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## MISSOURI RISK-BASED CORRECTIVE ACTION (MRBCA) WORKSHOP

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### Meeting Summary

Thursday, October 9, 2008  
1730 East Elm Street Conference Center

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#### Workshop Presenters and Speakers:

NAME	TITLE	AFFILIATION
Robert Geller	Director	Hazardous Waste Program (HWP)
Jim Belcher	Facilitator	HWP
Tim Chibnall	Environmental Specialist IV	HWP
John Madras	Environmental Policy Director	Division of Environmental Quality (DEQ)
Michael Barden	Consultant	Geoscience Resources, Inc.
Tim Eiken	Rules Coordinator	HWP
Marty Miller	Legal Counsel	DEQ
Doyle Childers	Director	Department of Natural Resources

#### Meeting Summary:

On October 9, 2008, the Missouri Department of Natural Resources hosted a workshop on the MRBCA process. The meeting was open to the public, stakeholders, department staff and other interested parties. A call-in number was provided for others to participate.

There were sixty-four (64) attendees who signed the attendance sheet and were present at the workshop. Approximately six (6) to eight (8) additional attendees participated by conference phone.

Robert Geller, HWP Director, began with introductions around the room and phone attendees. Handouts for the workshop were discussed and provided to attendees, as well as made available via the department's web page for those participating via telephone.

Jim Belcher, Workshop Facilitator, outlined the purpose and expectations of the workshop and passed out copies of the DRAFT Rule to the workshop attendees. Jim Belcher advised that a Question and Answer (Q&A) session would be available at the end of the workshop.

Tim Chibnall gave an overview of the MRBCA process and provided a Power Point presentation. He noted that this process actually consisted of two processes: 1) the Departmental process, and; 2) the Tanks process. Both were built on guidance. He informed the meeting attendees that today's purpose was to provide information on the DRAFT rules, stressing that the rules are DRAFT only, and are subject to changes. The intent of this workshop was to explain the current DRAFT rule, and the basis for the rule. There is a statutory mandate that the Tank's rule be filed by February 13, 2009. Tim Chibnall went on with his presentation covering the process, the "how's", "why's", the history and actual rule development process. He noted that the content was similar between the two rules, but the structure differed. He also noted that the Tank's rules would be transitioning from the Clean Water Commission (CWC) to

the Hazardous Waste Management Commission (HWMC). This would change the numbering in the Code of State Regulations from the current 10CSR 20-10.xxx to 10CSR 25-25.xxx. A crosswalk was provided as a handout.

A question was raised as to whether all rules regarding Underground Storage Tanks (UST's) will move. Tim Chibnall advised that they would all move from the CWC to the HWMC. An additional question was asked as to whether the Aboveground Storage Tank (AST's) rules would also be moving. Tim Chibnall advised that there was no authority to move those rules at this time and the AST rules would remain under the authority of the CWC.

Michael Barden, Geoscience Resources, gave a brief summary about the rule. Michael Barden had drafted the initial Tanks RBCA rules for the department. He went on to explain that the numbers in the tables were left out of the rule. The process for using the numbers is in the guidance. He noted that the rule was the "process" not the "numbers," that the current numbers were very conservative and that future numbers could change. Placing the numbers in the rule locked them in and did not allow for any flexibility. They were left out for simplicity.

A question was raised regarding the "Long-Term Stewardship" references in the rule. Michael Barden advised that language was used that existed in other similar rules, and was made appropriate to Missouri. He noted that this issue was complicated by different structures in different states. Real estate disclosure rules only apply in certain states. Restrictive covenants were usable in most instances, but environmental covenants were excluded in Missouri. He advised that the process must work with the overall legal structure and real estate laws of the state and that it is associated with "due diligence" system in real estate actions. Long-term stewardship provisions must ensure that whatever action is taken, it is maintained over time.

An additional question was addressed to Michael Barden regarding whether Missouri's rule was "too much" or "too little". Michael Barden responded that the major issue in drafting Missouri's rule was the Tier-1 soil type specific levels and the front load characterization. He noted that in RBCA the Tier-1 should be "numbers for the brain dead" and that Tier-2 is where it should become more complex and detailed. Characterization for target level development belongs in Tier-2. He was also asked how much deed notifications are used in other states. He responded that deed notifications are useful where the use of a site is unlikely to change in the future; deed notifications do not provide for any restrictions to inappropriate use.

Tim Eiken provided an overview of the rules process, dates and schedule of rule actions. He noted that on the Tanks rule that publication of the Regulatory Impact Report was expected by November 8, 2008, followed by a 60-day comment period. On January 9, 2009, there would be a review and response to comments, which will be posted to the web page. The rule would then be filed and presented to the HWMC the first week of February 2009, with a request for approval. If received, it would then be filed with the Secretary of State's office. This would be followed by a Public Hearing on April 17, 2009, in conjunction with the regular HWMC meeting. He noted that recommendations would be made based on comments received, and that it was up to the Commission to adopt the rule, however they decide. If approved at the HWMC level, it would then go to the Joint Committee on Administrative Rules, by June 22.

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He noted that the Departmental rule is in a slightly earlier schedule, but would follow the same process. It was approximately three weeks ahead of the Tanks schedule.

A question was raised as to whether the HWMC could change the rule, and if changed, does the process start over? Tim Eiken responded that if the HWMC agrees on a change, we make the order with the recommended changes.

A break for lunch was made at 12:00 p.m.  
The Workshop reconvened at 1:05 p.m.

Jim Belcher recapped the morning information and introduced Mr. Doyle Childers, Department Director.

Doyle Childers gave a brief statement to the group on the coordination of the process and its importance.

Tim Chibnall addressed the group again, noting there will be guidance revisions and providing information as to the reason for the revisions and which are significant.

A question was raised as to whether the guidance was proposed or final. Tim Chibnall responded that all things spoken about today are “proposed” – that all were “Draft”. He noted that the guidance cannot be applied until the rule is in place, that it is still changing and being defined. This is being addressed now as the guidance provisions cannot be changed (if the change would alter the rule) after the rule goes to the public comment period.

Tim Chibnall reviewed revised guidance information regarding Site Characterization and Risk Assessment. He then introduced Marty Miller, department counsel, who addressed the issue of the department’s authority to make reasonably anticipated future land use decisions.

Tim Chibnall addressed the group, noting that, where future land use is uncertain, the most protective MRBCA levels are applied by default. Only if future land use can be reasonably predicted can less protective target levels be applied. He then reviewed guidance provisions pertaining to Public Participation and Notice, Long-term Stewardship (noting that this portion of the rules is being revised and would most likely cause minor changes in the guidance), Corrective Action, RBTL’s (noting that these are the same in the Tanks and Departmental guidance), and Plume Stability.

#### Question and Answer:

The floor was opened for Q&A. The questions raised and the department’s responses are memorialized in a separate document titled *MRBCA Workshop Questions and Answers* which is available on-line at <http://www.dnr.mo.gov/env/hwp/MRBCAworkshop.htm>.

Dan Schuette requested that a contact person be named, if additional questions came up. Robert Geller mentioned that Tim Chibnall was the point of contact person, and mentioned that if any believed the Project Managers were not applying the guidance the way it is interpreted, to contact Tim Chibnall as a third party to ask.

No additional questions were received. Robert Geller made a closing statement thanking everyone for their involvement in today's workshop. Meeting adjourned.