

MINUTES
MISSOURI AIR CONSERVATION COMMISSION
Elm Street Conference Center
1730 East Elm Street – Lower Level
Bennett Springs Conference Room
Jefferson City, MO 65101
April 24, 2014
9:00 a.m.

Commissioners Present

Jack Baker, Member
Gary Pendergrass, Chairman
Mark Garnett, Vice Chairman
David Zimmermann, Member

Staff Members Present

Darcy Bybee, Compliance/Enforcement Section Chief, Air Pollution Control Program (APCP)
David Gilmore, Program Secretary, APCP
Wayne Graf, Air Quality Planning Section, APCP
Kendall Hale, Permits Section Chief, APCP
Julia Katich, Department of Natural Resources
Victoria Lovejoy, Public Information Specialist, APCP
Kyra Moore, Director, APCP
Paul Myers, Air Quality Planning Section, APCP
Aarick Roberto, Commission Secretary, APCP
Wendy Vit, Air Quality Planning Section Chief, APCP
Will Wetherell, Environmental Service Program
Joe Winkelmann, Air Quality Planning Section, APCP
Chris Wood, Environmental Service Program
Patrick Vavra, Compliance/Enforcement Section, APCP

Others Present by Attendance Record

Ken Anderson, Ameren
Robert Brundage; Newman, Comley and Ruth, P.C.
Kathrina Donegan, St. Louis County, Air Pollution Control Program
Tim Duggan, Attorney General's Office
Daniel Hedrick, City Utilities of Springfield
Chris Schreiber, Schreiber Engineering, LLC
David Shanks, Boeing
Todd Tolbert, Associated Electric Cooperative
Roger Walker, Regulatory Environmental Group for Missouri

A. Call to Order

Chairman Gary Pendergrass called the April 24, 2014, meeting of the Missouri Air Conservation Commission to order. The following commissioners were present: Jack Baker, Mark Garnett, Gary Pendergrass, and David Zimmermann.

B. Minutes from March 27, 2014, Meeting

Commissioner Jack Baker moved to approve the March 27, 2014, minutes as written. Vice Chairman Mark Garnett seconded the motion, and all commissioners voted to approve the minutes.

C. Public Hearing

Chairman Pendergrass called the public hearing to order.

Mr. Paul Myers presented 10 CSR 10-6.165, *Restriction of Emission of Odors*. Information on the proposed amendment begins on page 89 of the briefing document.

To obtain a copy of the public hearing transcript, please contact Ms. Monnie Mealy by writing to Midwest Litigation Services at 3432 West Truman Boulevard, Jefferson City, MO 65109, or by phone at 800-280-3376.

D. Recommended for Adoption and Actions to be Voted On

Mr. Joe Winkelmann presented Missouri State Implementation Plan Revision (SIP) – Supplement/Revision to the Redesignation Demonstration and Maintenance Plan for the Missouri Portion of the St. Louis Nonattainment Area for the 1997 8-Hour Ground-Level Ozone National Ambient Air Quality Standard. Information on the adoption item can be found beginning on page 95.

Vice Chairman Mark Garnett moved to adopt Missouri SIP – Supplement/Revision to the Redesignation Demonstration and Maintenance Plan for the Missouri Portion of the St. Louis Nonattainment Area for the 1997 8-Hour Ground-Level Ozone National Ambient Air Quality Standard. Commissioner Baker seconded the motion. All of the commissioners voted to adopt Missouri SIP – Supplement/Revision to the Redesignation Demonstration and Maintenance Plan for the Missouri Portion of the St. Louis Nonattainment Area for the 1997 8-Hour Ground-Level Ozone National Ambient Air Quality Standard.

E. New Business

1) Attorney General's Office Referrals

Ms. Darcy Bybee presented the referral request for 360 Degree Brake Service. Information on the proposed referral begins on page 105 of the briefing document.

Chairman Pendergrass asked if anyone representing 360 Degree Brake Service was present for the commission meeting.

No one answered.

Commissioner David Zimmermann moved to refer 360 Degree Brake Service to the Attorney General's Office. Commissioner Baker seconded the motion. All of the commissioners moved to refer 360 Degree Brake Service.

F. Unfinished Business

Ms. Bybee stated that per discussions at the last two meetings, the Air Pollution Control Program was requested by department legal counsel to discuss the possibility of the commission granting the department director the authority to refer matters to the Attorney General's Office (AGO) for civil action. At the April 24, 2014, commission meeting, Ms. Bybee outlined a proposal and a process for this. Essentially, the Air Pollution Control Program proposed that the commission consider granting the department director the authority to refer any matter to the AGO after the Air Pollution Control Program has determined that conference, conciliation and persuasion will not resolve the violation. As discussed at that time, the Air Pollution Control Program does plan to give the responsible party the option to request the matter to be heard by the commission. However, if that request is not made, the matter will proceed to the AGO under the approval of the department director.

Per the commission's request, the Air Pollution Control Program placed the vote for this proposal on the agenda for today's meeting. Upon the commission's vote, the Air Pollution Control Program is prepared to implement the approved procedure or to maintain the current process.

Chairman Pendergrass had some concerns about how the public would view this process, and if they would still be able to state their case to the commission if they so chose.

Ms. Bybee stated that the Air Pollution Control Program plans to give a responsible party the opportunity to request that the matter be heard before the commission, but those individuals will need to exercise that right and respond to the notification.

Commissioner Zimmermann echoed Chairman Pendergrass' concern regarding the individual's ability to come before the commission prior to referral. Commissioner Baker requested that the commission be kept informed of this process, and any referrals sent under this revised procedure.

Ms. Bybee stated that the Air Pollution Control Program would continue providing information to the commission on instances when matters are referred directly, and to the best of the Air Pollution Control Program's ability, would inform the commission of those matters that are being contemplated for this process.

All commissioners voted unanimously to approve the following process:

- The Air Pollution Control Program pursuing referral of a subset of matters to the AGO when the process of Conference, Conciliation and Persuasion fails to resolve the violation. Specifically, the Air Pollution Control Program may pursue 'direct referral' for a matter that fits one or more of the following criteria:
 - o Open Burning violations
 - o Multi-media violations (cases involving one or more other Department of Natural Resources enforcement programs)
 - o On-going compliance issues
 - o Instances wherein the entities involved have a history of noncompliance with state or federal air regulations

- The Air Pollution Control Program will notify the responsible party/entity that the Air Pollution Control Program intends to refer the matter to the AGO for resolution. The Air Pollution Control Program will inform the responsible party/entity that if the party wishes to have the matter heard before the commission, they will need to respond to the Air Pollution Control Program to schedule an appearance at a future commission meeting. If the party fails to respond or request an appearance, the matter will continue through the internal review procedure with, ultimately, the department director sending the matter to the AGO
- The Air Pollution Control Program will provide ongoing updates to the commission during regularly scheduled commission meetings. This will include printing the details of referred actions within the briefing document and providing verbal updates to the commission during the regular Compliance/Enforcement Report. These updates will include, to the extent possible, any planned or pending usage of this authority.

The Air Pollution Control Program will bring this matter to the commission for annual review of the process, or as questions or situations emerge for discussion.

G. Appeals and Variance Requests

None.

H. Reports - The following referenced reports are in the April 24, 2014, Missouri Air Conservation Commission Briefing Document and available online at dnr.mo.gov/env/apcp/macc.htm.

1) COMPLIANCE/ENFORCEMENT REPORT

Ms. Darcy Bybee stated that the Compliance/Enforcement Report begins on page 33 with the Concern Report. There were a total of 71 concerns received from March 1, 2014 through March 31, 2014. During this time period, there were 35 investigations completed.

The Ongoing Negotiations Report is on page 51 and 52. There are 38 enforcement actions in the negotiation process at this time, and many were able to come to a resolution, lowering the number of enforcement actions significantly since last month.

The Finalized Agreement Report is on page 53. For the month of March 2014, the department finalized eight agreements for a total penalty of \$28,000. Of that amount, \$8,000 was paid to the school fund of the county in which the violation occurred, and the remaining \$20,000 was suspended.

The Pending Referrals Report is on page 54. At this time, there are 15 active referrals, along with the referral on the agenda today.

The quarterly update for the Gateway Vehicle Inspection Program's Report for the first quarter of 2014 is on page 55. Over 180,000 vehicles were tested from January 1, 2014 through March 31, 2014, and 457 audits were conducted.

Ms. Bybee gave an update on a recent appeal for an Administrative Penalty Order (APO). The Air Pollution Control Program has been issuing APO's under the authority granted in 10 CSR 10-6.230. In January 2014, the Air Pollution Control Program issued an APO to Mr. Ray Sanborn. As allowed by 10 CSR 10-6.230, Mr. Sanborn appealed the APO and the case was heard by the Administrative Hearing Commission earlier this week. A recommendation is expected from the Administrative Hearing Commission sometime in May or June 2014 for the commission to review.

Ms. Bybee also gave an update on the decommissioning of the Stage II Vapor Recovery Program in the St. Louis area. As of April 18, 2014, there are over 730 facilities subject to the vapor recovery rule in St. Louis, of which 564 have applied to decommission. Of those, over 60% of all facilities in the St. Louis area have gone through the entire decommissioning process and now have a Stage I Vapor Recovery Operating Permit. The proposed rule amendment will be on public hearing at the May 29, 2014, commission meeting in St. Louis, and the amended rule is available on the Secretary of State's website.

2) PERMITS REPORT

Mr. Kendall Hale stated that the Permits Report begins on page 57 of the briefing document with the Permit Applications Received Report. There were a total of 39 construction permits and 21 operating permits received for the month of March 2014. The Permit Applications Received Report for the month of March 2014 is located on pages 58 through 63 of the briefing document.

Beginning on page 65 is the Permit Applications Completed Report. There were 38 construction permit projects and 10 operating permits completed for the month of March 2014. The Permit Applications Completed Report for the month of March 2014 is located on pages 66 through 70 of the briefing document. There are currently eight Part 70 Intermediate Operating Permits on public notice at this time.

On page 71 of the briefing document is the Open Permits Report. There are currently 475 open projects in house.

Mr. Hale gave an update to the Ideker asphalt plant near the city of Grandview. There have been some interested parties that have gone to the Jackson County Circuit Court and filed motions against Ideker. The parties were the city of Grandview and Concerned Citizens for Air. The Ideker permit is still not a resolved issue.

3) AIR QUALITY PLANNING REPORT

a) Rule and State Implementation Plan Agenda

Proposed amendments to 10 CSR 10-5.220, *Control of Petroleum Liquid Storage, Loading and Transfer*, and 10 CSR 10-6.040, *Reference Methods*, will be presented for public hearing at the May 29, 2014, commission meeting. The amendment to 10 CSR 10-5.220 involves removing Stage II vapor recovery requirements in the St. Louis area, along with other

changes, and the amendment to 10 CSR 10-6.040 incorporates the latest federal ambient air monitoring methods. In addition, proposed State Implementation Plan (SIP) revisions scheduled for public hearing on May 29, 2014, include the regional haze five-year progress report, and the St. Louis marginal nonattainment area plan for the 2008 ozone National Ambient Air Quality Standard (NAAQS). The rules and SIP revisions will be available for public review and comment through June 5, 2014.

b) 1-Hour Sulfur Dioxide National Ambient Air Quality Standard

On April 17, 2014, the U.S. Environmental Protection Agency (EPA) signed the proposed Data Requirements Rule that determines which large sulfur dioxide (SO₂) sources will need to be evaluated in future implementation phases of the 1-hour SO₂ NAAQS. These future phases include up to two additional rounds of nonattainment area designations in 2017 (based on air dispersion modeling) and 2020 (based on new monitors that must be operating by January 2017). The proposed Data Requirements Rule provides three sets of emission thresholds, with lower levels in urban areas and higher levels in rural areas. EPA's preferred Option #1 is to set the thresholds at 1,000 tons per year (tpy) SO₂ emissions in urban areas and 2,000 tpy in rural areas. The preferred option would establish the lowest set of thresholds, resulting in the greatest number of sources assessed in future rounds of designations. EPA is also taking comments on two other options with higher emission thresholds (Option #2 is 2,000 tpy/5,000 tpy and Option #3 is 3,000 tpy/10,000 tpy). EPA will accept comments on the proposed Data Requirements Rule for 60 days following its publication in the Federal Register (date unknown).

4) DIRECTOR'S REPORT

a) Carbon Pollution Standards Update

EPA is still in the process of proposing the Carbon Pollution Standard for the existing power plants, which should be proposed in June 2014. EPA is still accepting comments on the proposal for new power plants, and the comment period for this proposal ends on May 9, 2014.

b) Legislative Session

House Bill 1631, which involves carbon pollution standards regulations, is still in legislation at this time, and Ms. Moore will update the commission as soon as she has more information.

Senate Bill 968, termed the "Department of Natural Resources Omnibus Bill", includes a variety of items that affect the Air Pollution Control Program. The most important of these items revolve around the ability to change the legislation that previously allowed the Air Pollution Control Program to go through a fee stakeholder process in order to review a fee

increase in emission fees. The current bill would also allow a review and possible increase for permit fees and asbestos fees.

The initial fee stakeholder meeting is today, April 24, 2014, at 1pm in the Bennett Springs Conference Room. The second fee stakeholder meeting is scheduled for May 19, 2014.

I. Open Session

None.

J. Future Meeting Dates

May 29, 2014 – St. Louis

St. Louis Regional Office
314-416-2960
7545 S Lindbergh, Suite 220
DESE Conference Room
St. Louis, MO 63125

July 30, 2014 – Jefferson City

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

August 28, 2014 – Jefferson City

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

September 25, 2014 – Kansas City

Kansas City Regional Office
816-251-0700
500 NE Colbern Road
Large Conference Room
Lee's Summit, MO 64086

October 30, 2014 - Macon

Northeast Regional Office
660-385-8000
1709 Prospect Drive
North Conference Room
Macon, MO 63552

December 4, 2014 – Jefferson City
Elm Street Conference Center
1730 East Elm Street
Lower Level
Bennett Springs Conference Room
Jefferson City, MO 65101

K. Discussion of Pending Litigation and Legal Matters

None.

L. Missouri Air Conservation Commission

Commissioner Zimmermann moved to adjourn the April 24, 2014, Missouri Air Conservation Commission meeting. Vice Chairman Garnett seconded the motion, and all commissioners voted to adjourn the meeting.

Chairman Pendergrass adjourned the April 24, 2014, Missouri Air Conservation Commission meeting.

Respectfully submitted,

Kyra L. Moore, Director
Air Pollution Control Program

Approved:

Gary Pendergrass, Chairman
Missouri Air Conservation Commission