



GENERAL SESSION  
HAZARDOUS WASTE MANAGEMENT COMMISSION  
December 20, 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](http://dnr.mo.gov/videos/live.htm).

COMMISSIONERS PRESENT IN PERSON

Commissioner Deron Sugg

COMMISSIONERS PRESENT BY PHONE

Chairman Michael Foresman  
Vice-Chairman Andrew Bracker  
Commissioner Elizabeth Aull  
Commissioner Jamie Frakes

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

1. PLEDGE OF ALLEGIANCE

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

2. APPROVAL OF MINUTES

- General Session minutes from the October 18, 2012, meeting:

Commissioner Frakes made a motion to approve the October 18, 2012, General Session minutes. Commissioner Aull seconded the motion.

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

*The vote was taken as a roll call with Commissioner Sugg, Chairman Foresman, Commissioner Aull, Commissioner Frakes and Commissioner Bracker providing an affirmative vote to the minutes. It was noted that Commissioner Adams was not in attendance and that there was a quorum in attendance.*

3. TANKS RISK BASED CORRECTIVE ACTION RULE DEVELOPMENT UPDATE

David J. Lamb, Director, Hazardous Waste Program, addressed the Commission and advised that Leanne Tippett Mosby would be presenting the information on this agenda item instead of Tim Eiken. Commissioner Sugg welcomed Ms. Tippett Mosby.

Leanne Tippett Mosby, Director, Division of Environmental Quality, addressed the Commission, noting that at the last meeting she had advised that the Department was making changes to the Tanks rules and that they had been working closely with the Petroleum Storage Tank Insurance Fund (PSTIF), and the Missouri Petroleum Marketers and Convenience Store Association (MPCA), on these changes. She went on to state that those changes were close to being ready to present, that it was down to just some wording changes, and they should be completed within the next couple weeks. Ms. Tippett Mosby also stated that the Department's Director, Sara Parker Pauley, had previously asked that the sunset date for the current guidance be removed and that staff had been working on how to best approach this. She advised that the Department had originally requested that this issue be placed as an action item on today's agenda, but had since decided not to request that the Commission go forward with an emergency rule, feeling that it was not necessary at this time. She advised that the Department had decided to update the guidance to reflect current practices, as the changes were already in practice for the most part.

Ms. Tippett Mosby also advised the Commission that the Department anticipated they would have a proposal by the next meeting, for the Commission to authorize a regular rulemaking to remove the sunset date and update the rule to reflect the revised guidance.

No questions were posed by the Commission. This was provided as information only and required no other action on the part of the Commission.

4. UPDATING COMMISSION OPERATING POLICIES

Mr. Tim Eiken, Rules Coordinator, HWP, addressed the Commission, and gave a brief overview of the history of the proposed changes to the Commission Operating Procedures, which had been discussed during the past three meetings. He noted that the procedures were originally developed in 2004, and that the revised procedures were available for the approval of the Commission. Mr. Eiken advised the Commissioners that a "clean" copy and a "red-line strike out" copy had been provided in their packets to allow them to review all the changes made.

Mr. Eiken turned the floor over to the Commissioners for comments and discussion.

Commissioner Sugg inquired as to whether there were any questions from the Commission. He then noted that Page 24 addressed a Commission Conference.

- Mr. Lamb responded that this was old language, that the group that used to do the formal training had disbanded and that this was now obsolete. He advised that he was not aware of any training the Department currently had for Commissioners, but that the Program had

been continuing to try to provide the Commission training opportunities, referencing the Sunshine Law training that had been provided to them during a recent meeting.

- Commissioner Sugg inquired as to whether it was believed that the procedures should be altered at this time with regards to this issue.
- Mr. Lamb responded that the current wording did not reflect what the Department currently has in place and that he was unsure of what the future plans were with regards to this.
- Chairman Foresman recommended that this be removed until something new was developed, that this language be struck from the procedures.
- Commissioner Sugg stated that he would rather have something not in the procedures than have something in there that the Commission ignored.
- Commissioner Frakes agreed that language that was obsolete should be struck from the document, but inquired as to whether it was possible for the Department to add some type of training prior to the end of 2013 that would meet the requirements of this portion of the procedures.
- Mr. Lamb advised that, if the Commission would like, he could see if it would be possible to develop a one day training that could meet those requirements.
- Commissioner Frakes noted that he believed this was put in place for updates to the Hazardous Waste Management Commission and advised that he was not against it being kept in, as the intent was good for its initial inclusion.
- Chairman Foresman stated that he had reviewed what the conference/training used to cover and noted that if DNR was not going to provide this on a department-wide basis, then it defeated the purpose. He stated he did not want to have it in the procedures if the Department was not going to provide the training.
- Commissioner Bracker inquired as to whether anything was required by statute. He noted that training was beneficial, but that including it in the procedures was unnecessary if DNR was not going to provide it or require it.
- Mr. Jack McManus, Missouri Attorney General's Office, advised that there was no state statute that governed this; but, that including or not including it would not affect any state statute requiring Commissioner training. *Mr. McManus was filling in for Kara Valentine, Commission Counsel, for this meeting.*
- Commissioner Sugg inquired as to whether the Commission could adopt this policy as written, with or without the provision for a conference, and revisit at a future date?
- Mr. Eiken responded that the Commission could revisit these policies/procedures at any time.

Commissioner Sugg made the following motion:

**"I move to adopt the policies as updated, as written, with the exception of the Commission conference provision, suggesting it be stricken and revisited at a later date."**

The motion was seconded by Chairman Foresman.

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

5. RULEMAKING UPDATE

Mr. Time Eiken, Rules Coordinator, HWP, addressed the Commission and noted that they had approved a Finding of Necessity at the previous meeting, related to the adoption to incorporate by reference, the new federal rules. He noted that this action added two years' worth of federal rules, which totaled 5 or 6 new rules, and advised the Commission that the Department had requested this following a review of these through the stakeholder process. Mr. Eiken reviewed the timing of this rule process and noted that we could only have one amendment open at a time. Because the Department is currently dealing with implementation of the "no stricter than" HB1251 provisions, Mr. Eiken advised the Commission that continuing to file this rule package would adversely impact the Department in this implementation. He stated that the Department was going to wait and file these when all the other changes to the rules had been worked out; and noted that this would postpone the filing for several months, but that it was not a significant issue.

Mr. Eiken went on to state that on a similar note, at the previous meeting the Commission had directed the Department to begin a rulemaking effort with regards to the Exide trailer parking issue. He advised that the Department faced the same issue with this as with the filing of the Federal rule package, as the entire rule was being reviewed and if we were to file an amendment to the current rule, it would interfere with the Department's ability to meet the provisions of HB1251. He noted that the "no stricter than" legislation created significant issues with the language provided by Exide with regards to paved areas and daily inspections. He advised the Commission that in the meantime, while the Department was developing amendments to the current rules, they would meet with representatives from Exide to develop language that best met the requirements of HB1251. He stated to the Commission that the Department was committed to addressing this issue for the Commission and that all amendments to the current hazardous waste rules would need to be in line by December 2015 to meet the provisions of the legislation. He advised that the legislation stated that anything inconsistent by that date would be void and that the Department did not want to be in that situation.

Mr. Eiken advised the Commission that he had also looked in to the Indiana rule that Exide had presented to the Commission and noted that it was not final yet, although it was almost ready. But, he noted, the Indiana rule stated that batteries that were broken or leaking could not be staged and be in compliance with their rule.

Commissioner Sugg inquired as to what point the Department had to determine the status of each of the rules. Mr. Eiken advised that he believed the legislation stated that rules had to be identified by December 2013, as to whether they were in compliance with the provisions, or would have to be amended or rescinded. Commissioner Sugg inquired as to whether it was the Department's duty to make these identifications, to which Mr. Eiken advised that it was.

No other questions were posed by the Commission. This was provided as information only and required no other action on the part of the Commission.

## 6. HAZARDOUS WASTE TRANSPORTATION COMPLIANCE ACTIVITIES

Mr. David Giarratano, Compliance and Enforcement Section, addressed the Commission and advised that he would be presenting this topic, in place of Billie Hains. He provided the Commission with a PowerPoint presentation on the Hazardous Waste Program's activities related to hazardous waste transportation regulatory compliance. This presentation outlined the laws and regulations; the inspection standards; the common violations; the goals of the inspection process; the manifest requirements and review process; hazardous waste transporter requirements and licenses; and resources for information on these activities.

Mr. Giarratano opened the floor for questions from the Commission:

- Commissioner Aull inquired as to whether Ms. Hains was the only certified inspector. Mr. Giarratano advised that she was.
- Commissioner Aull asked if there was a process for identifying the location of the inspections or if it was done at random. Mr. Giarratano advised that Ms. Hains did these inspections on a routine basis at the TSD's, inspecting the vehicles as they arrived at the sites.
- Commissioner Aull asked if she could be doing inspections at Doe Run or other like facilities at any given time. Mr. Giarratano responded that these facilities were inspected approximately twice a year. He noted that if a facility had a good safety record they may not be inspected as often. He explained that facilities with enforced plans in place may not be as much of a focus as smaller facilities with less structure.
- Commissioner Aull thanked Mr. Giarratano and noted that this was a good educational opportunity for the Commissioners.

No other questions were posed by the Commission. This was provided as information only and required no other action on the part of the Commission.

## 7. QUARTERLY REPORT

Dee Goss, Public Information Officer, Hazardous Waste Program, addressed the Commission and gave brief highlights from the April through June 2012 Quarterly Report. Items of interest included the various areas of Program oversight that were affected by HB1251.

Commissioner Frakes inquired as to whether the report was available on line. Ms. Goss replied that it was and noted where it could be located on the web.

No other questions were posed by the Commission. This was provided as information only and required no action on the part of the Commission.

## 8. LEGAL UPDATE

Mr. Jack McManus, Acting Commission Counsel, addressed the Commission and advised that he did not have anything to present to the Commission at this time.

No questions were posed by the Commission. This was provided as information only and required no action on the part of the Commission.

#### 9. PUBLIC INQUIRIES OR ISSUES

Mr. David J. Lamb, Director, Hazardous Waste Program, addressed the Commission and advised that he had not received any requests to address the Commission. He provided the opportunity for any attendees to come forward, with no response.

No questions were posed by the Commission. This was provided as information only and required no action on the part of the Commission.

#### 10. OTHER BUSINESS

Mr. David J. Lamb, Director, Hazardous Waste Program, addressed the Commission and provided them with an update on the HB1251 “no stricter than” activities that the Program had been involved in. He noted that the Department had posed a color coded version of the current rules to the Programs website on November 9th, with notations of which portions were in compliance, which would need to be rescinded and which rules needed further discussion. He noted that this was the basis for the recent December 10<sup>th</sup> Hazardous Waste Forum meeting discussion with stakeholders. He noted that it had been decided that the participants wanted to address this as a whole group and not through individual subgroups, and that the next Forum meeting had been scheduled for mid-January 2013.

Mr. Lamb advised the Commission that a major issue with the Forum continues to be the packaging, marking and labeling rule language. He reminded the Commission that the legislation does give the Commission the authority to retain, modify or rescind the rule; but they may be limited in that authority to only the labeling provisions, as packaging and marking are not specifically addressed in the statute. Because of this, there may be some issues with the draft rule language developed in the Forum last year, as it is currently written. He noted that the Department was reviewing it to determine how or if it could be reworded to comply with the restrictions of the legislation. He also advised the Commissioners that the reason that the hazard labeling exemption was in HB1251 was because the emergency response community had concerns and the legislators were sensitive to those concerns. He noted that the Department would put an options document together and seek the Commissions direction on an approach at a future meeting.

Mr. Lamb went on to advise the Commission that Program staff had participated in a REGFORM seminar on November 13<sup>th</sup>. He noted that there was a lot of discussion on the impacts of HB1251, and that there was a large turnout and good discussions. He advised the Commission that the Department’s presentations for that seminar were on REGFORM’s webpage and that there was a link to it on the Department’s web page as well. He noted that he felt the Commission may find the information useful and that he would provide each of them a link following the meeting.

An additional topic that Mr. Lamb addressed was the Energy Policy Act. He advised the Commission that the Program was working on issues with the US Environmental Protection Agency and concerns they had that may impact our grant funding. He noted that staff continued to work on this issue and that our compliance demonstration had been sent to the EPA, but that we had not received a response as of this date.

Another issue that Mr. Lamb relayed to the Commission was the status of vacancies within the Program. He noted that numerous interviews had been conducted recently and that of the 16 positions the program had open, 6 had been filled. He also relayed that interviews would be continuing and that the vacancies were from several of the sections. Mr. Lamb stated that turnover continued to be an issue, and advised the Commission that Dennis Hansen, a Unit Chief in the Compliance and Enforcement Section, had recently advised the Program he would be retiring.

Mr. Lamb reviewed other Departmental management changes with the Commission, noting that Dru Buntin, Judd Slivka and Derrick Steen were no longer with the Department. He advised that Peter Lyskowski was the new Deputy Department Director; that Leanne Tippet Mosby had returned as Director of the Division of Environmental Quality, and that Alan Reinkemeyer had returned as the Director of the Environmental Services Program.

Mr. Lamb then addressed a question that Commissioner Aull had raised at a previous meeting regarding a notation in the quarterly report of three sites that had been listed as reopened remediation cases in the Tanks Section report. He advised the Commission that there had been an error in the query and that there was actually only one reopened site. He noted that this site was located in Owensville, and that the site was originally closed to a non-residential standard. He advised that the site was determined later to have some residential use occurring on it and would need to be cleaned up to meet residential standards.

Mr. Lamb wished the Commissioners a Merry Christmas, advised them to have safe travel during this holiday season and hoped that those Commissioners who were ill would be feeling better.

## 11. FUTURE MEETINGS

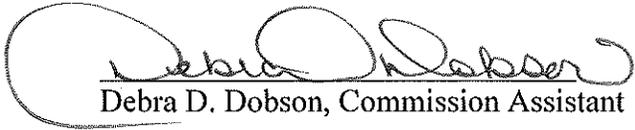
Commissioner Sugg noted that the next meeting was scheduled for February 21, 2012. It was noted that this was different than what the Commissions had received in their packets, and that an updated schedule was provided. He noted that the webpage would also be updated to reflect the correct date.

*Commissioner Aull made the motion to adjourn the meeting at 11:12 a.m. The motion was seconded by Commissioner Frakes.*

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

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Respectfully Submitted,

  
Debra D. Dobson, Commission Assistant

APPROVED

  
Michael Foresman, Chairman

6/20/13  
Date