



GENERAL SESSION  
HAZARDOUS WASTE MANAGEMENT COMMISSION  
December 19, 2013; 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

Chairman Michael Foresman  
Vice-Chairman Deron Sugg

The phone line was opened at approximately 9:42 a.m. for Commissioners calling in to today's meeting.

COMMISSIONERS PRESENT BY PHONE

Commissioner Andrew Bracker  
Commissioner Elizabeth Aull

A quorum was established at approximately 9:59 a.m.

Chairman Foresman called the General Session to order at approximately 10:00 a.m.

*A roll call was taken with Chairman Foresman, Vice-Chairman Sugg, Commissioner Aull and Commissioner Bracker acknowledging their participation in the meeting.*

1. PLEDGE OF ALLEGIANCE

Chairman Foresman 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 17, 2013, meeting:

Chairman Foresman made a motion to approve the General Session minutes. Commissioner Aull seconded the motion.

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

3. RULEMAKING UPDATE

Mr. Tim Eiken, Director's Office, Hazardous Waste Program, addressed the Commission and advised the Commission members that he wished to provide them with updates on what the HWP had been working on lately related to rules. He noted that for the most part, the majority of effort had been directed at the HB1251 legislative efforts, which he would be addressing in the next agenda item. Mr. Eiken went on to state, that in addition to the HB1251 efforts, he wished to address a couple of rule efforts related to underground storage tanks (USTs). The first rulemaking he discussed related to potential changes to the UST operational rules. He noted that these changes included such items as secondary containment and release detection.

Mr. Eiken advised the Commission that the Environmental Protection Agency (EPA) was also working on proposed changes to the federal UST rules and that the state was working to add these federal rule changes to our state rules, in addition to some state changes that had been identified as necessary. He noted that Department staff, in conjunction with the Department of Agriculture and the Petroleum Storage Tank Insurance Fund (PSTIF), had held four informational meetings around the state; in St. Louis, Kansas City, Cape Girardeau, and Springfield. In addition to these meetings he noted that information was posted on the Department's website and sent out in newsletters to get the word out about these potential changes. He advised the Commission that the Department was still waiting to see what the federal rule looked like, so the state's rulemaking, at this time, was in the beginning stage.

Mr. Eiken went on to discuss a second UST rule item related to Tanks Risk Based Corrective Action (RBCA). He noted that these rules had been filed with the Secretary of State as final. He advised that no comments had been received by the Joint Committee on Administrative Rules (JCAR), that the rule process was on schedule and that the rule should be in effect at the end of February. He noted that the rules would be published in the Missouri Register, then the Code of State Regulations, before becoming final.

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

4. HB1251 IMPLEMENTATION STATUS

Mr. Tim Eiken, Director's Office, Hazardous Waste Program, then addressed the Commission and provided an update on the HB1251 implementation efforts to date. He noted that Department staff had been working with stakeholders to meet the requirements of the legislation that was passed in 2012, and had been working to identify those rules, in certain chapters and parts, that were inconsistent with federal rules. Mr. Eiken advised that the issues identified to date by the Department and the stakeholder group had been sent out in a Listserve email blast and that a notice had been filed the previous day for these changes to be posted in a section of the Missouri Register called "Rules Under Consideration." He advised that this should appear in the February 2<sup>nd</sup> edition of the rule register. Mr. Eiken also noted that comments had been received from REGFORM and that the Department had responded to

their comments, comment by comment. He advised that the comments and responses were available on the Forum webpage.

Mr. Eiken went on to explain that the proposed changes had been identified in what was referred to as the "Color Coded Document." The affected rules had been reviewed; those in red had been identified as inconsistent, those in black were not inconsistent and could be retained, and those in blue were not inconsistent but needed to be changed to resolve other issues. Inconsistencies were noted in strikethrough rule text. He advised that there were also a handful that were still under consideration, and were reflected in shaded text until a determination was made as to whether they were to be deleted or retained. Mr. Eiken also noted that a few things had been missed in the initial review, so some additional items had been identified since the report the Commission had received earlier had been compiled. Mr. Eiken advised the Commission that all the changes identified to date had been reviewed and discussed at the Hazardous Waste Forum meeting the previous day and this final determination was well received. He went on to state that the stakeholders were happy with the decisions that had been made and were at a point where all the specifics had been agreed to and that he believed that the Department could now move ahead towards formatting the rule text, renumbering, changing references, correcting the corresponding chapters, etc. He advised that efforts during the next couple of months would be directed towards developing this revised rule text, and anticipated coming back before the Commission during the February or April 2014 meeting, with the Finding of Necessity, asking to move forward with these rule changes. He advised that this was a statutory requirement. He noted that a Regulatory Impact Report would also be required. Mr. Eiken ended his presentation noting that Department staff and stakeholders had come a long way and that he was glad to see the completion of the identification portion of the legislative requirement.

Chairman Foresman noted his pleasure that the Department had gone ahead and held the December Forum meeting and inquired if anyone had any further questions.

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

##### 5. TANKS UPDATE

Mr. Ken Koon, Chief, Tanks Section, addressed the Commission and provided them an update on Tanks Section activities. He provided a PowerPoint presentation which outlined the receipt of competitive EPA grants, and the projects the Tanks Section had utilized these grant monies with.

Mr. Koon advised that the first grant, for \$43,000, was used to conduct activities at abandoned tanks sites. He provided photos and an overview of the work done at several abandoned tanks sites across the state. He advised that activities at these sites included site characterization and risk assessments, source removal, contractual installation of monitoring wells, and coordination with PSTIF to establish where work could count towards the insurance deductible.

Mr. Koon noted that the second competitive grant received, for \$94,000, was focused on activities at former sites along Route 66. He advised that several abandoned sites were identified, and that site characterizations and risk assessments, source removal and the installation and testing of groundwater monitoring wells were some of the activities these monies were utilized to perform.

Mr. Koon also noted the receipt of other competitive grant monies, which were utilized for Leaking Underground Storage Tank site cleanups, and for work at drinking water impacted sites where the facility was abandoned or the owner was not viable. Other potential projects were outlined and an overview of additional Tanks Section work and participation in national conferences and trainings were discussed.

Commissioner Bracker commended Mr. Koon on the receipt of the grants, acknowledging the effort put forward to obtain these grants, and noted the Tanks Section's excellent work. He inquired as to the type of geophysical survey that was used at some of the sites outlined, to which Mr. Koon advised that ground penetrating radar was used.

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

6. FINANCIAL RESPONSIBILITY QUARTERLY UPDATE

Mr. Mike Martin, Compliance and Enforcement Section, addressed the Commission and provided them with an update of the current financial responsibility enforcement efforts. He noted that on August 21, 2008, the Commission approved an expedited process whereby the HWP director may refer sites that do not have financial responsibility (FR) to the Attorney General's Office (AGO) for enforcement action and civil penalties. The Commission voted for the expedited process to begin on November 1, 2008.

Mr. Martin outlined the basis for the financial responsibility laws, the types of FR coverage accepted, who needs FR coverage, the historical process for meeting compliance with FR requirements, charts noting current compliance and totals of those currently without verifiable FR coverage. He advised the Commission that Missouri law and regulation requires tank owners and operators to maintain FR so that they will have funds to take corrective action and compensate third parties for bodily injury and property damage if they have petroleum releases from their underground storage tanks, and that the Compliance and Enforcement Section (CES) continues with the tasks and responsibilities of ensuring compliance with FR.

He noted that the expedited program remains successful at prompting compliance. As of November 20, 2013, of the 3,167 regulated active tank sites in Missouri, only 43 are currently without verified coverage. He advised that this was a slight uptake to the general number. He explained that a large company with numerous sites across the state had recently filed for bankruptcy, which had skewed the numbers.

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

7. CONTAMINATED SOLVENT WIPES

Ms. Nicole Eby, Unit Chief, Compliance and Enforcement Section, provided the Commission with a PowerPoint presentation outlining the EPA's recently published exclusions to the solvent contaminated wipes rule. She explained that these included a conditional exclusion from the definition of solid waste for reusable wipes and a conditional exemption from the definition of hazardous waste for solvent contaminated wipes sent for disposal. She provided a brief overview of the regulations, the difference in these and our current approaches, and some considerations for facilities which may be affected were provided in this presentation. She noted that this rule was not new, as it was over 30 years in the making.

Ms. Eby explained that on July 31, 2013, the EPA published a final rule that modified its RCRA hazardous waste regulations for solvent-contaminated wipes. (78 FR 46448) 40 CFR 261.4. She noted that the rule becomes effective on January 31, 2014, which includes a conditional exclusion from the definition of solid waste for solvent-contaminated wipes sent for cleaning ("reusable wipes") – 40 CFR 261.4(a)(26); a conditional exclusion from the definition of hazardous waste for solvent-contaminated wipes sent for disposal ("disposable wipes") – 40 CFR 261.4(b)(18); and she noted that the purpose of the final rule was to provide a consistent regulatory framework which was appropriate to the level of risk posed by solvent-contaminated wipes in a way that maintains protection of human health and the environment, while reducing overall compliance costs for industry. She stated that the EPA estimated a national cost savings of \$21.7 to \$27.8 million/year.

Chairman Foresman inquired as to whether this was restricted to chlorinated solvents only or if it related to other solvents also. Ms. Eby responded that she would cover this information in her presentation, but, it included several types of solvents.

Ms. Eby went on to advise the Commission that because the rule excludes solvent-contaminated wipes from RCRA hazardous waste regulation, the rule is considered less stringent than the base federal program; therefore, authorized states have the option of whether or not to adopt the exclusions into their regulations. She noted that Missouri's tentative plan is to adopt this rule with the current rulemaking package, and that the rule will supersede the Department's current guidance for solvent contaminated wipes. She explained that while the exclusion for wipes sent for disposal is less stringent than current regulation, the exclusions for laundered wipes will add requirements to current guidance. Ms. Eby reviewed the new definitions established by the rule, explained which types of wipes do not qualify, outlined the accumulation requirements and disposal/laundry requirements for disposable and reusable wipes, outlined which types of records were and were not required, provided a description of a closed container, reviewed questions that have been posed, outlined the questions regarding shipping, and reviewed other considerations and options.

Ms. Eby completed her presentation by noting that it may not be practical for every facility to use the exclusions rather than manage their wipes as hazardous waste, and that deciding whether it will benefit the individual facility to utilize this exclusion will require careful consideration of the overall processes and management practices of the facility.

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. PERMITS SECTION UPDATE

Mr. Rich Nussbaum, Chief, Permits Section, provided the Commission with a PowerPoint presentation outlining the Permits Section, their responsibilities, and current issues. He provided an organizational chart for the section, noting key positions and vacancies. Mr. Nussbaum explained that there had been several retirements or transfers of key staff in the recent months, with a loss of over 120 years of combined knowledge and experience. He outlined the different units within the section and provided an overview of their duties and responsibilities. Mr. Nussbaum also noted that several vacant positions had been or were being filled, and new staff was coming up to speed on their duties.

Mr. Nussbaum went on to explain the regulatory instruments that the Permits Section uses, the common misconceptions regarding permits and the impacts of recent legislation. He noted how HB1251, the “no stricter than” legislation, and HB 28/650, affected permitting requirements and outlined staff efforts to meet these requirements.

Mr. Nussbaum discussed several national workgroups and organizations that he or section staff were coordinating with to ensure Missouri was involved in the most progressive approach to the issues they faced. He noted different ways the regulated community could help streamline and un-complicate the process and outlined the ongoing challenges the section faced.

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

9. MISSOURI HAZARDOUS SUBSTANCE SITE LOCATOR

Ms. Hannah Humphrey, Chief, Long Term Stewardship Unit, provided the Commission with a PowerPoint presentation and a live demonstration of the Department’s newly released online map. She noted that this new online map is a one stop resource that allows users to conduct a web-based search for hazardous substance investigations and cleanups within a specific community or area.

Ms. Humphrey provided background information, noting that in 2011, the Brownfield/Voluntary Cleanup Program developed a pilot Long Term Stewardship Mapper. The Hazardous Waste Program worked with the Information Technology Services Division to develop an improved, expanded map that includes Superfund, Federal Facilities, Resource Conservation and Recovery Act (RCRA) Corrective Action, and Brownfields/ Voluntary Cleanup Program investigation and cleanup sites. This new map website was launched on December 2, 2013, and featured an interactive map viewer with individual site summaries for every site, and links to important documents from Department files. It also included downloadable data layers that local governments or utilities can download and use in their own planning efforts.

Ms. Humphrey went on to advise that until now almost all this information was only available by reviewing Department paper files and county property records; but that it was known that many property uses that put people at risk do not involve chain-of-title searches, such as construction and utility work, and this website allows property occupants, construction and utility workers, and potential purchasers an increased awareness and understanding of activity and use limitations designed to ensure their safety at risk-based cleanup sites.

Ms. Humphrey stated that developing the map and preparing information about cleanups for the new map represented a substantial effort for Hazardous Waste Program staff in 2013. She noted that thousands of paper files were converted to electronic format and site information from three Departmental information systems was updated and linked; with the Department's goal being making site information easily accessible to the public and providing a transparent, consistent information resource that helps ensure property is used safely in Missouri. She stated that this map represents the first time the Department has used the Google mapping platform, and is part of an overall effort to use technology to improve service to Missourians, in this case by improving the visibility of environmental information to the public to protect public health. A live demonstration was provided of sites in the Warrensburg area, showing the documents that were linked and the ease of availability. Ms. Humphrey also noted that more records were being added.

Commissioner Bracker advised that the presentation and the information was incredibly interesting; he commended the quality and the ease of accessibility and advised he was very pleased with the Department's efforts.

Chairman Foresman noted that it was a great resource.

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

## 10. LEGAL UPDATE

Ms. Kara Valentine, Commission Counsel, Office of the Attorney General, addressed the Commission and provided them with an update on several legal cases across the state. She began by advising them of a recent case involving the Glover lead smelter in southeast Missouri. She noted that this was part of the ASARCO bankruptcy, and the state was awarded five million dollars. She noted that ASARCO had sold the site and the slag piles to Doe Run in 1998; therefore, Doe Run was awarded a joint claim. She advised that the plan was for the state to get the money and to contract with Doe Run to close and grade the slag piles. She stated that ASARCO decided that it was not going to pay up on that money and stated that they were entitled to certain offsets due to other sites where ASARCO and Doe Run had joint liability. Ms. Valentine advised the Commission that the state had filed for summary judgment with the bankruptcy court, and the court had recently released its agreement with the state. During the interim, she noted, interest has been accruing on the judgment amount and the state would be issuing directions to ASARCO as to how payment was to be made in to the trust fund. She advised that of the settlement amount, \$250,000 was

to be paid to the Hazardous Waste Fund for oversight work, which would be done by Mr. Rich Nussbaum's Permits Section staff.

Chairman Foresman inquired as to whether the state believed the amount would be sufficient, to which Ms. Valentine replied that she believed it would be.

The next case Ms. Valentine addressed was the Discount Computers Inc. site, or DCI. She advised that they were an electronics recycling company that had rented a warehouse in St. Louis, and had accumulated approximately two thousand CRT's, monitors and televisions which they had abandoned. She stated that the building was owned by a company called Savis, who had agreed to clean up the abandoned waste. Ms. Valentine advised that the state had filed for and received a default judgment against DCI in the amount of \$102,600, which had been referred to collections. She also noted that a consent judgment had been reached with Savis and the transporters.

Next on Ms. Valentine's list was a case involving Enos Green. She advised Mr. Green owned a bar in Festus, Missouri, which had a parking lot that dropped off into a ravine. She noted that Mr. Green had needed clean fill to stabilize the parking area and someone had dropped off loads of lead dross from the Doe Run site. She advised that a lawsuit was filed by Mr. Green in 1999, against Doe Run, to clean up the fill and that letters had been sent to Doe Run and to Enos Green. Doe Run claimed that lead dross was a commodity and they would not have allowed anyone to remove the lead dross for dumping at the site, so no civil penalties were requested in the matter. Ms. Valentine advised that the site was recently cleaned up through the Brownfields Voluntary Cleanup Program, with Mr. Green insisting it be cleaned up to standards of 100 ppm, versus the 660 ppm standard; thus leaving Mr. Green with a very clean parking lot.

Ms. Valentine next provided the Commission with information on the Dyno Nobel case. She noted that this was not a state led case, but was a result of an EPA inspection. She advised that Dyno Nobel manufactures industrial explosives and has plants in Louisiana and Carthage Missouri. Ms. Valentine stated that an EPA inspection in 2012 found a release of hydrochloric acid at the Carthage plant and that Dyno Nobel had failed to make the appropriate emergency notifications at the time of the release. She advised that the EPA was awarded a \$250,000 penalty. She noted that the state was limited to \$10,000 a day, whereas the federal government could assess three times that amount.

Ms. Valentine ended her presentation with a clarification on the process of executive session minutes taken during Commission meetings. She noted that a recent inquiry on how executive session minutes were handled had been made and provided Commission members with the following clarification. She stated that the Commission could continue to vote on executive session minutes, in the general session; but, any changes would have to be discussed and made in executive session. She stated that just because the Commission votes to approve these minutes in general session, it does not make it open to public review. She suggested that any amendments be made after going in to executive session, and the draft copies that the Commissioners receive could be retained by the Commissioners, or could be returned to the Commission Secretary for proper disposal.

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

#### 11. PUBLIC INQUIRIES

Mr. David J. Lamb, Director, Hazardous Waste Program, advised the Commission that he had received a Public Comment request form from Mr. Roger Walker, from REGFORM, requesting an opportunity to address the Commission.

Mr. Roger Walker, REGFORM, addressed the Commission and advised that he wished to publicly let them know how responsive the Department had been regarding the HB1251 rule reviews. He noted that it was a very big undertaking, had taken up a great deal of staff time, and that he knew they had worked hard on the process. He applauded the Department's coordination with stakeholders, addressing all comments, inquiries and discussions on the different issues involved. He noted that he did not want the level of effort to go unsaid.

Chairman Foresman thanked Mr. Walker for his comments and noted his appreciation for REGFORM's involvement in the process.

Mr. Walker thanked Mr. Lamb and his staff for their work and coordination.

#### 12. OTHER BUSINESS

Mr. David J. Lamb, Director, Hazardous Waste Program, addressed the Commission and provided a brief update on several program related items that he felt would be of interest to them. Mr. Lamb began by advising that the program's generator fee invoicing had been completed for this year and that 2,735 invoices had been sent out anticipating receipt of \$1,495,000 in fees. He stated that this was slightly above last year's invoices of \$1,437,000. He noted that the program had started collecting the fees and that generators had until the end of year to submit their fees to avoid late fees. Mr. Lamb also noted that \$193,000 in tank fees had been invoiced earlier in the year, noting that the tank fees were a little different than the generator fees, with the cycle changing year to year, as tank owners are billed on a five year basis, rather than annually. He advised that \$175,000 had been collected, and that those who had not paid were at the point of enforcement action being necessary to try to compel compliance.

Mr. Lamb then noted that the legislative session would start up again soon, with bills already being pre-filed. He stated that the session was scheduled to start on January 8<sup>th</sup>, and when it started, fiscal notes would begin to circulate and staff were beginning to gear up to respond to them and other legislative inquiries. He stated that he believed it was going to be a light legislative year for the program. He noted that the program's fees were good until 2018, and that the Department only had one fee up for legislative action this year; that fee being the scrap tire fee for the Solid Waste Program. Mr. Lamb advised that with the "no stricter than" legislation and the permit streamlining efforts of the last two years, the program had probably worked through most of the issues with our hazardous waste laws that needed to be addressed.

He did note that a bill had already been filed related to e-cycle, and there may be other issues like that which could come up during this session, which could affect the program.

Mr. Lamb then advised that the Hazardous Waste Forum meeting had been held the previous day. He noted that the "no stricter than" package appeared to be ready for final edits. He also advised that the tank container labeling issue had been discussed and was narrowed down to two options, with the stakeholders approving of both. He advised that these options would be discussed with the first responders to get their feedback, as representatives were unable to attend the December meeting. Mr. Lamb also stated that the site locator had been discussed during the Forum, with positive feedback from those stakeholders present, and that staff had participated in a REGFORM seminar in November, which was well attended. He noted that this participation had allowed more people to get involved in the "no stricter than" rule review process, bringing forth some good ideas that brought about some additional changes.

Mr. Lamb ended his discussion with thanking the Commissioners for their service during the year, wishing them a happy holiday season and a Merry Christmas.

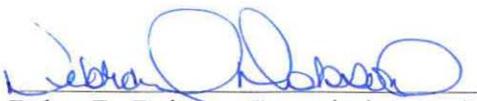
13. FUTURE MEETINGS

It was noted that the next meeting would be held on February 20, 2014.

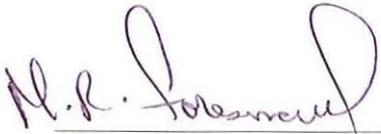
Chairman Foresman requested a motion to adjourn if no other business needed to be presented to the Commission at this time.

*Vice Chairman Sugg made the motion to adjourn the meeting at 11:56 p.m. The motion was seconded by Commissioner Aull.*

Respectfully Submitted,

  
Debra D. Dobson, Commission Assistant

APPROVED

  
Michael Foresman, Chairman

2/20/14  
Date