DRAFT
MINUTES OF THE
MISSOURI CLEAN WATER COMMISSION MEETING
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek
Jefferson City, MO 65102

July 13, 2011

Present

Sam Hunter, Chair, Missouri Clean Water Commission
William A. Easley, Jr., Missouri Clean Water Commission
Sam Leake, Missouri Clean Water Commission
Todd Parnell, III, Missouri Clean Water Commission
Wallis Warren, Missouri Clean Water Commission
Dennis Wood, Missouri Clean Water Commission
John Madras, Director of Staff, Missouri Clean Water Commission
Jennifer Frazier, Counsel, Missouri Clean Water Commission
Malinda Steenbergen, Secretary, Missouri Clean Water Commission

Michael Barrett, Department of Natural Resources, Jefferson City, Missouri
Melissa Bagley, Environmental Protection Agency, Region 7, Kansas City, Kansas
Karen Bataille, MDC, Columbia, Missouri
Gordon Belcher, Department of Natural Resources, Jefferson City, Missouri
Dorris Bender, City of Independence, Water Pollution Control, Independence, Missouri
Mark Bockstruck, Department of Natural Resources, Jefferson City, Missouri
Joe Boland, Department of Natural Resources, Jefferson City, Missouri
Judith A. Browne, Friends of LaBarque Creek Watershed, LaBarque Creek, Missouri
Robert Brundage, Newman, Comley and Ruth, Jefferson City, Missouri
Dru Buntin, Department of Natural Resources, Jefferson City, Missouri
Mary West Calcagno, Jacobs Engineering, St. Louis, Missouri
Robert Coffing, Missouri Stream Team, Catawissa, Missouri
Lorin Crandall, Missouri Coalition for the Environment, St. Louis, Missouri
Becky Cripe, Department of Natural Resources, Jefferson City, Missouri
Aimee Davenport, Lathrop & Gage, Jefferson City, Missouri
John DeLashmit, Environmental Protection Agency, Region 7, Kansas City, Kansas
Adam Dorrell, Benton and Associations, Kirksville, Missouri
Joe Engeln, Department of Natural Resources, Jefferson City, Missouri
Ed Galbraith, Barr Engineering, Jefferson City, Missouri
Carol Garey, Department of Natural Resources, Jefferson City, Missouri
Doug Garrett, Department of Natural Resources, Jefferson City, Missouri
Curt Gateley, Department of Natural Resources, Jefferson City, Missouri
Floyd Gilzow, Missouri Public Utility Alliance, Jefferson City, Missouri

David Harrison, Department of Natural Resources, Jefferson City, Missouri
Darlene Helmig, Department of Natural Resources, Jefferson City, Missouri
Leslie Holloway, Missouri Farm Bureau, Jefferson City, Missouri
John Hoke, Department of Natural Resources, Jefferson City, Missouri
Steve Hunt, City of Columbia, Columbia, Missouri
Matt Kliethermes, Department of Natural Resources, Jefferson City, Missouri
D. Angel Kruzen, Water Sentinels and Scenic River Stream Team Assoc., Mt. View, Missouri
Barbara Li, Department of Natural Resources, Jefferson City, Missouri
Teng Lim, University of Missouri, Columbia, Missouri
John Lodderhose, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Randy Lyman, City of Springfield, Springfield, Missouri
Colleen Meredith, Department of Natural Resources, Jefferson City, Missouri
Steve Meyer, City of Springfield, Springfield, Missouri
Ken Midkiff, Clean Water Campaign-Sierra Club, Columbia, Missouri
Jan Millington, City of Springfield, Springfield, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Nate Moore, Rose Acre Farms, Knob Noster, Missouri
Leanne Tippett Mosby, Department of Natural Resources, Jefferson City, Missouri
Dave Murphy, CFM, Jefferson City, Missouri
Terry Nelson, Department of Natural Resources, Jefferson City, Missouri
Don Nikodim, Missouri Pork Association, Columbia, Missouri
Ray E. Oberkramer, Land Owner in Watershed, Eureka, Missouri
Rebecca O'Hearn, MDC, Columbia, Missouri
Sara Parker Pauley, Department of Natural Resources, Jefferson City, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
David Potthast, Department of Natural Resources, Jefferson City, Missouri
Tom Ratermann, Boone County Regional Sewer District, Columbia, Missouri
Lorisa Smith, Department of Natural Resources, Jefferson City, Missouri
Jeff Starr, Department of Natural Resources, Jefferson City, Missouri
Darrick Steen, Department of Natural Resources, Jefferson City, Missouri
Trent Stober, Geosyntec, Columbia, Missouri
Jeff Theerman, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Scott Totten, Department of Natural Resources, Jefferson City, Missouri
Karl Tyminski, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Janet Vaughn, Jason & Terri Vaughn, Rolla, Missouri
Roger Walker, REGFORM, Jefferson City, Missouri
Sunny Wellesley, Environmental Protection Agency, Kansas City, KS
Joseph Zulovich, MU, Columbia, Missouri

CALL TO ORDER

Chair Hunter called the meeting to order on July 13, 2011 at 9:35 a.m., at the Department of Natural Resources' Lewis and Clark State Office Building located at 1101 Riverside Drive, Jefferson City, Missouri.

Chair Hunter made introductions of the Commissioners, Staff Director, Legal Counsel, and Commission Secretary.

Chair Hunter read Commission Resolutions to be presented to former Commissioners Ron Hardecke and Frank Shorney for their years of services as members of the Missouri Clean Water Commission.

Sara Parker Pauley, Director, Department of Natural Resources welcomed the two newest Commissioners, Commissioner Warren Wallis and Commissioner Dennis Wood. Director Pauley also thanked the entire Commission for their dedication and services as a Commissioner to the State of Missouri.

Director Pauley announced that Governor Nixon signed House Bill 89 which ensures continuance of the water fees for the Water Protection Program.

Director Pauley also noted that the Department had been and continues to be responding to the disasters that are occurring around the State of Missouri. She noted that one of the key initiatives that would be beneficial for the Clean Water Commission to engage in discussions and help set the direction for the State of Missouri is the Watershed Initiative. Director Pauley noted that the Watershed Initiative was still in the planning stages and would be a five to six year timeframe to fully engage the Department, but the hope is to get the pilot portion of the initiative going in the next several months and to begin planning at a watershed level, focusing and targeting financial and technical resources at a watershed level, focus on the conversation at a watershed level which would include permitting at a watershed level.

Director Pauley noted another Workgroup that had just begun that will dovetail with the Watershed Initiative on how the Department could spend more of staffing resources on compliance assistance and providing the information, education, and tools to the regulated community to ensure they have the opportunity to ensure compliance.

Commissioner Parnell asked that the Department and the Commission allocate time in the near future to discuss the broader planning perspective, strategize, and discuss the Commission's role in the context of the Department's plans and the context of the legal requirements of the Commission. Director Pauley agreed that it would be a very beneficial undertaking and would direct staff to look into scheduling a meeting in conjunction with the September Commission meeting.

ADMINISTRATIVE MATTERS

Special Election of Missouri Clean Water Commission Officers
Agenda Item #1A

Commissioner Easley nominated Commissioner Todd Parnell as the Vice-Chair of the Commission. Commissioner Leake seconded the nomination. The nomination passed with a roll call vote:

Commissioner Easley:	**Yes**
Commissioner Wood:	**Yes**
Commissioner Parnell	**Abstained**
Commissioner Warren:	**Yes**
Commissioner Leake:	**Yes**
Chair Hunter:	**Yes**

Approval of the May 4, 2011 Missouri Clean Water Commission Meeting Minutes
Agenda Item #1

Commissioner Leake made a motion to approve the May 4, 2011 meeting minutes as submitted. Commissioner Easley seconded the motion. The motion passed with a roll call vote:

Commissioner Wood:	**Abstained**
Commissioner Parnell	**Abstained**
Commissioner Warren:	**Abstained**
Commissioner Leake:	**Yes**
Commissioner Easley:	**Yes**
Chair Hunter:	**Abstained**

Small Borrower Loan Request – City of Linneus
Agenda Item #2

Joe Boland, Financial Assistance Center, presented the city of Linneus' request for a $100,000 small borrower loan to fund the replacement of the sewer pump station and the repair of existing lagoons cells.

Commissioner Leake made a motion to approve the small borrower loan of $100,000 for the city of Linneus. Commissioner Parnell seconded the motion. The motion passed with a roll call vote:

Commissioner Parnell	**Yes**
Commissioner Warren:	**Yes**
Commissioner Leake:	**Yes**
Commissioner Easley:	**Yes**
Commissioner Wood:	**Yes**
Chair Hunter:	**Yes**

State Fiscal Year 2012 Clean Water State Revolving Fund Intended Use Plan Amendment
Agenda Item #3

Doug Garrett, Financial Assistance Center, presented the proposed amendments to the State Fiscal Year 2012 Clean Water State Revolving Fund Intended Use Plan. Mr. Garrett recommended the following projects be added to the fundable project lists:

- Metropolitan St. Louis Sewer District (Missouri River Wastewater Treatment Plant),
- Stockton,
- Taos,
- Columbia (Upper Hinkson Outfall Phase I),
- Columbia (North Grindstone Outfall Phase II),
- Boone County Regional Sewer District (North Grindstone Outfall Phase II),
- Platte City,
- Northeast Public Sewer District (Saline Creek and Lower Saline Creek), and
- Louisiana.

In addition, Mr. Garrett recommended the eligible project costs be increased for the first phase of the Cape Girardeau Wastewater Treatment Plant project and that the Boone County Regional Sewer District (Westwood Meadows) project, be added to the planning list of the Intended Use Plan. Mr. Garrett also recommended changing the recipient name of the Ozark Clean Water Company to the Upper White River Basin Foundation d.b.a Ozarks Water Watch on the Intended Use Plan and removing Cuba from the fundable list due to the city being successful in closing on their loan last month.

Karl Tyminski, Metropolitan St. Louis Sewer District (MSD) encouraged the Commission to adopt the measure before the Commission.

Commissioner Leake made a motion to approve the amendments to the State Fiscal Year 2012 Clean Water State Revolving Fund Intended Use Plan as presented by staff. Commissioner Easley seconded the motion. The motion passed with a roll call vote.

Commissioner Parnell	**Yes – Abstained on Upper White River Basin Foundation Portion**
Commissioner Warren:	**Yes**
Commissioner Leake:	**Yes**
Commissioner Easley:	**Yes**
Commissioner Wood:	**Yes**
Chair Hunter:	**Yes**

<u>10 CSR 20-6.010 Construction and Operating Permits Proposed Rulemaking Amendment</u>
Agenda Item #4

Darrick Steen, Permits and Engineering Section presented an emergency rule amendment, finding of necessity and proposed rule amendment 10 CSR 20-6.010, Construction and Operating Permits. The emergency rule amendment removes a permit exemption for aquatic pesticides and was presented to Commission as information only. The emergency rule will be effective on October 31, 2011 through April 28, 2012. The finding of necessity and proposed rule will make permanent the changes proposed in the emergency rule amendment along with other changes related to Continuing Authorities. The Department anticipates filing the proposed rule prior to July 15, 2011. The amended rule will be published in the Missouri Register on August 15, 2011.

Floyd Gilzow, Missouri Public Utility Alliance, noted a few items he would like the Commission and the Department to give more consideration and discussion to during the rulemaking process.

Commissioner Easley made a motion to approve the finding of necessity for the proposed rulemaking, 10 CSR 20-6.010. Commissioner Parnell seconded the motion. The motion passed with a roll call vote. A finding of necessity was signed by the Commission.

Commissioner Warren:	**Yes**
Commissioner Leake:	**Yes**
Commissioner Easley:	**Yes**
Commissioner Wood:	**Yes**
Commissioner Parnell	**Yes**
Chair Hunter:	**Yes**

<u>10 CSR 20-8.300 Manure Storage Design Regulations Proposed Rulemaking</u>
Agenda Item #5

Barbara Li, Permits and Engineering Section presented the Findings of Necessity for 10 CSR 20-8.300, Manure Storage Design Regulations. The Department anticipates filing the rule prior to July 15, 2011. The new rule will be published in the Missouri Register on August 1 or 15, 2011.

Commissioner Wood made a motion to approve the finding of necessity for the proposed rulemaking, 10 CSR 20-8.300. Commissioner Warren seconded the motion. The motion passed with a roll call vote. A finding of necessity was signed by the Commission.

Commissioner Leake:	**Yes**
Commissioner Easley:	**Yes**
Commissioner Wood:	**Yes**
Commissioner Parnell	**Yes**
Commissioner Warren:	**Yes**
Chair Hunter:	**Yes**

Administrative Hearing Commission's Recommended Decision Regarding Russell M. Palmer Appeal Number 10-1407-CWC
Agenda Item #5B

Jennifer Frazier, Attorney General's office presented the Administrative Hearing Commission's recommended decision regarding Russell M. Palmer Appeal Number 10-1407-CWC. Ms. Frazier noted to the Commission that the Commission had the options of 1) adopt the Administrative Hearing Commission's (AHC's) recommendation, 2) change findings of fact or conclusions of law or 3) vacate or modify the recommended decision. If the Commission either changes findings of fact or conclusions of law or vacates or modifies the recommended decision, it must state the specific reason(s) in writing for the change(s).

Tom Ratermann, Boone County Sewer District, spoke to the Commission on behalf of Mr. Palmer.

Sarah Mangelsdorf, Attorney General's Office, represented the Department in the Palmer Appeal and Gordon Belcher, Operator Certification Section spoke to the Commission on behalf of the Department.

At the request of the Commission, Jennifer Frazier, as the Commission's Legal Counsel, clarified the rule language for the Commission.

Commission Leake made a motion that the Commission modify the Administrative Hearing Commission's findings of fact and conclusions of law to find that Russell Palmer timely submitted his operator certification renewal application and that he possesses sufficient renewal training, and through no fault of Mr. Palmer, the Department was unable to issue a new certification before the expiration of his certification. This modification is based upon the undisputed evidence presented by Mr. Palmer and his employer that the application and renewal fee was put into the U.S. mail prior to April 30, 2010. Pursuant to 10 CSR 20-9.030(6)(E), the Commission finds that Mr. Palmer's previous certification would continue in effect until such time as Mr. Palmer resubmits his renewal application and renewal fee and the Department acts on the renewal application.

The Commission encouraged operators to use certified mail in the future in order to document receipt of applications by the Department. The Commission also noted it is a wise business practice and will prevent appeals like Mr. Palmer's in the future.

Commissioner Parnell seconded the motion. The motion passed with a roll call vote.

Commissioner Easley:	**No**
Commissioner Wood:	**No**
Commissioner Parnell	**Yes**
Commissioner Warren:	**Yes**
Commissioner Leake:	**Yes**
Chair Hunter:	**Yes**

10 CSR 20-6.300 Concentrated Animal Feeding Operations Proposed Rulemaking Amendment
Agenda Item # 6

Darrick Steen, Permits and Engineering Section, presented a summary of proposed rule amendment 10 CSR 20-6.300, Concentrated Animal Feeding Operations. This information was presented to the Commission for information only. A finding of necessity was previously signed by the Commission on March 3. 2011. The Commission asked questions for clarification. The Department anticipates filing the rule prior to July 15, 2011. The amended rule will be published in the Missouri Register on August 15, 2011. No action taken by the Commission.

Regulatory Impact Report for 10 CSR 20-7.031 Water Quality Standards
Agenda Item #7

John Hoke, Watershed Protection Section, presented information regarding the Regulatory Impact Report (RIR) for the 2012 Water Quality Standards (WQS) triennial review. The RIR for the WQS rulemaking was published for public comment on June 3 and the comment period ends August 12, 2011. The Department encouraged interested stakeholders and citizens to submit written comments regarding the RIR and proposed rule. In addition to information provided by the Department, information regarding the RIR and proposed rule was presented by representatives from environmental, agricultural, industry and regulated interest groups as well as the general public. The U.S. Environmental Protection Agency also presented a brief statement regarding the proposed rule. Those making comments were as follows:

John DeLashmit, Environmental Protection Agency
Ed Galbraith, Barr Engineering
Mary West-Calcagno, Jacobs Engineering
John Lodderhose, Metropolitan St. Louis Sewer District
Trent Stober, Geosyntec Consultants
Robert Brundage, Newman, Comley & Ruth, P.C.
Leslie Holloway, Missouri Farm Bureau
Floyd Gilzow, Missouri Public Utility Alliance
Aimee Davenport, Lathrop & Gage (on behalf of Poplar Bluff)
Jeff Theerman, Metropolitan St. Louis Sewer District
Ken Midkiff, Clean Water Campaign-Sierra Club
Robert Coffing, Missouri LaBarque Stream Team Association
Judith Brown, Friends of LaBarque Creek Watershed
Ray Oberkramer, Landowner in LaBarque Watershed
Lorin Crandell, Missouri Coalition for the Environment
Adam Dorrell, Benton and Associates

No Action taken by the Commission.

ENFORCEMENT

Vaughn Topsoil Farm, Phelps County - Unpermitted – Referral to the Attorney General's Office
Agenda Item #8

Kevin Mohammadi, Compliance and Enforcement Section presented the Vaughn Topsoil Farm, Phelps County case and proposed that the Commission refer the case to the Attorney General's Office for appropriate legal action in order to compel compliance, pursue a civil penalty, and/or seek any other appropriate form of relief.

Janet Vaughn, representing Jason and Terri Vaughn, asked the Commission not to refer the matter to the Attorney General's Office.

Commissioner Leake made a motion to refer the matter to the Attorney General's Office contingent upon a 45 day period for the parties involved to reach an agreement. If an agreement is not reached within 45 days the case would then be referred for appropriate legal action in order to compel compliance, pursue a civil penalty and/or seek any other appropriate form of relief. Commissioner Easley seconded the motion. The motion passed with a roll call vote.

Commissioner Wood:	**Yes**
Commissioner Parnell	**No**
Commissioner Warren:	**Yes**
Commissioner Leake:	**Yes**
Commissioner Easley:	**Yes**
Chair Hunter:	**Yes**

Maher Brothers, Inc., Ralls County, MO-G010015 – Referral to the Attorney General's Office
Agenda Item #9

Kevin Mohammadi, Compliance and Enforcement Section, withdrew the referral request as parties reached an agreement before the date of the Commission meeting. No action taken by the Commission.

Commissioner Parnell clarified his vote on the previous motion for Vaughn Topsoil Farm referral stating that he is opposed to sending cases such as that to the Attorney General's Office. He feels they should be worked out at the Department level without getting into a legal process.

STAFF UPDATES

Permits and Water Quality Review Sheet Update
Agenda Item #10

Curt Gateley, Permits and Engineering Section presented an update on permit performance. No action taken by the Commission.

Financial Assistance Center Update
Agenda Item #11

Joe Boland, Financial Assistance Center presented updates to the Commission on the Federal Fiscal Year 2011 Allotment. The allotment for Missouri is $40,936,000. Mr. Boland noted that the outlook for the Fiscal Year 2012 Allotment is approximately $18,500,000.

Mr. Boland also noted that due to the disastrous storm that hit the community of Duquesne the Financial Assistance Center is working with the community to provide financial relief to defer some payments for a period of time for their loan. The community of Joplin that was also hit by the disastrous storm and was offered the same relief but has declined as they are going to continue to make payment on their loan. No action taken by the Commission.

Status of Rulemaking
Agenda Item #12

Carol Garey, Rule Coordinator of the Water Pollution Control Branch of the Water Protection Program, presented an update on rulemaking indicating regulatory development priorities and the next significant rulemaking action. No action was taken by the Commission.

STANDING ITEMS

Legal Report

Jennifer Frazier, Legal Counsel to the Commission did not have any items to report to the Commission. No action was taken by the Commission.

Director's Update

John Madras, Director, Water Protection Program, noted two items as follows:

1) The Department is following the federal budget discussions since a significant portion of the program comes through the Environmental Protection Agency's (EPA's) appropriation, and certain reductions in EPA's budget could affect the program or its capability to make grants and loans and will keep the Commission informed it develops.

2) The Department has begun projects to improve efficiency of water permits, including electronic permit processing which would allow general permits to be applied for and issued on-line next year, centralization of permit issuance which will further permit streamlining and consistency, watershed management and compliance assistance through the regional offices.

Commissioner Parnell requested that he receive the Commission briefing packet and material online in the future instead of hard copies. The other Commissioners asked to continue to receive hard copies.

No action was taken by the Commission.

PRESENTATIONS

Public Comment and Correspondence

David Harrison, Department of Natural Resources-Division of Energy, presented information regarding the Energize Missouri Water Program which is a new program for water and wastewater energy loans. Mr. Harrison noted more information for this program can be found at www.EnergizeMissouri.org.

Kevin Perry, REGFORM, thanked the two new Commissioners and the entire Commission for the role it plays in the environment issues that face Missouri. Mr. Perry also invited the Commission to the Water Seminar scheduled for September 14 and 15, 2011.

No action was taken by the Commission.

ADJOURNMENT OF MEETING

Commissioner Warren made a motion to adjourn the meeting. Commissioner Wood seconded the motion. The motion passed unanimously with a roll call vote:

Commissioner Parnell	**Yes**
Commissioner Warren:	**Yes**
Commissioner Leake:	**Yes**
Commissioner Easley:	**Yes**
Commissioner Wood:	**Yes**
Chair Hunter:	**Yes**

The meeting adjourned at 3:08 p.m.

Respectfully Submitted,

John Madras

John Madras
Director of Staff