

**MINUTES**  
**MISSOURI AIR CONSERVATION COMMISSION**  
**Elm Street Conference Center**  
**1730 East Elm Street – Lower Level**  
**Bennett Springs Conference Room**  
**Jefferson City, MO 65101**  
**August 3, 2015**  
**9:00 a.m.**

**Commissioners Present**

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

**Staff Members Present**

Larry Archer, Division of Environmental Quality  
Aaron Basham, Air Quality Planning Section, Air Pollution Control Program (APCP)  
Van Beydler, Public Information Coordinator, Soil and Water Conservation Program  
Darcy Bybee, Compliance/Enforcement Section Chief, APCP  
Kimberly Campbell, Directors Office, APCP  
Steve Feeler, Deputy Director, Division of Environmental Quality  
David Gilmore, Program Secretary, APCP  
Wayne Graf, Air Quality Planning Section, APCP  
Kendall Hale, Permits Section Chief, APCP  
Steve Hall, Air Quality Analysis Section Chief, APCP  
Julia Katich Mudd, Department of Natural Resources  
Carolyn Kliethermes, Section Chief, Fiscal and Budget Section  
Kyra Moore, Director, APCP  
Paul Myers, Air Quality Planning Section, APCP  
Lisa Nahach, Public Information Specialist, APCP  
Bob Randolph, Air Quality Planning Section, APCP  
Wendy Vit, Air Quality Planning Section Chief, APCP

**Others Present by Attendance Record**

Tim Blackwell, Attorney General's Office  
Margaret Crocker, Doe Run Company  
Tim Duggan, Attorney General's Office  
Dave Fraley, Diamond Sky Ventures  
D.K. Hirner, Regulated Environmental Group for Missouri  
David Shanks, Boeing  
Emily Wright, Gibbons Workman

**A. Call to Order**

Chairman David Zimmermann called the August 3, 2015, meeting of the Missouri Air Conservation Commission to order. The following commissioners were present: Jack Baker, Gary Pendergrass, Mark Garnett and David Zimmermann.

**B. Minutes from June 25, 2015, Meeting**

Commissioner Jack Baker moved to approve the June 25, 2015, minutes as written. Vice Chairman Gary Pendergrass seconded the motion, and all commissioners voted to approve the minutes.

**C. Public Hearing**

Chairman David Zimmermann called the public hearing to order.

Mr. Aaron Basham presented the following three rules for public hearing: 10 CSR 10-6.372, *Cross-State Air Pollution Rule Annual NO<sub>x</sub> Trading Allowance Allocations*, 10 CSR 10-6.374, *Cross-State Air Pollution Rule Ozone Season NO<sub>x</sub> Trading Allowance Allocations*, and 10 CSR 10-6.376, *Cross-State Air Pollution Rule Annual SO<sub>2</sub> Trading Allowance Allocations*. Information on the three proposed rules begins on pages 91, 109 and 129, respectively, of the briefing document.

To obtain a copy of the public hearing transcript, please contact Ms. Kathy Porter by writing to Midwest Litigation Services, 711 North 11th Street, St. Louis, MO 63101, or by phone at 1-800-280-3376.

Vice Chairman Pendergrass moved to close the August 3, 2015, public hearing. Commissioner Baker seconded the motion, and all commissioners voted to close the public hearing.

**D. Recommended for Adoption and Actions to be Voted on**

Mr. Paul Myers presented 10 CSR 10-6.261, *Control of Sulfur Dioxide Emissions*. Information on the proposed rule can be found beginning on page 143 of the August 3, 2015, briefing document.

Vice Chairman Pendergrass moved to adopt 10 CSR 10-6.261, *Control of Sulfur Dioxide Emissions*. Commissioner Mark Garnett seconded the motion. All of the commissioners voted to adopt 10 CSR 10-6.261, *Control of Sulfur Dioxide Emissions* as revised.

Mr. Paul Myers presented 10 CSR 10-6.260, *Restriction of Emission of Sulfur Compounds*. Information on the proposed revision can be found beginning on page 153 of the August 3, 2015, briefing document.

Vice Chairman Pendergrass moved to rescind 10 CSR 10-6.260, *Restriction of Emission of Sulfur Compounds*. Commissioner Garnett seconded the motion. All of the commissioners voted to rescind 10 CSR 10-6.260, *Restriction of Emission of Sulfur Compounds*.

Mr. Bob Randolph presented Missouri State Implementation Plan Revision – Nonattainment Area Plan for the 2010 1 Hour Sulfur Dioxide National Ambient Air Quality Standard – Jackson County Sulfur Dioxide Nonattainment Area. Information on the proposed rule can be found beginning on page 155 of the August 3, 2015, briefing document.

Vice Chairman Pendergrass moved to adopt Missouri State Implementation Plan Revision –Nonattainment Area Plan for the 2010 1 Hour Sulfur Dioxide National Ambient Air Quality Standard – Jackson County Sulfur Dioxide Nonattainment Area. Commissioner Jack Baker seconded the motion. All of the commissioners voted to adopt Missouri State Implementation Plan Revision –Nonattainment Area Plan for the 2010 1 Hour Sulfur Dioxide National Ambient Air Quality Standard – Jackson County Sulfur Dioxide Nonattainment Area.

## **E. New Business**

### **Necessity Findings**

Mr. Wayne Graf presented the following Necessity Finding to the commission for approval: 10 CSR 10-6.210, *Confidential Information*. Information on the Necessity Finding begins on page 159 of the briefing document.

Commissioner Garnett moved to approve the Necessity Finding as presented by Mr. Graf. Vice Chairman Pendergrass seconded the motion. All commissioners voted to approve the Necessity Finding as presented by Mr. Graf.

### **Commission Operating Procedures**

Ms. Kyra Moore gave a brief overview of the change in commission operating procedures. The proposed commission operating procedures begin on page 161 of the August 3, 2015, briefing document.

Vice Chairman Pendergrass moved to approve the Commission Operating Procedures as revised. Commissioner Jack Baker seconded the motion. All commissioners voted to approve the Commission Operating Procedures as revised.

### **Permit Fee Stakeholder Proposal**

Ms. Kyra Moore presented the Permit Fee Stakeholder Recommendation to the commission. Her presentation can be found on Attachment A of these minutes. A color copy of her presentation can be found on the Missouri Air Conservation Commission website: <http://dnr.mo.gov/env/apcp/docs/macc-presentation-apcp-permit-fee-proposal-august32015.pdf>

## **F. Unfinished Business**

None.

## **G. Appeals and Variance Requests**

Mr. Tim Blackwell addressed the commission regarding the C.B. Asphalt appeal and gave them brief history of the appeal. He suggested the Missouri Air Conservation Commission (commission) adopt the recommendation of the Administrative Hearing Commission.

Commissioner Garnett moved to adopt the recommendation of the Administrative Hearing Commission regarding the C.B. Asphalt appeal. Vice Chairman Pendergrass seconded the motion. All commissioners voted to adopt the recommendation of the Administrative Hearing Commission regarding the C.B. Asphalt appeal.

Mr. Blackwell said he was filling in for Mr. Jacob Westen regarding the Calvin T. Burks (Burks) appeal. Mr. Blackwell gave the commission a brief history of the Burks appeal. He suggested the commission adopt the recommendation of the Administrative Hearing Commission.

Vice Chairman Pendergrass moved to adopt the recommendation of the Administrative Hearing Commission regarding the Burks appeal. Commissioner Garnett seconded the motion. All commissioners voted to adopt the recommendation of the Administrative Hearing Commission regarding the Burks appeal.

## **H. Reports - The following referenced reports are in the June 25, 2015, Missouri Air Conservation Commission Briefing Document and available online at [dnr.mo.gov/env/apcp/macc.htm](http://dnr.mo.gov/env/apcp/macc.htm).**

### **1) COMPLIANCE/ENFORCEMENT REPORT**

Ms. Darcy Bybee stated that the Compliance/Enforcement Report begins on page 29 with the Concern Report. There were a total of 47 concerns received from May 16, 2015 through June 15, 2015. During this time period there were 44 investigations completed.

The Ongoing Negotiations Report can be found on pages 45 and 46. There are 56 enforcement actions in the negotiation process at this time.

The Finalized Agreement Report is on page 47. For the time period of May 16, 2015 through June 15, 2015, the department finalized 17 agreements with a total penalty of \$44,000. Of that amount, \$7,000 was paid to the school fund of the County in which the violation occurred, and the remaining portion was suspended.

The Pending Referrals Report can be found on page 49. At this time, there are 16 Active Referrals.

The quarterly updates for the Gateway Vehicle Inspection Program for the first and second quarters of 2015 can be found on pages 51 and 52 of the briefing document. The first quarter report is an updated report, as the one that was presented in May had data errors. As the commission can see from both reports,

approximately 200,000 vehicles were tested during each quarter and approximately 700 audits were conducted. The third quarter report for 2015 will be presented in October.

As Ms. Bybee mentioned at the last commission meeting, the program issued an administrative penalty order for an open burning violation which was appealed. Staff attended a hearing at the Administrative Hearing Commission last week. Ms. Bybee said she expects the appeal be presented to the commission in the Fall for a final decision.

Ms. Bybee updated the commission on a recent Supreme Court action on the Utility MATS or the Mercury Air Toxics Standards. Essentially, the U.S. Supreme Court recently ruled that EPA should have considered cost at an earlier step in the rulemaking process than it did and remanded the cases to the D.C. Circuit Court for further action. The court didn't question EPA's authority to control toxic air pollution from power plants as long as EPA considers cost appropriately. EPA has confirmed that the MATS rule is still in effect and has stated that, nationwide the majority of power plants are already in compliance or well on their way. In Missouri, many utilities were required to be in compliance by the MATS compliance date of April 15, 2015—however, the department, in coordination with EPA Region VII, did issue extensions for 11 facilities. Therefore, for these 11 facilities, the compliance date is April 15, 2016. It is not clear when the DC Circuit court will render its decision, so the program will continue to monitor closely.

Ms. Bybee gave a quick update on the Decommissioning of the Stage II program in St. Louis. As of this week, 83 percent of the facilities subject to the St. Louis vapor recovery rule have gone through the entire Stage II decommissioning, testing and permitting process. The program continues to work with the 107 facilities that have not started the process to assist them to meet the December 31, 2015, compliance date.

## **2) PERMITS REPORT**

Mr. Kendall Hale stated that the Permits Report begins on page 53 of the briefing document with the Permit Applications Received Report. A total of 293 construction and 198 operating permit applications have been received from January through June 2015. Details of the projects received for June can be seen from pages 54 through 61 of the briefing document.

Beginning on page 63 is the Permit Applications Completed Report. The Permits Section completed a total of 51 construction and 34 operating permits projects for June. A total of 85 construction and operating permit projects were completed in June. Details of the projects completed for June can be seen from pages 64 through 72 of the briefing document.

On page 73 of the briefing document is the Open Permits Report. This report details the types of projects currently open in the Permit Section.

There is currently one Part 70 operating permit that went public notice on August 5, 2015. And the permit for the CertainTeed facility near St. Louis has been completed, paid for, and issued.

Vice Chairman Pendergrass asked for an update on permit staff.

Mr. Hale responded that the Permits Section has two vacancies. Ms. Jill Wade will transition from a part time to a full time employee. The other vacancy has been posted and the program is currently trying to fill it.

### 3) **AIR QUALITY PLANNING REPORT**

#### a) **Rule and State Implementation Plan Agenda**

Ms. Wendy Vit said two actions will be presented for public hearing at the August 27, 2015, commission meeting: the infrastructure SIP for the 2012 annual fine particulate matter (PM<sub>2.5</sub>) standard and proposed options for the program's area designation recommendations for the 2010 1-hour sulfur dioxide (SO<sub>2</sub>) standard. Both of these items were made available for public review and comment on the program's website on July 24, 2015, and comments will be accepted through September 3, 2015.

On July 14, 2015, the program filed proposed rulemakings for 10 CSR 10-6.241 *Asbestos Projects—Registration, Notification and Performance Requirements* and 10 CSR 10-6.250 *Asbestos Projects—Certification, Accreditation and Business Exemption Requirements*. The proposed revisions include changes to asbestos fees based on stakeholder input. These proposed rulemakings will be published in the *Missouri Register* on August 17, 2015, and the public hearing is scheduled for September 24, 2015. The comment period closes October 1, 2015.

#### b) **Rules In Progress Schedule**

The program has worked extensively with stakeholders through the Air Program Advisory Forum on revisions to the opacity rule (10 CSR 10-6.220 *Restriction of Emission of Visible Air Contaminants*). Among other changes, one revision is to add an exemption to this rule for facilities subject to the federal Mercury and Air Toxics Standards (MATS) regulation. The recent U.S. Supreme Court decision on MATS raised questions about proceeding with this rule change. Because the court did not vacate MATS and EPA maintains it is still in place, the program anticipates moving forward with this exemption in this rulemaking. However, the program is still reviewing it internally and it has not made a final decision. The program hopes to be able to provide more information on this rulemaking, including the schedule, at the next commission meeting.

#### c) **Ozone Updates**

The U.S. Environmental Protection Agency (EPA) issued findings of failure to submit so-called “Good Neighbor” SIPs under Clean Air Act section 110(a)(2)(D)(i)(I) for the 2008 ozone standard. “Good Neighbor” SIPs are required to demonstrate how a state will address air pollution that affects the ability of other states to attain and maintain and air quality standard. These SIPs for the 2008 ozone standard were due March 2011. EPA’s finding targeted 24 states, including Missouri. EPA’s finding establishes a two-year deadline (August 12, 2017) for EPA to approve a SIP or finalize a Federal Implementation Plan (FIP).

The program didn’t submit the “Good Neighbor” SIP for the 2008 ozone standard because of uncertainty about this requirement. This was due to EPA’s reconsideration of the 2008 ozone standard, which delayed its implementation, and the federal Cross State Air Pollution Rule (CSAPR). In response to this finding, the program expects to review the EPA’s proposed FIP as a starting point for discussions with affected sources.

The Summer of 2015 continues to be a mild ozone season. Through August 2, 2015, only two exceedances of the 2008 ozone standard have been recorded statewide: one on June 9 in Perry County and a second one on July 24 in St. Louis. For the current three-year period (2013 through 2015 year to date), all of the state’s ozone monitors are in compliance with the 2008 ozone standard. If these low levels continue through the end of the summer, there’s a good chance the St. Louis area will attain the 2008 ozone standard by the end of 2015.

Chairman David Zimmerman asked what caused the exceedance at the Perry County ozone monitor. Ms. Vit replied that staff meteorologists have been evaluating that exceedance and she would give an update at the next commission meeting.

#### **4) DIRECTOR’S REPORT**

##### **a) Carbon Pollution Standards – Clean Power Plan**

Ms. Moore detailed EPA actions released today, August 3, 2015. EPA released the following carbon pollution rules:

- Final Clean Power Plan (CPP) Rule for Existing Power Plants
- Final Carbon Pollution Standards for new, modified and reconstructed power plants
- Proposed Federal Plan and Model Rule for Clean Power Plan, available for comment when published in Federal Register

The rules were posted during the meeting so not a lot of details are known at this point. Staff will review the rule and provide updates to the commission.

##### **b) Gateway Vehicle Inspection Program**

Commissioner Garnett asked if the Gateway Vehicle Inspection Program (GVIP) would ever end.

Ms. Moore replied that the GVIP, the emissions program in St. Louis, is a requirement of the ozone nonattainment area in St. Louis and removing any requirement from a nonattainment area requires justification that any changes would not negatively impact the area.

Although the St. Louis area could attain the current ozone standard of 75 parts per billion (ppb) this year, EPA plans to propose a new ozone standard on October 1, 2015. Depending on where the ozone standard is set, St. Louis may or may not be in attainment with the new standard. The program will keep the commission updated on the status of the new standard and the impact to St. Louis and the rest of the state.

**c) Future Meetings**

Ms. Moore mentioned there will be several changes to the commission meeting schedule this year and she will work with the commission to schedule and update as soon as practicable.

**I. Open Session**

Ms. D.K. Hirner, representing the Regulated Environmental Group for Missouri, addressed the commission. Ms. Hirner acknowledged and thanked staff from the Department for working with them during the permit fee stakeholder process.

**J. Future Meeting Dates**

**August 10, 2015 – Jefferson City  
Teleconference**

Air Pollution Control Program  
1659 East Elm Street  
APCP Conference Room  
Jefferson City, MO 65101

**August 27, 2015 – Jefferson City**

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

**September 24, 2015 – St. Louis**

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

**October 29, 2015 – Jefferson City**

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

**December 3, 2015 – 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**

Mr. Tim Duggan addressed the commission. He gave an update to the commission regarding their request that he look into the matter about defining the stakeholder process. Details of his findings, and the commission's response, can be viewed on the Missouri Air Conservation Commission website at <http://dnr.mo.gov/env/apcp/macc.htm>.

**L. Missouri Air Conservation Commission**

Commissioner Garnett moved to adjourn the August 3, 2015, Missouri Air Conservation Commission meeting. Commissioner Baker seconded the motion, and all commissioners voted to adjourn the meeting.

Chairman Zimmermann adjourned the August 3, 2015, Missouri Air Conservation Commission meeting.

Respectfully submitted,



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Kyra L. Moore, Director  
Air Pollution Control Program

Approved:

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David Zimmermann, Chairman  
Missouri Air Conservation Commission





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# Air Pollution Control Program Permit Fee Proposal

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Kyra Moore  
August 3, 2015



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## History of Fee Stakeholder Process

- House Bill 28 (2013)
- Senate Bill 968 (2014)
- Revised Statute of Missouri 643.079.10

### Outcome:

- Review of Fee Structure with stakeholders
- Submit Proposed Fee Structure to Commission
- Start rulemaking process after commission approval

## Fee Stakeholder Meetings:

- 5 Meetings in 2014
  - (April 24, May 19, June 16, August 21, August 28)
- January 29, 2015
- April 30, 2015
- May 19, 2015 (2)
- May 26, 2015
- Additional emails and communications sent to stakeholders.

All presentations and summaries:

<http://dnr.mo.gov/env/apcp/airadvisory/apcpstakeholder.htm>

## Air Program Revenue/Expenditures

- Facing ~\$3.5 Million shortfall by FY2019
- Decreased expenditures in the last five years  
(Examples: Eliminated several positions, holding vacancies, reduced training, reduced monitoring network, eliminated local agency funding and eliminated use of permit contractors.)
- ~ 50% of the Air Program's revenue is from emission fees, ~2% permit fees, ~2% asbestos fees and ~17% is from the Gateway Vehicle Inspection Program fees. (Balance is predominantly from federal funding. The Air Program does not receive general revenue from the state.)

## Emission and Asbestos Fees

- Emission Fee – Through a 2014 stakeholder process, the emission fee will increase to \$48 per ton starting in January 2016 (for 2015 calendar year emissions)
  - The emission fee fund currently covers some asbestos and permit work
  - Increased emission fee will increase revenue ~\$1.28 million in FY2016
- Asbestos fees proposed and presented last month are anticipated to cover 100% of asbestos program expenditures. If approved asbestos fees would increase January 2017.

## Permit Fees

- Permit fees have not increased since created, most in 1992
- Not realistic for permit fees to cover 100% of permit work
- Stakeholder proposal presented today would increase revenue approximately \$486,000
- Any increase in permit fees minimizes the need to revisit increasing emission fees in the near future



## Permit Fee Proposal Based on Stakeholder Discussion

Fee Type	Current Fee	Fees Proposed for Commission Review
Portable Source Filing/Review Fee	\$200/Application	<b>\$300</b>
Construction Permit Review Fee	\$50/Review Hour	<b>\$75</b>
Construction Permit Filing Fee (Deminimis & Minor)	\$100/Application	<b>\$250</b>
Construction Permit Filing Fee - Major Prevention of Significant Deterioration (PSD)	\$100/Application	<b>\$5,000</b>
Vapor Recovery Permit Filing Fee	\$100/Application	<b>No fee adjustment</b>
Operating Permit Filing Fee (Basic)	\$100/Application	<b>\$500</b>
Operating Permit Filing Fee (Intermediate & P70)	\$100/Application	<b>Tiered \$750 - \$6,000</b>



## Operating Permits - Fees Intermediate and Part 70

- 5 Year Permit
- Current fee is \$100 filing fee per application
  - \$20 per year
- No hourly review fee
- Time spent on permit application ranges from 6 hours to 200 hours
  - No average
  - Majority is between these 2 extremes

## Part 70/Intermediate Operating Permit Fee Tiered approach

### Filing Fee based on complexity of permit

1. Base fee based on # Emission Units
2. Additions to Base Fee
  - Major items that add to workload of writing permit (not all)
3. Total #1 and #2 for Fee Amount – not to exceed a set maximum

## Tiered approach Additions to Flat/Base Fee - Options

1. New Source Performance Standards (NSPS)
2. Maximum Achievable Control Technology (MACT) standards
3. National Emission Standards for Hazardous Air Pollutants (NESHAP)
4. Compliance Assurance Monitoring (CAM) Plans
5. Subject to Acid Rain
6. Confidentiality Request



## Base Fee

Emission Points	Approximate Number Permits**	Approximate Number That would pay Base Fee Only**	Base Fee
0-30	350	123	\$750
31-60	75	17	\$1,000
61-90	20	4	\$1,250
over 91	35	7	\$1,500

\*\* Approximate numbers for reference and discussion purposes



## Additions to Base Rate

	Column A	Column B	Column C
Name	Enter #	Amount	Add to Base Rate
NSPS (Enter # standards applicable to installation)		\$1,000	Column A *Column B
MACT/NESHAP (Enter # standards applicable to installation)		\$1,500	Column A *Column B
CAM (Enter # plans per installation)		\$1,000	Column A *Column B
Confidentiality Request (Enter 1 if submitted/ 0 if not)		\$500	Column A *Column B
Acid Rain (Enter 1 if applicable/0 if not)		\$500	Column A *Column B
		<b>Total Added to Base Rate:</b>	<b>Total Column C</b>



## Part 70/Intermediate Filing Fee

- Filing Fee = Base Rate + Additions
- Minimum Fee = Base rate (\$750 - \$1500)
- Maximum Fee = \$6,000
- Filing Fee Structure same - initial & renewals
- Examples of how to calculate fee in application instructions
- Overpayment/underpayment addressed prior to issuance of permit



## Part 70/Intermediate Filing Fee Other considerations

- Major Modifications
  - No charge – many are wrapped into Part 70
- Minor modifications
  - No charge
- Off Permit changes
  - No Charge

## Fee Stakeholder Input

- Mostly letters/emails of support
- Questions about the large increase on operating permit fees
  - How to address future standards
- Question/concern about hourly review fee

## Response to Stakeholder Input

- Construction Permit Hourly Review fee  
\$75 (was discussed at \$100)
- Operating Permit Fee – tiered approach
  - 5 year permit, no hourly review fee
  - Comparable to other states
  - Clarified future standards in draft rule
- Committed to a review of permit process  
with Stakeholders starting 1<sup>st</sup> Quarter 2016

## Timeline for Rulemaking- tentative

- Mid-August: Conference Call MACC meeting for commission to vote on start of rulemaking
  - August 17, 2015 – File proposed rulemaking with SOS
  - September 15, 2015 – Rulemaking published in Missouri Register, start of public comment period
- October 29, 2015 – Permit Rules Public hearing
- November 2015 – MACC meeting to vote on adoption of permit fee rules
- December 1, 2015 – File order of Rulemaking
- January **2017** - Rulemaking(s) effective.
  - Fee(s) take effect **January 1, 2017**

Division of Environmental Quality Director: Leanne Tippet Mosby

Date: August 3, 2015

Nothing in this document may be used to implement any enforcement action or levy any penalty unless promulgated by rule under chapter 536 or authorized by statute.





