

Wisconsin Brownfields Study Group

FRIDAY, MAY 10, 2019

1-855-947-8255 / 6612 745#

WIFI: DNR GUEST

PASSWORD: GOODAYR&H2O

Welcome / Intros / Agenda Repair

MARK THIMKE & DAVE MISKY

Brownfields Continuing Success — *Eastbay Sports Complex*

Mark A. Thimke

Brownfields Study Group Meeting
May 10, 2019



Holtz & Krause Landfill (1957-1978)

- Municipal/industrial landfill – 1957
- Built in low area of Wausau in area of three sloughs – stagnant water
- 1978 – Wisconsin Supreme Court case compelling closure
- Threatened Superfund listing

Eastbay Sports Complex



Eastbay Sports Complex – 2019

- May 3, 2019 – Mountain Bay Cup Soccer Tournament
 - 113 soccer teams
 - 5,000 people
 - 2,050 hotel rooms booked
 - Economic impact - **\$1.3 to \$1.4 million** for one event

Assistant Dep. Secretary
Todd Ambbs



RR Program Director Christine Haag

WILL CONTINUE:

- LONG-STANDING CULTURE OF INNOVATION
- COMMITMENT TO PROGRAM IMPROVEMENT
- COLLABORATIVE WORKING RELATIONSHIP WITH STAKEHOLDERS
- THINKING STRATEGICALLY
- TAKING DELIBERATE ACTION
- SUPPORTING OUR DEDICATED STAFF AND MANAGEMENT TEAM



RR Program Director Christine Haag

SHORT TERM PRIORITIES:

- EMERGING CONTAMINANTS
- FILL VACANCIES
- NR 700 RULE UPDATES
- ACT 369



RR Program Director Christine Haag

MID TERM PRIORITIES:

- EMERGING CONTAMINANTS
- RULE IMPLEMENTATION
- SUCCESSION PLANNING AND KNOWLEDGE TRANSFER
- END OF PECFA – PECFA 2.0?
- NEXT ROUND OF STRATEGIC PRIORITIES
- COMMUNICATION AND COLLABORATION!

Report Out

ACT 369

- PLANS FOR RR GUIDANCE
- OMB DIRECTIVE

RR Guidance – ACT 369

- Workload analysis
 - Definition of guidance expanded
 - RR would need 17 FTE for 1 year focused solely on this effort
- Department-wide process to prioritize and triage workload for LRB (in development)
- BSG's prioritization will be considered along with other factors (open rate, etc.)
- Prior completion of 21-day comment period – repeat

Act 369 – Guidance Update

- Litigation over Act 369 continues
 - Wisconsin Supreme Court to hear oral arguments on May 15; decision likely issued quickly
 - Preliminary ruling – indicates support for Act 369
 - Trial in Dane County Circuit Court on one of lawsuits – Wisconsin Supreme Court decision may pre-empt
- Brownfields Study Group list provided to WDNR
- Note July 1 date

Federal Guidance

- OMB directive effective May 11, 2019
- Federal guidance subject to OMB review as to whether it is a “major rule” under Congressional Review Act
- Delay in issuance of guidance/increased procedural process

Report Out

PFAS

- PFAS ASSURANCES INITIATIVES

Report Out

PFAS

- RR PROGRAM EMERGING CONTAMINANTS
TEAM LEADER – BRIDGET KELLY

Bridget Kelly

- ▶ Previous position - Drinking Water and Groundwater program Lead and Copper Rule Coordinator for the last 2.5 years.
- ▶ Prior to joining DNR in 2016, Bridget worked in consulting and aggregates and was also an Associate Lecturer at University of Wisconsin – Eau Claire.
- ▶ Bridget grew up in Eau Claire, where she earned her BS in Geology from UWEC; she earned her MS in hydrogeology from the University of Nebraska – Lincoln.



Report Out

PFAS

- ENVIRONMENTAL MANAGEMENT DIVISION
PFAS COORDINATOR – JAY NIELSEN

Jay Nielsen

- ▶ Previous positions include work with
 - ▶ US Centers for Disease Control
 - ▶ National Center for Environmental Health
 - ▶ New York City's Mayor's Office
 - ▶ Community Relations Coordinator for Law Office
 - ▶ Environmental Research Associate at Columbia University
- ▶ Education
 - ▶ BS in Environmental and Public Health from Columbia University
 - ▶ MA in Environmental Science and Policy from UW Eau Claire

Report Out

PFAS

- HISTORY & USE SUBGROUP

History & Use Subgroup

Approximately 16 participants in person and 34 phone lines active

Participants in person and by phone included

- Consultants
- Attorneys
- City of Madison
- Citizen groups
- Other DNR Agencies
- Government Relations
- RR Program Staff

History & Use Subgroup

The content of the information shared was primarily from ITRC fact sheets and work products and information obtained during the ITRC workgroup/meeting/training Fassbender attended on March 25-29, 2019.

The presentation included:

- A review of ITRC existing resources and upcoming tools
- Regulatory Update
 - How many states have standards?
 - EPA Hazardous Substance Listing
- An overview of the history of PFAS development and use
- Environmental awareness history
- Replacement chemistry

History & Use Subgroup

- Major sources of PFAS in the environment
 - Aqueous Film Fighting Foam (AFFF)
 - Production and Manufacturing
 - Waste Water Treatment Plants
 - Landfills
 - Use of consumer products
- Resources for information
 - ITRC
 - US EPA Clu-In
 - Specific scientific articles
 - Identification of facilities that produced or used PFAS
 - NAICS and SIC Codes – benefits and difficulties
- Other State evaluation methods
 - Michigan – POTW/WWTP sampling and water supply well sampling
 - Minnesota – Industry identification – fire dept surveys, landfill testing, industry risk ranking
 - California – Airport and landfill testing
- Northeastern States – AFFF “recycling” programs

History & Use Subgroup

Open forum Discussion

Other information available

- Michigan PFAS source list – used as basis for POTW/WWTP sampling project

Other topics of Interest

- WI recognition of PFAS as hazardous substance
- Destruction technology - difficulty with incinerators not burning PFAS waste long enough or hot enough to degrade the PFAS
- PFAS Toxicity information
- Need for list of potential sources for PFAS; Which PFAS come from which industries
- PFAS evaluation method discussion (i.e. DOD method vs. EPA method 537.1 vs. others)
- ASTM process updates for Phase I's and II's

Report Out

PFAS

- FATE & TRANSPORT SUBGROUP

Fate & Transport Subgroup

22 participants in person, 37 Skype connections, over 30 by Phone

Participants included

- Consultants
- Attorneys
- City of Madison
- Citizen groups
- Other Agencies/Programs – DNR (Waste and Materials Management), UW-MKE, UW-Madison, USGS
- Government Relations
- RR Program Staff

Fate & Transport Subgroup

The content of the information shared was obtained primarily from ITRC fact sheets and work products related to Fate and Transport of PFAS.

The presentation included:

- A review of the four major sources of PFAS and common Conceptual Site Models including:
 - 1) AFFF
 - 2) Industrial
 - 3) Landfills
 - 4) WWTPs
- A review of the different fate and transport mechanisms influencing PFAS movement in the environment, including:
 - Partitioning (i.e. hydrophilic vs. lipophilic)
 - Advection, Dispersion, Diffusion, Deposition, Leaching
 - Surfactant Properties and Micelle Formation

Fate & Transport Subgroup

- A review of the different transformation mechanisms influencing PFAS movement in the environment, including:
 - Abiotic and biotic transformation
- A review of the different mediums where PFAS can occur:
 - Air
 - Soil and Sediment
 - Groundwater and Surface Water
 - Biota and Bioaccumulation (i.e. plants, invertebrates, fish, humans)
- Identify potential additional subgroup topics to be addressed – what topic areas need to be discussed in detail
 - Review of ITRC's Technical Document Outlines - detailed information for each of the different fate and transport processes is covered in the ITRC fact sheets (i.e. Environmental Fate and Transport Processes, Media, Site Characterization)

Fate & Transport Subgroup

Open forum Discussion

Discussion: Screening for PFAS - A robust dialogue was carried out by the group

- a number of chemists and consultants were present with much information on the chemical characteristics of different PFAS compounds and experience in testing for PFAS:
 - Some feel we should not move forward until EPA establishes a standard method
 - Others feel EPA is not moving fast enough and that we cannot wait for them
 - Group seeks guidance on PFAS remedial goals

Fate & Transport Subgroup

Other topics of Interest

- Development of a source list resource – which types of operations are likely to contain PFAS and should be tested/evaluated during Phase I/II process
- Development of a source list resource – identify which types of PFAS came from which industry
- Develop a screening process that would be useful to identify if a site is a PFAS site (i.e. a quick screen to guide redevelopment projects)
- ASTM process updates for Phase I's and II's
- Toxicity information
- Testing methods – what method will produce consistent results
- Testing methods – what method will state require in the future

Fate & Transport Subgroup

Other topics of Interest (cont.)

- Development of a priority list to determine where testing is likely needed
 - Start list by removing types of industry from the list that are NOT a known source
- Development of a plan to determine potential exposure at likely high-risk sites
- BSG intends to move forward on a 'Phase i/Phase II' type addendum to handle
- Report on any dialogue that is happening between the states – stakeholders are interested in what is happening in Region 5; what is happening nationally
- Establish a subgroup for Waste and Materials Management

Report Out

PFAS

- LAB ANALYSIS SUBGROUP

Lab Analysis Subgroup

- ▶ List of compounds has been selected
- ▶ 36 total compounds
- ▶ 13 Carboxylic Acids
- ▶ 12 Sulfonic Acids
- ▶ 7 Sulfonamides, Sulfomidoacetic acids, Sulfonamidoethanols
- ▶ 4 Replacement Chemicals
 - ▶ HFPO-DA (also know as GenX)
 - ▶ DONA (also available as the ammonium salt ADONA)
 - ▶ 9CI-PF3ONS
 - ▶ 11CL-PF3OUdS

Lab Analysis Subgroup

- ▶ Subgroup includes 14 interested Laboratories
 - ▶ ½ currently certified in Wisconsin for analyses other than PFAS
 - ▶ ½ currently conducting PFAS analyses
- ▶ Developing SOP for “WI PFAS SOP” method – Will not be identified as a 537.1 modified method
- ▶ Will require LCMS/MS
- ▶ Scheduled to offer certification in late summer
- ▶ Begin auditing laboratories about 1 month after offering certification

Report Out

PFAS

- ASTM – PFAS AS A HAZARDOUS SUBSTANCE

PFAS as Hazardous Substance

- ▶ PFAS not currently on Federal Hazardous Substance list
- ▶ Proposing modification to Wis. Admin. Code for VPLE to require ASTM Phase I plus other hazardous substances under Wisconsin's definition.
- ▶ *Hazardous substance" means any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department. See Wis. Stats. § 292.01(5)*

Report Out

PFAS

- DNR / DHS – NR 140 UPDATE

NR 140 Update

- ▶ On track for draft recommendations to DNR by Mid 2019
 - ▶ 27 compounds including – 2 PFAS
 - ▶ PFOA
 - ▶ PFOS
- ▶ Cycle 11 Request Received
 - ▶ Includes 40 compounds – 34 PFAS
 - ▶ Currently developing a timeline for when review of Cycle 11 will be complete.

Report Out

PFAS

- MADISON STUDY

Madison Study

- ▶ Pilot project to review Land Uses
- ▶ Evaluate potential sources of PFAS within capture zones of Wells 15 and 16 in Madison
- ▶ Determine the source of PFAS in Well 16, which provides water to part of Madison's west side, and Well 15, which helps serve the city's northeast side.
- ▶ Review past and present land uses near wells
- ▶ Inventory former industrial and commercial activities
- ▶ The DNR plans to spend an estimated \$30,000 on pilot project
- ▶ Estimated completion time – mid-summer

Report Out

ACT 70

Act 70 Update

- EDGE Program – Brownfields manufacturing incentives
 - Green Tier ROP in place and available
 - First applicant moving forward
 - Discussion with Deloitte on developing criteria for new manufacturing plant incentives
 - Working on Green Tier Charter approach for industrial parks
- Potential legislative cleanup on Act 70 – ETIDs

Report Out

NR 700 RULES – REVISIONS / TOPICS / WEBSITE

NR 700 rule revisions

Rule Development Phase

- Rulemaking process timing & rule drafting
- Rule Development Meetings
- Website: <https://dnr.wi.gov/topic/Brownfields/RuleChanges.html>
- Email: DNRRNR700input@wisconsin.gov
- Last meeting: May 7, 2019
- Next meeting: June 4, 2019

Lender Subgroup - PFAS

Lender Liability Subcommittee

- Prior Brownfields Study Group subcommittee reviewed Wisconsin lender liability provisions
- Bank practices inconsistent with lender protections
- Brownfields Study Group did not pursue; not a Brownfields issue
- Now – PFAS
- Re-look at lender liability to avoid Brownfields lending freeze

Legal Update

- RCRA CITIZEN SUIT
- CERCLA – COURT OF APPEALS DECISION
- ACT 21

RCRA Citizen Suits – Cleanup

- *Liebhart v. SPX Corp.* – 7th Circuit Court of Appeals (Mar. 6, 2019)
- Watertown, Wisconsin case – manufacturing building demolition
- RCRA – “imminent and substantial endangerment”
- Issue – whether required to show:
 - Harm **already** suffered or
 - Ongoing threat of **future** harm
- Adopted – threat of future harm sufficient
- No requirement to show contamination above agency threshold
- Show contaminants have potential to substantially threaten health in future
- Redevelopment – control of off-site impacts

CERCLA Liability – Sale of Buildings

- *U.S. v. Dico, Inc.* – 8th Circuit Court of Appeals (Apr. 11, 2019)
- Manufacturing building with PCBs sold to demolition company
- Demolition company not told of PCBs – contamination
- Sale of building – “arrangement for disposal” under CERCLA
- Lesson – potential cleanup liability for demolition “gone bad”

Act 21 Update – § 221.10(2m)

- Act 21 – limits agency authority to what is explicitly required or explicitly permitted by statute or rule
- Two cases going through courts on scope of Act 21
- Both are with the Wisconsin Supreme Court
- Prior Attorney General supportive of narrow interpretation of agency authority
- Attorney General Kaul reversing position with Wisconsin Supreme Court; Legislature retaining separate counsel for narrow interpretation
- Awaiting definitive court opinion



Lunch Break

Courtesy of Kenn Anderson / Aon

Legislative & Budget Initiatives

- ACT 70 IMPROVEMENTS

Act 70 Improvements

EDGE Pilot - Wis. Stats. § 285 (see issue paper)

- Clarify that air permit could be for a new or existing source at an expanded or new facility
- Make clear that the pilot can apply to any property that obtains VPLE Certificate of Completion

Environmental Remediation Tax Incremental Financing - Wis. Stat. § 66.1105 (20m)

- Clarify requirements for investigation certified by DNR and role of DNR
- Does there need to be investigation and remedial action plan for every parcel in the district?

Legislative & Budget Initiatives

- VPLE LONG-TERM SOLUTION

VPLE Long Term Solution

- Modify VPLE to consider emerging contaminants and scope of liability protection (see issue paper)
- Other possible VPLE issues:
 - Allow DNR to require updated Phase I, Phase II and Site Investigation
 - Insurance requirement for natural attenuation for substances without a NR 140 enforcement standard
 - Clarification of VPLE sediment requirements
- Task VPLE Subgroup to develop recommendations

Legislative & Budget Initiatives

- VARIOUS UPDATES TO WIS. STAT. 292

Updates to Wis. Stats. 292

- Improvements to Umpire Process in Wis. Stats. § 292.35 (see issue paper)
- Clarify language in Wis. Stats. § 292.11(7)(c) regarding DNR order authority that refers to the DATCP agriculture chemical cleanup program law

Legislative & Budget Initiatives

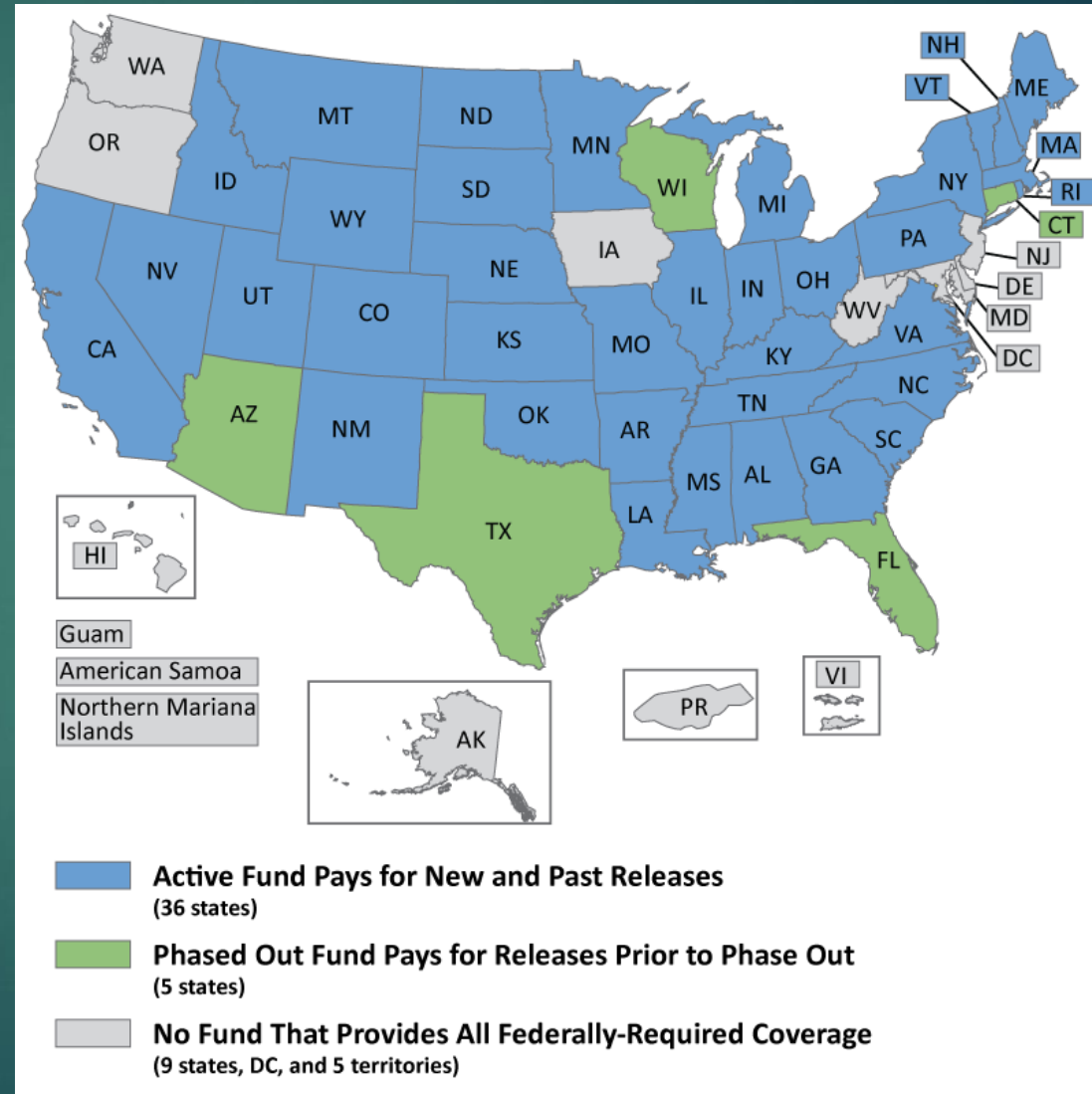
- BROWNFIELD FUNDING PROPOSAL

Legislative & Budget Initiatives – PECFA 2.0

- PECFA 2.0

Legislative & Budget Initiatives – PECFA 2.0

- Gov's Budget -
Extend PECFA to
June 30, 2021
- PECFA sunset will
make WI one of
only a few states
without a state
fund





State Tank Funds

REGION 5 HIGHLIGHTS FROM STATE
FUND – FINANCIAL RESPONSIBILITY TASK
FORCE, TANKS PUBLICATION

State Fund Survey Results 2017

- ▶ Based on responses to a survey conducted by the Vermont Department of Environmental Conservation.
- ▶ Updated Spring/Summer 2018.
- ▶ ASTSWMO Website August 24, 2018 Publication

	Fed Reg USTs	Other
Illinois		Petroleum USTs
Indiana	Yes	
Michigan		Refined Petroleum USTs
Minnesota	Yes	Other USTs, Heating Oil, ASTs
Ohio	Yes	
Wisconsin	Yes	Other USTs, Some Heating Oil, Some ASTs






Tanks Covered by State Programs



Illinois	5,389
Indiana	4,175
Michigan	6,700
Minnesota	10,400*
Ohio	7,131
Wisconsin	4,300

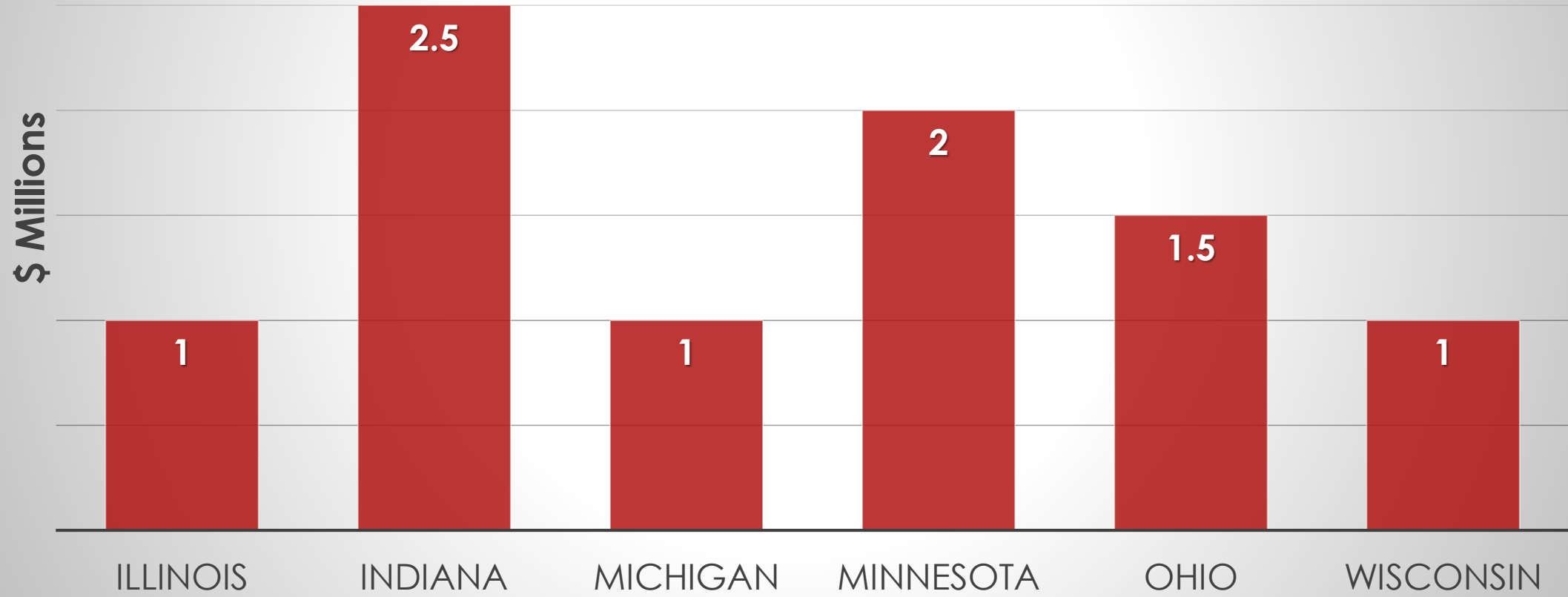
* Active regulated UST and AST sites (unregulated and former tank sites also covered)

2017 Number of Covered Tanks

	Indiana	Michigan	Minnesota	Ohio	Wisconsin
Corrective Action					
Corrective Action Post Dec 30, 2014					
Third Party Damages					
New Releases					
Old releases newly discovered at active tank sites					
Abandoned Tanks					

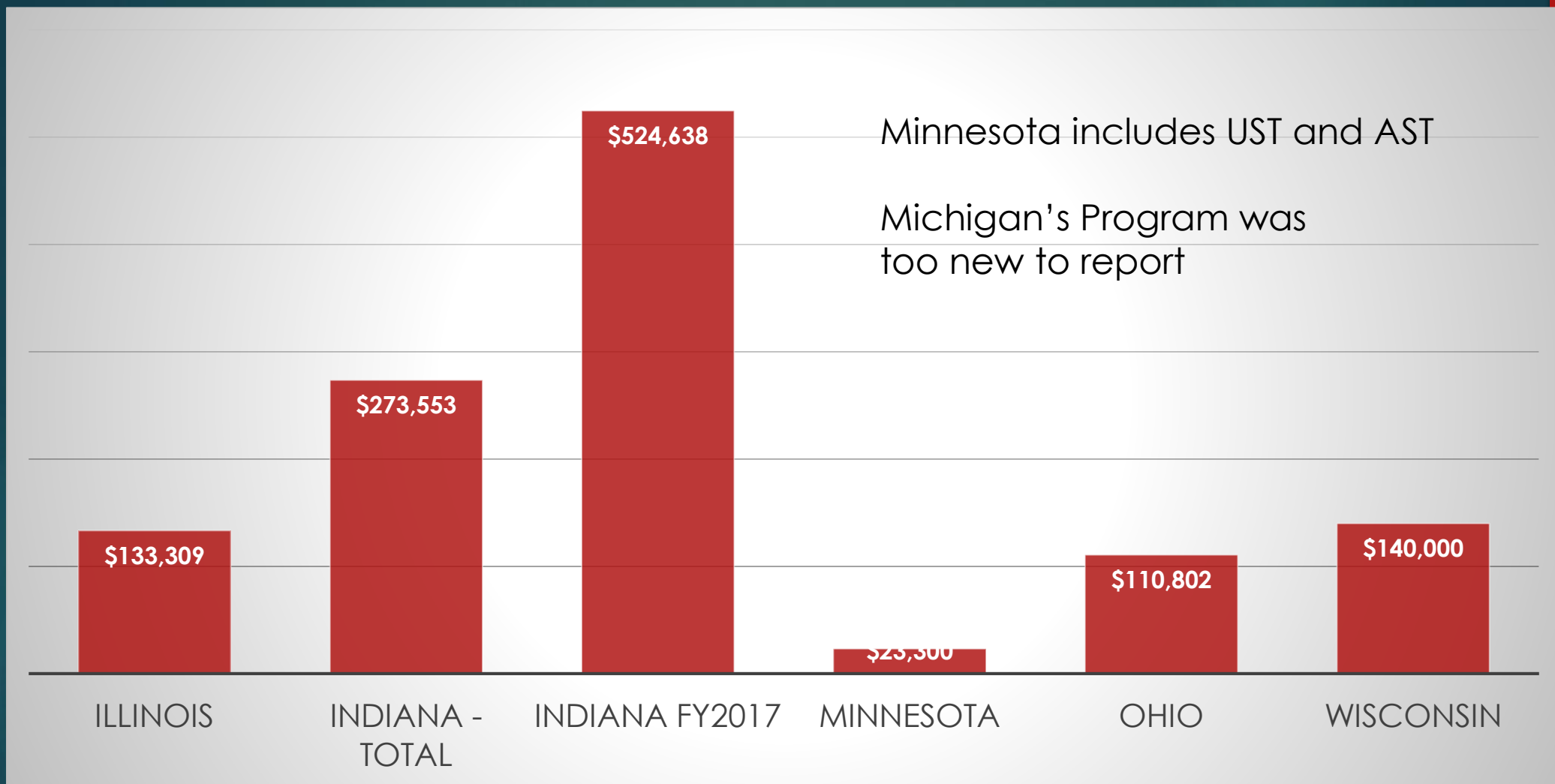
Fund Coverage

Fund Coverage Caps



Illinois	\$5,000 for new releases reported on and after June 8, 2010. For releases reported prior to June 8, 2010, \$10,000; \$15,000; \$50,000; or \$100,000.
Indiana	\$15,000.00
Michigan	\$2,000 for owners or operators of 7 USTs or less. \$10,000 for owners or operators with 8 or more USTs
Minnesota	Reimbursement of 90% of eligible costs. Applicants responsible for 10% of eligible costs.
Ohio	\$55,000 standard; \$11,000 reduced
Wisconsin	\$2,500 - \$5% of coverage

Deductibles



Average Amount paid per discharge

Releases greater than \$1M



Indiana 162 releases

Illinois 85 releases

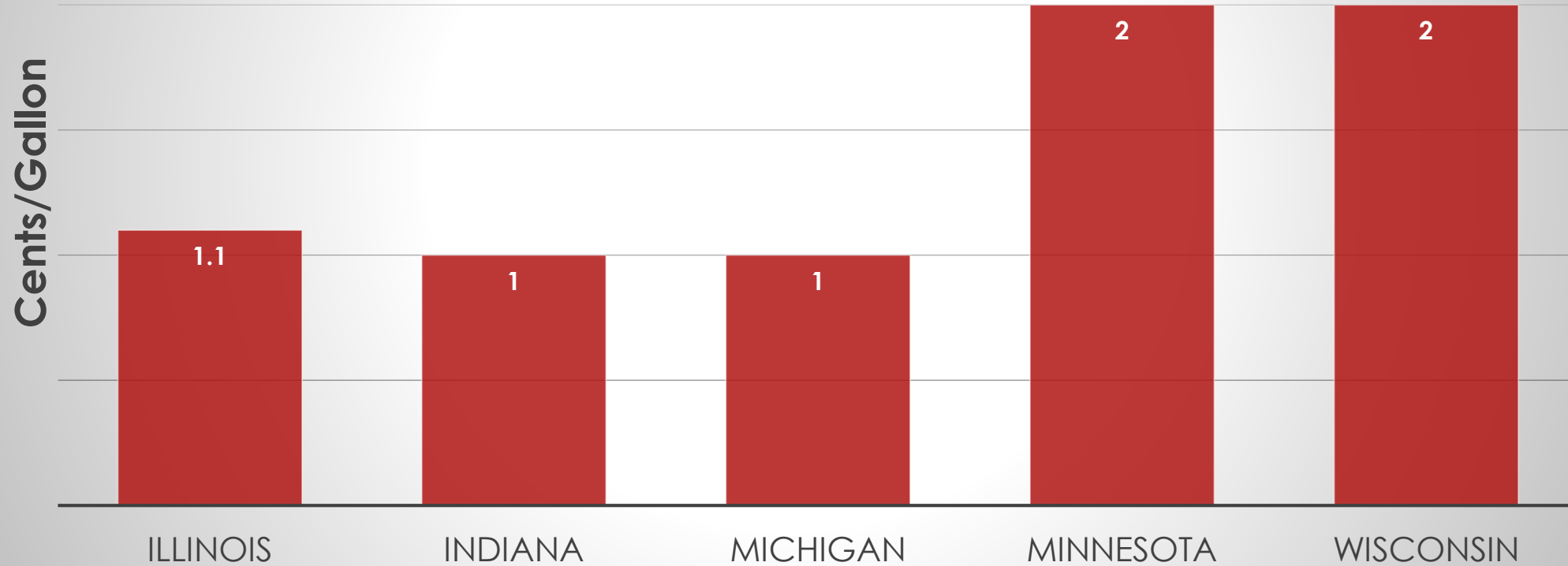
Minnesota 6 releases

Michigan, Ohio and Wisconsin did not report
or reported 0 releases exceeding \$1M in
reimbursable expenses

Cost Control Measures

Indiana	None
Michigan	Schedule of Costs, Competitive bidding, Pre-approval of excavation costs, List of ineligible costs
Minnesota	Fee schedule. Competitive bidding. Pre-approval of active remediation costs. Use of standard forms for proposing/invoice costs.
Ohio	Use standard forms for site assessment and corrective action plans require pre-approval of cleanup plans and/or budget limit overhead paid use pay-for-performance cover cleanups based on site-specific risk-based end points
Wisconsin	Usual and customary cost standards

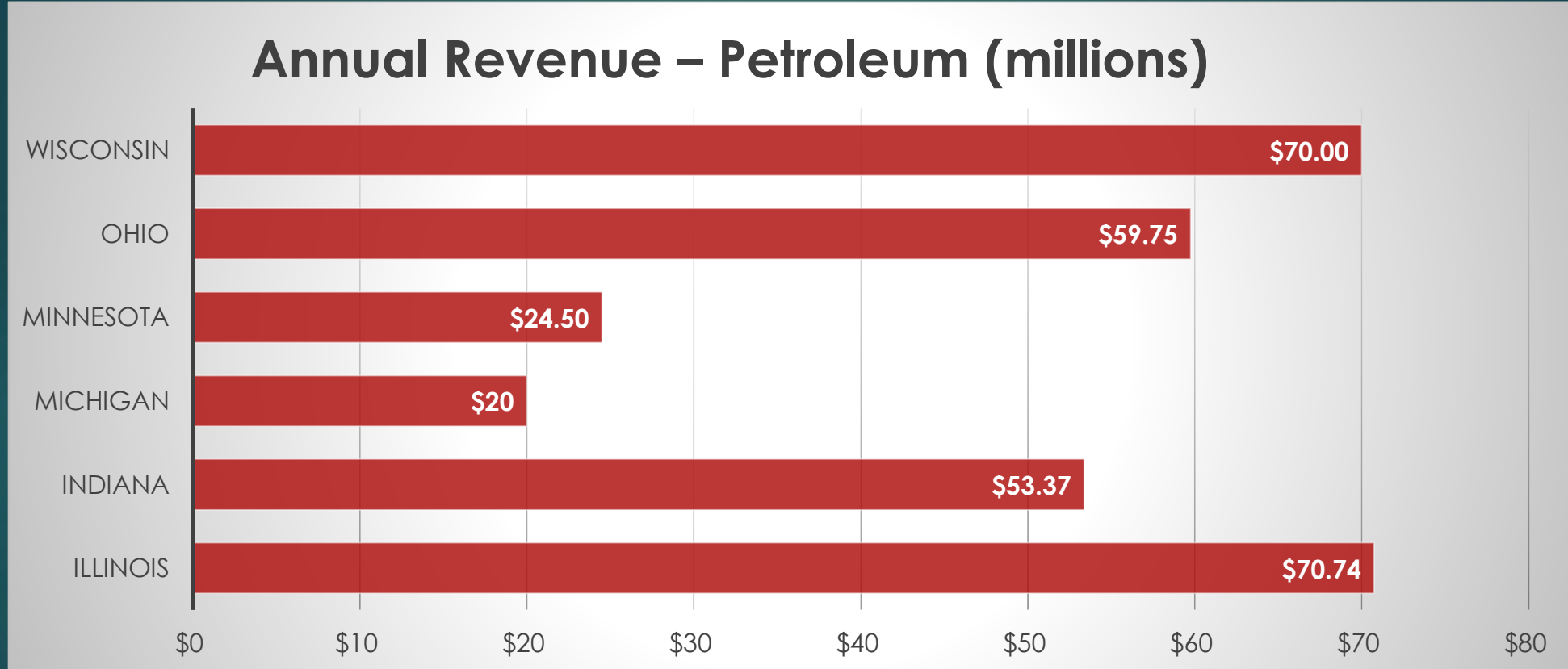
2017 Petroleum Fee/Gallon



Ohio reported no per gallon fee for petroleum and annual Tank Fees of \$400 for \$55,000 deductible and \$600 for \$11,000 deductible

Indiana Reported a per gallon fee plus an annual fee of \$90/tank

Annual Petroleum Revenue



Michigan reported \$20M for reimbursement fund

Illinois	One year from the date of issuance of No Further Remediation Letter.
Indiana	Nine months after "No Further Action"
Michigan	None
Minnesota	Within seven years of work being performed.
Ohio	One year
Wisconsin	6 months after cost are incurred (This change in the law took effect 1 Feb 2016)

Time Limit for submitting costs

	Status	Sunset
Illinois	Positive Balance	01/01/2025
Indiana	Solvent	None
Michigan	Financially sound	None
Minnesota	Financially sound	06/30/2022
Ohio	Supported solely by annual tank fees, revenue bond proceeds, if any, and interest income.	None
Wisconsin	Sufficient funding until 2020.	06/30/2020

Current Status of Fund

State Fund Used for Financial Responsibility requirements?

	Fund for FR?	Voluntary?
Indiana	Yes	Yes (95%)
Michigan	Yes	32%
Minnesota	Yes	Yes
Ohio	Yes	No
Wisconsin	No	No

U.S. EPA Update

JON GROSSHANS - EPA

BSG Standing Items

- WMC – LANE RUHLAND
- WEDC – JASON SCOTT
- BSG MEMBERSHIP & STRUCTURE
- NEXT MEETING

Confirm Assignments & Adjourn

MARK THIMKE & DAVE MISKY