

MINUTES
MISSOURI AIR CONSERVATION COMMISSION
Elm Street Conference Center
1730 East Elm Street – Lower Level
Bennett Springs Conference Room
Jefferson City, MO 65101
March 28, 2013
9:00 a.m.

Commissioners Present

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

Staff Members Present

Darcy Bybee, Compliance/Enforcement Section Chief, Air Pollution Control Program (APCP)
David Gilmore, Program Secretary, APCP
Ashley Jurgensmeyer, Air Quality Planning Section, APCP
Steven Kratky, Missouri Department of Natural Resources
Mark Leath, Air Quality Planning Section, APCP
Victoria Lovejoy, Public Information Specialist, APCP
Kyra Moore, Director, APCP
Leanne Tippett Mosby, Director, Division of Environmental Quality
Paul Myers, Air Quality Planning Section, APCP
Stan Payne, Air Quality Planning Section, APCP
Bob Randolph, Air Quality Planning Section, APCP
Aarick Roberto, Commission Secretary, APCP
Patrick Vavra, Compliance/Enforcement, APCP
Wendy Vit, Air Quality Planning Section Chief, APCP
Joe Winkelmann, Air Quality Planning Section, APCP

Others Present by Attendance Record

Genevieve Bodnar, The Doe Run Company
Rick Campbell, Barr Engineering
Chris DeCioccio, The Doe Run Company
Kathrina Donegan, St. Louis County, Air Pollution Control Program
Dave Fraley, City Utilities of Springfield
Perry Friedrich, GeoEngineers
Susan Kady
Roger Walker, Regulatory Environmental Group for Missouri

A. Call to Order

Vice Chairman Jack Baker called the March 28, 2013, 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 February 5, 2013, Meeting

Commissioner Mark Garnett moved to approve the February 5, 2013, minutes as written, Commissioner Gary Pendergrass seconded the motion and all commissioners voted to approve the minutes.

C. Reports - The following referenced reports are in the March 28, 2013, Missouri Air Conservation Commission Briefing Document and available online at dnr.mo.gov/env/apcp/macc.htm.

1) COMPLIANCE/ENFORCEMENT

The Compliance/Enforcement Report begins on page 39 with the Complaint or Concern Report. There were a total of 74 concerns received from January 1, 2013 through February 15, 2013, with 59 investigations completed and 10 violations issued. Beginning next month, the report will no longer contain the information found in the "Complainant" column. The information will be retained in both the electronic databases and paper files, but will no longer be provided in this report.

The Ongoing Negotiations Report is on pages 61 and 62, with 60 enforcement actions in the negotiation process. The Finalized Agreement Report is on page 63. For the time period of January 1, 2013 through February 15, 2013, the department finalized agreements for a total penalty of \$107,500. \$77,000 of that amount is suspended, and \$30,500 is paid to the school fund in the county where the violation occurred.

Finally, the Pending Referrals report is on page 64. At this time, there are 21 active referrals with two referral requests on the agenda for today. At this time, however, the Air Pollution Control Program is in the process of resolving the violation issued to Mr. David Ward. Therefore, Mr. Curtis Evans doing business as Evans Trucking will be the only referral request today.

2) PERMITS REPORT

The Permits Report begins on page 65 of the briefing document. For the months of January 2013 and February 2013, the Permits Section received 80 construction permits projects, and 43 operating permits projects, for a total of 123 permits projects received for the year.

The Permit Applications Received Report is located on pages 66 through 78, where there is detail of the projects received.

Beginning on page 79 is the Permits Applications Completed Report. There were 58 construction permits and 62 operating permits completed for the months of January and February, for a total of 120 projects completed for the year. The Permit Applications Completed Report is located on pages 80 through 94.

On page 95 of the briefing document is the Open Permits Report. There are currently 485 projects open and 12 operating permits on public notice that are not mentioned in the briefing document.

At the end of January, there was a court decision on PM_{2.5} modeling and monitoring, which will not affect any of the current permit projects in the Air Pollution Control Program.

3) **AIR QUALITY PLANNING REPORT**

a) **Rules in Progress Schedule**

The following proposed rulemakings are scheduled to be published in the Missouri Register on April 15, 2013 and go to public hearing on May 30, 2013: 10 CSR 10-6.345, *Control of NOx Emissions from Upwind Sources*; 10 CSR 10-6.110, *Reporting Emission Data, Emission Fees, and Process Information*; 10 CSR 10-6.390, *Control of NOx Emissions from Large Stationary Internal Combustion Engines*; 10 CSR 10-6.060, *Construction Permits Required*; 10 CSR 10-5.570, *Control of Sulfur Emissions from Stationary Boilers*; and 10 CSR 10-6.400, *Restriction of Emission of Particulate Matter from Industrial Processes*. 10 CSR 10-6.345 is being proposed for rescission because it expired on December 30, 2011. The proposed revision to 10 CSR 10-6.060 would incorporate by reference the U.S. Environmental Protection Agency's new option allowing plantwide applicability limits (PALs) for greenhouse gas permitting. The rest of these proposed rulemakings are primarily administrative in nature, covering a variety of changes to clarify language, fix typographical errors, and other editorial changes.

b) **Startup, Shutdown, Malfunction State Implementation Plan Call**

On February 22, 2013, a proposed State Implementation Plan (SIP) call was published in the Federal Register affecting the SIPs of 36 states, including Missouri. In response to a petition from the Sierra Club, the Environmental Protection Agency (EPA) proposed findings that these SIPs contain inadequacies regarding exemptions of emissions during startup, shutdown, and malfunctions. For Missouri, the petitioner objected to two rules—10 CSR 10-6.220, *Restriction of Emission of Visible Air Contaminants* (referred to as the opacity rule) and 10 CSR 10-6.050, *Startup, Shutdown, Malfunction Conditions*. EPA proposed granting the petition regarding the opacity rule because it could be read as allowing for exemptions in federally enforceable SIP emission limitations through the state director's discretion. The language in question is 10 CSR 10-6.220 subsection (3)(C) which reads as follows:

Visible emissions over the limitations shown in subsection (3)(B) of this rule are in violation of this rule unless the director determines that the excess emissions do not warrant enforcement action based on data submitted under 10 CSR 10-6.050 Startup, Shutdown, Malfunction Conditions.

At the same time, EPA proposed denying the petition with respect to the startup, shutdown, malfunction rule because it clearly only applies to state enforcement and doesn't preclude federal enforcement action. The

program submitted a comment in response to this proposed SIP call agreeing with EPA's assessment of 10 CSR 10-6.050. Once the SIP call is final, the program will have 18 months to fix the deficiency with 10 CSR 10-6.220 by clarifying the language at subsection (3)(C). In summary, this SIP call is expected to have an insignificant impact on the state.

c) 1-Hour Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS)

On February 6, 2013, EPA released a “next step” strategy document outlining their approach for implementing the 1-hour SO₂ standard in areas outside the initial nonattainment areas. Key components of the new approach include establishing emission thresholds for large SO₂ sources that states would be required to evaluate, offering state air agencies the flexibility to consider modeling or monitoring for those large sources as appropriate, and lengthening the overall implementation schedule to give sources additional time to plan and take enforceable limits, potentially avoiding nonattainment designations in the future. EPA is expected to release technical modeling and monitoring guidance this spring/summer and issue a proposed rulemaking in late 2013 with a final rule late 2014. States would then have several years to work with sources to implement either modeling or monitoring, and EPA would finalize area designations based on modeling or monitoring in 2017 and 2020, respectively.

d) Transport Issues

The U.S. Court of Appeals for the D.C. Circuit vacated the Cross State Air Pollution Rule (CSAPR) and denied EPA's request for a rehearing. Although the federal government has not yet made a decision on whether or not to appeal the case to the U.S. Supreme Court, the EPA is moving forward with discussions with states on how to proceed regarding our shared responsibility under the Clean Air Act to address interstate transport of air pollution. EPA has held several conference calls and a webinar and has scheduled two meetings with state air agencies—one on April 8, 2013, in Research Triangle Park, North Carolina for Eastern states and another one on April 17, 2013, in Denver, Colorado for Western states. The purpose is to get input from states on key technical questions and regulatory options for moving forward.

4) DIRECTOR'S REPORT

a) Commission Members

Chairman Ron Boyer has officially resigned as a commission member. With his departure from the Missouri Air Conservation Commission, the commission is now down to four members. Since Ron Boyer was the commission chair, the remaining commission members are encouraged to elect a new chair and vice chair either this meeting or the next.

b) Air Issues

As seen in the local newspapers, the Department of Natural Resources has been working with the Bridgeton Landfill in the St. Louis area to comply with all state and federal rules regarding air pollution. The department is working with the Department of Health on this issue as well.

c) Stage II Vapor Recovery

The removal of the Stage II nozzles at the gas stations in the St. Louis area has begun starting March 15, 2013. Air Pollution Control Program staff recently held a stakeholders meeting in the St. Louis area to answer any questions regarding the removal process.

d) Other Issues

At this time, the department does not know how the changes in the federal budget will affect the Air Pollution Control Program's budget. Future grants may be affected, but at this time, the St. Louis and Kansas City near-roadway monitors have already been funded and will not be affected.

The sixth annual Regulatory Environmental Group for Missouri Air Seminar took place on March 27, 2013. Many Air Pollution Control Program staff attended, as well as Commissioner Pendergrass, who gave a presentation on the Missouri Air Conservation Commission.

D. Public Hearing

Vice Chairman Baker called the public hearing to order.

Mr. Bob Randolph presented Proposed Revision to the Boundary Recommendation of Nonattainment and Unclassifiable Areas per the 2010 1-hour Sulfur Dioxide National Ambient Air Quality Standard. Information on the proposed rule rescission begins on page 115.

Mr. Mark Leath presented Missouri SIP – Section 110 Infrastructure Requirements for the 2010 Nitrogen Dioxide National Ambient Air Quality Standard. Information on the proposed rule begins on page 123.

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, Suite 207, Jefferson City, MO 65109, or by phone at 800-280-3376.

E. Recommended for Adoption and Actions to be Voted On

Mr. Stan Payne presented 10 CSR 10-1.010, *General Organization*, to the commission. Information on the adoption item can be found beginning on page 127 of the briefing document.

Commissioner Pendergrass moved to adopt 10 CSR 10-1.010, *General Organization*. Commissioner Garnett seconded the motion. All of the commissioners voted to adopt 10 CSR 10-1.010, *General Organization*.

Mr. Paul Myers presented 10 CSR 2.330, *Control of Gasoline Reid Vapor Pressure*, to the commission. Information on the adoption item can be found beginning on page 133 of the briefing document.

Commissioner Garnett moved to adopt 10 CSR 10-2.330, *Control of Gasoline Reid Vapor Pressure*. Commissioner Pendergrass seconded the motion. All of the commissioners voted to adopt 10 CSR 10-2.330, *Control of Gasoline Reid Vapor Pressure*.

Mr. Joe Winkelmann presented Missouri SIP Revisions – Attainment Demonstrations for the 2008 Lead National Ambient Air Quality Standard for the Buick/Viburnum Trend Lead Nonattainment Area and the Herculaneum Lead Nonattainment Area to the commission. Information on the adoption item can be found beginning on page 137 of the briefing document.

Commissioner Zimmermann moved to adopt Missouri SIP Revisions – Attainment Demonstrations for the 2008 Lead National Ambient Air Quality Standard for the Buick/Viburnum Trend Lead Nonattainment Area and the Herculaneum Lead Nonattainment Area. Commissioner Garnett seconded the motion. All of the commissioners voted to adopt Missouri State Implementation Plan Revisions – Attainment Demonstrations for the 2008 Lead National Ambient Air Quality Standard for the Buick/Viburnum Trend Lead Nonattainment Area and the Herculaneum Lead Nonattainment Area.

Mr. Mark Leath presented Missouri SIP Revision – Early Progress Plan for the Missouri Portion of the St. Louis Nonattainment Area for the 2008 8-hour Ground-Level Ozone National Ambient Air Quality Standard to the commission. Information on the adoption item can be found beginning on page 147 of the briefing document.

Commissioner Zimmermann moved to adopt Missouri SIP Revision – Early Progress Plan for the Missouri Portion of the St. Louis Nonattainment Area for the 2008 8-hour Ground-Level Ozone National Ambient Air Quality Standard. Commissioner Pendergrass seconded the motion. All of the commissioners voted to adopt Missouri SIP Revision – Early Progress Plan for the Missouri Portion of the St. Louis Nonattainment Area for the 2008 8-hour Ground-Level Ozone National Ambient Air Quality Standard.

F. New Business

1) Attorney General's Office Referrals

Ms. Bybee presented the referral case for Mr. Curtis Evans doing business as Curtis Evans Trucking, LLC. Information on the proposed referral begins on page 151 of the briefing document.

Vice Chairman Baker asked if anyone representing Mr. Curtis Evans was present for the commission meeting.

No one answered.

Commissioner Garnett moved to refer Mr. Curtis Evans to the Attorney General's Office (AGO). Commissioner Zimmermann seconded the motion. All commissioners moved to refer Mr. Curtis Evans doing business as Curtis Evans Trucking, LLC to the AGO.

2) Necessity Findings

Ms. Wendy Vit presented three Necessity Findings to the commission for adoption: 10 CSR 10-6.070, *New Source Performance Regulations*, 10 CSR 10-6.075, *Maximum Achievable Control Technology*, and 10 CSR 10-6.080, *Emission Standards for Hazardous Air Pollutants*. Information on the Necessity Findings begins on page 153 of briefing document.

Commissioner Pendergrass moved to adopt the Necessity Findings as presented by Ms. Vit. Commissioner Garnett seconded the motion. All commissioners voted to approve the Necessity Findings as presented by Ms. Vit.

3) Election of Officers

Due to the departure of Ron Boyer as a commission member, a new set of officers must be voted on.

Commissioner Garnett nominated Jack Baker as Chairman for the remainder of 2013. Commissioner Zimmermann seconded the motion. All commissioners voted Jack Baker as Chairman for the remainder of 2013.

Commissioner Garnett nominated Gary Pendergrass as Vice Chairman for the remainder of 2013. Commissioner Zimmermann seconded the motion. All commissioners voted Gary Pendergrass as Vice Chairman for the remainder of 2013.

G. Unfinished Business

Commission Operating Policies

Commissioner Pendergrass requested that the commission review the policies at the next meeting. Commissioner Zimmermann seconded this. At this time, the Operating Policies will be discussed at the April 25, 2013, meeting.

H. Appeals and Variance Requests

None.

I. Open Session

Mr. Roger Walker, representing the Regulatory Environmental Group for Missouri, thanked the commission and Air Pollution Control Program for all of their hard work. Mr. Walker also expressed his concern and encouragement for an additional commission member to be appointed to the Missouri Air Conservation Commission.

J. Future Meeting Dates

April 25, 2013 – Joplin

La Quinta Inn
417-781-0500
Meeting Room BC
3320 South Rangeline Road
Joplin, MO 64804

May 30, 2013 – Jefferson City

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

June 27, 2013 – St. Louis

Sheraton St. Louis City Center
314-613-5430
Colonnade Salon D
400 South 14th Street
St. Louis, MO 63103

July 24, 2013 (Wednesday) – Jefferson City

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

August 29, 2013 – Jefferson City

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

September 26, 2013 – Kansas City

Holiday Inn Southeast
816-737-0200
Grand BC
9103 East 39th Street
Kansas City, MO 64133

October 31, 2013 – Jefferson City

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

December 5, 2013 – 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 Garnett moved to adjourn the March 28, 2013, Missouri Air Conservation Commission meeting. Commissioner Zimmermann seconded the motion and all commissioners voted to adjourn the meeting.

Vice Chairman Baker adjourned the March 28, 2013, Missouri Air Conservation Commission meeting.

Respectfully submitted,

Kyra L. Moore, Director
Air Pollution Control Program

Approved:

Jack Baker, Chairman
Missouri Air Conservation Commission