

Missouri Department of Natural Resources

Hazardous Waste Program

Hazardous Waste Forum Summary

December 9, 2011

Bennett Springs/Roaring River Conference Room

(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 09:54 a.m. The meeting was live-streamed on the Web, with the broadcast beginning at 10:00 am.

Meeting Facilitator: Crystal Lovett – Missouri Department of Natural Resources (MDNR)

Crystal Lovett opened the meeting at 10:03 a.m.

Introductions were made around the room.

David J. Lamb, Director, Hazardous Waste Program, addressed the meeting and provided an update to the group regarding Federal funding. He noted that 73% of the program's budget comes from the federal government. He noted that the Deficit Committee had proposed a reduction to funding to the U.S. Environmental Protection Agency, which translated in to about a 10% reduction to most of the Program's funding. There was a 10% overall reduction proposed to our Superfund grant, a 10% reduction to the Underground Storage Tanks Cooperative Agreement, and a 13% reduction to the Underground Storage Tanks Preventative Grant. He noted that the Program had not yet received definitive information on the RCRA grant. Mr. Lamb explained that this equaled a \$450,000 reduction to the Program and if RCRA followed the same course, it would mean a total \$700,000 reduction from a \$7.9 million dollar budget. He noted that the Department would have to look at finding ways to offset this reduction, and would be looking at vacancies, the impact to services, etc. He advised the group that this information was just a "heads up," that this was a significant reduction that would have to be dealt with.

Mr. Tim Eiken, Director's Office, Hazardous Waste Program, addressed the group next and provided a brief update on rule developments. He provided an overview of the proposed rules, the public hearing dates, which orders had been filed with the Secretary of State's office, and their effective dates. He advised that the new regulations had just been published in the Code of State Regulations and were available on the Secretary of State's website. He went on to note that they would become effective at the end of December. Mr. Eiken encouraged the participants to get copies and to use the new regulations. He went on to advise that there were new federal rule

changes that were being looked at, regarding Underground Storage Tanks, Medical Waste and changes that were needed to the Tanks regulations that had been moved. He noted that the most significant would concern universal waste and used oil. He again recommended that participants pay attention to the changes to the regulations that effected their individual operations. He stated that these were not additions to the regulations, just clarifications. Mr. Eiken advised the group that he was available if they had any questions, and they could call him if needed. He ended with noting that the Program was working on a new package, that it was an ongoing effort and that we would be ready to file early next year.

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

Q: With regards to going to federal requirements, are we there yet?

R: No. We have made significant changes and additional changes since the previous meeting in response to comments. We realize that the changes will not completely meet REGFORM's request or address concerns from emergency responders; but, we are at the point of moving forward, based on the Commission's request.

No other questions were asked.

Ms. Lovett introduced Ms. Kathy Flippin, Chief, Compliance and Enforcement Section, who provided a PowerPoint presentation and handouts on the changes made to the Packaging, Marking and Labeling regulations since the previous Forum meeting. She noted that the handouts contained the old redline version and the new wording. She provided a brief summary of the changes that had been made, based on comments received.

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

S: The change on the registration is a huge improvement.

S: Speaking on behalf of fellow public safety/emergency service providers, eliminating labels will place emergency service providers in harm's way more than normal. Just like in Joplin, there were orphan containers. Taking away the requirement makes the job more difficult.

Q: Question on (C) II – acid – corrosive label. Need to discuss taking out the bracketed language regarding “acidic or alkaline”. (referring to the proposed revisions to the draft rule language handout)

S: Think there is already a (C) II; I believe the numbering is messed up. The commenter discussed a quotation from the federal regulation that he advised is

misworded in the draft rule. He went on to comment on Ms. Flippin's presentation, stating that he believed the draft language intended smaller containers to be allowed in larger containers but that the current language does not reflect that. He noted that under some settings the proposed requirements were not practical and that it does not alleviate the labeling requirement. Shelves are commonly used.

S: (David Lamb) This language does not prevent you from storing containers on a shelf as long as you meet all the other requirements. If it is put on a shelf, and is under a gallon, you don't have to put the generators name and address on it.

Q: Mr. Downy asked the emergency response representative: Is the current proposed language not good enough?

R: If there is nothing on the container to identify hazards, then it creates more chance for danger.

S: A discussion began on Walmart's concerns. They discussed that the problem with (C) I and (C) II was waste codes. The language of (C) II was discussed regarding Walmart's ability to provide the Department with all waste codes of all products. Also discussed was the 3rd line, "facility personnel.....upon their request for their own purposes....," in addition to the words "prior to or....." They stated that the Department has access to all information prior to the inspection, as a list had been provided. It was noted that Walmart could comply with the rule under those conditions.

R: (Kathy Flippin) Ms. Flippin responded that Walmart would not be an issue; but, for the normal generator with no special system, this would be more work for the inspector as the information is not on the container. Inspectors and others would have to see if the information was provided and if it matched up. She noted that it could be done but the facility may face additional questions, and it would take more time.

S: This shows how little value this has, the inspector already has this information.

S: This doesn't address how containers are labeled during addition of waste when waiting for lab work.

R: (Kathy Flippin) We will have to work out mechanisms through communication between the inspector and the facility. In reality, you could be awaiting sampling results; it is important to know what you are adding together. This information needs to be noted on the container; communication with the inspector is important.

R: (David Lamb) The information doesn't have to be on the container, just listed and available somewhere.

Q: (Kathy Flippin) Are there any comments on Wal Mart's proposed language?

S: A list is like finding a needle in a haystack.

R: Mr. Downy discussed the specifics of the list he had provided and clarified the information provided.

S: It is a different situation for a university setting. The information cannot be provided in advance, there are too many combinations. Waste codes don't address incompatibles. A "properties statement" is of far more value. Waste codes do not provide adequate information to first responders.

R: Yes, we want to know if it is flammable, etc.

Different options were discussed among the group.

Q: If we are responding, will someone be there that can tell me what is in the different colored containers?

R: (Phone participant) There is a 24 hour emergency response center that can immediately coordinate on any issue. We brief local responders when each store is built.

Q: What is the definition of "immediate" in the language when providing information to emergency responders?

The requirements, warehouse procedures and catastrophe scenarios and needs were discussed.

S: Believe all issues are covered by federal regulations. Adding a new rule won't make non-compliers compliant. Federal regulations state that there must be annual coordination with local responders. It is misrepresentative to show photos of barrels; those that are not going to comply are not going to comply. They are putting the public at risk. We need to focus on those that are not complying with the federal regulations.

R: With regards to going federal only; if a drum is knocked over or has gone off site, we have nothing to start with even knowing what the generator produces.

S: Tier II discusses the generators filing status.

Tier II and other options for coordination with the Department were discussed. It was noted that Small Quantity Generators would require more coordination because they were not required to have a contingency plan whereas Large Quantity Generators were required to have one on file.

Q: Are you minimizing the importance of a contingency plan?

R: Just noting that the regulations require "minimal."

S: I still believe the Federal regulations say you have to "familiarize" the local responders.

Q: What is the interpretation of "familiarize?"

S: This was spoken about at the last Commission meeting, prompted by an anonymous letter that outlined disaster scenarios that are not the norm. There was a letter presented that I consider inappropriate, inflammatory, and contained emotional remarks. It was found out later that it came from an anonymous person, some no-named person. I believe its only intent was to emotionally inflame the Commission. The less thoughtful would believe...the foundation of our argument...is that we are putting our emergency responders at risk by not

putting DOT labels on the barrels. Why do we not express that same outrage towards people flippantly putting people of such importance, our emergency responders, at risk? Why is that same outrage not in place behind the regulations that are already on the books? I thought we were here to try to protect these individuals. If the regulation that is already on the books is actually doing what it is supposed to be doing, we would not be here having this discussion. With the scenario that Kathy presented earlier, and I do not profess to be an expert on Hazwoper training, but it certainly must violate any Hazwoper training. To go into a burning building and then discover that there was a barrel with a flammable label in there. This information should have been known ahead of time.

The group discussed the training requirements for dealing with different scenarios and under what circumstances an emergency responder would enter a building.

S: The response is based on the type of emergency.

S: What the Department is requiring or using as a reason; what they are calling “first responder safety,” is really not an issue.

Several different scenarios were discussed.

S: Labels can be washed away in a catastrophic event. Most of this would be product and not waste. I don’t like arguing against the safety of our emergency responders.

S: To put it in perspective; all we are talking about is identifying the waste before shipment. We are going to have to identify it when it is shipped. But, most small businesses with a single waste stream do not have any idea how to comply with these regulations. We continue to argue and are not getting anywhere. There is language in front of us. Straight DOT is probably not the right thing but it is the least amount of effort for the little guy. We need to find some solution to this. We are not all going to agree all the way, but we need some closure to this. It would be preferable to adopt the Federal standards but I don’t think we are headed that way. Just need to get this over with.

S: It will be going to rulemaking with further opportunity for input.

S: I can’t find where waste codes are required by EPA regulations. You don’t have to put codes on the drum, just on the manifest. Since we are not required to do that now, I don’t think we should be required to do that under the new regulations. We are providing more detail with the new regulations, and can use waste codes.

R: (Kathy Flippin) We looked at alternate options. It is the generator’s choice where to put the waste codes. But, waste codes must be on the manifest for shipment.

S: We are giving you more. So, how does a waste code add value?

R: (Kathy Flippin) We need to know all the risks, all the different possibilities. A “description” may not be specific enough. When we changed the regulation to require a non-specific description of the contents, we narrowed the requirement

down to meet the requests from stakeholders. Waste codes can be referenced for more specifics on the drums contents.

The group discussed waste codes and what documentation and information was important to provide adequate information, along with the question of “Whose responsibility is it?”

R: (David Lamb) Waste codes should have been provided when the generator registered.

R: (Kathy Flippin) We have looked at past inspections and can't find any serious violations with regards to the Packaging, Marking and Labeling issue.

R: (Dennis Hansen) There have been four (4) NOV's issued during our review period. In the scheme of things, out of 1000+ inspections, there have been only four (4) issued. And, this was not the primary reason for the NOV.

Q: Can you now prove they are in compliance?

No other discussion, comments or questions were raised on the issue.

Ms. Lovett introduced Mr. Rich Nussbaum, Chief, Permits Section, Hazardous Waste Program, who addressed the agenda topic, Closure Guidance, as an update of previous Forum topics.

Mr. Nussbaum began by noting that the Department had looked at the issue of what constituted “clean” closure and had created an outline. He advised that a draft had been created and there was a list of stakeholders that had volunteered to be on a subgroup to review the guidance. He noted that the Department intended to put the draft out to the subgroup to review and comment and that their input would be brought to the larger group for finalizing. After finalization, it would be brought to the stakeholders group as a whole. He noted that other states had been looked at for information and that it was his hope that the draft could be out to the subgroup for comment by the next forum date. He advised that it was still in the internal review phase at this time.

Mr. Nussbaum opened the floor for questions or comments, and none were received.

Ms. Lovett called for a break for lunch at 12:08

The meeting reconvened at 1:07

Ms. Lovett turned the floor over to Mr. David Lamb to continue the discussion on the revisions to Missouri's packaging, marking and labeling regulation.

Mr. Lamb began by summarizing the issue to date, noting that the (C) I references needed to be fixed, along with the change in the language. The terminology of “acidic or alkaline” needed to be discussed, but the only real issue that remained was waste codes. He advised that the Department would be okay with the changes that Walmart suggested, if there were no other

objections. He went on to state that we were not going to be able to resolve all the differences between the emergency responders and industry. He noted that the Hazardous Waste Management Commission would have to weigh in on the issue. Mr. Lamb then advised that the Department still sees the value to what they had proposed but would tweak the language to make it as amiable as possible before proposing it to the Commission.

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

- Q: We would like to know what value the additional container information has?
- R: (David Lamb) We see information as the value. It is a benefit to inspectors and the Department believes that the generators need to know what wastes they are producing. We need to have documentation of what the generator has, once a determination of the waste is made. We think there is value to this information and that it is worth having in the rule. If you have any other comments or have any suggestions on other ways to restructure this, or if you have any additional language, please let us know.
- S: A question remains as to the need for “immediacy or near immediacy” on the availability of information – if we can come to some agreement on that. Emergency responders say this is not a system they use. We need to determine what is needed to be demonstrated and how to code. We need specifics on a time element so generators know they have time to get the information from the sources.
- Q: Mr. Lamb inquired of Ms. Flippin as to what time elements the inspectors were going to be working with?
- R: (Kathy Flippin) During the interim they just need to have something marked or recorded to let the inspectors know that the waste is in the process of having a determination. For example, the generator marking the container “waste awaiting sample analysis,” along with the date, would be good. “Trust & Verify” is our standard position. I have never seen a “Fail to Determine” violation if there is clear notice on record showing the generator’s efforts are underway to make the waste determination. There is no specific set time period; it is driven by the facility process.
- Q: Are you still saying while the inspector is on site.
- R: (Kathy Flippin) Yes – if it is “in process” we need to know that too.
- Q: Mr. Lamb inquired from MU as to how/when they make their determinations?
- R: (The process was discussed) The trademark name, chemical components, description of contents or the name of the product is used. Suggest the wording be something like “description of contents, such as.....”

There was a discussion on a variety of ways it could be worded to ensure the information that it described the hazard elements were included.

S: (David Lamb) We could combine C III with C I as an and/or.

S: Just want to remind to make sure numbering is correct when this language is drafted.

S: I have a comment on how this is represented. It is my belief if we could get sincere views, not DNR staff, from everyone who is a generator, get them to sincerely represent their feelings, they would say “We can live with this, it is an improvement over the existing state rule,” but in their heart of hearts they would prefer we had the Federal standards. But – this is what we have been able to come up with in this setting.

S: I feel labeling is important. I drove 4 ½ hours to promote this.

Ms. Lovett advised that the discussion on this was wrapping up.

Ms. Flippin gave an overview of the language that had been proposed through this discussion. She noted the addition of a “product trade name, chemical name and/or hazardous waste codes” would be included. She also stated that, based on stakeholder concerns, the reference to “a maximum of 6” and “waste codes” would be removed.

S: Don’t like the terms “at a minimum” or “may.”

Ms. Flippin updated the language with the changes and noted that the Department looked forward to hearing from everyone during the public comment period.

Ms. Lovett expressed her gratitude to all for their input on the issue and introduced Mr. Dennis Hansen, Compliance and Enforcement Section, Hazardous Waste Program, who addressed the “Closed Container Guidance” topic on the agenda.

Mr. Hansen addressed the group and noted that the Department had received a request for this information as a generic topic. He asked for specific questions so that he could adequately respond.

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

S: The issue was raised because the EPA released a guidance document that facilities all received and the DNR sent out a listserv e-mail telling facilities that the Department did not accept the EPA guidance. The question is; “What do you accept?” It seems that the inspectors think the containers need to be hermetically

sealed. We have had inspectors tell us that the rings were not together, that they can jiggle the lid; therefore it is not closed. The EPA guidance relates something different. So, the inquiry was triggered by DNR's listserv e-mail.

R: (Dennis Hansen) Our responses to closed container questions follow the 5 part test as stated in the EPA May 1980 Federal Register Preamble. Our listserv has provided the Department's guidance on closed containers. The listserv also addresses where there are issues with past or conflicting guidance. In this case, EPA's guidance allowed for something to just be placed over the top of the container without any way for the lid to be sealed. Consequently, if the container were to tip over there would be the possibility of spillage.

S: If a container is stored away from an aisle and cannot be gotten to with a forklift, how do you believe it would just tip over? It's not going to just flip over on its side all by itself without any help.

Different scenarios were discussed where issues could arise.

R: (Dennis Hansen) It may be necessary for us to see exactly how you are dealing with closed containers under different circumstances. You would need to just let us know exactly how you approach the issue at your facility.

S: We coordinate our containers with our inspector.

R: (Dennis Hansen) So this is focused on satellite areas? Please send me an e-mail if you have questions on how you manage your containers, being case specific.

S: This needs to be consistent for everyone. What if I do not know what agreement you have made with someone else?

S: If you have a EPA inspector vs a DNR inspector; he may not agree with your agreement.

R: (Kathy Flippin) EPA follows the state's procedures and policies. If there is any discrepancy just let EPA and us know. We do rescind violations if it is appropriate, and remove them from the record. We do discuss our interpretations at the end of our inspections.

Q: (David Lamb) If Missouri developed specific guidance, would that help?

R: If there is not guidance then we need that.

Q: (Dennis Hansen) We can compile from previous guidance.

R: Start with the EPA guidance and see where you differ and why.

Ms. Lovett moved on to the next agenda item, Quarterly Reporting Requirements, introducing Ms. Angie McMichael, Budget and Planning Section, Hazardous Waste Program.

Ms. McMichael noted that this item had been requested in an e-mail to DNR. She inquired as to what specific information was being requested.

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

- S: We have received comments from our members that the quarterly reporting is overly complex. They advise that the frequency is higher than necessary. We are trying to find out what is done with the data? What is the environmental benefit? We would like to know the Missouri requirements in relation to other state's requirements. California only requires once a year and New Jersey requires the Federal standard biennial reporting.
- R: Ms. McMichael responded that Mr. David Green, of her staff, had checked with California and New Jersey, as these states had been referenced in the e-mail received.
- R: Mr. Green noted that California requires a submission once a year, consisting of three (3) one page forms. One page was a verification of information on the generator, one form noted the number of manifests and the fees assessed on this "per manifest" number and another form provided information on the number of employees, where another fee was assessed.
- Q: The fees are based on the number of manifests, instead of the tonnage generated?
- R: (David Lamb) noted that every state is different in how they generate the fees for their individual programs. Missouri would be different than somewhere else.
- Q: Is there any value other than to collect fees?
- R: (David Green) responded that state inspectors and EPA inspectors use the information.
- R: (David Lamb) advised that even MERC uses them in lieu of the Tier II's.
- R: (Angie McMichael) responded that it had been set up quarterly in an effort to give the Department adequate time to get the information inputted in a timely manner. If these reports all came in once a year, at the same time, there would be no way for staff to get the information inputted in the system.
- Q: How is the information submitted and inputted?
- R: (David Green) responded that it is submitted in an Excel data sheet, although some are printed and mailed in.
- S: Would like to see it go annually and would like to see if something could be developed where we could export information to the Department. Printing off large reports is not efficient.
- R: (David Lamb) responded that until the Department could get solutions from the Federal government on requirements, there was not much the Department could do at this time. We know that the Feds are looking at e-manifesting but I am not aware of where it is in the process at this time.

R: (David Green) responded that the bill for E-Manifests had passed the senate but he did not know where it was in the house. And, he advised, it would eliminate approximately 95% of the reports.

The group discussed different reporting requirements.

Q: How many Large Quantity Generators are on file?

R: 400 or so.

Q: I believe you also looked at New Jersey's requirements?

R: They collect a fee of \$10 per manifest. If you e-file it is one fee. If it is filed on paper or there are any errors there is a higher fee.

Q: But the federal forms need only be submitted every other year.

S: I believe Missouri's rule says quarterly.

R: (David Lamb) Yes, for Large Quantity Generators; Small Quantity Generators still only file annually. But, if the federal rule passes and e-filing becomes an option, we will have to look at reworking Missouri's rule.

Q: (Kathy Flippin) Do any of you have any difficulty with reporting bi-annually?

S: (David Green) Some of these reports are very extensive.

Q: Are the reporting requirements on a quarterly basis just for financial reasons or are there environmental benefits?

R: (David Lamb) It provides information for our inspectors, and how current the information is has value. Hopefully the e-manifests will be the answer to the data entry issue.

Ms. Lovett moved the discussion on to the Brownfields Long Term Stewardship Project agenda item, introducing Mr. Chris Cady, Brownfields Voluntary Cleanup Section, Hazardous Waste Program.

Mr. Cady provided the participants with a PowerPoint presentation that outlined a mapping system database and pilot project that the Department had been working on with the City of Springfield. He provided information on the mapping system database, and how it would be used in the future to link information for searches on environmental issues and cleanup data at any given parcel of property. He discussed what information was expected to be in the system when it was running as expected and advised it would be a tool that would have far ranging benefits for anyone needing information about a site.

Ms. Lovett advised that the Department would review the list of topics that had been submitted previously and a decision would be made later as to what would be on the next agenda. She asked Mr. Lamb to send an e-mail to the Listserv group to see what topics were still needing discussion.

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Mr. Lamb noted that the EPA's Pharmaceutical guidance may be of interest to parties in the group and it was decided that March 12, 2012, would be the date of the next Forum meeting.

The date for the next meeting was set for March 12, 2012, from 10:00 am – 2:00 pm.

The meeting was adjourned.