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1 P R O C E E D I N G S

2 (Hearing started at 10:07 A.M.)

3 CHAIRMAN ADAMS: I hereby call this public
4 hearing to order. A public hearing is not typically a
5 forum for debate of the issues. Rather, the purpose of
6 this hearing is to provide the Department of Natural
7 Resources and the public an opportunity to present
8 testimony on the proposed changes to 10 CSR 25-12.010,
9 Hazardous Waste Fees and Taxes.

10 At the request of the Commission, the Department
11 will first present testimony on the proposed amendments.
12 Following their testimony, the public will be given the
13 opportunity to comment on the proposed rulemaking. A
14 sign-up sheet is provided at the back of the room for
15 anyone in attendance at the hearing, in addition to
16 comment forms for those who would like to make any oral
17 comments.

18 Please fill out a comment form if you wish to be
19 heard. This will aid us in recognizing speakers and
20 calling them to testify. Additionally, we ask anyone who
21 approaches the Commission to testify to please state their
22 name and affiliation, if any, for the record and to
23 provide a business card, if available, to the court
24 reporter and to the Commission secretary.

25 Written comments will also be accepted at this

1 hearing. Please provide them to the Hazardous Waste
2 Program's Director, David Lamb. Following the conclusion
3 of the hearing, comments may be submitted by mail to the
4 Director of the Hazardous Waste Program, P.O. Box 176,
5 Jefferson City, Missouri 65102. Comments should be
6 submitted -- I'm sorry. Comments submitted by mail must
7 be postmarked on or before the end of the public comment
8 period, on August 27, 2015. Tim Eiken.

9 (Witness sworn.)

10 STATEMENT BY TIM EIKEN:

11 Good morning, Commissioners. My name is Tim
12 Eiken, the rule coordinator for the Hazardous Waste
13 Program. I'm here to present the Department's testimony
14 on this proposed amendment of 10 CSR 25-12.010, the
15 hazardous waste fee rule. Just kind of real briefly, the
16 nature of our --

17 MS. DOBSON: Is it on? Turn it on on the side.

18 TIM EIKEN: The nature of our testimony will be
19 kind of some background information first, why are we
20 proposing to change this rule and, second, the second half
21 of the presentation will be fee specifics on exactly what
22 it is that we're proposing, what changes we are proposing
23 to this particular rule.

24 Some basic statutory background on the fee rule.
25 It has been about ten years since changes have been made

1 to the hazardous waste fee structure. That change was
2 Senate Bill 225 from 2005. Essentially that combined our
3 two different hazardous waste funds and hazardous waste
4 remedial fund into a single fund and then kind of
5 reallocated things that were previously paid out of those
6 funds to other funds, so just reapportioned funding to
7 some extent, revised funding in other situations. So we
8 did change the fee structure about ten years ago and
9 that's the most recent change.

10 The most -- the newest statutory change and the
11 reason that we're here is -- was in 2013. Two house
12 bills, House Bill 28 and House Bill 650, changed the
13 hazardous waste laws so that the fee structure could be
14 revised through the rulemaking process after going through
15 a stakeholder process and after approval by the
16 Commission.

17 The same authority exists in the Hazardous Waste
18 Program and the Clean Water Program and the Air Program
19 and one or two other programs in the Department. So the
20 legislature gave each program and commission the authority
21 to make some changes to the fee structure through the
22 rulemaking process and that's the nature of the rule that
23 we proposed today.

24 Specifically the sections that we're looking at,
25 as far as providing the authority, we have Section 260.380

1 and 260.475. Those statutes do require stakeholder input
2 and Commission approval to move forward with the proposed
3 amendment. We completed the stakeholder process in March
4 of 2015. The outcome of that process was the stakeholder
5 group essentially recommended moving forward with a change
6 to the fee structure. And then that recommendation was
7 presented to the Commission in April of 2015, which you
8 reviewed and approved at your meeting in June -- or on
9 June 11 at your special meeting.

10 The fee work group effort, that was the first
11 step in the process. We initiated that process last fall,
12 in November and December of last year. Essentially what
13 it came down to was working with stakeholders to develop
14 or to try to obtain agreement with stakeholders on what a
15 reasonable fee increase would look like that stakeholders
16 would support and that we could propose through the
17 rulemaking process.

18 The basis of our kind of requests to obtain a
19 reasonable fee increase through this statutory authority
20 is we do project a funding shortfall in the coming years
21 and this change would address a portion of that shortfall.
22 Subsequent to the stakeholder process, another element,
23 important element of our program funding comes in federal
24 grants from the Environmental Protection Agency. We do
25 get a significant portion of our funding from EPA in the

1 form of grants and we have been notified by EPA that
2 they're changing the allocation structure for those
3 grants.

4 So the State of Missouri could stand to lose
5 funding as a result of that reallocation and decisions
6 made at the federal level and that would also affect our
7 funding for RCRA activities and obviously would affect the
8 shortfall that we've already projected.

9 Those changes at the EPA level would be phased
10 in over five years and at this point they're estimating
11 would affect approximately 30 percent of our funding. So
12 that is another element that we do consider in proposing
13 this change to our fee structure.

14 This is just -- it's kind of hard to see, but
15 you've seen this graph previously. We did present this
16 graph to stakeholders and it's essentially an illustration
17 of how the funding changed after the 2005 statutory change
18 that I mentioned previously. That's the first bar on the
19 left-hand side, funding before that statutory change and
20 then each subsequent year after that change represents the
21 change in the funding as a result of that statutory
22 change.

23 So the funding did go down considerably after
24 that statutory change. There were some qualifiers in that
25 in that we did move some types of activities off of those

1 funds, so that would change what we spend the funding on,
2 but as you can see, it did change the nature of revenues
3 to our program significantly.

4 The second graph, this one also was presented to
5 stakeholders as part of the reason, justification for why
6 we were asking for some changes to the fee structure.
7 This line graph, the top line shows operating expenses,
8 the bottom line shows total available funds. As you can
9 see, projecting into the future, expenses do exceed
10 available funds and up until now we've essentially been
11 using a surplus of funding in that fund to account for
12 that discrepancy. So we're hopeful that this fee
13 recommendation will address some of that shortfall between
14 what expenses are and what the available funds are.

15 The stakeholder process that we went through
16 started in November. Basically what we did in that
17 process was we just provided information to the
18 stakeholders about -- did a budget for the Department, the
19 budget for our Hazardous Waste Program, the revenues to
20 our Department's budget and the expenditures for our
21 Department's budget and our program budget.

22 We compared fee structure to other states so we
23 could see how Missouri's fees compared to other state fees
24 and also, of course, obtained input from stakeholders
25 about the impact of the fees. We had calculators

1 available at each meeting. It's just an electronic
2 spreadsheet that we would put up on the screen as we went
3 through the process that had each fee represented with the
4 amount for each fee as an input field and behind that
5 calculator there were spreadsheets, so that generators
6 could see with each change how much their fees would go up
7 for each of these different fee amounts, the different
8 levels of proposed -- that were discussed and that were
9 discussed during the process.

10 Obviously with those charts and at the meetings,
11 the stakeholders had the opportunity to assess the impact
12 of each of the different proposals that we considered on
13 the specific fees that they pay. In addition to the
14 meetings, we kept stakeholders who weren't able to attend
15 the meetings informed about what we were discussing
16 through notices that went out to different list e-mail
17 groups that we maintained, generators of permitted
18 facilities and others who have indicated an interest in
19 fees and taxes or Commission or some other Department
20 issue related to fees and the funding structure. So
21 information was provided that way.

22 We set up a web page that had all of the
23 information and the charts and the spreadsheets so that
24 anyone not in attendance could follow along with what we
25 were discussing and what we were proposing. We also sent

1 out a notice in November when we sent out our generator
2 fee invoice statements that we send -- that generators
3 send in with their payments for the different fees, the
4 generator registration fees. We do that once a year. So
5 basically any generator, any TSD that pays us a fee got a
6 notice in the mail that said changes were being discussed
7 to their -- to the fee structure for hazardous waste.

8 So those were all elements that we -- kind of
9 went into the stakeholder process to develop this rule.
10 Some specifics of what we -- the outcome of the
11 stakeholder process and what we ultimately proposed, I
12 kind of wanted to specifically mention here because we've
13 had some questions after the stakeholder process.

14 We did ultimately propose the exact proposal
15 that was presented to and agreed to by stakeholders back
16 in March. So I know there's some -- there were some
17 questions of whether what we proposed was the same as
18 agreed to by the stakeholders and it is the same proposal.
19 So I wanted to mention that.

20 Essentially, there's about three fees at issue
21 here. The statute limited which types of fees we could
22 consider as part of this process. So the table was set
23 somewhat in terms of what we could propose changes to
24 through this process.

25 The first fee is the hazardous waste generator

1 registration and renewal fee. This is the fee that all
2 generators pay on an annual basis to obtain their ID
3 number. They send it in. It's currently \$100 for all
4 generators and basically there's different categories of
5 generators, depending on how much waste you generate, a
6 large quantity or small quantity or conditionally exempt
7 small quantity. Currently it's \$100 for all generators.
8 The proposal would change that amount to -- it will be a
9 tiered approach to where conditionally exempt and small
10 quantity will pay \$150 and large quantity generators would
11 pay \$500.

12 I also wanted to mention that in the rule text
13 that's in your packet and relates to all these specific
14 changes that we're discussing, this portion of the rule
15 text is in all bold text as if it's all new text, but the
16 reason that it's in bold text is because we're moving it
17 from -- it's currently in Chapter 5. We decided to have
18 all the fee language in a single rule, which is this
19 Chapter 12 rule that we're proposing to amend just so that
20 in the future years whenever we need to revisit these
21 amounts, if necessary, we just have to amend a single rule
22 and we don't have references to multiple rules for fees.
23 So that's the reason why in the rule text it appears in
24 bold as if it's new, but it's just basically moving the
25 generator fee language from one rule to another.

1 It does also include an exclusion. As we
2 discussed raising the fee for large quantity generators,
3 the issue came up that some generators have to pay that
4 fee multiple times because they have multiple sites, even
5 though all of those sites are essentially owned and
6 operated by the same entity and are in the same
7 geographical area. The hazardous waste regulations
8 required multiple ID numbers based on how the waste is
9 moved from one site to another, so these types of
10 generators would have had to pay the additional fee for
11 large quantity generators multiple times.

12 The provision basically allows them to pay a
13 single fee to cover multiple sites if they meet the
14 conditions in the rule that they're in close proximity,
15 operated by a single entity and the other factors that are
16 listed in the rule.

17 The second fee after the generator and
18 registration and renewal fee is what we call the in-state
19 fee. This is paid by Missouri generators based on how
20 much hazardous waste they generate. It's currently \$5 per
21 ton. The agreed amount of the proposed increase would be
22 up to \$6.10 per ton. That fee also has a minimum amount.
23 Currently it's \$150, so if you're subject to that fee, you
24 would pay that minimum no matter what. The minimum would
25 be increased to \$200 and that minimum would be applied to

1 the first ton of waste.

2 Also on the in-state fee, there's a maximum
3 amount or a cap for that particular fee. Currently it's
4 \$52,000. The proposal would increase that to \$57,000.
5 That affects a few generators, not many, but a few are
6 affected by that cap and would be subject to that
7 additional amount.

8 The third fee, the land disposal fee, this is
9 basically a fee on if you're a generator and you dispose
10 of your hazardous waste on land in the state of Missouri,
11 you pay this fee on each ton of waste that you dispose of.
12 So it's -- it would be increased from \$25 per ton to
13 \$29.50 per ton. In all, this proposal with each of these
14 recommended changes to the fees would generate
15 approximately \$500,000 in additional revenue to the
16 hazardous waste fund on an annual basis.

17 The nature of these changes, basically all we're
18 doing is amending one rule to implement the
19 recommendations of the fee stakeholder work group. The
20 affected rule is 10 CSR 25-12.010, Hazardous Waste Fees
21 and Taxes. The text of the amendment is included in your
22 rule packet. Within that rule, the portion of the rule
23 that relates to each of the fees that we've discussed has
24 to be amended to reflect the changes in the rates, so
25 that's what we're proposing to change with this amendment.

1 Some other changes in addition to the fee
2 amounts that we are proposing to include in this
3 amendment, we will be charging the minimum in-state fee on
4 the first ton of waste. That's a slight change from
5 current practice. That's in the rule. We also have some
6 transition language with the changes to the generator
7 registration and renewal fee and kind of a delayed
8 effective date for this statute based on the statutory
9 language.

10 We specified some -- we added some language to
11 the rule that specifies when the old fee -- when you pay
12 the old fee of \$100 and when you have to pay the new fee
13 of either \$150 or \$500, depending on your generator
14 status. So essentially how that works in the proposal,
15 beginning with calendar year 2017 and then annually going
16 forward from that point, you would pay the new generator
17 registration and renewal fee, but the wrinkle to this is
18 that we send out those -- the bills for calendar year 2017
19 actually in October of 2016. So we just specified that
20 when those bills go out, the bills do cover the calendar
21 year 2017 at which point the revised rates would be in
22 effect. So you would pay the new rates beginning at that
23 time.

24 We do have some fees that are based on what we
25 call reporting year. It's when our generators report back

1 to us on how much waste they've generated and we use that
2 information to assess their fees. The reporting years run
3 from July 1 to June 30. So we needed some transition
4 language in the rule that says for each reporting year,
5 are they paying the old fee or are they paying the new
6 fee.

7 The new rates will apply for -- there's a half
8 year involved because the statute goes into effect
9 January 1 and the reporting years are July 1 to June 30.
10 So the new rates will apply for the reporting year that
11 begins July 1, 2016 and ends June 30, 2017. The old rate
12 will apply for all previous reporting years. So that
13 language is part of the proposed amendment.

14 We do have some language that basically requires
15 the per-ton fee rate to be paid for a partial ton for a
16 land disposal fee; in the past that we didn't have that
17 specified in the rule so that partial tons essentially
18 would round down and you would not have to pay the per-ton
19 amount on partial tons of waste. We proposed to change
20 that.

21 We also have the exclusion so that multiple
22 sites can pay a single large quantity generator
23 registration fee under certain conditions. The amendment
24 was published in July, July 15 in the Missouri Register.
25 You see there where you can find the text of the proposed

1 amendment in the Register, in the July 15 Missouri
2 Register.

3 As noted in the opening statement, the comment
4 period is open an additional seven days after today's
5 hearing, so we will accept comments through the end of
6 business on August 27. And at that point we'll respond to
7 comments and come back to the Commission at your next
8 meeting with our recommendation for changes, if any, made
9 in response to comments.

10 Here's the schedule. The amendments were
11 published in July, the public hearing is today, the
12 comment period ends a week from today. Final adoption
13 will be scheduled for your next meeting. Based on that
14 schedule, if the -- if approved by the Commission and
15 approved by the Joint Committee on Administrative Rules,
16 which is the first place that the orders are filed after
17 adoption, we would file the final order with the Secretary
18 of State by November 25. And this one is a little bit
19 different in that the orders of rulemaking would be
20 published January 4, 2016, but there's some special
21 statutory language that is included in this section of the
22 statute that allows the General Assembly, the next
23 legislative session to review what we've proposed and
24 adopted and make changes or disapprove the changes through
25 the legislative process. But barring no disapproval

1 action by the General Assembly in the next session, then
2 the rulemaking would go into effect in one year from
3 January 1, so January 1 of 2017.

4 That's the -- all of the testimony for the
5 Department on this proposed amendment. If you have any
6 questions about what we proposed, I would be happy to
7 answer those at this time.

8 CHAIRMAN ADAMS: Are there any questions for
9 Mr. Eiken?

10 COMMISSIONER FRAKES: Mr. Chairman, I have a
11 question for Mr. Eiken.

12 CHAIRMAN ADAMS: Sure.

13 QUESTIONS BY COMMISSIONER FRAKES:

14 **Q. Mr. Eiken, on the slide on page five of the**
15 **handout that we received, details of proposal, you've**
16 **mentioned that under the registration and renewal fee,**
17 **increase \$100 for all generators to 150 for conditionally**
18 **exempt and small quantity generators. You then go on and**
19 **talk about multiple sites in close proximity.**

20 A. Right.

21 **Q. What is the definition of close proximity by the**
22 **Department under this proposed rule?**

23 A. There is some amount of interpretation involved.
24 I don't know that we have the specific distance included
25 in the rule. The rule language that pertains to this

1 is -- let me see if I can find -- essentially what we're
2 looking at is a single facility where one inspector could
3 inspect all of those sites, all of those ID numbers at
4 once.

5 Basically you're on site, you meet with the one
6 person who's in charge of those five or four multiple
7 facilities. They have all the required records in the
8 same place. They're the person that is able to answer
9 questions about all the sites and you can visit all those
10 sites within the scope of the same visit.

11 So if they're a far enough distance away that it
12 would require multiple visits or multiple inspections,
13 then you probably wouldn't fit the criteria. It's
14 essentially -- we do have some sites that are part of the
15 same company, but they do have sites kind of scattered
16 around, you know, a common geographic area.

17 So we're trying to allow some flexibility to
18 where if it's a single inspector can hit all those sites
19 at once. If it's farther apart to where we can't do that,
20 then they probably wouldn't meet the conditions, but there
21 is some flexibility in terms of that determination built
22 into that determination so that we can kind of review
23 those on a case-by-case basis.

24 **Q. So technically if a company had the financial**
25 **wherewithal and the ability to be able to have a local**

1 office that could maintain those records and they had the
2 ability to be able to move that individual around, then
3 the Department would, within reason --

4 A. Right.

5 Q. -- consider that as being close proximity?

6 A. Right.

7 Q. Okay. Thank you.

8 A. You're welcome. And the intent with that was
9 with the increase to the large quantity generator fee,
10 especially, some of the generators would have been paying
11 that increase fee four or five times for four or five
12 sites, so we tried to be flexible and allow those types of
13 sites to just pay the single fee since it would be at an
14 increased amount.

15 COMMISSIONER FRAKES: Okay. Thank you.

16 TIM EIKEN: You're welcome.

17 CHAIRMAN ADAMS: Thank you, Commissioner Frakes.

18 Are there any others? Mr. Eiken, I have one and it
19 relates to what Commissioner Frakes had just asked.

20 QUESTIONS BY CHAIRMAN ADAMS:

21 Q. And I was just going to ask what were some of
22 these conditions under your -- under changes to rule text
23 that would allow multiple sites to pay a single large
24 quantity generator fee? That's obviously one of those
25 conditions. What other conditions?

1 A. Okay. It's on page 874 of the proposed rule,
2 item number four on the right-hand side, basically. All
3 of the sites have to be owned or leased by the same
4 person, that's number one. You have to have a single
5 point of contact for all those sites, so you have one
6 person who is the same person that is responsible for each
7 of those sites.

8 The geographic issue comes in in item C of the
9 proposed rule text. Basically each site has to be
10 adjacent to another site that's covered by your request or
11 within the same -- we list some examples, recognized
12 boundaries, it can be an industrial park, warehouse
13 district, research campus or academic campus. So if all
14 of your sites are within the recognized boundaries of an
15 area like that, that would be -- that would meet that
16 requirement.

17 And then we have the catchall that all the
18 generator sites are in close proximity and can be
19 inspected at once. They have to submit a map that shows
20 the location of each site, so that will help us determine
21 the close proximity standard and compliance with that
22 standard.

23 There are some requirements that apply to each
24 site that if they're going to do this, they have to have a
25 single one that applies to all those sites such as a

1 contingency plan, a repository for their records, and a
2 unified training plan that covers all those sites rather
3 than having one for each site, just one that applies to
4 all the sites.

5 And if anything changes, they submit an updated
6 petition to us that shows us what the change is, if the
7 sites have changed or if any other information changes.
8 Any time that changes, they submit that information to us
9 so that we can keep up to date and the inspector has the
10 latest information when they go out to determine
11 compliance.

12 CHAIRMAN ADAMS: Thank you, Mr. Eiken.

13 TIM EIKEN: You're welcome.

14 CHAIRMAN ADAMS: Anyone else have any questions
15 for him? If not, thank you again, Mr. Eiken.

16 TIM EIKEN: Thank you.

17 CHAIRMAN ADAMS: Mr. Director, do we have anyone
18 with questions, public?

19 MR. LAMB: We do.

20 CHAIRMAN ADAMS: Thank you. It is now time for
21 our public comments period in this hearing. We have one
22 request and that is Mr. Kevin Perry with REGFORM.
23 Mr. Perry.

24 (Witness sworn.)

25

1 STATEMENT BY KEVIN PERRY:

2 Good morning, Mr. Chairman, and good morning,
3 Commissioners. My name is Kevin Perry. I'm the assistant
4 director at REGFORM. REGFORM is the regulatory
5 environmental group for Missouri, P.O. Box 205, Jefferson
6 City, Missouri 65102.

7 Thanks for this opportunity to offer hearing
8 testimony today. Cut to the chase, we support this
9 proposal for these fee adjustments and the -- it's very
10 important that the program continue to have funding to
11 adequately staff the work that needs to be done and it was
12 very clear when we started working with the Department in
13 the stakeholder meetings that the current funding levels
14 that were coming in, those lines are going to cross and
15 there's going to be a day when we can't keep paying for
16 the program, the money just won't be there.

17 So we do support these fee changes that are
18 proposed today. The stakeholder process, I thought, went
19 very well. It was a very dynamic process. We took two or
20 three goes at it. The financial calculator that was
21 described was a very excellent tool. We were able to
22 explore all sorts of scenarios. If you increase a fee
23 here, what does that do to a certain number of generators.

24 And also I really appreciate the Department and
25 everybody on the stakeholder process being willing to

1 consider this idea for solving the problem of having a
2 bunch of registered sites in close proximity to one
3 another and then, you know, that company has to take a big
4 hit because of the fee increase just on the registration
5 part alone. So I think the solution that came out of this
6 is a very good solution and I commend the Department for
7 incorporating it into this proposal.

8 We support these fees and we ask that the
9 Commission adopt them. I'm happy to try to answer any
10 questions if you might have any.

11 CHAIRMAN ADAMS: Any questions for Mr. Perry?
12 If no, thank you, Mr. Perry.

13 MR. PERRY: Thank you.

14 CHAIRMAN ADAMS: Mr. Director, do we have any
15 other business pertaining to this hearing?

16 MR. LAMB: I did not see any other people sign
17 up to attend -- or to speak, so I think we're through.

18 CHAIRMAN ADAMS: All right. Then, if no others,
19 I do call this public hearing adjourned.

20 (Proceedings concluded at 10:38 A.M.)

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CERTIFICATE OF REPORTER

I, Julie K. Kearns, Certified Court Reporter
(MO), Certified Shorthand Reporter (IL), Registered
Professional Reporter and Certified Realtime Reporter
within and for the State of Missouri, do hereby certify
that I was personally present at the proceedings had in
the above-entitled cause at the time and place set forth
in the caption sheet thereof; that I then and there took
down in Stenotype the proceedings had; and that the
foregoing is a true and correct transcript of such
Stenotype notes so made at such time and place.

Julie K. Kearns, CCR #993, CSR, RPR, CRR

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