

GENERAL SESSION
HAZARDOUS WASTE MANAGEMENT COMMISSION
December 18, 2014; 10:00 A.M.
1730 E. Elm Street
Roaring River Conference Room
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 videoed and will be available on the Commission's web page.

COMMISSIONERS PRESENT IN PERSON

Chairman Deron Sugg
Commissioner Mark Jordan
Commissioner Jamie Frakes

The phone line was opened at approximately 9:35 a.m. for Commissioners calling in to today's meeting.

COMMISSIONERS PRESENT BY PHONE

Vice Chairman Charles Adams
Commissioner Elizabeth Aull
Commissioner Michael Foresman

9:52 Message received from Chairman Sugg noting that he was running late due to road conditions.

Chairman Sugg arrived at 10:04, as Vice-Chair Adams was calling the General Session to order.

1. PLEDGE OF ALLEGIANCE

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

A roll call was taken with Chairman Sugg, Vice-Chairman Adams, Commissioner Aull, Commissioner Foresman, Commissioner Frakes and Commissioner Jordan acknowledging their participation in today's meeting.

2. APPROVAL OF MINUTES

- Commissioner Frakes made the motion to approve the General Session minutes from the October 16, 2014, meeting. Commissioner Aull seconded the motion.

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

- Chairman Sugg advanced the agenda to Item #4.

4. RULEMAKING UPDATE

Mr. Tim Eiken, Director's Office, Hazardous Waste Program (HWP), addressed the Commission and noted that there was not a lot of new state information at this time, most concerned new federal rulemakings. He advised, with regards to the "No Stricter Than" rule package, it was still going through the review process; that we were waiting on approval to publish the Regulatory Impact Report to begin its 60 day comment period and that we were ready to publish when the approval was received.

Mr. Eiken went on to note, that on the federal side, the "Definition of Solid Waste" had been released on December 10, 2014. He advised that this covered changes proposed in 2011, and had been three years in the works. Mr. Eiken noted that Missouri did not adopt the original 2008 rule, and that only 10 states had done so. He stated that the amendments proposed in 2011 were designed to address the concerns Missouri and other states had; but, it had just come out and there had not been sufficient time yet to review. He also noted that if Missouri wished to adopt this, it would have to be picked up in the next round of federal rule adoptions as the "No Stricter Than" package was still open and nothing additional could be added at this time.

Mr. Eiken explained that the federal rule addressed Hazardous Secondary Materials; stating that this was material that, because it was able to be used in another process, was therefore not considered to be "discarded" and therefore not a hazardous waste. He noted that the conditional exclusion in the federal rule established certain conditions with regards to containment, management, emergency response, etc., and that, because it is less stringent, it is optional for states to adopt the rule. He noted that there are two options for claiming the conditional exclusion; the generator may recycle their own material or use a verified recycler who has a hazardous waste permit or a variance. Mr. Eiken advised the Commission that the U.S. Environmental Protection Agency (EPA) had held a conference call the preceding week, to announce this to the state's, and that staff are reviewing the verbiage at this time.

Mr. Eiken concluded by advising that another federal rule, regarding Coal Ash, had a deadline of the following day. He advised that Missouri believed that it would be classified as a solid waste and not a hazardous waste; requiring it to meet Resource Conservation and Recovery Act (RCRA) requirements for solid wastes. He noted that information available led us to believe the EPA was leaning towards the "solid waste" determination and that would have minimal impact on the HWP.

Mr. Eiken briefly noted that the only other federal rule related to "Operator Training," which would be addressed by Heather Peters further down the agenda.

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.

- Chairman Sugg returned to Agenda Item #3.

3. COMMISSION OPERATING POLICIES

Mr. Tim Eiken, Director's Office, HWP, addressed the Commission and noted that the Commissioners had received a redline strikethrough version of the proposed changes to the Operating Policies at the previous meeting, and had been asked for any suggested changes. He advised that a "clean" copy had been provided in their packets, which incorporated the changes that had been suggested; noting that two suggested changes had been received from the Commission, and reiterated that the HWP had presented their suggested changes at the previous meeting.

The floor was opened up for the Commissioners discussion on the proposed changes, with Chairman Sugg noting that the proposed changes seemed reasonable. He discussed the change he had suggested to item 7, Conduct of Meetings, and addressed Mr. David Lamb, noting that he had received the verbiage the state had proposed that streamlined the verbiage for his suggested change. Mr. Lamb responded that Department legal staff had reviewed his suggestions and had proposed the verbiage to address the Commission's concerns.

The suggested verbiage was read; *"The Commission reserves the right to impose reasonable time limitations on presentations and/or comments before the Commission. Any presentation and/or comment expected to last longer than 15 minutes must receive prior approve from the chairperson."*

Commissioner Foresman noted that the proposed version was appropriate. Commissioner Frakes asked if he could make a motion to adopt the Operating Policies, with the aforementioned addition to item 7, to which Chairman Sugg agreed. Commissioner Frakes made the following motion:

"I move that the Commission adopt with modifications, the proposed changes to the Hazardous Waste Management Commission's Operating Policies."

The motion was seconded by Commissioner Adams.

A vote was taken, all were in favor, none opposed, motion carried.

5. FEE STAKEHOLDER UPDATE

Mr. David J. Lamb, Director, HWP, addressed the Commission, and advised that he had a quick update he wished to provide them regarding current fee stakeholder efforts. Mr. Lamb noted that the first meeting with stakeholders had been held the previous month and that a second one was scheduled to follow the current Commission meeting. He advised that at the first meeting, participants were provided with background of the current fee structure, the projected shortfalls, and information on how the Department would like to see the process go. He noted that the meetings were being scheduled monthly with the meetings on alternate months being scheduled in conjunction with the Commission meeting to give the Commissioners additional opportunities to participate.

Mr. Lamb advised the Commission that the first fee stakeholders meeting was well attended, with approximately 20 participants in attendance in person and 20 participating electronically through Adobe Connect or on the phone.

Mr. Lamb provided the Commission with a PowerPoint presentation that outlined the changes to the law and new process for changing the fee structure, noting that in 2013, HB28/HB650 revised the Hazardous Waste Law in Sections 260.380 and 260.475 to allow the fees to be amended by rule, and that in 2014, SB642 made additional revisions to clarify the process. He noted that the original legislation contained a provision that limited rulemaking to odd number years and this changed the provision to allow the rule to go in to effect the following year. He noted that the legislation provided the Department with the authority to conduct a comprehensive review of certain fees and propose changes, and that the review was to include a stakeholder process involving representatives from cement kilns, chemical companies, large and small generators, and any other interested parties. He noted that the Department would then submit the proposed fee structure, with stakeholder agreement, to the Commission for approval to begin a rulemaking. He also noted that the bill provided that the Commission could then review the proposal at their next meeting, but that they would not be able to vote on the proposal until a subsequent meeting; and that if the Commission approves by a 2/3 majority (5 of 7 Commissioners), the Department can proceed to file the proposed rule.

Mr. Lamb reviewed the fees to be included in stakeholder process and discussed the fees that could be changed using the process established by SB642. He also discussed other Program fees; where there may be flexibility to change the fees by rule, and those that would require legislative action to change.

Mr. Lamb then provided a financial overview, noting the breakdown of the Program's funding, and how the budget is projected out from fiscal year (FY) 17 through FY21. He noted that at current funding levels, there was a \$2.3 shortfall projected. Mr. Lamb explained how the shortfall was projected for each of these years. He advised that a "calculator" had been developed from FY14 reporting data that included all the fees, and that the stakeholders could go in to the calculator, adjusting the different fee levels and determine how the different changes could affect them.

Mr. Lamb went on to provide a timeline for anticipated rulemaking to provide for a 2017 implementation. He advised that a proposal would need to be presented to the Commission by April 2015, for their vote. Following that, the fee package would be filed – providing for a public hearing by August 2015, and adoption by October 2015. He noted that if this timeline was met, and was not disapproved by the Joint Committee on Administrative Rules, the new rule could be in place by 2017. Mr. Lamb also noted that if the timeline was not met, special meetings may have to be held to meet the requirements for a 2017 implementation.

The stakeholder meeting schedule was provided to the Commission, noting that meetings were scheduled for December, January, February and tentatively March. Mr. Lamb also advised that all information to date was posted on the Fee Stakeholders web page.

The floor was opened to the Commission for questions. The Commission inquired as to how Missouri's fees compare to surrounding states. Mr. Lamb responded that this subject was brought up at the last stakeholder meeting and was also scheduled to be discussed during the Fee meeting later that day. He noted that all states had different structures and it was difficult to make a direct comparison. He advised that information that was gathered for the stakeholder meeting would be posted. An inquiry was made regarding the pie chart that showed the shortfall, asking whether the shortfall reflected activities related to the group being asked to pay a fee increase or if it supported other activities. Mr. Lamb responded that only shortfalls in the hazardous waste fund were included in the chart; and noted that shortfalls in areas such as the DERT Fund, Environmental Radiation Monitoring, Natural Resource Damages and the Tanks Fund were not included in the chart. Mr. Lamb also responded to an inquiry regarding the projection included in the assumption for vacancies. He advised that the Program generally operated with an average of a 10 percent vacancy rate.

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

6. E-MANIFEST UPDATE

Mr. Tim Eiken, Director's Office, Hazardous Waste Program, advised the Commission that some timely information was being presented to them regarding e-Manifests. He noted that the EPA had recently held a conference call with states and any interested stakeholders, regarding this issue.

Mr. Eiken provided an overview of the rule and advised that the EPA was in the process of developing a system to allow the use of electronic manifests. He noted that the EPA estimated that the national e-Manifest system will ultimately reduce the burden associated with preparing shipping manifests by between 300,000 and 700,000 hours, and that the result could be cost savings of more than \$75 million per year for states and industry.

Mr. Eiken noted that currently the current paper-based hazardous waste manifest system is designed to track hazardous waste shipments from "cradle-to-grave." He noted that it records information on types, quantities, and routing of wastes. He also advised that it was a six-copy form that must be completed, carried, signed, filed, and mailed to states, and that manifest satisfies both the EPA's and Department of Transportation's requirements for a shipping document. He advised that this was very inefficient and was an enormous amount of paper to keep track of.

Mr. Eiken stated that Congress had passed an Act in October 2012 that required the EPA to set up a system for electronic reporting. He noted that either paper or electronic would be accepted, and that the electronic reporting would include all the information currently being provided by hard copy. He advised that the key component at this time was the fee, as this was a fee based program, provided by in the statute, which allows the EPA to write a rule to set the appropriate fee. He noted that it was a self-maintaining system.

Mr. Eiken went on to report that there were two laws associated with this process that were being planned. He noted that the first one would authorize the use of e-Manifests; and that the

second one would establish a user fee setting up the system. He noted that the state's priority would be how the states accessed the data, as we need data for fee collection, enforcement, legislative reporting etc. He advised that generation and destination states require pre-public access to manifest data as the states wish to check the data first.

Mr. Eiken finished by explaining that it was anticipated to be Spring 2018 before the system would be up and running; but also advised that funding may be an issue in the future.

The Commission posed a question as to whether there would be any additional fees for those who continue to report by paper. Mr. Eiken responded that it was unknown, that the only thing that had been announced to date was that generators could continue to report by paper if they chose to. A question was also raised as to whether the EPA had sought input from the states as to the number of man hours it took to process the manifests each year. Mr. Eiken responded that he was not sure; but, that he knew the EPA worked with the states to develop the system and likely had information from the states. It was asked if it was known how much of what Missouri spent that this could alleviate. Mr. Lamb responded by explaining current resources involved and that it was expected to increase efficiency in the areas of manifest review and generator reporting. He also advised that all of the benefits have not been determined yet, but it was believed that this would be of benefit to the states.

A question was raised about fees and the benefits of the rule to the fee payers. Mr. Lamb advised that it was not known what EPA's fee structure will be, and that we are waiting on the rule language. He noted that the electronic manifest rule had been approved, but that the rule related to e-manifest fees had not yet been approved.

No other questions were posed by the Commission.

7. ANADARKO SETTLEMENT

Ms. Jacki Hicks, Permits Section, HWP, provided the Commission with a PowerPoint presentation and update on the November 10, 2014, U.S. District Court for the Southern District of New York historic settlement agreement against Kerr-McGee Corporation and related subsidiaries of Anadarko Petroleum Corporation.

Ms. Hicks provided information to the Commission on the status of the former Tronox (former Kerr McGee sites located in Kansas City and Springfield) with regard to the court's decision. The presentation included a short background outline, current status and future expectations regarding the possible receipt of funds from the April 3, 2014, settlement agreement against Kerr McGee/Anadarko.

Ms. Hicks also provided background and timelines for Kerr-McGee's business ventures, and information on the offenses charged in the case. She provided information on the Post-Closure Care and Corrective Action Cost Estimates, and the bankruptcy settlement funds for Missouri.

Ms. Hicks explained that Tronox had agreed in the Settlement to distribute any funds that they would have received from the Anadarko Litigation among the environmental and tort claimants. She noted that 88 percent of any funds left after payment of legal and administrative fees, other expenses, etc. were earmarked for distribution to the environmental claimants in the percentages established by the Bankruptcy Settlement Agreement.

Ms. Hicks also provided link information to the EPA's webpage that contained further information regarding the settlement agreement, and an opportunity was provided for the Commissioners to ask any questions they may have regarding the information provided.

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. SOURCES AND CAUSES REPORT

Mr. Ken Koon, Chief, Tanks Section, HWP, addressed the Commission and provided a PowerPoint presentation overviewing the Sources and Causes Report due to the Environmental Protection Agency each December. He advised that this was required by the Energy Policy Act and that this report covered the period of October 1, 2013, through September 30, 2014. He noted that this report included any underground storage tank (UST) releases that had been noted during the reporting year. Mr. Koon advised that "Sources" include the Tank, Piping, Dispenser, Submersible Turbine Pump, Delivery Problem, Other, and Unknown; and that "Causes" included Spill, Overfill, Physical or Mechanical Damage, Corrosion, Installation Problem, Other, and Unknown.

Mr. Koon reported that there were 94 UST releases reported during that period, with nine having operations issues and 85 from historical contamination. Mr. Koon went on to provide photographs and information on the nine actual releases that were noted earlier. He provided the source and cause of each known release, the quantity of the release and the current status of the investigation of the release.

Mr. Koon also advised that there were also a total of nine Aboveground Storage Tank (AST) releases; which included four delivery issues (overfill or spill), and five historical releases from Phase II assessments. He noted that not many of these were seen as there are no closure requirements for AST's.

Mr. Koon finished his presentation by noting the location of the report on the web, in the event any of the Commissioners would like to see the entire report.

Chairman Sugg inquired as to whether the release at the Boonville location was discovered during an inspection. Mr. Koon advised that it was found during a check of the utilities on the adjacent property as a fire had occurred. He noted that there was a significant inventory loss, but the flash fire caused them to look. It was commented that a slow leak of that much inventory, should have been noticed earlier.

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

11:15 a.m. – Chairman Sugg called for a 5 minute break.

11:27 a.m. – The meeting resumed.

9. OPERATOR TRAINING UPDATE

Ms. Heather Peters, Environmental Specialist, Compliance and Enforcement Section, addressed the Commission and provided an overview of the new operator training. She noted that it was important for two reasons; first being the fact that some of our federal funding was tied to compliance with the Energy policy Act, which requires this training; and because the proposed federal rule change defines and describes the requirements of Class A/B and Class C operators.

Ms. Peters went on to provide a timeline for implementation, noting that Petroleum Storage Tank Insurance Fund (PSTIF) had proposed the UST rule on September 2, 2014, and that PSTIF had accepted comments until October 17, 2014. She advised that the Board had voted on December 3, 2014, to approve the final order of rulemaking, and noted that it will be published February 28, 2015, becoming effective March 30, 2015.

Ms. Peters reported that the training will be on line, and free to operators. She noted that there will be an A/B and C option, and an option to test out. She advised that the contract had been awarded to Williams and Company, and she also advised that there will be reciprocity with some states.

Ms. Peters advised that there would be implementation requirements, which included that participants will have to retrain if violations are found, with discretion provided for what was appropriate “retraining.” She noted that PSTIF would be keeping track of the trained operators, and the Department would have access to the information. She also noted that, in addition to the Fund, Department staff and EPA would be checking on compliance.

Commissioner Frakes inquired as to whether there was any incentive to encourage employees at a facility that are exempt from having to take the training, to go ahead and take it as an opportunity for safety training. He noted that large manufacturing plants have many staff that are not “operators,” but could benefit from the training. How do we provide it on a broader basis? Ms. Peters responded that it was free, that the Fund was paying the costs for the training, and that it was a good training opportunity. She noted that there was no limit to the number of people who could take the training, and would attempt to determine how many people actually take the training vs how many are required to take it. She noted that she would report back at a future date if that information could be determined.

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

10. FINANCIAL RESPONSIBILITY UPDATE

Mr. Michael Martin, Compliance and Enforcement Section, HWP, addressed the Commission and provided a PowerPoint presentation and update on the Department’s process for

maintaining financial responsibility (FR) at tank sites.

Mr. Martin noted that Missouri law and regulation requires that tank owners and operators 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 USTs. And, that recognizing the importance of this, the Hazardous Waste Management Commission approved the usage of an expedited enforcement procedure to address these facilities in August 2008. He also advised that in 2008, of the 3,374 facilities required to have financial responsibility, 184 facilities lacked coverage, which equated to a 95% compliance rate.

Mr. Martin stated that as of November 18, 2014, of the 3,221 facilities currently required to have financial responsibility, only 30 are without verified coverage, equating to a 99% compliance rate.

He also advised that as of November 10, 2014, 10 of those sites have been referred to the Attorney General's Office for legal action and 12 of those 30 have submitted applications to the Petroleum Storage Tank Insurance Fund and are pending approval for coverage, with staff currently in the process of issuing letters and Notices of Violations, and working to resolve the violation.

Chairman Sugg commented on the positive of the 99 percent success rate, with Mr. Martin responding that he had great staff and support from the Attorney General's Office.

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.

11. LEGAL UPDATE

Ms. Kristin Stokely, Office of the Attorney General, addressed the Commission and advised that she was standing in for Ms. Kara Valentine; but, did not have any information to present to the Commission at this time. She noted that Ms. Valentine would provide any updates at the next meeting.

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

12. PUBLIC INQUIRIES

Mr. David J. Lamb, Director, HWP, advised the Commission that he had not received any requests from the public, to address the Commission.

13. OTHER BUSINESS

Mr. David J. Lamb, Director, HWP, addressed the Commission, and advised that he only had a couple of items to pass along at this time. Mr. Lamb began by noting that the Department

had a new Deputy Director, as Mr. Todd Samsell had joined the Department. Bio information was provided on Mr. Samsell and Mr. Lamb noted that he would be a great addition to the management team. He then noted that there had been a couple of other recent reorganizations within the Department that had taken place, including the move of the Water Resource Center and the Land Reclamation Program to the Missouri Geological Survey. He also noted that the Soil and Water Conservation Program had been transferred to the Division of Environmental Quality. In addition, he advised, the Water Protection Program's Non-Point Source Program has been moved to the Soil and Water Conservation Program. He stated that there had been no physical changes to work locations for staff and that this restructuring was just designed to add synergy to projects; and, it appeared to be a good move to get the right people collaborating and coordinating on the issues managed by the affected Programs.

Mr. Lamb went on to advise the Commission that the Program had filled the Unit Chief's position in the Long Term Stewardship Unit, with Mr. Donald Cripe, who had begun work on November 22, 2014. Mr. Lamb also noted that the new legislative session would be starting up January 7th, and that staff were gearing up for that. He noted that the Program would be keeping an eye out for any bills that would affect the Program.

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

Chairman Sugg inquired as to the meeting location for those staying for the Fee Stakeholders Meeting. Mr. Lamb noted when and where the meeting was scheduled to begin. He also reminded the Commission that the June and August meetings may have to be moved up a week to keep us in line with our rulemaking schedule.

14. FUTURE MEETINGS

The next meeting of the Hazardous Waste Management Commission will be held on Thursday, February 19, 2015, at the 1730 E. Elm Street Conference Center.

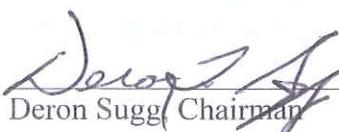
Vice-Chairman Adams made the motion to adjourn the meeting at 11:47 a.m. The motion was seconded by Commissioner Aull.

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

Respectfully Submitted,


Debra D. Dobson, Commission Assistant

APPROVED


Deron Sugg, Chairman

2/19/15
Date