



MINUTES
MISSOURI AIR CONSERVATION COMMISSION
CONFERENCE CALL
April 29, 2020
9:00 a.m.

Commissioners Present

Ron Boyer, Member
Gary Pendergrass, Member
Richard Rocha, Chairman
Mark Fohey, Vice Chairman
Kevin Rosenbohm, Member

Staff Members Present

Stacy Allen, Air Quality Planning Section, Air Pollution Control Program (APCP)
Adel Alsharafi, Air Quality Planning Section, APCP
Van Beydler, Public Information Coordinator, Soil and Water Conservation Program
Darcy Bybee, Director, APCP
Francisco Cortalezzi, Air Quality Planning Section, APCP
Jan Dunlap-Chronister, Southeast Regional Office
David Gilmore, Director's Office, APCP
Kendall Hale, Permits Section Chief, APCP
Stephen Hall, Air Quality Analysis Section Chief, APCP
Connie Kinney, Compliance and Enforcement Section, APCP
Mark Leath, Air Quality Planning Section, APCP
Patricia Maliro, Air Quality Analysis Section, APCP
Kyra Moore, Deputy Director, Division of Environmental Quality
Paul Myers, Air Quality Planning Section, APCP
Shelly Reimer, Air Quality Planning Section, APCP
Richard Swartz, Compliance and Enforcement Section Chief, APCP
Richard Waters, Assistant General Counsel, Department of Natural Resources
Will Wetherell, Environmental Services Program
Emily Wilbur, Air Quality Planning Section Chief, APCP

Others Present (per virtual meeting registration)

Andrew Baumgarth
Cody Brown
Jeff Burkett, Liberty Utilities
Kris Donaghey
Kathrina Donegan
Richard Groeneman, Assistant Attorney General, Attorney General's Office
Bruce Heine
Michael Hutcheson, Ameren Missouri
Jeannie Kozak, Shell Engineering and Associates, Inc.
David Little, City Utilities of Springfield
Lisa Lori

Ken Miller
Jeffrey Molony
Brent Ross
Charles Thornbrugh
Laura Schubert
Wendy Vit, GeoEngineers, Inc.
Roger Walker, Regulatory Environmental Group for Missouri
Steve Whitworth, Ameren Missouri
Shirley Wolverson

A. Call to Order

Chairman Richard Rocha called the April 29, 2020, meeting of the Missouri Air Conservation Commission to order. The following commissioners were present by phone: Gary Pendergrass, Ron Boyer, Mark Fohey, Richard Rocha, and Kevin Rosenbohm.

B. Welcome and Introductions

Ms. Darcy Bybee gave a brief overview of the agenda and noted that the meeting was again being held remotely due to the COVID-19 virus. She briefly discussed management reminders for the virtual meeting to make the remote process work for staff, commissioners, and the public.

C. March 26, 2020, Minutes

Commissioner Kevin Rosenbohm moved to approve the March 26, 2020, minutes. Commissioner Mark Fohey seconded the motion. All commissioners approved the March 26, 2020, minutes as written.

D. Reports – The following referenced reports are in the April 29, 2020, Missouri Air Conservation Commission Briefing Document and available online at dnr.mo.gov/env/apcp/macc.htm.

1) COMPLIANCE/ENFORCEMENT REPORT

The video for this meeting and these reports are available at <https://dnr.mo.gov/videos/archive-meetings.htm>. Please note the video will be removed 90 days after the date of the commission meeting.

a) Concern Report

Mr. Richard Swartz said the Compliance/Enforcement Report begins on page 29 of the briefing document with the Concern Report and runs through page 65. The Department received a total of 72 concerns from February 16, 2020, through March 15, 2020. The majority of the concerns received were regarding burning, odor, or asbestos. During this time regional office staff completed 62 investigations. In addition, the Department issued eight Letters of Warning and one Referral Notice of Violation.

b) Ongoing Negotiations Report

The Ongoing Negotiations Report is on page 67. There are 16 active cases at this time. One GVIP case was resolved, which will show up on next month's Finalization Report.

c) Finalized Agreement Report

There were no finalized agreements for this reporting period.

d) Pending Referrals Report

The Pending Referrals Report is on page 69. Mr. Swartz stated there were three active referrals and the list was unchanged.

e) Gateway Vehicle Inspection Report

The Gateway Vehicle Inspection Report begins on page 71. Over 180,000 vehicles were tested during the first quarter of 2020 with a passing rate of over 97 percent. The program also conducted 676 audits during the first quarter.

f) Compliance Report

A summary of the Compliance Report is available on page 73. The program received 795 reports during the first quarter, the majority of which were annual compliance recertifications and semi-annual monitoring reports.

g) Quarterly Asbestos Report

The Quarterly Asbestos Report is available on page 75. The program processed 941 Occupational Certifications and 227 notifications. In addition, the program issued 64 Abatement Contractor Registrations along with 15 Training Provider Accreditations.

h) Regulatory Relief

Mr. Swartz stated the Air Pollution Control Program is able to offer relief to businesses or entities that are impacted by the COVID-19 virus. He went on to speak about the online ability to view the resources and regulatory information on the Department's home page.

Mr. Swartz said it was also very important to focus on compliance, and briefly talked about what the department was doing to help with that as well. There are currently 11 requests for regulatory relief, nine of which were reviewed and have responses: Five were in regards to periodic testing; four were in regards to stack testing, one in regards to EIQ deadlines, and one requesting relief from a civil penalty recently imposed. He spoke on how the EPA had issued advisement on enforcement discretion in regards to COVID-19. The most common theme, so far, in regards to the virus, was with Method-9 testing and stack testing. Mr. Swartz briefly spoke about what the program was allowing to help entities to stay

in compliance and what they were allowing in regards to recertifications. For stack testing, the program is viewing it as a force majeure event per the provisions within Part 60 and 63 in the federal regulations that account for situations such as this.

Pursuant to the Governor's Executive Order 20-04, the program has suspended portions of State Rule 10 CSR 10-6.250 in regards to asbestos recertification.

Commissioner Pendergrass inquired into the regulatory relief entities that had filed and how they had been broken down, specifically the final one and if it was regarding some sort of penalty. Mr. Swartz stated that it was an open burning case regarding a small business. No decision has been reached regarding relief from the assessed penalty. He spoke on some of the details of the case.

Chairman Rocha asked, in regards to regulatory relief, if the Air Pollution Control Program was corresponding with other programs so that everyone was following a unified approach. He also inquired if other programs had seen the same amount of requests for relief.

Mr. Swartz stated that the Division Director's office was coordinating the approach and went into detail on how it was working. He also stated that other programs were seeing about the same amount of relief requests as the Air Pollution Control Program.

Chairman Rocha suggested a way for the program to cope if it gets inundated with regulatory relief requests that are not substantive. He also noted it takes time and effort for facilities to deal with additional filings, especially if they are short on staff due to COVID-19. Some entities have limited resources.

Mr. Swartz replied that he was taking note. He also stated that he does not believe the 11 entities applying for the relief would be the only ones experiencing record keeping or compliance issues related to COVID-19. The program will thoughtfully consider how to handle the record keeping and compliance issues moving forward.

2) PERMITS REPORT

Mr. Kendall Hale stated the Permit Report begins on page 77 of the briefing document with the Permit Applications Received Report for the months January-March. The Permit Section received 41 Construction and four Operating Permit projects. So far, the Permit Section has received 127 permit projects for the first three months of 2020. Pages 78-89 of the briefing document show the projects submitted.

The Permit Applications Completed Report begins on page 91 of the briefing document. For the month of March, the Permit Section completed 45 Construction and 10 Operating Permit projects. So far, the Permit Section has completed 118 permit projects and 20 operating projects for 2020. This information is searchable on the Air Pollution Control Program's website and is updated weekly. Pages 92-105 of the briefing document show the projects completed.

The Open Permits Report is on page 107 of the briefing document. This report details the types of projects currently open in the Permit Section. There are 152 Construction and 130 Operating permit projects currently open in the Permit Section.

On page 95 of the briefing document, Golden Triangle is mentioned. They filed an appeal on April 15, 2020, for the intermediate operating permit they were issued. More updates will be provided in the future as this moves forward.

The Permit Section continues to reduce the backlog of Intermediate and Part 70 operating permits. The Permit Section was down to 42 projects at the end of March.

There are currently five vacancies in the Permit Section. Since most Permit Section staff are working remotely from home, the best way to communicate is by e-mail.

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3) AIR QUALITY PLANNING REPORT

a) Rule and State Implementation Plan Agenda

Ms. Emily Wilbur said the Rule and State Implementation Plan (SIP) Agenda begins on page 109.

There is no public hearing scheduled and one proposed item for adoption, which is a proposed boundary recommendation. There is no public hearing scheduled for the May meeting. There will be eight rulemakings brought before the commission for adoption; seven are amendments and one rescission.

b) Rules in Progress Schedule

The Rules in Progress Schedule starts on page 111. Ms. Wilbur provided an update on a rule submitted in November 2016, 10 CSR 10-6.210, *Confidential Information*. EPA brought concerns in regards to a conflict with a state rule and requirements of a federal rule. Ms. Wilbur went into brief detail on the specifics of this. In addition, a few actions on the federal level Ms. Wilbur wanted to mention included EPA finalizing five rules that were reviewed under RTR.

c) State Plans Report

The State Plans Report begins on page 113 of the briefing document. The main plan action of note is the new settlement agreement the department is working on with Doe Run Glover, a historical lead site. The agreement will be included in, and a SIP Revision that updates their operational status and eliminates monitoring requirements. On page 114, under Jackson County Maintenance Plan, Ms. Wilbur noted that EPA has proposed approved of the programs clean data determination request.

Ms. Wilbur also mentioned she wanted to update the commission on another re-designation request the program is working on in Franklin and St. Charles counties

currently designated unclassifiable under the 2010 SO2 Standard. She briefly spoke on the request and stated that it would be listed on the next State Plans Report.

Chairman Rocha spoke about the EPA and its ability over the last few years to raise the bar as to what it allows to be considered confidential information.

4) DIRECTOR'S REPORT

a) Staffing

Ms. Bybee said that the program had the same vacancies as in previous months and that hiring was currently on hold, though the program was still optimistic for a few interns over the summer.

Many staff are working remotely, checking e-mail, checking voicemail, and conducting business as much as possible while maintaining distancing.

Ms. Bybee encouraged everyone to call the employee's regular line if they need to reach them or to leave a message at the main number. There will slowly be a few more people going into the office in the coming weeks. Following the Governor's order and the four phases outlined, the program will slowly start moving back into the new normal.

b) Regulatory Relief

A federal fuel waiver was announced by the EPA in April, and the program is looking into what it can potentially look at with regards to this waiver in the Kansas City area.

c) Fee Stakeholder Process

The kick off meeting was on March 2, 2020, and another meeting was held on April 6, 2020. The program is looking to hold another meeting on May 5, 2020, regarding this process as well. At the March Fee Stakeholder Meeting, the program shared it is expecting approximately a \$3.9 million average annual shortfall starting in fiscal year 2023, which would start on July 1, 2022. There was a lot of discussion about how the program determined that shortfall, how it expects expenditures to rise, and how fees are expected to maintain or drop down based upon best estimates and projections. The program is appreciative of everyone's time and attention.

Ms. Bybee updated the committee on the Frequently Asked Question document that they had been asked to put together, and mentioned there would be an update soon.

Ms. Bybee informed the commission that there would likely be the need for an additional meeting with the commissioners, and that the program was looking at June for that meeting.

d) Ozone

The 2020 ozone monitoring season runs from March 1st - October 31st. Ms. Bybee reminded everyone the program utilizes both its GovDelivery and Twitter accounts to update the public about high ozone days.

The program is working on its annual air quality report. The current goal is to have Mr. Steve Hall present his report at the May commission meeting.

e) Volkswagen

The program opened an application period on March 2, 2020, for all categories other than the Diesel Emission Reduction Act (DERA). These categories include school buses, non-government trucks, transit and shuttle buses, locomotives, marine and airport cargo equipment. The application period was set to close on March 31, 2020, but the application period was extended for 60 days and will now close on May 31, 2020. The program wanted to ensure everyone that was interested in applying had the opportunity. The program has quite a bit of appropriation authority still to award this fiscal year; a little less than half of \$13.5 million. The program is hoping many great projects apply so the full amount can be awarded. Even while working remotely, staff are still answering phone calls and emails. She encouraged anyone that has questions to reach out.

f) Miscellaneous Items

Ms. Bybee mentioned that the program was looking at the May commission meeting, which is currently scheduled to be held in Jefferson City. The program would coordinate to decide on if it would be virtual again, or if it would have the possibility of an in-person setting. Ms. Bybee also said that they would look to reschedule a meeting again in Kansas City.

Chairman Rocha asked the program to provide a short summary of the Fee Stakeholder meetings and where the program is headed. Ms. Bybee stated they would put something together with more information regarding where the process is hopefully leading.

Chairman Rocha also asked if it would be possible to add information to the air quality report regarding March and April 2020. He mentioned that it would be interesting to see the impact COVID-19 is having on air quality. Ms. Bybee stated that they would add this information to the presentation.

E. Recommended for Adoption and Actions to be Voted on

Adel Alsharafi presented *Proposed Area Boundary Recommendations for the 2010 Sulfur Dioxide Standard: December 2020 Designations*.

Commissioner Boyer stated staff did a good job on this presentation.

Commissioner Pendergrass moved to approve *Proposed Area Boundary Recommendations for the 2010 Sulfur Dioxide Standard: December 2020 Designations*. Commissioner Rosenbohm seconded the motion. All commissioners voted to approve *Proposed Area Boundary Recommendations for the 2010 Sulfur Dioxide Standard: December 2020 Designations* as presented.

F. Open Comment Session

Charles Thornbrugh asked remotely, “How will 7.0 RVP be handled this summer?”

Ms. Bybee stated the program is still reviewing the federal waiver and hopes to send an update soon. Richard Swartz added that the rule requirements begin to apply on June 1, 2020.

G. Future Meeting Dates

May 28, 2020 – Thursday

Elm Street Conference Center
1730 East Elm Street
Lower Level
Bennett Springs Conference Room
Jefferson City, MO 65101

July 30, 2020 – Thursday

St. Louis Regional Office
7545 South Lindbergh, Suite 220
DESE Conference Room
St. Louis, MO 63125

August 27, 2020 – Thursday

Elm Street Conference Center
1730 East Elm Street
Lower Level
Bennett Springs Conference Room
Jefferson City, MO 65101

September 24, 2020 – Thursday

Southwest Regional Office
2040 West Woodland
East and West Conference Rooms
Springfield, MO 65807

October 29, 2020 – Thursday

Elm Street Conference Center
1730 East Elm Street
Lower Level
Bennett Springs Conference Room
Jefferson City, MO 65101

December 3, 2020 – Thursday

Elm Street Conference Center
1730 East Elm Street
Lower Level
Bennett Springs Conference Room
Jefferson City, MO 65101

H. Discussion of Pending Litigation and Legal Matters

Mr. Richard Groeneman stated there was nothing new to be discussed.

I. Meeting Adjournment

Commissioner Fohey moved to adjourn the April 29, 2020, Missouri Air Conservation Commission meeting. Commissioner Rosenbohm seconded the motion. All commissioners voted to adjourn the April 29, 2020, Missouri Air Conservation Commission meeting.

Chairman Rocha adjourned the April 29, 2020, Missouri Air Conservation Commission meeting.

Respectfully submitted,

Signature on File

Darcy A. Bybee, Director
Air Pollution Control Program

Approved:

Richard Rocha, Chairman
Missouri Air Conservation Commission