



GENERAL SESSION
HAZARDOUS WASTE MANAGEMENT COMMISSION
October 18, 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.

The phone lines were opened at 09:40 a.m. for Commissioners participating by phone.

COMMISSIONERS PRESENT IN PERSON

Chairman Michael Foresman
Commissioner Elizabeth Aull
Commissioner Deron Sugg

COMMISSIONERS PRESENT BY PHONE

Vice-Chairman Andrew Bracker
Commissioner Charles Adams

Chairman Foresman called the General Session to order at approximately 10:02 a.m.

Chairman Foresman took a roll call of the Commissioners. Chairman Foresman, Commissioner Aull, and Commissioner Sugg were present in person. Vice Chairman Bracker and Commissioner Adams were present by phone.

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 August 16, 2012, meeting:

Commissioner Sugg made a motion to approve the August 16, 2012, General Session minutes. Commissioner Aull seconded the motion.

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

Chairman Foresman proceeded to the next agenda item and welcomed Deputy Department Director Leanne Tippett Mosby.

3. TANKS RISK BASED CORRECTIVE ACTION RULE DEVELOPMENT UPDATE

Ms. Tippett Mosby, Deputy Department Director, addressed the Commission and advised that the Department had originally requested that this item be placed on the agenda as an "Action Item," but that the Department does not yet have a solid recommendation. She mentioned that Director Pauley had previously recommended removal of the sunset date on the existing rule, but stated that the Department is currently wrestling with how to best accomplish this from a mechanical perspective. She advised that an emergency rule was being considered in addition to notifications to the regulated community. Ms. Tippett Mosby went on to advise that the Department would bring a more solid package to the Commission during the December meeting; but, it would not include recommendations on Site Characterization or Neighbor Notification.

Chairman Foresman advised that one idea would be to issue guidance. He noted that it would only take a mandate and that language would still allow for requests to the Department on how to use the guidance.

Ms. Tippett Mosby acknowledged that is an option.

Vice Chairman Bracker noted that he had raised a question at the previous meeting on the status of the Vapor Intrusion federal guidance, and information on its promulgation, and inquired as to how this would affect the schedule.

Ms. Tippett Mosby responded that the EPA was still reporting it will be available in November. She further stated that the vapor intrusion Ad Hoc committee continues to meet, but it is unlikely the vapor intrusion changes will be ready by the December meeting.

Vice Chairman Bracker stated that the stakeholder meetings had been suspended for two meetings in a row and he requested an update at the December meeting. Ms. Tippett Mosby responded that the Department will provide an update as requested.

4. FINDING OF NECESSITY

Mr. Tim Eiken, Rules Coordinator, Hazardous Waste Program, addressed the Commission and provided a PowerPoint presentation on the Department's current request for the Commission to allow the Department to file a group of proposed amendments to update the incorporation by reference of the Code of Federal Regulations, in the code of State Regulations, from July 1, 2010, to July 1, 2012. Mr. Eiken outlined the proposed amendments and noted the benefits of this request. Following his presentation Mr. Eiken provided the Commission with the Department's recommendation to file the updates.

Commissioner Sugg made the following motion:

“I move that the Commission adopt the Finding of Necessity that the proposed amendments to Title 10, Division 25 are necessary to carry out the commission’s rulemaking authority and that the Department proceed with the filing of the proposed amendments with the Secretary of State.”

Commissioner Aull seconded the motion.

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

5. BATTERY STORAGE TRAILER PARKING ISSUE – COMMISSION INQUIRY RESPONSE

Ms. Kathy Flippin, Chief, Compliance and Enforcement Section, Hazardous Waste Program, addressed the Commission and noted that she was here today as a follow-up to this topic’s inclusion to previous meetings. She advised that the Commission had been provided comments and information from Exide, Doe Run, the U.S. Environmental Protection Agency, and from the Department regarding the trailer parking issue. She noted that the Commission had also been provided rule change motion language by Exide, in addition to a proposed rule from the state of Indiana and a guidance document from Puerto Rico, which they felt supported their position on the issue.

Ms. Flippin advised that the Department had reviewed these documents and had prepared a recommendation for consideration after all the information was heard. Following this review of the background information, Ms. Flippin requested the opportunity to introduce Mr. Andrew Brought, Exide counsel, and to allow him to address the Commission on behalf of his clients, while also requesting to be able to speak again to respond to comments made. Chairman Foresman advised that the Commission would hear from Ms. Flippin again, following Mr. Brought’s presentation.

Mr. Andrew Brought, Spencer Fane, addressed the Commission and thanked them for having continued the discussions with his clients on this issue. He noted that discussions had been ongoing for over two years and they appreciated the dedication to a resolution that the Commission had afforded his clients. Mr. Brought went on to note that Exide had submitted a position paper for this meeting, which outlined the history of the issue and their recommendations for moving forward. He began with referencing the Indiana rule language and directed the Commission’s attention specifically to the language related to staging. Mr. Brought noted that the Indiana rule language was more lenient than what Exide had proposed to date, as it allowed for a fourteen day staging period while Exide was proposing a seven day staging period. Mr. Brought advised that the Indiana rule language also proposed weekly exterior inspections while Exide had proposed daily exterior inspections, noting that this proposal was far more stringent than the Indiana rule language.

Mr. Brought went on to state that discussions would continue until the Commission started the rulemaking process and that what Exide had proposed was in compliance with all federal laws and mirrored what was seen in other EPA regions. He also stated that it was in line with other state’s environmental agencies standards. Mr. Brought broached the question to the

as to whether or not they were looking to support recycling; that these types of facilities could not operate if they were constantly subjected to enforcement actions regarding staging operations. Mr. Brought thanked the Commission again for their time and relinquished the floor to Ms. Flippin.

Ms. Kathy Flippin addressed the Commission and began with advising them that the intent of the Indiana rule language, which was directed at retailers, re-claimers, owners and operators, was to set standards for safe storage. She noted that although retailers have their own set of standards, separate from this rule language, the Indiana rule language does define "staging." She went on to quote that their definition was "...holding whole spent acidlead batteries..." and that was where the issue lay. She advised that Indiana's intent was that these batteries would meet these requirements. She stated that 40 CSR 264 – Permitted Storage, also included this definition. Ms. Flippin went on to outline the issues that were included and excluded from the references on the Indiana rule and noted that although their rule language has been published and has gone through the public comment period, as of a discussion with a representative of Indiana just prior to this meeting, Indiana would be making changes to their rule language. Ms. Flippin went on to state that the Puerto Rico rule also detailed that batteries must be in good condition. Ms. Flippin advised that she believed that it was important that the Commission have the opportunity to hear what the Department of Transportation (DOT) had to say on the issue of defining "received," and that the Department would also like to comment on that issue. She noted that due to the fact that the Department had not received the information from the DOT she was recommending against the Commission signing the Certification of Decision that Exide was proposing, at this time. She noted that the Department would prefer to define a "leaking trailer," remove the wording "weather permitted," and note that batteries must be in good condition or be properly packaged or be processed immediately. She went on to state that the existing rule already allows for storing batteries up to a year if they meet those conditions.

Commissioner Aull commented that she did not believe that asphalt was a good choice of surface and noted a need to change the wording on "staging."

Chairman Foresman advised that he believed the best choice would be to direct the Department to start, to begin the rulemaking process; which would include public hearings, testimony, etc., to get this issue resolved.

Commissioner Adams advised that he concurred, that this needed to move forward.

David J. Lamb, Director, Hazardous Waste Program, requested the opportunity to be heard. He noted that there was a timeline issue with this direction; that if the Department were to be directed to start a rulemaking, it could prevent them from meeting the statutory timeframes required by the HV1251 ("no stricter than") legislation that had recently passed.

Chairman Foresman stated that he believed the direction could be given and a timeline worked out later.

Commissioner Sugg read the following motion:

“I move that the Commission, having heard testimony and receiving material and data provided by the parties presenting before this Commission, direct the Department to propose a rulemaking package of regulations adopting the language and specific approach presented in the attached set of proposed revisions to Missouri Hazardous Waste Management regulations addressing temporary staging of in-bound trailers of lead-acid batteries pending processing at battery recycling and reclamation facilities.

The proposed revisions affect:

- *24 –hr rule 10 CSR 25-7.264*
- *Missouri Part 266 regulations 10 CSR 25-7-266*
- *Missouri Universal Waste Regulations 10 CSR 25-16-273*

Proposed additions are shown in underlining; deletions are shown with strike-throughs. The rulemaking is to be in compliance with the public notice, comment, and other requirements for adopting regulations under the Missouri Hazardous Waste Management Law.”

Commissioner Adams seconded the motion.

A vote was taken; all who voted were in favor; Commissioner Bracker recused himself, none opposed. Motion carried.

Commissioner Aull addressed the Commission and noted that she would like to make a change to the wording; Chairman Foresman and Commissioner Sugg advised that it had already been voted on and passed.

6. UPDATING COMMISSION OPERATING POLICIES

Mr. Tim Eiken, Rules Coordinator, HWP, addressed the Commission, and gave a brief overview of the changes that had been received to date. He also provided an overview of the changes that had been suggested by the Petroleum Storage Tank Insurance Fund and REGFORM. Copies of these suggested changes had been provided to the Commissioners in their packets prior to the meeting.

Chairman Foresman opened the floor up to discussion.

Vice-Chairman Bracker advised that he was withdrawing the suggested language from the previous meeting. He noted that he had not provided anyone with copies of his suggested language incorporated into the policies, but believed the changes that had been made to date should cover his concerns.

Commissioner Aull requested that the word “and” be replaced with the word “or” on page 12, line #2.

Chairman Foresman then noted that the final draft would be placed on the agenda for the December meeting for a vote, and that during the interim all comments received should be posted to the web page by the Commission Secretary, for review.

No other questions were posed by the Commission. No other action was required on the part of the Commission.

7. RULEMAKING UPDATE

Mr. Tim Eiken, Rules Coordinator, HWP, addressed the Commission and advised that he would be providing a brief update on the rules currently proposed, and noted that recent legislation, HB1251, will have impacts on current proposed rules, in addition to the other rules already on the books. He noted that the Department would have a better idea by the next meeting as to the actual impacts, and that current proposed rules were almost to the point where they will be posted.

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

8. TANKS FINANCIAL RESPONSIBILITY

Mike Martin, Chief – Tanks Compliance and Enforcement Unit, Compliance and Enforcement Section, Hazardous Waste Program, addressed the Commission and provided an update on Tanks financial responsibility (FR) issues. Mr. Martin noted that this was a routine update, which had been requested regularly by the Commission. Mr. Martin advised that the law required FR and that as of January 2012, the Compliance and Enforcement section had taken over the duties of FR oversight. He went on to advise that the program was running smoothly, but that there was a slight increase in FR violations as there had been a lot of new installs, and the facilities had been slow in getting policies in place.

Chairman Foresman inquired as to the process for acquiring FR, which was explained by Mr. Martin.

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.

9. DRYCLEANING ENVIRONMENTAL RESPONSE TRUST (DERT) ANNUAL REPORT

Mr. Scott Huckstep, Chief, DERT Unit, Brownfields\Voluntary Cleanup Program, addressed the Commission and provided a brief overview of the current DERT program. He advised that the program was experiencing funding issues and that it may not have funds to address any workplans received after January 1, 2012. He went on to advise the Commission that letters had been sent out to all drycleaners and stakeholders in late September 2012, which had advised them of the current status/issue with the fund. He stated that the Department had given them as much notice and information that they had at the time.

Mr. Huckstep went on to explain that no new site applications were accepted after September 3, 2012. After the mailing was made, consultants were contacted and it was discerned that there has been a significant decrease in the number of sites that are required to register and in the amount of fees that have been paid. He noted that some of these changes are the result of changes in the chemicals that are being used, some of the sites have gone out of business and that some have consolidated operations.

Commissioner Aull inquired as to whether Mr. Huckstep could foresee whether this fund would be going away in the next ten years. Mr. Huckstep responded that the sunset date for the fund was August 2017.

Vice-Chairman Bracker advised Mr. Huckstep that he commended him and the Program and wanted to emphasize the importance of the fund. He noted that sometimes the availability of funding is a critical component, especially in urban areas.

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

10. 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. Ms. Goss inquired as to whether the Commissioners had any suggestions regarding the report. Chairman Foresman suggested that the report be linked to other public contacts and Commissioner Aull suggested linking the report to Extension Services and County Health Department websites.

No other comments or questions 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. Kara Valentine, Commission Counsel, addressed the Commission and noted that there were no current Administrative Hearing Commission appeals but that there were a couple of enforcement actions/issues that may be of interest to the Commission.

Ms. Valentine began with information on a company – HPI – located in St. Joseph, Missouri. She noted that the company processed pesticides and operated two plants with four storage areas. She advised the Commission that in 2010 a Consent Decree was signed with HPI following a criminal prosecution of the company for environmental violations. She also noted that there was a civil decree and that the company was supposed to characterize the product at their plants, with the possibility of penalties being lowered if they could prove their activities. She went on to relate that the US EPA had inspected the location and discovered that HPI had not complied with the conditions of the decree, and the EPA was currently involved in calls with the Department of Justice to encourage compliance.

The second location that Ms. Valentine discussed was the Doe Run location in Sweetwater. She noted that the wind erosion plan had recently been finalized. She advised that the plan was designed to keep the lead from blowing in the wind. Ms. Valentine provided the Commission with photographs of the site, both before and after, noting that significant vegetation had been planted to keep the wind born contamination down, and that the site looked a great deal better than it had when they started. She advised the Commission that these efforts were being encouraged to try to keep this site from becoming a Superfund site.

Ms. Valentine went on to advise the Commission that the environmental attorneys with the Attorney General's Office were scheduled to meet that afternoon. She advised that the Registry was going to be discussed as some of the sites were operating under old agreements and they were going to be discussing how to get all of them in line with the Risk Based Cleanup standards.

No comments or 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 OR ISSUES

Mr. David J. Lamb, Director, Hazardous Waste Program, introduced Mr. Kevin Perry, from REGFORM, who had requested to address the Commission during this portion of the meeting.

Mr. Perry addressed the Commission and advised them that REGFORM was having an Environmental Seminar on November 13, 2012, and provided an invitation to the Commissioners to attend. He went on to advise the Commission that he expressed gratitude to the Department for their assistance with the Seminar, and that Department staff would be presenting on several of the items on the Seminar agenda.

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

11. OTHER BUSINESS

Mr. David J. Lamb, Director, Hazardous Waste Program, addressed the Commission and advised them he had a couple of items he wished to pass on to them. He began with an update of Energy Policy Act issues the Department has been working with the EPA to address. He reminded the Commission that the Department had provided them with a presentation on the Energy Policy Act at the August 2012 meeting, which had included information regarding Financial Responsibility; with which the EPA still has issues with the state's requirements. He noted that there had been a demonstration document submitted to the EPA the previous Friday, which had been developed in coordination with PSTIF and the Department of Agriculture, outlining the state's procedures with regards to Financial Responsibility for the purpose of demonstrating compliance; but, that they had not heard anything back from the EPA as of today's meeting. He noted that he would keep the Commission updated on this issue as it is an issue that is critical to the funding of the Tanks program.

The second item for the Commissions information was regarding the "No Stricter Than" legislation and impacts. He advised that the Department had held a meeting with stakeholders, during the Hazardous Waste Forum, on September 24, 2012. He noted that this was the first Forum since the legislation had passed and that it had been a big topic of discussion. He advised that discussions had been had with stakeholders and that the Department had agreed to post a color coded list of the rules to the Department's website identifying which ones were currently in compliance with the new legislation and which ones would require different levels of changes. He also noted that subgroups to the Hazardous Waste Forum were being formed to look at the specifics and that there would be more meetings with stakeholders scheduled.

Mr. Lamb advised the Commissioners that Program staff would be participating in the REGFORM Seminar, scheduled for November 13th. He noted that the seminar was centered around the "No Stricter Than" issue and that more than half of the agenda would be dedicated to that topic.

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

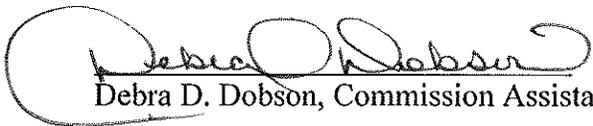
12. FUTURE MEETINGS

Chairman Foresman noted that the next meeting was scheduled for December 20, 2012.

Commissioner Sugg made the motion to adjourn the meeting at 11:27 a.m. The motion was seconded by Commissioner Aull.

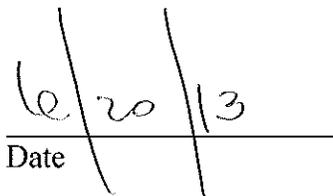
A vote was taken; all were in favor, none opposed. Motion carried.

Respectfully Submitted,


Debra D. Dobson, Commission Assistant

APPROVED


Michael Foresman, Chairman


Date

