

GENERAL SESSION
HAZARDOUS WASTE MANAGEMENT COMMISSION
April 19, 2012; 10:00 A.M.
1730 E. Elm Street
Bennett Springs/Roaring River Conference Rooms
Jefferson City, MO 65102

(Note: The minutes taken at Hazardous Waste Management Commission proceedings are just that, minutes, and are not verbatim records of the meeting. Consequently, the minutes are not intended to be and are not a word-for-word transcription.)

The meeting was streamed live from the Department's website at: dnr.mo.gov/videos/live.htm.

COMMISSIONERS PRESENT IN PERSON

Commissioner Michael Foresman
Commissioner Elizabeth Aull
Commissioner Deron Sugg

COMMISSIONERS PRESENT BY PHONE

Vice-Chair Andrew Bracker
Commissioner Charles Adams

The phone line for the Commissioners calling in to today's meeting was opened at 9:45 a.m.

Commissioner Aull called the General Session to order at approximately 10:02 a.m.

1. PLEDGE OF ALLEGIANCE

Commissioner Aull led the Pledge of Allegiance, and it was recited by the Hazardous Waste Management Commission (Commission) and guests.

A roll call was taken of the Commissioners. Commissioner Aull, Commissioner Foresman and Commissioner Sugg were present in person. Vice-Chairman Bracker and Commissioner Adams participated by telephone.

2. APPROVAL OF MINUTES

- Executive Session minutes from the February 16, 2012, meeting:
- General Session minutes from the February 16, 2012, meeting:

Commissioner Sugg made a motion to approve the February 16, 2012, Executive Session minutes. The motion was seconded by Commissioner Foresman. Commissioner Foresman made the motion to approve the February 16, 2012, General Session minutes. Commissioner Sugg seconded the motion.

A vote was taken; all were in favor, none opposed. Motion carried. Minutes were approved.

Following the vote on the previous meeting's minutes, Commissioner Aull welcomed Ms. Sara Parker Pauley, Department Director, to the podium, to address the Commission. Ms. Pauley began by advising the Commission that she was happy to be able to take this opportunity to say "hello" to the Commissioners and to thank them for their service to Missouri citizens. She advised the Commission that in addition, she would like to provide them with information on several Department-wide initiatives that were being focused on, highlighting three current efforts.

She noted that the first initiative was the "Communication and Education Initiative," stating that the agency had become more aware of their need to engage stakeholders and that a heightened level of effort was being made to include these stakeholders in discussions regarding regulations and policy. She noted that this was being accomplished through different Forums and other stakeholder group meetings and that she had reengaged the Kitchen Cabinet process. She stated that the Kitchen Cabinet process was a mechanism to engage key stakeholders in high level policy discussions and decisions. Ms. Pauley went on to advise the Commission that these meetings have already begun with a meeting with representatives from the environmental community having been held several months ago, a meeting with representatives from the agricultural community held the previous week, a meeting scheduled with the municipal and county government representatives in May and a meeting with representatives from business and industry slated for the summer. She noted that the Department intended to hold follow-up meetings with these groups approximately twice each year to keep the dialogue open.

Ms. Parker then addressed the second initiative the Department was working on, the "Enhancing Science and Technology" initiative, which would be working towards a heightened use of technology. Ms. Parker noted that the different divisions and programs within the Department were the holder and users of enormous amounts of data and that this initiative would work towards ways to better use and share this data within the Department, with stakeholders and with the public in general. She noted that different program reviews had been initiated, such as the permitting process, to further efficiency within the agency. She stated that as revenues decline, it was more imperative than ever that efficiency be a major focus.

Lastly Ms. Pauley noted that the third initiative she wished to share with the Commission was the "Our Missouri Waters" initiative. She stated that this initiative encompassed different watershed issues, noting the need to prioritize environmental issues within watershed areas, focusing on funding and technical assistance.

Ms. Pauley advised the Commissioners that she would try to provide periodic updates and again thanked them for their commitment to the state.

The Commission was provided an opportunity to ask questions. No questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission.

3. RULEMAKING UPDATE

Mr. Tim Eiken, Director's Office, Hazardous Waste Program, addressed the Commission and provided a brief update on the Department's current rule related efforts. He noted that there were three items he would be presenting to the Commission today, beginning with the current rule package, which includes the Packaging, Marking and Labeling package and the Satellite Accumulation package. He noted that the draft rule language had been prepared, which had been drafted with input from stakeholders through the forum process, and had received initial approval to proceed with the process. Following this approval, the Department was working on the Regulatory Impact Report prior to it being heard by the Commission for the Finding of Necessity for concurrence that the rules were necessary, which was anticipated at the June meeting. In addition, he noted, the Department was in the process of updating the incorporation by federal reference of rules that have come out since July 2010. He advised that this would include the two noted previously and any others that had come up since the last update. Mr. Eiken stated that the current schedule showed that in addition to the Finding of Necessity at the June meeting, a public meeting should be scheduled for August, with the public hearing at the October meeting, the final decision at the December meeting and the rules becoming effective in April 2013.

Mr. Eiken went on to advise the Commission that the Department was also working with the Environmental Protection Agency on the rule package that had been submitted previous to this one, for which we had requested authorization. He noted that the EPA was working on the authorization and that the Department had been responding to their consultants' questions and anticipated the final publication shortly.

And finally, Mr. Eiken provided the Commission updated information on a rule that had been adopted in December 2011, the Academic Lab Rule, noting that it provided for an alternate set of management practices for generator standards at laboratories associated with an academic setting. He advised that there had been a lot of interest in the rule and that the Department had received questions as to whether the rule was in effect yet and whether it was effective. He also noted that Washington University and the University of Missouri-St. Louis had expressed interest in the rule provisions. Mr. Eiken advised that the EPA maintained a website which listed the different states that have adopted this type of standard and that Missouri was being added to the list of states that have this type of rule in place. He noted that in the near future that schools would be given the option to submit a request to opt in and that this would give them additional flexibility in how they managed their waste.

The Commission was provided an opportunity to ask questions. No questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission.

4. BATTERY STORAGE UPDATE

Ms. Darleen Groner – Permits Section, HWP, addressed the Commission and began by providing the Commission with copies of photographs taken during the October 2009 inspection of the Exide facility. She noted that her presentation was an update on battery storage and the states “24 hour” rule, which had been requested by the Commission during their December 2011 meeting. Ms. Groner provided the Commission with a description of a “battery” with regards to the federal regulations. She noted that the description stated that a “battery” was defined as “intact, unbroken batteries, from which the electrolyte had been removed.” She noted that the key words were “intact and unbroken.” Ms. Groner explained that there were several other sources, in addition to the regulation, that operators could go to that provided information on battery storage and handling, such as RCRA Online. She advised the Commission that this source provided the EPA’s clarifications on battery storage issues through letters and Q&A postings and memorandums, which further clarified the federal rules and regulations. Ms. Groner further noted that in this resource was an EPA letter, dated May 30, 1997, which stated that the regulation was only intended to exempt those operators that generate, transport or collect spent, intact batteries; and if broken, the batteries would have to be managed as a hazardous waste. She also noted that in October 2011 the US EPA published a compendium that stated that only intact batteries, prior to reclamation, are exempt from regulatory controls. If they are cracked, uncapped or broken, they must be managed as a hazardous waste, which means they need to be over-packed, properly packaged, marked and labeled and properly manifested.

Ms. Groner then provided the Commission with a brief overview of the AHC’s decision on Exide’s appeal, noting that under 40 CFR 266, a reclaimer needs a permit for storage of unprocessed batteries. She went on to note that under the state’s “24 hour” rule, the reclaimer of a hazardous waste from an offsite source, had 24 hours to process the shipments or put the contents in to a permitted storage area. Under the regulations, Missouri has interpreted this to mean, intact, unbroken batteries. Ms. Groner then referred to an April 3, 2009, memo from the Department of Transportation, which had been provided to the Commission as Attachment I. She noted that this memorandum had been sent out to all battery recyclers and that it reiterated that batteries must be intact or unbroken or they were not exempt from their requirements. DOT noted in the memo that this was in response to an “ongoing trend towards serious safety violations,” with a reference to non-compliance and a lack of documentation regarding the transportation of spent batteries.

Ms. Groner noted that Exide’s own requirements state that the batteries must be intact and unbroken to comply with exemptions to regulations regarding transport of hazardous waste. She advised that Exide had stated that they had been receiving trailers that contain non-conforming batteries and that they now have to reject those trailers. She advised that although this had been stated, the Department had found no documentation supporting the assertion that trailers were being rejected or as to why they were rejecting trailers, or how many had been rejected since the conditions of the permit had been upheld.

Ms. Groner went on to discuss the 1998 Enforcement Discretion agreement. She noted that this agreement had allowed Exide to store trailers up to seven (7) days before they had to be unloaded. She advised that this was part of past management practices and that Exide had been advised, during the permit renewal process, that this agreement would no longer be an option as it did not comply with federal requirements and that the trailer storage area would have to be added to the permit. She went on to advise that the permit does not and did not require that Exide turn away non-conforming loads of batteries, it only requires that they adequately pack and store those non-conforming loads in accordance with the regulations. She noted that during the inspection leading up to the 1998 agreement, no broken batteries were found and the agreement was only inclusive of trailers that were already in compliance. Ms. Groner advised the Commission that Exide has a wet containment area, and would only have to properly package any non-conforming batteries and they could be stored there within the requirements of the permit. Exide had been advised that the state's regulations could not be less stringent than the federal requirements. She noted that at the same meeting Exide had advised that they would be contacting the EPA to determine if the state's interpretation was the same as EPA's. At a follow-up conversation, Exide had advised the state that they would not be contacting EPA.

Commissioner Foresman inquired if the Department had been to the Exide facility for an inspection since 2009. Ms. Groner noted that the most recent inspection had been in January of 2012. He inquired as to what the status was during the January inspection and was advised that no violations were found at that time, that no trailers were on the lot, they were coming in and being unloaded as they arrived.

In response to the Commission's 2011 request for the Department to look in to working with Exide regarding this issue, Ms. Groner noted that several options had been discussed with Exide to resolve the issue. These options included managing the batteries as they are received, contracts with haulers, providing of DOT compliant containers, not accepting shipments on weekends or holidays, and offering assistance to Exide with compliance issues. Off-site staging had also been discussed but it was noted that non-conforming batteries could still result in a violation. Ms. Groner noted that the Department does not condone the turning away of trailers with non-conforming batteries; that they really wanted them to manage them appropriately or process them immediately. She stated that the issue had been discussed with other like businesses who do not seem to have the same issues that Exide has with the permit restrictions. Ms. Groner stated that the Department had concluded that changing the "24 hour" rule does not solve the problem of non-conforming shipments and that, if they are received, we have recommended processing them immediately or properly storing them.

Ms. Groner offered to the Commission to have a representative from the EPA, from the Doe Run facility and from DOT at the June meeting to respond to any questions the Commission may have.

Commissioner Foresman noted that the Commission's dilemma was those who ship non-conforming loads, those trailers that park in public areas where there could be adverse impacts

to the public. He stated that the regulations are complex, but that the Commission needed to determine if there was anything they could do to address the environmental issue. Ms. Groner responded that outside of DOT doing a "big sweep" on those types of transporters, she was not sure what could be done.

Commissioner Foresman then inquired as to how or if Exide could be allowed to receive non-conforming loads in a contained area over the weekend, to alleviate the environmental issues. Ms. Groner suggested penalizing the shipper if it was obvious that they knew the loads did not conform, and advised she would look in to other options. Mr. Foresman noted that keeping the trailers at an off-site location only created a potential for a bigger environmental issue. Ms. Groner responded that the EPA had stated that off-site staging would be less stringent, therefore in violation of the regulations. She suggested that additional efforts could be made by the recycler to discourage their shippers from bringing in loads that contain broken batteries; they could be penalized, etc. To allow for on-site staging for more than the 24 hours would make it less stringent than EPA's requirements, although the possibility exists that an area could be designed that accepts liquids. Commissioner Foresman noted that the Department needed to get a ruling from EPA on the issue, other than "it might be a violation." He advised that the Department needed to put a rule together to have it looked at as a legal review to ensure all the possibilities are adequately addressed.

Commissioner Aull asked a question of Doe Run's representative, Mr. Province. She inquired as to how loads were scheduled for processing at their facility. She inquired if appointments were made for deliveries. Mr. Province responded that deliveries to his facility were scheduled in advance. Ms. Aull inquired if appointments were rescheduled if the hauler could not make the appointment time, to which he advised they were.

Commissioner Sugg inquired as to whether the Department had received the information on the EPA's position in writing, to which Ms. Groner responded that it was received in an e-mail. Mr. Sugg went on to address Mr. John Doyle and inquired as to any significant differences between the Doe Run facility and the Exide facility. Mr. Doyle responded that the Doe Run Buick Recycling facility was considerably larger. Mr. Sugg inquired as to whether this difference in size influenced any significant differences in their operating schedules. Mr. Doyle responded by clarifying the Buick facilities receiving schedule.

The Commission was provided further opportunity to ask questions. No additional questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission.

5. EXIDE TECHNOLOGIES – SPENT BATTERIES TRAILER PARKING ISSUES

Mr. Jim Price, Spencer Fane Britt & Browne, counsel for Exide, addressed the Commission and began with a brief review of how trailers come in to the Buick plant. He noted that Exide's process was similar to the Buick facilities' process. He notes that the batteries arrive at Buick, they wait outside the processing facilities, but it is outside the processing area. The trailers come in, if it is not time for that trailer's scheduled appointment time then they wait in the trailer parking area until it is thier time. Mr. Price noted that if the Department had no problems with the way Buick utilized their trailer parking area, then he felt that Exide could work within those guidelines and could just de-permit their trailer parking area.

Commissioner Foresman inquired as to when the trailers were opened; if they were only opened when the trailer reached the receiving area or prior to that? Mr. Price responded that he believed that trailers were only subject to being opened when they are "received," and his interpretation is that occurs when the trailers reached the receiving area and the hauler turned in their paperwork, bill of lading, etc., and begins unloading. Commissioner Foresman asked Mr. Province to respond for Buick's process and the process was discussed.

Mr. Price pointed out that neither Exide nor Buick look in the trailers prior to receiving them and neither would be aware of non-conforming loads up to that point. He advised the Commission that both facilities appeared to follow basically the same process.

Mr. Price went on to advise the Commission that Exide was asking the Commission to direct the Department to initiate a rulemaking to try to resolve these issues. He stated that he was in agreement with Commissioner Foresman that the only way there would be a definitive answer would be to have the Department begin the rulemaking process so the EPA could review all the specifics surrounding the issue and make a ruling on it.

In response to the Department's noting that Exide had decided not to contact the EPA, Mr. Price advised the Commission that after speaking to several people regarding the issue, that it was not clear how Exide could come to a true resolution with EPA on this issue as this was not an EPA program, it had been delegated to the states to develop working regulations within their guidelines. He also noted that it would be inappropriate for Exide to ask the Commission to make a ruling that goes against clearly stated EPA guidelines.

Mr. Price went on to propose that the Commission direct the Department to work on a definition of "received." He stated that their position is that until they are ready to be unloaded, the trailers are the responsibility of the shipping company and a battery is not received until then. He noted that this would clarify that the liability stays with the transporter, and not Exide, until that point. Mr. Price stated that this would not be inconsistent with recent EPA rulings and provided the Commission with a copy of an EPA decision out of Puerto Rico. He noted that the EPA stated in this ruling, that trailers could be held up to 10 days before they were unloaded as they were not deemed "received" until that point.

Mr. Price provided copies to the Commissioners of a Resolution that Exide was proposing, requesting the Commission direct the Department to begin a rulemaking, and suggested rule language changes to the existing regulations. The Commission posed questions to Mr. Price regarding an earlier statement, with regards to Exide separating their trailer parking area from their permitted area. Mr. Price advised that this separation could be done through a permit modification, but that Exide really did not want to look at an off-site parking area. A discussion was had regarding the difference between Exide's and Buick's trailer parking area and what de-permitting Exide's parking area would accomplish. Mr. Province was questioned by the Commission regarding Buick's trailer parking area and it was determined that their parking area was part of their permitted area, but was not part of their permitted storage area, whereas Exide's was. The issue of when the trailers were considered "received" at each of the facilities was also discussed, with Commissioner Foresman noting that it appears to be a shipper issue, if there were non-conforming batteries, and not Exide or Buick's.

Commissioner Aull suggested that the Commissioners needed to see how the two plants were laid out, to see the similarities and the differences. Mr. David Lamb, Director, Hazardous Waste Program advised the Commission that Department would provide the information from the permits. He went on to note that he requested the Commission consider some information, as they deliberated on the information that had been provided, that the Department could not condone the acceptance of non-conforming loads. He stated that it would be condoning illegal transportation of hazardous waste and was a violation of DOT regulations. He advised the Commission that broken batteries needed to be hauled by a licensed transporter, with the waste manifested accordingly.

Commissioner Sugg inquired as to what was preventing Exide from having stricter schedules or scheduling shipments or from having specific requirements for shippers. Mr. Price responded that Exide has distributed information to its haulers. He noted that there was a difference between what could be required from independent or contracted haulers. He also stated that Exide was a smaller facility than Buick, having only two bays, and has been working towards improvements.

Mr. John Doyle addressed the Commission and clarified that the trailers that were coming in to Exide were not just trailers that are brought in and dropped off. The majority of trailers that are left at the plant are either Exide trailers or contracted trailers. The others predominantly have a driver that stays with the shipment.

Commissioner Aull inquired as to what percentage of haulers were independent. Mr. Doyle was unable to provide that information.

Mr. Price discussed the Resolution he had provided to the Commissioners, noting that it was just a place to start, that he did not believe that EPA would have issue at the end of the discussion. He stated that he believed that this is what EPA was doing elsewhere.

Commissioner Sugg inquired as to whether Mr. Price had any other information or documentation, other than the citing from Puerto Rico, where EPA has different guidelines than what had been presented by the Department. He responded that he did not. Mr. Price went on to advise the Commission that Exide, in response to information from the Commission at an earlier meeting, was looking in to the possibility of a variance, although they were not sure at this time if a variance would meet their needs, or if they would qualify for a variance under the current standards for getting one granted.

The Commission was provided further opportunity to ask questions. No additional questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission. The Resolution was provided for the Commission to review, and may be acted on at a future date.

A break was called for at 11:20 a.m.

The meeting was reconvened at 11:35 a.m.

Commissioner Aull addressed Ms. Groner and requested that she contact the EPA and have them provide some specific information regarding the Puerto Rico decision that Mr. Price had referenced. Ms. Groner inquired as to whether the Commission would like to have a representative from the EPA at the next meeting to respond to any questions that the Commission may have. Commissioner Aull responded that having someone from EPA would be acceptable if Ms. Groner, the EPA and Mr. David Lamb thought it would be appropriate. Commissioner Aull also asked Ms. Groner to provide the Commission with maps/aerial photos of the two recycling facilities' parking areas so the Commission could compare the two. She noted that the Commission would like to come to some kind of conclusion on this issue. No other questions or comments were posed by the Commission at this time.

6. TANKS RISK BASED CORRECTIVE ACTION RULE DEVELOPMENT UPDATE

Ms. Leanne Tippett Mosby, Deputy Department Director, addressed the Commission and provided them with a copy of 10 CSR 26-2, regarding Petroleum and Hazardous Substances in Underground Storage Tanks. He noted that she was here today to provide the Commission a brief update on the Tanks RBCA rulemaking effort; but that she wanted to first touch on an issue that had been brought up at the last meeting, where there had appeared to have been some confusion on how the Department viewed the 2004 guidance with respect to the current rulemaking effort. She requested the Commission review the information provided and noted that the rule was clear. She directed their attention to #3, which stated that the "owner and operator shall" follow the rule and advised that it provided the option of using the 2004 guidance or another Department approved written procedure.

Following this clarification, Ms. Tippet Mosby proceeded to update the Commission on the current Tanks RBCA rulemaking effort. She reported that there had been five (5) stakeholder meetings scheduled in 2012; on April 27, June 15, August 15, October 10 and November 14. She advised that these meetings were scheduled to provide the Department and stakeholders an opportunity to go over necessary changes and make input. Ms. Tippet Mosby noted the guidance document, since its' inception, was a living document that would be changing as science and technology changed. She noted that the document was not perfect, but that was why there were procedures in place to amend or revise as needed.

Ms. Tippet Mosby noted that the need for updates and revisions had been made very clear from discussions the Department had been having and from disagreements with the Petroleum Storage Tank Insurance Fund (PSTIF). She advised that the current efforts were towards producing a document that was as clear, accurate and usable as possible. She went on to state that due to the conflicts with PSTIF and the Missouri Petroleum Marketers & Convenience Store Association (MPCA), any agreements would be reflected in the revised guidance.

Commissioner Aull inquired if there were any more questions, to which there were none. Prior to Ms. Kara Valentine addressing the Commission, Mr. Lamb noted that Mr. Ron Leone, President, MPCA, had requested to address the Commission.

Mr. Leone took the podium and directed the Commissioners' attention to a two page memo that had provided. He advised the Commission that he was here today to ask the Commission to take action, and was asking the Commission to make a motion to direct the Department to begin to develop a rule that would delete the sunset date on the current RBCA rules. He stated that there were current RBCA rules already on the books and those had been working up to this date, and that there were no emergencies that necessitated changes to the current rule. He went on to note that the Department had and does have ability to revisit any site through the provisions of the "No Further Action" letter that is issued to a site following cleanup. He stated that he was asking for a motion to settle the RBCA issue immediately and advised the Commission that he had drafted suggested motion language for their consideration. Mr. Leone read his motion language to the Commission.

The Commission was given an opportunity to pose questions. Commissioner Bracker began by inquiring to Ms. Tippet Mosby as to what the Department's response to the sunset date of December 31st of this year and how it would be best addressed. Ms. Tippet Mosby advised that the sunset date was put in to the rule at the request of PSTIF. She noted that PSTIF had suggested some language that the Department was not comfortable with and that the Department had countered with some language that had ended up in the rule that included the sunset date. The sunset date was put in the language based on the schedule at that time to complete the rulemaking effort. She advised that the guidance had been in place since 2004 and regardless of whether the rule sunsets, the guidance will still be in place and would still require owners and operators to follow the guidance or use some other written procedures that are approved by the Department. Ms. Tippet Mosby noted that she believed deleting the sunset date was unnecessary and that there was also the issue that if a rule is opened up to

address one issue then any additional issues cannot be addressed until that issue is resolved and the rule is closed and reopened for each individual issue.

Commissioner Bracker advised that he had a question as a follow-up to the February meeting. He noted that the Commission had authorized a delay in the rulemaking process as a result of the Department's waiting on the federal Vapor Intrusion (VI) guidance. He inquired of Ms. Tippet Mosby if the Department was monitoring the federal process or did she anticipate further delays. Ms. Tippet Mosby responded that the draft VI guidance had been released to the workgroup in March and it was still on schedule to be final by November 2012. She noted that the guidance was a result of an Inspector General audit that "dinged" EPA for not having the guidance in place. Ms. Tippet Mosby went on to advise the Commission that vapor intrusion was an area that revisions were necessary and that even PSTIF had brought the need to revisit the vapor intrusion issue early in the stakeholder process. She noted that the Department was proposing to reconvene the Ad Hoc vapor intrusion workgroup to focus on the changes needed. Commissioner Bracker noted that this was the information they were wanting to here. Commissioner Aull inquired as to when the final vapor intrusion rule would be available to which Ms. Mosby noted that it was guidance, not a rule, and that it was expected by November 2012. Commissioner Aull also inquired as to whether the Commission could anticipate an update on the VI guidance at their December meeting. Ms. Tippet Mosby responded that there would be updates given at each Commission meeting and that the draft rule with the VI guidance input was anticipated by February 2013. No further questions were posed to Ms. Tippet Mosby at this time.

Ms. Carol Eighmey, Executive Director, PSTIF, requested permission to speak to the Commission. Ms. Eighmey approached the podium and noted that she wanted to make a slight clarification to information provided by Ms. Tippet Mosby. Ms. Eighmey stated that PSTIF had worked with the Department approximately a year ago and the rules were a compromise that was reached. She stated that PSTIF did not ask for the sunset date, the Department had; but the language that was developed was acceptable to the parties mentioned.

The Commission was provided further opportunity to ask questions. No additional questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission.

7. SUNSHINE LAW UPDATE

Ms. Kara Valentine, Commission Counsel, addressed the Commission and noted that it had been awhile since an update had been brought to the Commission regarding the requirements of the Sunshine Law. She advised that small changes are made by the legislature on a fairly regular basis and that two of the Attorney General's office staff had prepared an update regarding the current requirements of the Sunshine Law. Ms. Valentine introduced Brenda Siegler and Peggy Landwehr, Missouri Attorney General's Office, who provided the Commission with a handout and PowerPoint presentation on highlights from the Sunshine

Law, noting what constitutes a Public Meeting and how the Sunshine Law effects the Commission. Ms. Siegler went over the origins of the Sunshine Law, definitions, related laws, compliance policies, public policy, an overview of who and what kinds of activities were covered by the law, required notices, when and where meetings can be held, documentation required of activities at a covered meeting, closed meetings, what constitutes an open record, best practices for recordkeeping, responsibilities for responses to records requests, public meeting notices, exceptions, closed record guidelines, fees for record request responses and liabilities for violations. Ms. Siegler went on to provide information on how e-mails should be classified, noting that any e-mail sent by one entity or Commissioner, to all Commissioners, regarding any issue, was subject to an open records request and must be added to the public record.

Following Ms. Siegler's presentation, Ms. Valentine introduced Ms. Rhonda Loveall to the Commission, noting that she was the Custodian of Records for the Hazardous Waste Program and the Solid Waste Management Program, and that requests for records were processed thru her office.

The Commission was provided an opportunity to ask questions. No questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission.

8. QUARTERLY REPORT

Mr. Larry Archer, Public Information Officer, Division of Environmental Quality, addressed the Commission and presented the current Quarterly Report, covering the period of October through December 2011. Mr. Archer discussed some of the highlights of the report and provided an opportunity for the Commission to ask questions. No questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission.

9. LEGAL UPDATE

Ms. Kara Valentine, Commission Counsel, provided the Commission with an update on legal issues that may be of interest to the Commission. She began with noting that there was one pending appeal before the Administrative Hearing Commission, by the Buick Recycling facility. She advised that there was one remaining issue that she believed was being resolved. She went on to note that there were a couple of enforcement cases that may be of interest to the Commission. She began with advising the Commission that there had been a settlement reached with WalMart, from violations from 2008. She noted that the settlement was for approximately \$3,000,000. She outlined the issues surrounding the violations, noting that

they stemmed from 3 main violations. Those violations included failure to determine the hazardous waste status of the material in question, the failure to use an authorized hazardous waste transporter or disposal facility; and, as a generator, that they had failed to demonstrate that the products were being recycled. She stated that the settlement agreement included a civil penalty of \$214,000, that the Department would be receiving reimbursement for costs of \$4,000, and that there was an agreement reached on a Supplemental Environmental Project (SEP) for \$1,050,000. This SEP would involve pesticide collection events spread out in rural areas across the state. These events would have to be held within 12 months of the settlement agreement. She also advised that there was still an ongoing Federal investigation regarding similar offenses that Missouri is still involved in.

Vice Chairman Bracker complimented Ms. Valentine on the presentation and advised that he appreciated the efforts towards the SEP.

Ms. Valentine went on to note that there had been an Environmental Protection Agency settlement regarding Cosmo Plex, a company in Hannibal that produced rubber hoses and belts. She noted the violations involved a failure to report chemical releases and violations of the Toxic Release Inventory requirements and that an \$80,000 penalty had been imposed. The Commission was advised that although this was a hazardous waste violation, the company had been prosecuted under the EPCRA law, which is only enforceable by the EPA.

Ms. Valentine then advised the Commission that a settlement agreement had been filed the previous day in federal court regarding the Sweetwater site. She noted that Sweetwater was a subsidiary of the Doe Run mine and mills and that the original lawsuit had been filed by an adjacent landowner, regarding contamination of his property by the Sweetwater mine activities. She explained that after numerous court hearings and depositions of Department staff, the state had intervened in 2008 and had gotten the case in to mediation. In the settlement agreement Doe Run had agreed to setting aside \$8,000,000 for cleanup costs. An additional \$35,000 was to be used to sponsor Science Camps for children, approximately \$30,000 was slated for the remediation costs and the Hazardous Waste Program would receive up to \$15,000 for oversight of the cleanup activities. Ms. Valentine went on to explain that Doe Run was not required to start the cleanup until mining operations ended, which were on a 20 year lease. But, she noted, there had been "hot spots" located that Doe Run had agreed to clean up prior to the end of mining operations. In addition, Doe Run agreed to get ISO certification at the Sweetwater site.

Ms. Valentine asked the Commission if any of them had any experience with ISO certification and whether it was a benefit. She asked for any input they may have on the subject.

Ms. Valentine directed the Commission's attention to a press release on the Sweetwater case and advised that it was just the preliminary release, that the AGO's office would be releasing an addition press statement giving credit to DNR for their involvement in the settlement.

Ms. Valentine provided an opportunity for the Commission to ask questions. No questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission.

Prior to the next agenda item Commissioner Aull advised the audience that for future meetings any items that are to be presented to the Commission must be provided to the Commission Assistant at least 24 hours prior to the meeting and that other deadlines would be discussed.

10. PUBLIC INQUIRIES OR ISSUES

Mr. David Lamb, Director, Hazardous Waste Program, addressed the Commission and advised that the Department had received no public requests to speak before the Commission.

11. OTHER BUSINESS

Mr. David Lamb, Director, Hazardous Waste Program, addressed the Commission and provided a brief update on several issues the Commission may have interest in. He began with an update on recent legislative action that had potential to affect the Department. Mr. Lamb advised the Commission that the main issue he wished to advise them on was the "No Stricter Than" language in House Bill (HB) 1752. He noted that the current language would limit the Commission's authority and would prevent them from promulgating any rules that were stricter than federal rules. He noted that if an issue were not covered by RCRA then the Commission would not be able to do anything about it. He advised the Commission that the Department had been working to draft revised language that would at least remove the unintended consequences of the current language and that they were working with the sponsors to find revised language that would be acceptable.

Mr. Lamb went on to review HB 1135 which would require that administrative rules expire every 10 years and would require the Department go back and re-promulgate these rules each time. He noted that Senate Bill (SB) 469 was the alternative that would provide for the Department filing a report every 5 years that support continuing the rule as is or providing for changes.

Mr. Lamb advised that SB 838 had language that could potentially affect a portion of the Brownfields program, with provisions for receiving a cleanup letter for portions of contaminated sites. He noted that this bill had also contained language regarding access to PSTIF funding but that he thought that language may have been removed in the newest version. SB 645 was reported as an effort to extend the timeframes of action by the Administrative Hearing Committee. And, SB 480, which concerned the shipment of radioactive waste in the state, would repeal the current fee structure imposed by the Department. He stated that the Department believed this would create a loss of \$282,000 in fees which were slated for training first responders and providing escort fees for shipments through the state.

Mr. Lamb provided the Commission with a brief overview of the current budget noting that the Program had taken a reduction of \$237,000, which equaled 5.76 FTE. He noted that this was being addressed through vacant position, even though some of these were key positions. Mr. Lamb also discussed the loss of flexibility in the budget due to the loss of E appropriations.

The Tanks Conference was discussed next as Mr. Lamb relayed how successful the conference had been and noted that it was a cooperative effort between the PSTIF, the Department of Agriculture and the Department. He advised that there were approximately 600 attendees, with the Department playing a prominent role. He also advised the Commission that the Missouri Waste Control Coalition conference at the Lake of the Ozarks was scheduled for June 17-19 and was being planned at this time. He noted that staff from DEQ, SWMP and other programs would be participating and presenting.

Mr. Lamb advised the Commission that he would not be present for the June 2012, meeting, and that Mr. Jim Belcher would be working with the Commission during that meeting.

This was provided as information only and required no action on the part of the Commission.

12. FUTURE MEETINGS

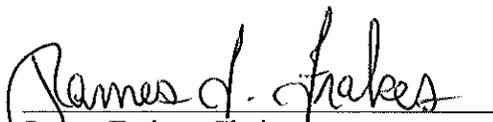
Commissioner Aull noted that the next meeting was scheduled for June 21, 2012, and would be held in the Bennett Springs/Roaring River Conference Rooms at the 1730 E. Elm Street building. It was noted that Mr. David Lamb would not be present at the June meeting. Commissioner Aull called for a motion to adjourn. The motion to adjourn was made by Commissioner Sugg and was seconded by Commissioner Foresman.

Commissioner Aull adjourned the meeting at 12:44 p.m.

Respectfully Submitted,


Debra D. Dobson, Commission Assistant

APPROVED


James Frakes, Chairman

6-21-12
Date

