

**Missouri Department of Natural Resources**

**Hazardous Waste Program**

**Hazardous Waste Forum Summary**

**April 7, 2011**

**Bennett Springs/Roaring River Conference Rooms**

*(Note: The minutes taken at Hazardous Waste Forum 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 phone lines were opened at 09:53 a.m.

Meeting Facilitator: Crystal Lovett – Missouri Department of Natural Resources

Crystal Lovett opened the meeting at 10:03 a.m. She noted that this was the 3<sup>rd</sup> Forum meeting in this series and thanked everyone for coming.

Introductions were made around the room of all participants.

Mr. Tim Eiken, Hazardous Waste Program (HWP) Rules Coordinator, was introduced to the participants; he provided a short update on rule packages the HWP currently has in process. He noted the current rule packages were moving on schedule and there were public hearings on two of the packages scheduled to be held by the Hazardous Waste Management Commission (HWMC) during their June 16<sup>th</sup> meeting. The public comment period was set to end the following week on the Health Profile Rule and the Academic Lab Rule. A final decision was scheduled to be made by the HWMC during the August meeting. The UST operational regulations were on the same schedule.

Mr. David J. Lamb, Director, Hazardous Waste Program, was introduced. He proceeded with an update on the status of current legislation affecting the Department/Program:

- HB98 – concerning the fees on batteries and HW generators
  - The package had gone through the House and had been referred to the Senate. It had not been assigned to a committee at this time.
- Substitution for HB192 – extends the DERT fund for 10 years and includes the provision for the UST Operators training. It also includes funding for Water, Parks, etc.
  - This bill has had a 3<sup>rd</sup> reading in the House.
- SB135 – the Senate’s version of the bills noted previously (Extends DERT sunset and provides PSTIF with authority for UST Operators training), with additional inclusions.
  - This bill was passed by the Senate and is scheduled for a hearing in the House Tourism and Natural Resource Committee on April 7, 2011.

Ms. Lovett addressed the participants and advised that the discussions would start off with broad topics. She noted 3 main issues, which included the regulation opinion survey of hazardous waste generators; options on the packaging, marking and labeling regulations, and options on satellite accumulation.

Mr. David Lamb advised the participants that as agreed upon in the last meeting, the Department had sent out a survey to stakeholders throughout the regulated community, requesting input into the packaging, marking and labeling issues being discussed. He provided a Powerpoint presentation regarding the survey, noting that this survey had been distributed to approximately 1000 small and large quantity generators and that the Department had received 129 responses to date. Copies of the survey and responses were provided to the participants and the responses were reviewed.

The floor was opened to questions/comments: (paraphrased)  
(Q-questions, R-responses, S-statements)

- Q: Is there any way to tell if the responding entities understand what is being asked and if they are in compliance?
- S: The survey appears to be written by someone not used to writing professional survey questions. Multiple questions are leading and the descriptions predate issues. It doesn't cover what has been discussed. The wording is leading. We may have the psychology department look at how it could be construed. The questions should have stated both options and required a "yes" or "no" response.
- R: (David Lamb): We thought we were being unbiased and thought we had presented our inquiries in a fair manner.
- R: (Crystal Lovett): We thought we did the best job we could on this. If you have professionals that want to put a survey together we would be happy to take a look at it.
- S: The flat out questions get the best responses.
- S: (Kathy Flippin): We struggled with the wording on the survey but I think we got a lot of interesting input back. We received good ideas that we hadn't thought of before. We were looking for that.
- S: PM&L requirements are overly burdensome. Why not just ask if they accomplish anything?
- R: (Crystal Lovett): We may do a follow-up survey.

Ms. Kathy Flippin addressed the group, summarizing survey ideas and options received on the packaging, marking and labeling requirements, from page 11 in the survey handout. She noted the following suggestions were received:

- Post signs in the areas
- If too small for a label, place in a larger container

- Use a container color coding system
- Have some means for less marking and labeling for containers still being processed
- Require some, but not all DOT information on label while in storage
- Profile reference number

She noted that the Department had moved some of these suggestions over to the concept list and will discuss later.

She went on to discuss options for a tiered system, with a handout being provided. This was an idea transferred over to the concept paper and she inquired as to what the participants thought of it. She advised that there were several issues noted with potential solutions posed. The handout covered:

1. In Process Option

- This was based upon suggestions from the group and survey results. Allow federal regulations for drums marked “in process” and full marking and labeling when actually “in storage.” Cost, benefits and questions the Department had, were outlined.

2. Standards of Labeling

- The Department surveyed states on their processes and requirements and received responses from 13 states. California’s marking and labeling requirements are most similar to Missouri’s. The different state requirements were discussed, of responding states, Vermont, New York and New Hampshire have additional marking or labeling requirements.

3. Adopt California Standards

- The benefits, costs and comments were provided.
- Key elements: composition and physical state of the waste, statements that call attention to the particular hazardous properties of the waste (e.g., flammable, reactive, etc.) and name and address of the generator.

4. Tiered System

- Generator could, at their choice, declare their status via amended registration for an exemption from PM&L during storage period. Those SQGs and LQGs that declare and that meet all LQG regulations (except for PM&L during storage) could follow federal regulations only for marking and labeling during storage (i.e., the words “Hazardous Waste” and the accumulation start date). Benefits and costs were discussed.

5. Amend to require primary DOT marking (e.g., need only be changed when adding new wastes if the primary hazard of the container changes).

- No secondary, no additional marking. Same costs & benefits as #3.

6. Amend to have only certain DOT requirements during storage (i.e, diamond labels that indicate hazard(s)).

- Stakeholder comments on issue noted
7. Marking outside of storage area:
- NFPA was a suggestion, but problematic as it does not apply in all areas, and other questions about referencing these other standards were raised.
  - Facilities could choose to use standardized markings.
  - Doesn't quite meet the type of security standard we might like.

Ms. Crystal Lovett invited additional discussion:

Starting with Concept #1:

The floor was opened to questions/comments: (paraphrased)  
(Q-questions, R-responses, S-statements)

- Q: For the "In Process," would it be satellite accumulation with 1 year to ship, or go to storage?
- R: (Kathy Flippin): If it is not being managed under the satellite accumulation (SA) regulations (i.e, under the control of the operator and other SA regulations) currently the 90-180-270 storage requirements would apply.
- S: We won't fill a container in 90 days.
- R: If you are meeting satellite accumulation requirements it could be a satellite container. EPA and the state would normally view anything else as a storage container.
- S: EPA has advised – take full advantage of one year allowed. Move to EPG for 90 day storage. (This comment from a permitted treatment, storage and disposal facility.)
- S: Regulations state that you can continue to add to container while in storage.
- R: (Kathy Flippin): That is correct, though label information may change.
- S: We have a 1 year storage limit. We never get the container filled before the year is up due to the product line source. In satellite there is no DOT label. In storage it is labeled as in process. What if I put it in storage and was not adding anything to it?
- R: There is an element of trust needed. It would be fine to move to storage, but meet marking and labeling requirements until the container is filled.
- Q: A full container can't have "in process" on it?
- Q: An "in process" area within the storage area?
- R: (Kathy Flippin): An "in process" area within a storage area may be a good thing for safety reasons. TSD's have specific requirements set out in their permits for these areas. For other generators, it may be okay, if certain requirements are met.

- S: That creates a safe harbor time period and area.
- S: (David Lamb): This gives you the option; provides the most flexibility.
- Q: What benefits do we get from PM&L?
- R: (Kathy Flippin): Packaging requirements are valuable as the packaging must be appropriate for the product; so it won't leak, cause worker exposure, etc. The Missouri regulations were put in place for a reason, they give us more safety. I suspect we have fewer problems and costly releases than states without these additional storage regulations. Marking: We went by the responses we received. "Since we have to mark when shipped it is no more burdensome to put it on there the whole time." Labeling – Is a visible means of telling everyone – employees, others in the facility, emergency responders, inspectors the primary hazards of the container. Federal regulations are intended to be just "minimum." EPA looks to the states to put the regulations in place that are best for each of their states.
- S: There have been comments and discussion on the process. We would like to be able to do this just once. We have to label and then re-label when ready to transport. Who else benefits from this?
- R: (Kathy Flippin): DOT labels are recognizable. In an emergency, responders can see immediately what the issues are without having to track someone down to look at inventory information. It also keeps incompatible products from being mixed. You have that knowledge for employee knowledge and safety, for response in an emergency, etc. If you know specifically what is in a container it helps to reduce errors.
- Q: Why is the DOT system the best option? There are times when containers don't leave the site, they won't be shipped.
- R: (David Lamb): We have been trying to solicit some possible alternatives.
- S: We need choices – some could use one type, some another.
- Q: (Kathy Flippin): What do you think of California's options?
- R: We need to make sure what is required by California, the EPA, OSHA. They are different.
- S: Federal rules require that they have to provide contingency and emergency plans, and make local responders familiar with the site. It all exists in the federal regulations.
- S: How many more rules do you want to add? Be in compliance with federal rules but allow for flexibility.
- S: (Crystal Lovett): Flexibility without being prescriptive. We would like to see some resolution so we do not revisit this over and over.
- Q: Are these options even allowable by the Department?
- R: (David Lamb): These are ideas we could work on if agreeable. We would have to go through the rulemaking process.

- S: We keep hearing “people’s safety.” Worker safety is the responsibility of OSHA, not the Hazardous Waste Program. Their responsibility is RCRA. Would have to ask if the Hazardous Waste Management Commission has authorized the Hazardous Waste Program to promulgate rules regarding worker safety?

Different responsibility efforts were discussed among the group, with the Department noting its need to assure safety for Department staff working at sites.

- S: The way I do it would be different than the way others represented here would do it. Options and choices are needed. Prescriptive doesn’t fit well. There is a broad spectrum of generators across the state.
- S: Put it in guidance documents, make it be helpful.
- S: That allows it to be tailored to different work places.
- R: (David Lamb): Inspectors would have difficulty in determining compliance.
- S: If it is not a regulatory requirement then what difference would that make?
- S: Removal of this small piece does not make the whole thing crumble.
- S: (Aaron Schmidt): We are trying to meet in the middle and are struggling to see where the middle is.
- S: Changes have been made in the last 20 years. These rules were made to fit circumstances from 20 years ago. This should be abandoned because it has no place in the world as it is now.
- R: (Kathy Flippin): The circumstances haven’t changed significantly and protecting human health and the environment is still the Department’s responsibility.
- S: Labels on containers do not make a difference.
- Q: Is concept #4 middle ground? It contains an option to comply with federal or state, not LQG or SQG. Don’t have the declaration. Just let me pick one based on the benefit to me.
- S: With the satellite area dictated. A lot of small areas could be utilized.
- S: Be standardized, not have different requirements for different states.
- S: Have standards in effect all the time, or allow different statuses for different areas – time periods, etc.
- R: (David Lamb): This would require two separate set of standards that the inspectors would have to know.
- S: Some are asking now - it depends on your answers as to how they inspect.
- R: (Kathy Flippin): How you “declare” sets a specific set of requirements on what you will be inspected for. This provides for certainty, clarity, in what is required.
- S: (Aaron Schmidt): I have asked the group to put something together that we can present to management. I need to know what kind of target I am trying to hit.
- Q: (Kathy Flippin): To follow up on an earlier question: How would you “declare?” We could put another status in our database. Because the generator already must inform the state when their registration changes, we just note this in the database.

This would be nothing new for the generator, as it is part of a process already in place.

- S: Some people like the state standards probably because it is prescriptive – it tells them what to do.
- S: More educated generators want more options – less educated wants to be told what to do.
- S: This would be the easiest thing to add to the existing regulation if adopting a change.
- S: Some are just expecting the company that picks up the waste to make them compliant.
- S: As a hauler or driver at a facility – what if containers are not labeled – how is he to know what it is if it is not labeled correctly? California has one uniform label.
- S: Can we talk about NFPA as an option? Arguments that are made regarding DOT requirements in storage – they don't do what the Department says they are supposed to do. We are struggling with the usefulness of this regulation. We are not trying to find a middle ground and we don't believe the argument stands up after considering.
- R: (Aaron Schmidt): Provide to us the pros and cons – in writing – and we will send through management.
- S: I realize that some legitimately like the rule the way it is – but I like the “or” being put in there.
- R: (Aaron Schmidt): We are willing to look at this as middle ground.
- S: (Kathy Flippin): If you write it all down – put yourself in the shoes of the inspector – we do not want to throw them in to this pool of inconsistency.
- S: The federal rule requires that a LEPC plan be provided to local responders.
- S: Recommend that we have DNR inspectors at this briefing.

Ms. Lovett called for a short break at 12:00 a.m.

The meeting reconvened at 12:18 p.m.

Ms. Lovett advised that the Satellite Accumulation topic was open for discussion.

The floor was opened to questions/comments: (paraphrased)  
(Q-questions, R-responses, S-statements)

- S: The survey would not let me NOT make a choice and just comment.
- S: Data is varied by area, not by generator. What purpose would additional labeling serve?
- R: This is different by satellite accumulation area.

- S: Feds say 55 gallon or less of any waste; State allows for 55 gallons from each waste stream. This is incompatible.
- R: (Kathy Flippin): EPA sees our regulations and guidance as a package deal, they have never challenged us as they recognize that we have the one-year satellite storage time limit. They look to the state to enforce its own regulations.
- S: Multiple containers, different waste streams, no time limits – federal regulations would negatively impact us.
- S: (Kathy Flippin): We also believe that by going to less strict standards, and with no limit on storage time, generators will have more serious violations. By marking the accumulation start date, I know that I only have one year and by moving to storage can avoid more serious violations (damaged or leaking containers).
- S: An example was given by a participant of large expense incurred because of the one year time limit.
- Q: (Kathy Flippin): Would academic lab rule relieve this issue?
- R: Don't believe they are covered – clinic vs laboratory.
- Q: Can you exempt containers of 1 gallon or 5 gallon?
- R: (Kathy Flippin): That is a good point that could be considered.
- Q: What are you looking for?
- R: (Crystal Lovett): Looking at comments to speak for themselves. Everything is on the table, nothing is off limits. Some of the responses even required additional requirements.
- S: (Tom Judge): One of the main things we are looking at with the 1 year rule is stuff that goes bad with age. Do you have any suggestions?
- S: We understand the need for some time restrictions; but with regards to the survey, I don't believe everyone understood the question.
- Aaron Schmidt made a brief statement as to the department's efforts in creating and distributing the survey.
- Q: Do you want us to draft language?
- R: (Aaron Schmidt): We are not passing the buck, but would appreciate the input.
- S: We can put something together – with several scenarios.
- Q: Can you include things regarding the academic lab rule?
- A discussion ensued regarding the difficulty of training staff.
- Q: (Crystal Lovett): Does anyone else have anything on Satellite Accumulation?
- Q: Does the Department have any preconceived ideas on how this is going to unfold in the future?
- R: (Aaron Schmidt): Nothing is set in stone but we would like to see something on this as soon as possible to show progress on these issues.
- S: (David Lamb): The driver will be reaching an agreement on these issues. We need consensus on the issues. We have heard interest in the tiered system, it

sounded like you wanted options to choose. Let us know if there are ideas with no interest that we can mark off the list of options to be considered.

S: #2 and #3

Q: On PM&L, what is the most egregious, or are they so intertwined as to be inseparable?

S: Federal regulations meet necessity.

S: Marking and labeling are intertwined – Packaging- don't see what it adds.

Q: As regulators, what is the minimum you need?

S: (Aaron Schmidt): We have received responses across the board – trying to find a balance.

Ms. Lovett moved on to the Aerosol Cans agenda item. Mr. Dennis Hansen, Compliance & Enforcement, HWP, addressed the attendees and provided a brief update on the aerosol can disposal guidance.

Mr. Hansen also discussed “Inspection Criteria.” He noted that there was an ongoing push to coordinate inspector criteria, and that the inspection manual was almost final. He advised that training would be provided to the regional offices with additional work on anything on which they had questions.

The floor was opened to questions/comments: (paraphrased)  
(Q-questions, R-responses, S-statements)

A few scenarios were discussed where participants had experienced instances where inspectors were not operating on uniform standards.

Q: Are minutes distributed to the regional office staff when inspection issues arise so there is uniformity in decisions?

R: (Dennis Hansen): Typically when changes made/issue resolved, there is an email to the regional office. We could also put it out on the listserv to discuss common issues.

S: When there might be a question on uniformity, an NOV should be held off on until it can be investigated. NOV's can go to the top of a management chain that might unnecessarily create issues.

It was decided to continue to work on the discussion at the next meeting.

The date for the next meeting was set for May 19, 2011 from 10:00 am – 2:00 pm.

The meeting was adjourned at 1:33 p.m.