

**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**

January 4, 2012

Present

Sam Hunter, Chair, Missouri Clean Water Commission
Todd Parnell, Vice-Chair, Missouri Clean Water Commission
William A. Easley, Jr., Missouri Clean Water Commission
Sam Leake, Missouri Clean Water Commission
Jan Tupper, Missouri Clean Water Commission
Dennis Wood, Missouri Clean Water Commission
Wallis Warren, 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

Bob Angelo, Environmental Protection Agency, Kansas City, Kansas
Bill Arnold, City of Perry, Perry, Missouri
Melissa Bagley, Environmental Protection Agency, Kansas City, Kansas
Karen Bataille, Missouri Department of Conservation, Columbia, Missouri
Dorris Bender, City of Independence, Independence, Missouri
Joe Blume, Department of Natural Resources, Jefferson City, Missouri
Michael Bollinger, Ameren, St. Louis, Missouri
Mark C. Bross, Klingner and Associates, Hannibal, Missouri
Robert Brundage, Newman, Comley & Ruth P.C., Jefferson City, Missouri
Mary West-Calcagno, Jacobs Engineering, St. Louis, Missouri
Dennie Carothers, City of Clarence, Clarence, Missouri
John Carter, Self, Rolla, Missouri
Lorin Crandall, Missouri Coalition for the Environment, St. Louis, Missouri
Rebecca Cripe, Department of Natural Resources, Jefferson City, Missouri
Aimee Davenport, Lathrop & Gage, Jefferson City, Missouri
John DeLashmit, Environmental Protection Agency, Kansas City, Kansas
Jeffrey Doss, Northeast Sewer District, Fenton, Missouri
Keith Forck, Department of Natural Resources, Jefferson City, Missouri
Tom Frasca, Self, Festus, Missouri
Mark Fugull, City of Perry, Perry, Missouri
Ed Galbraith, Barr Engineering, Jefferson City, Missouri
Carol K. Garey, Department of Natural Resources, Jefferson City, Missouri
Doug Garrett, Department of Natural Resources, Jefferson City, Missouri

Peter Goode, Washington Univ./Missouri Coalition for the Environment, St. Louis, Missouri
Ron Hardecke, Owensville, Missouri
John Hoke, Department of Natural Resources, Jefferson City, Missouri
Leslie Holloway, Missouri Farm Bureau, Jefferson City, Missouri
Liz Hubertz, Washington Univ./Missouri Coalition for the Environment, St. Louis, Missouri
Scott Knight, Northeast Public Sewer District, St. Louis, Missouri
Ted Koenig, Department of Natural Resources, Jefferson City, Missouri
Ann Lavaty, Environmental Protection Agency, Kansas City, Kansas
Barbara Li, Shafer, Kline & Warren, Inc., Columbia, Missouri
John Lodderhose, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Stee Loethen, City of St. Thomas, St. Thomas, Missouri
Randy Lyman, City of Springfield, Springfield, Missouri
Linda Mebruer, Department of Natural Resources, Jefferson City, Missouri
Colleen Meredith, Department of Natural Resources, Jefferson City, Missouri
Steve Meyer, City of Springfield, Springfield, Missouri
Jan Millington, City of Springfield, Springfield, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Nate Moore, Rose Acre Farms, Missouri
Byron M. Murray, Department of Natural Resources, Jefferson City, Missouri
Terry Nelson, Department of Natural Resources, Jefferson City, Missouri
Traci Newberry, Department of Natural Resources, Jefferson City, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
John Pozzo, Ameren, St. Louis, Missouri
Tom Ratermann, Boone County Regional Sewer District, Columbia, Missouri
Tonya Roth, Department of Natural Resources, Jefferson City, Missouri
Amanda Sappington, Department of Natural Resources, Jefferson City, Missouri
Dan Schuette, Flotron & McIntosh, Lohman, Missouri
Lorisa Smith, Department of Natural Resources, Jefferson City, Missouri
Thomas Smith, Newman, Comley & Ruth, Jefferson City, Missouri
Darrick Steen, Department of Natural Resources, Jefferson City, Missouri
Charlie Stevens, City of Liberty, Liberty, Missouri
Trent Stober, Geosyntec, Columbia, Missouri
Kavan L. Stull, EDEC, Joplin, Missouri
Jeff Theerman, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Scott Totten, Department of Natural Resources, Jefferson City, Missouri
Roger Walker, REGFORM, Jefferson City, Missouri
Phil Walsack, Missouri Public Utility Alliance, Columbia, Missouri
Sunny Wellesley, Environmental Protection Agency, Kansas City, Kansas
Julie Westhoff, Kennedy/Jenks Consultants, Mission, Kansas
Joseph M. Zulovich, University of Missouri Extension, Columbia, Missouri

CALL TO ORDER

Chair Hunter called the meeting of the Missouri Clean Water Commission to order on January 4, 2012 at 9:10 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.

ADMINISTRATIVE MATTERS

Public Hearing – 10 CSR 20-7.031 Water Quality Standards **Agenda Item #1**

The Missouri Clean Water Commission held a public hearing for the purpose of receiving oral testimony on proposed amendments to 10 CSR 20-7.031, Water Quality Standards. John Hoke of the Watershed Protection Section presented testimony on behalf of the Department. Sixteen individuals representing agricultural, industrial, and municipal stakeholders, environmental groups and the general public provided oral testimony during the hearing. Testimony received at the hearing included concerns regarding the cost of the proposed rule amendments, the extent to which the rule applied Clean Water Act designations to more Missouri waters, and issues regarding federal water quality criteria being implemented in state regulation. It was noted that written comments would be accepted until 5:00 p.m. on January 18, 2012. The Commission will take final action on the rulemaking at the March 7, 2012 meeting. Presenting testimony were:

Ed Galbraith, Barr Engineering
Leslie Holloway, Missouri Farm Bureau
Aimee Davenport, Lathrop & Gage
Ron Hardecke, Self
Roger Walker, REGFORM
Trent Stober, Geosyntec
Tom Ratermann, Boone County Regional Sewer District
Lorin Crandall, Missouri Coalition for the Environment
Phil Walsack, Missouri Public Utility Alliance
Mary West-Calcagno, Jacobs Engineering
Jeff Theerman, Metropolitan St. Louis Sewer District
Steve Meyer, City of Springfield
Robert Brundage, Newman, Comley & Ruth, P.C.
Liz Hubertz, Washington University/Missouri Coalition for the Environment
Peter Goode, Washington University/Missouri Coalition for the Environment
John Carter, Self

A Court Reporter from Midwest Litigation was in attendance and the official hearing transcript is attached.

Approval of the November 2, 2011 Missouri Clean Water Commission Meeting Minutes
Agenda Item #2

Commissioner Leake made a motion to approve the November 2, 2011 meeting minutes as submitted. Commissioner Tupper seconded the motion. The motion passed with a roll call vote:

Commissioner Wood: Yes
Commissioner Tupper: Yes
Commissioner Parnell: Yes
Commissioner Warren: Yes
Commissioner Leake: Yes
Chair Hunter: Yes

10 CSR 20-6.300 Concentrated Animal Feeding Operations
Agenda Item #3

Darrick Steen representing the Water Protection Program presented the Order of Rulemaking for the Concentrated Animal Feeding Operation (CAFO) regulation 10 CSR 20-6.300. Mr. Steen provided a short background on the rule and explained changes that had been made to section (3)*(B)2 of the Order. Mr. Steen provided revised copies of the Order reflecting the changes to the Commission. Mr. Steen noted that the rule would have an effective date of April 30, 2012.

Commissioner Tupper made a motion to approve the filing of the Order of Rulemaking for 10 CSR 20-6.300, Concentrated Animal Feeding Operation with the revision to section (3)(B)2 as presented by staff. Commissioner Leake seconded the motion. The motion passed with a roll call vote:

Commissioner Wood: Yes
Commissioner Tupper: Yes
Commissioner Parnell: Yes
Commissioner Warren: Yes
Commissioner Leake: Yes
Chair Hunter: Yes

10 CSR 20-8.300 Manure Storage Design Regulations

Agenda Item #4

Darrick Steen representing the Water Protection Program presented the Order of Rulemaking for the new Manure Storage Design regulation 10 CSR 20-8.300. Mr. Steen noted that this is a new regulation that did not previously exist and provided a short background on the rule. Mr. Steen noted that the rule would have an effective date of April 30, 2012.

Commissioner Leake made a motion to approve the filing of the Order of Rulemaking for 10 CSR 20-8.300 Manure Storage Design Regulation as presented by staff. Commissioner Tupper seconded the motion. The motion passed with a roll call vote:

Commissioner Tupper: Yes
Commissioner Parnell: Yes
Commissioner Warren: Yes
Commissioner Leake: Yes
Commissioner Wood: Yes
Chair Hunter: Yes

10 CSR 20-6.010 Construction and Operating Permits

Agenda Item #5

John Rustige, Permits and Engineering Section presented the Order of Rulemaking for the Construction and Operating Permits regulation 10 CSR 20-6.010. Mr. Rustige stated that a recent court decision ruled that pesticides applied into or onto water are not exempt from the National Pollutant Discharge Elimination System (NPDES) permits. Mr. Rustige noted that modifying the exemption allows the Department to issue permits consistent with the court ruling and with the permitting requirements imposed by the Environmental Protection Agency. He noted that as a result of comments received, the Department recommended that the Commission withdraw proposed changes to rule language regarding the discharge of water used to flush potable water distribution systems and fire hydrants as well as language that clarified when a lower preference continuing authority may be available to an applicant for the operation of a new wastewater treatment facility. Mr. Rustige noted that the rule would have an effective date of April 30, 2012.

Commissioner Leake made a motion to approve the filing of the Order of Rulemaking for 10 CSR 20-6.010 Construction and Operating Permits as presented by staff with the noted changes. Commissioner Tupper seconded the motion. The motion passed with a roll call vote:

Commissioner Parnell: Yes
Commissioner Warren: Yes
Commissioner Leake: Yes
Commissioner Wood: Yes
Commissioner Tupper: Yes
Chair Hunter: Yes

State Fiscal Year 2012 Clean Water State Revolving Fund Intended Use Plan Amendment
Agenda Item #6

Doug Garrett, Financial Assistance Center presented the amended State Fiscal Year 2012 Clean Water State Revolving Fund Intended Use Plan. Mr. Garrett noted that the following projects had met the readiness to proceed criteria, as established by the Commission, and were moved to the appropriate funding project funding list.

Boone County Commission, C295685-01, Manchester Heights I.S., move from the Planning List to the Fundable Contingency List with an eligible project cost of \$382,978.

Boone County Regional Sewer District:

- C295375-10, Sunrise Estates Int., move from the Planning List to the Fundable Contingency List with an eligible project cost of \$652,592.
- C295375-11, Spring Park Int., move from the Planning List to the Fundable Contingency List with an eligible project cost of \$417,273.
- C295375-12, Rocky Fork WWTP, move from the Planning List to the Fundable Contingency List with an eligible project cost of \$11,431,926.
- C295375-13, Highway HH WWTP, move from the Planning List to the Fundable Contingency List with an eligible project cost of \$4,901,400.
- C295375-15, Energy Efficiency Upgrades, move from the Planning List to the Fundable Contingency List with an eligible project cost of \$66,671.
- C295375-18, Westwood Meadows, move from the Planning List to the Fundable Contingency List with an eligible project cost of \$386,325.

Lake Ozark, C295646-02, from the planning list to the Fundable Contingency List with an eligible project cost of \$2,722,674.

Rocky Mount Sewer District, C295623-01, from the Planning List to the Disadvantaged Community Reserve with an eligible project cost of \$4,000,000.

Bill Arnold, City of Perry and Mark Bross, Klingner and Associates requested the proposed project for the City of Perry be moved from the Fundable Contingency List to the Fundable List. Scott Knight representing the Northeast Public Sewer District made a request to have the C295684-02 Upper Saline Creek project consolidated with the C295684-03 Saline Creek project. The District requested that the scope of the Saline Creek project be revised to include the Upper Saline Creek project without an increase in the original Saline Creek project cost estimate. Phil Walsack, Missouri Public Utility Alliance noted his support of moving the City of Perry to the Fundable List.

Commissioner Leake made a motion to approve the proposed changes to the State Fiscal Year 2012 State Revolving Fund Project Lists as presented by staff and to include moving the City of Perry to the Fundable List and the consolidation of the Northeast Public Sewer District Upper Saline Creek project with the Saline Creek project. Commissioner Parnell seconded the motion. The motion passed with a roll call vote:

Commissioner Warren: Yes
Commissioner Leake: Yes
Commissioner Wood: Yes
Commissioner Tupper: Yes
Commissioner Parnell: Yes
Chair Hunter: Yes

Phil Walsack, Missouri Public Utility Alliance inquired what the political implications of the State Revolving Fund for 2013 would be if there were budget cuts at the federal level.

ENFORCEMENT

Toulon Heights Subdivision, Jefferson County, MO-0089729 – Referral to the Attorney General’s Office

Agenda Item #7

Kevin Mohammadi, Compliance and Enforcement Section presented the Toulon Heights Subdivision, Jefferson County, MO-0089729 case and proposed that the Commission refer the case to the Attorney General’s Office contingent upon a 45 day period for the parties involved to reach an agreement.

Commissioner Leake made a motion to refer this 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 Tupper seconded the motion. The motion passed with a roll call vote:

Commissioner Leake: Yes
Commissioner Wood: Yes
Commissioner Tupper: Yes
Commissioner Parnell: Yes
Commissioner Warren: Yes
Chair Hunter: Yes

Outstanding Missouri Operating Permit Fees
Agenda Item #8

Byron Murray, Fiscal Management Section presented the Outstanding Missouri Operating Permit Fees. Mr. Murray recommended referring nine facilities to the Missouri Attorney General's Office for collection of outstanding fees; four from July 2011 and five from August 2011. The facilities listed for referral were: Red Bird Pre-Mix Company, Current River Gravel & Ready Mix, S & K Meats, Crashsite Parts Sales & Towing, Chula Wastewater Treatment Plant, Cape Fair Mobile Home Park, Crouch Meats, Bernadette Business Forms, and R & R New Parts and Salvage.

Commissioner Tupper made a motion to refer the nine facilities to the Attorney General's Office for appropriate legal action in order to collect delinquent permit fees, compel compliance for any other violaton of Missouri Clean Water Law and Clean Water Commission regulations, pursue a civil penalty, and/or see any other appropriate form of relief. Commissioner Leake seconded the motion. The motion passed with a roll call vote:

Commissioner Wood: Yes
Commissioner Tupper: Yes
Commissioner Parnell: Yes
Commissioner Warren: Yes
Commissioner Leake: Yes
Chair Hunter: Yes

STAFF UPDATES

Permits and Water Quality Review Sheet Update
Agenda Item #9

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

Financial Assistance Center Update
Agenda Item #10

Doug Garrett, Financial Assistance Center presented the following updates:

- State Revolving Fund (SRF) Refunding - EIARA Series 2011A - SRF Refunding occurred on November 21, 2011. The refunding issue encompassed 15 series of bonds for previously funded drinking water and wastewater SRF projects. Market conditions were very favorable at the time of pricing. The par amount of Clean Water State Revolving Fund (CWSRF) bonds was \$96,350,000. The annual savings for the CWSRF program was \$10,553,300 which will be realized over a 13 year period.

- State Fiscal Year 2013 Intended Use Plan (IUP) - Mr. Garrett noted that staff intend to have a draft document available for public review and comment available by the end of January. He stated that a public hearing at the March Clean Water Commission meeting will be necessary followed by adoption of a final IUP at the May meeting. The Commission was informed that the draft IUP would include information relative to the Governor's Our Missouri Waters Initiative.
- Federal Funding – Mr. Garrett provided information regarding the federal 2012 budget. He stated that based on the federal appropriation, the State Revolving Fund program expects to receive approximately \$38.9 million but noted that the exact Missouri allotment would not be known until the Environmental Protection Agency reviews the budget documents. Mr. Garrett noted that it is the intent of staff to apply for the funds as soon as they become available.

No Action was taken by the Commission.

Status of Rulemaking
Agenda Item #11

Carol Garey, Water Protection Program presented an update on rulemaking. 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 several upcoming meetings of interest to the Commission and those in attendance, including:

- Effluent Regulation Workgroup January 10, 2012
- Fees Stakeholder meeting January 12, 2012
- Affordability Workgroup January 24, 2012
- Water Protection Forum February 6, 2012

- Environmental Protection Agency (EPA) Municipal Planning Workshop in Kansas City February 15, 2012. John DeLashmit of the Environmental Protection Agency added that the contact at EPA for more detailed information for the workshop was Tonya Nicks, telephone number (913) 551-7170.
- There are ongoing efficiency projects, including:
 - ePermitting
 - Compliance Assistance
 - Watershed-based Management

Mr. Madras noted that the Department announced the Our Missouri Waters initiative, with three pilot watersheds. The initiative focuses Department attention on the watersheds across the full range of services we provide. The pilot watersheds are Spring River, Lower Grand and the Big Rivers.

No action was taken by the Commission.

PRESENTATIONS

Public Comment and Correspondence

Ed Galbraith of Barr Engineering addressed the Commission on the desire of several people to comment on response to comment documents on rulemakings and other matters before the Commission at the time the Commission is making a decision.

Dennie Carothers of the City of Clarence spoke to the Commission on the clean water actions the city is taking, including sewer rehabilitation, adding disinfection and other upgrading, and described the significant costs involved for a small city.

Phil Walsack of the Missouri Public Utility Alliance mentioned several matters related to the high costs of clean water improvements, including the bankruptcy of a major metropolitan area (not in Missouri), as well as his concerns that costs estimates on rulemakings appear too low. He stated the Missouri General Assembly may take further action on affordability in 2012.

No action was taken by the Commission.

Commissioner Wood commented that Bill Easley was no longer a Commissioner and commended him for his years of service to the Commission.

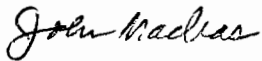
ADJOURNMENT OF MEETING

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

Commissioner Wood:	Yes
Commissioner Tupper:	Yes
Commissioner Parnell:	Yes
Commissioner Warren:	Yes
Commissioner Leake:	Yes
Chair Hunter:	Yes

The meeting adjourned at 2:15 p.m.

Respectfully Submitted,



John Madras
Director of Staff

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DEPARTMENT OF NATURAL RESOURCES
MISSOURI CLEAN WATER COMMISSION

IN RE: PUBLIC HEARING
10 CSR 20-7.031 WATER QUALITY STANDARDS

January 4, 2012

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DEPARTMENT OF NATURAL RESOURCES
MISSOURI CLEAN WATER COMMISSION

IN RE: PUBLIC HEARING
10 CSR 20-7.031 WATER QUALITY STANDARDS

January 4, 2012

Department of Natural Resources
Lewis and Clark State Office Building
1101 Riverside Drive
Jefferson City, Missouri

BEFORE: Samuel Hunter, Chairman
Todd Parnell, Commissioner
Wallis Warren, Commissioner
Samuel Leake, Commissioner
Jan Tupper, Commissioner
Dennis Wood, Commissioner
William Easley, Jr., Commissioner

REPORTED BY:
KELLENE K. FEDDERSEN, RPR, CSR, CCR
Missouri CCR No. 838
Midwest Litigation Services
3432 West Truman Boulevard, Suite 207
Jefferson City, MO 65109

1 (WHEREUPON, the hearing began at
2 9:08 a.m.)

3 COMMISSIONER HUNTER: At this point we'll
4 start with tab No. 1 in the agenda. This is a proposed
5 rule 10 CSR 20-7.031, water quality standards.

6 The purpose of this public hearing is to
7 provide the Department opportunity to present testimony
8 and to provide both the Department and the public the
9 opportunity to comment on the proposed amendment.

10 This public hearing is not a forum for
11 debate or resolution of issues. The Commission asks that
12 those commenting limit their testimony to five minutes and
13 not repeat comments that others have already made.

14 The Commission will first hear testimony
15 from the Department. Following the Department's
16 testimony, the Commission will give the public an
17 opportunity to comment.

18 We ask that all individuals present fill
19 out an attendance card so our records are complete. If
20 you wish to present verbal testimony, please indicate that
21 on your attendance card. When you come forward to present
22 testimony, please speak into the microphone and begin by
23 identifying yourself to the court reporter.

24 Following the public hearing today, the
25 Commission will review testimony presented and make

1 appropriate modifications to the proposed rule
2 10 CSR 20-7.031, water quality standards. The Commission
3 plans to take final action at the March 7th, 2012 meeting.

4 The court reporter will now swear in anyone
5 wishing to testify at this public hearing before the Clean
6 Water Commission today. Will all those wishing to comment
7 please stand.

8 (Witnesses sworn.)

9 MR. HOKE: Thank you, Chairman Hunter,
10 Commissioners. Good morning. My name is John Hoke. I'm
11 the acting chief the Watershed Protection Section within
12 the Water Protection Program. I'll try to keep my remarks
13 today brief. There's a lot of folks who want to speak on
14 this rule, and I want to be sure we get their testimony.

15 The purpose of this rulemaking is to update
16 Missouri's water quality standards to make them
17 functionally equivalent to federal standards and to
18 improve the clarity, specificity and effectiveness of the
19 rule. Several of the revisions are department priorities
20 as well as responses to decisions by the U.S.
21 Environmental Protection Agency and revisions as a result
22 of petitions that were presented before this Commission.

23 The rulemaking went through a regulatory
24 impact report which was open for public comment from
25 June 3rd, 2012 through August 12 -- sorry -- June 3rd,

1 2011 through August 12, 2011. Comments and responses to
2 the RIR have been posted at the Water Protection Program's
3 rules and development web page.

4 On December 1st, 2011, the proposed
5 amendment to 10 CSR 20-7.031 Water Quality Standards was
6 placed on public notice. Public comment period was from
7 December 1st, 2011, the date of publication in the
8 Missouri Register, through January 18, 2012.

9 Just to bring you up to speed and as a
10 reminder, the water quality standards to be addressed
11 during this rulemaking include the following:

12 Applying fishable/swimmable use
13 designations to currently unclassified waters as required
14 by Section 101(a) of the federal Clean Water Act;

15 Incorporating new federal Section 304(a)
16 criteria into 10 CSR 20-7.031, Table A. New criteria
17 additions have resulted in the need for better format and
18 layout of Table A, so that table has now been revised and
19 split into three tables, Table A1, A2 and A3;

20 Expanded dissolved oxygen water quality
21 criteria per federal 304(a) guidance;

22 Revisions to chloride and sulfate water
23 quality criteria in response to a petition before this
24 Commission from the Missouri Agri Business Association;

25 Revised phenol water quality criteria in

1 response to another petition before this Commission from
2 Associated Industries of Missouri.

3 The rulemaking package includes a response
4 to the U.S. Environmental Protection Agency regarding
5 their October 29th, 2009 decision that new or revised
6 standards are needed on a short segment of the Mississippi
7 River outside the City of St. Louis.

8 The rulemaking also includes the addition
9 of various authorizing provisions to recommend variances
10 from water quality standards when standards are not
11 achievable through traditional regulatory approaches.

12 The rulemaking also contains a number of
13 reformatting and typographical error corrections that the
14 department or commenters have led us to make those
15 revisions.

16 That concludes my remarks for this hearing.
17 If you have any questions, I'd be more than happy to
18 answer them.

19 COMMISSIONER HUNTER: Thank you, John.

20 MR. HOKE: Thank you.

21 COMMISSIONER HUNTER: We have quite a few
22 people this morning that would like to comment on this
23 rulemaking, and so in the interest of brevity, we are
24 going to try to limit each comment to a five-minute
25 period. At that point then we will need to call another

1 commenter.

2 We're going to start this morning with Amy
3 Davenport.

4 MS. DAVENPORT: Good morning, Chairman
5 Hunter, members of the Commission. I'm Amy Davenport with
6 the law firm of Lathrop & Gage, and on behalf of a group
7 of numerous regulated stakeholders, I'd like to thank this
8 Commission and the Department for its hard work and
9 expertise in moving Missouri's Water Quality Standards
10 forward.

11 The purpose of my testimony today is to
12 address the fiscal note associated with this rule, a key
13 component of this rule, an important one at that.

14 In Missouri, the Department is required to
15 do a fiscal note when the cost of a rule will exceed \$500
16 or more for any public or private entity or person.
17 Missouri law also requires that the Department outline a
18 detailed cost estimate for the cost of compliance for the
19 rule and to ensure and attest that that estimate is
20 reasonably accurate.

21 Recently the Missouri Court of Appeals
22 emphasized how important this requirement is to make sure
23 that the fiscal note is accurate and correct by stating
24 that the Department must perform a comprehensive and
25 diligent effort, put forth a comprehensive and diligent

1 effort to identify all affected parties and must ensure
2 that its estimate is reasonable, realistic and makes good
3 sense.

4 The fiscal note as written is not complete,
5 and as you'll hear from a couple of others testifying
6 subsequent to me, there are costs that have been
7 overlooked and need to be included in this fiscal note.

8 We ask that this Commission take that into
9 consideration and include those costs and acknowledge them
10 in this fiscal note, and I'd be happy to answer any
11 questions and appreciate you hearing my testimony this
12 morning. Thank you.

13 COMMISSIONER HUNTER: Thank you, Amy. Next
14 is Phil Walsack.

15 MR. WALSAK: Good morning. I have not had
16 the five-minute card flashed before me before, so here we
17 go. My name is Phil Walsack. I work for the Missouri
18 Public Utility Alliance in Columbia. We're an association
19 of 110 municipal governments here representing 1.1 million
20 ratepayers and taxpayers today.

21 Thank you for the opportunity to comment on
22 the fiscal note and the regulatory impact report and the
23 draft revisions to the Water Quality Standards established
24 in 10 CSR 20-7.031. The Missouri Public Utility Alliance
25 would like to thank the Commission in advance for their

1 willingness to hear this message.

2 For the record, I placed an elephant in the
3 room. While it's a stuffed animal, it is symbolic of the
4 real elephant in the room, the cost of environmental
5 regulations and specifically the cost of the revised rule.
6 The cost of regulations are increasing and are
7 increasingly important to the nation and to the state of
8 Missouri.

9 Visible evidence of this can be seen on the
10 national political arena. In the Republican presidential
11 debate, several of the candidates have spoken about
12 transforming the EPA, about overregulation of -- on
13 business ventures and about the regulatory burden placed
14 on taxpayers and ratepayers.

15 EPA is feeling the pressure and is only now
16 beginning to respond. The acting administrator for water,
17 Nancy Stoner, authored a memo dated October 27th, and
18 there's an indication that EPA will be integrating storm
19 water and wastewater planning and costs.

20 On December 12th of last year, a hearing
21 much like this one was held at the nation's Capitol on
22 Capitol Hill, and the hearing was held in the U.S. House
23 of Representatives chamber. Two speakers from midwest
24 Missouri municipalities gave presentations, Mayor Reardon
25 from Kansas City, Kansas and Mayor Suttle from Omaha,

1 Nebraska.

2 Mayor Suttle of Omaha stated before
3 Congress that the critical issue on water-related mandates
4 is that of affordability. He stated that the nation's CSO
5 overflow programs and projects are now spending 15 percent
6 more than their current revenue streams allow on CSO
7 eliminations. For the seven Missouri CSO communities that
8 ratio is worse at 22 percent and is spending more in
9 revenue than they are currently bringing in. In Missouri
10 those communities are St. Louis, Kansas City, Cape
11 Girardeau, Macon, Moberly, St. Joe and Sedalia.

12 Mayor Suttle also notes that the great
13 recession alone does not fully explain the deficit
14 spending in the growth in long-term debt. He along with
15 many in the environmental protection community state that
16 the effects of this practice will be experienced long into
17 the future.

18 Mayor Reardon of Kansas City puts it this
19 way: The consent order being pressed forward by EPA seeks
20 to put the city's sewer rate at 3.1 percent of the median
21 household income for the next 25 years. He emphasized
22 that meeting the combined overflow mandate for his city is
23 four times higher than that of his annual budget.
24 Presented in a different light, EPA wants the city to
25 spend more on its sewer system than it will spend in four

1 years on police and fire, jail, roads and bridges, parks
2 and recreation and social service programs, all of the
3 functions of municipal government.

4 Now, I use these previous comments in front
5 of our elected officials in Washington, D.C. to amplify
6 Missouri's municipal concerns about the fiscal note in the
7 RIR presented for the Water Quality Standards before you
8 today. These comments emanate from written comments
9 presented in a letter dated August the 12th sent to the
10 Department as part of a large effort crafted by Mr. Ed
11 Galbraith of Barr Engineering. We were one of the
12 signaturees of that letter.

13 In summary, the RIR's fiscal note does not
14 accurately describe current cost estimates to be borne by
15 municipal governments when these cities are required to
16 implement the proposed water body classification system,
17 the 1 to 100,000 NHD, National Hydrography Dataset map.

18 MPUA noticed the Department that it was not
19 using recent cost estimates from municipalities whose
20 wastewater systems will be affected. Communities whose
21 products are listed on the current state revolving loan
22 fund list were not included. Wastewater projects listed
23 on the recently completed 604(b) grant funded wastewater
24 needs assessment were not included. The most current PER,
25 preliminary engineering report and facility plan submitted

1 to the states engineering by the engineering firms in this
2 state were not considered. This is not reasonable nor is
3 it forthright.

4 Based on the Department's response to
5 Mr. Galbraith's cooperatively submitted letter, the
6 Department gives this response, and now I quote: The RIR
7 requires the best estimates of the cost and impacts of the
8 proposed rule. The Department documents estimates of
9 potential costs of the potential -- of the proposed rule
10 in the RIR with the realization that actual costs may, in
11 fact, be higher or lower for any specific individual
12 facility.

13 I hereby challenge the Department to
14 provide an example, one example in which the price of
15 chlorination and dechlorination facility upgrades for a
16 facility treating less than 1 million gallons a day meets
17 the \$16,100 threshold presented in the RIR.

18 As this Commission knows, MPUA gave a
19 presentation in the summer entitled The Tale of Ten
20 Cities. In a cursory review, MPUA presented the fact that
21 the closest current and actual cost estimate of the
22 Department was 2.7 times higher and 29.2 times in the
23 worst case scenario.

24 COMMISSIONER HUNTER: Thank you, Phil.

25 MR. WALSACK: In closing, there's an

1 elephant in the room. The elephant in the room is cost.
2 The elephant should be green for the cost of money. The
3 current cost of environmental regulations should be viewed
4 honestly, transparently and with reason. Thank you very
5 much.

6 COMMISSIONER HUNTER: I thought we were in
7 Iowa there for a minute.

8 MR. WALSHACK: You're welcome. Would you
9 like me to take him with me?

10 COMMISSIONER HUNTER: Thank you. Next is
11 Mary West.

12 MS. WEST: Thank you, Commissioner Hunter
13 and the remaining Commissioners, for the opportunity to
14 speak today. My name is Mary West. I'm with Jacobs
15 Engineering.

16 I'm also here to address the public fiscal
17 note for the rule. We did comment on this in the
18 Galbraith letter during the RIR comment period, and we
19 believe that the Department did not sufficiently give
20 weight to that comment particularly as it applies to
21 ammonia limits for small entities, particularly lagoons,
22 or other entities that discharge to unclassified waters.

23 The portion of the rule that I'm speaking
24 of is the Section 4, delineation of 1 to 100 K for
25 beneficial uses, fishable and swimmable.

1 We believe that a subset of the municipal
2 permittees that operate lagoon systems will be affected by
3 this rule change. The lagoon policy used by Missouri's
4 regulatory agency requires that permittees that discharge
5 to unclassified waters using the current definition
6 monitor for ammonia. I have a copy of the lagoon renewal
7 policy, the copy of the lagoon flow chart for issuing
8 permits, and the total ammonia nitrogen implementation
9 criteria, and I actually brought copies for you. I took
10 lessons from Phil, but I did not bring an elephant.

11 I would draw your attention on the first
12 page to the sentence at the bottom of the Galbraith memo
13 when he was with the Department that points out that all
14 of the actions in the memo are consistent with existing
15 permit renewal conditions and include no new
16 interpretation of existing regulations.

17 The next part of the copy material that I
18 would draw your attention to today that applies to my
19 comments is page 4 of 10 of the ammonia implementation
20 guidance, the fourth bullet down. For discharges to
21 unclassified waters and facilities with design flow less
22 than 22,500 gallons per day, if adequate data are
23 available for conducting an RPA, the analysis must be
24 conducted. If adequate data are not available, the permit
25 should be reissued with a monitoring requirement for total

1 ammonia nitrogen and the RPA performed at renewal. Permit
2 writers have the discretion to add a reopener clause to
3 the permit to perform the RPA sooner than renewal provided
4 adequate data become available.

5 The next bullet, discharges to classified
6 waters with limited assimilative capacity have reasonable
7 potential or cause -- to cause or contribute to an
8 exceedance of ammonia.

9 So there is a difference in how the
10 Department has treated discharges to classified waters
11 versus unclassified waters. Particularly as it states on
12 pages 2 -- page 2 and page 3 of that same memo, acute
13 criteria shall not be exceeded at any time except in those
14 waters for which the Department has allowed a zone of
15 initial dilution. There is no zone of initial dilution
16 for small streams because they're listed as no flow, and
17 so there is no zone of dilution allowed. Chronic criteria
18 shall not be exceeded except in water segments for which
19 the Department has allowed a mixing zone.

20 Currently I believe the Department's
21 response to comments said, cost estimates for ammonia
22 controls were not included in the RIR because current
23 permitting practice is to protect aquatic life to chronic
24 toxicity levels regardless of distance to the first
25 classified receiving stream.

1 I maintain that when you change all of the
2 streams to classified, that all streams will have to be
3 protected to both the acute and the chronic level, and so
4 there are hundreds of facilities in the state that are
5 going to have to upgrade to ammonia removal technology.
6 For lagoons, this is extremely difficult in many cases and
7 will require upgrades. Those costs are not included in
8 the public fiscal note anywhere.

9 Thank you for letting me make comments
10 today, and I'd be happy to answer any questions.

11 COMMISSIONER HUNTER: Thank you very much,
12 Mary. Next is Roger Walker.

13 MR. WALKER: Good morning, Mr. Chairman,
14 members of the Commission. I want to talk a little about
15 the 1 to 100,000 dataset and a little bit on defining
16 waters of the state.

17 I am executive director of REGFORM. I'm
18 also an attorney with Armstrong Teasdale. I teach
19 environmental law at St. Louis University, and I don't
20 mention that for puffery. It's just that I do have to pay
21 attention to some of these issues.

22 I passed out a short presentation. I'll
23 stay within the five minutes and just hit the highlights.
24 I also will be providing additional written testimony by
25 January 18th.

1 Slide No. 1, I just wanted to point out
2 that, you know, these answers on what's protected, what's
3 waters of the state, they're really straightforward. It
4 gets complicated at the margins. And I wanted to also
5 note, as you're well aware, these issues get very
6 politicized with the state. On a federal level, there's
7 been legislation introduced on sides, both sides, folks
8 who want it more protected, make it more clear in the
9 Clean Water Act, folks who want it less protected, less
10 restricted. Drawing that line has always been
11 complicated.

12 It's also been a bit of a legal maelstrom.
13 The Supreme Court three times, three cases have tried to
14 decide what is navigable waters, what are waters of the
15 states. All that interplays with this.

16 I have a couple slides just outlining what
17 Missouri law is on waters of the state. It's pretty
18 narrow, pretty brief rather. I will say that Missouri
19 statute does not incorporate, does not include all waters
20 of the state. It's very clear, it does not. I would get
21 more detailed, but I only have five minutes.

22 The Clean Water Act makes it unlawful to
23 discharge any pollutant without a permit into navigable
24 waters, and according to the Clean Water Act, navigable
25 waters are the waters of the United States. So a little

1 bit more about that.

2 Clean Water Act is also a little broader
3 than just traditional navigable. It includes relatively
4 permanent bodies of water. The Clean Water Act also
5 separately defines various point sources. Includes lots
6 of exceptions.

7 I think what I want to get into is the
8 slide where it talks about easy, harder and hardest and
9 just say a few words about that. Like I said, traditional
10 navigable, waters that have relatively permanent flow,
11 wetlands adjacent to these permanent flows, that's easy.
12 It gets harder when you're talking about ditches,
13 seasonal, things that aren't permanent, waters that are
14 ephemeral, wetlands that are not adjacent to navigable in
15 fact can be included in there. That's where it gets
16 harder.

17 It gets hardest when the gray areas are
18 what's -- the Supreme Court uses the term significant
19 nexus, trying to decide whether a water body that's not
20 one of those traditional, that's not close to a permanent,
21 whether it's -- whether it's -- there's a significant
22 nexus to what's traditionally navigable in fact.
23 So is there a significant nexus, and there's -- the
24 Supreme Court laid it out pretty detailed. It's by no
25 means clear.

1 the Supreme Court has always said that that's a
2 case-by-case determination. I think this approach gets us
3 in the ballpark to protect many of those without doing a
4 case-by-case and also allows the state to move forward,
5 you know, in a reasonable manner to protect waters of the
6 state as defined by that parameter for beneficial uses,
7 et cetera.

8 There's lots of nuances that others will
9 talk to. My only point here is that, not saying
10 supportive of the 1 to 100,000. I think there's problems,
11 there's nuances, but I will say that legally the state is
12 not required, the Commission is not required to protect
13 all waters of the state, every single drop. This is in
14 the ballpark for what the federal courts have said and
15 what the Clean Water Act requires.

16 And I'll stop with that. Thanks so much.

17 COMMISSIONER HUNTER: Thank you, Roger. I
18 don't even have to call them anymore. They just start up.
19 Trent.

20 MR. STOBBER: Good morning, Chairman,
21 Commissioners. My name is Trent Stober. I'm with
22 GeoSyntec Consultants in Columbia, Missouri. We represent
23 several clients that will be potentially impacted by this
24 rule. I have one of those with me, and Chairman, if you
25 will, I'd like to jointly present with Steve Meyer with

1 the city of Springfield. Can I get a couple more minutes
2 than the five given that?

3 COMMISSIONER HUNTER: See that lady with
4 those?

5 MR. STOBBER: Please?

6 COMMISSIONER HUNTER: Yes. Steve is on the
7 list, too, so he can have a couple more minutes.

8 MR. STOBBER: Thank you. As you know, water
9 quality standards are broken up into three pieces in their
10 framework. You have the assignment of beneficial uses to
11 various waters, you have the criteria that protect those
12 beneficial uses, and then you have an anti-degradation
13 policy. The focus of this whole rule is primarily on
14 those designation of uses and criteria. I'll break my
15 testimony up into those different components.

16 Roger discussed the assignment of aquatic
17 life and recreational beneficial uses to the 1 to 100 K
18 NHD layer. While that has been vetted substantially
19 through stakeholder process, there's still some components
20 of that that apparently go quite beyond where reasonable
21 assignment of beneficial uses should extend to, and Steve
22 will present those in just a minute.

23 While there's some pluses to using that
24 framework in its presentation to the public, the ability
25 to use it in databases and so forth, it still needs to be

1 recognized that it is relatively -- could be considered an
2 arbitrary designation of waters. Essentially
3 cartographers over the last several decades developed
4 those. In fact, when you look at the whole state, you'll
5 see different pieces of the state that were probably done
6 by different cartographers, map makers that have different
7 densities of streams. So like Roger did say, there's a
8 site -- specific site by site issue that needs to be dealt
9 with.

10 I'll hand out a few of the streams that we
11 reviewed in the city of Springfield, and Steve will
12 discuss that in just a moment.

13 MR. MEYER: Good morning. My name is Steve
14 meyer. I'm director of environmental services for
15 Springfield, Missouri. I wanted to show you how this act
16 will affect my community and my citizens, and I'll be
17 very, very brief. I know Trent's boiling over.

18 This action will, in Missouri will increase
19 the classified streams from 24,600 miles to 183,600 miles.
20 That's over six times. In Springfield at least 47 of
21 the -- at least 47 of the streams that have been
22 classified are either dry streams or engineered channels.
23 They're not streams at all. And I've got four examples
24 that I'm passing out to you, and we have plenty more.
25 Like I said, we have 47.

1 In my mind, placing these streams on a
2 classified list will be a significant expense and impact
3 Springfield, Missouri by now we will have to provide UAAs
4 for each one of these 47 streams that probably shouldn't
5 have been on the classified list in the first place
6 because these streams not navigable. I don't believe this
7 was the intent of the Clean Water Act to have these kind
8 of dry depressions classified as waters of the state.

9 I believe that rather than doing all of
10 these UAAs, that this money could be better spent
11 improving appropriately classified streams rather than
12 inappropriately classified streams. Thank you.

13 MR. STOBBER: As Steve mentioned, we believe
14 that there's several of these situations that really are
15 not appropriate for the default assignment of beneficial
16 uses. One of the pathways through that is the use
17 attainability analysis procedure process which has been
18 discussed in front of the Commission several times. With
19 that, we really do need to push that forward, and I assert
20 that we really need an expedited process to deal with some
21 of these waters that are really simple pretty calls in the
22 whole grand scheme of things.

23 Another beneficial use assignment issue is
24 the assignment of human health protection for all waters.
25 Now, while that sounds like a valiant effort, there's some

1 components of those criteria which are developed to
2 account for both the drinking water intake as well as the
3 intake of fish and shell fish from given water bodies.
4 That's been assigned to the whole -- the whole breadth of
5 the classified waters, whereas EPA documents and so forth
6 allow the assignment of that only to drinking water
7 supplies.

8 And that brings in a whole set of criteria
9 which you'll see in the rule as the human health
10 protection water organism criteria which have some very
11 stringent criteria. We've done some quick assessments of
12 those. For example, some of the criteria are dropping
13 down by a thousandfold in the case of arsenic, which is a
14 naturally occurring compound.

15 The assignment of that use and some of
16 these criteria could cause widespread 303(d) listings,
17 impairment decisions, resulting TMDLs that puts a burden
18 on an already strained state government.

19 Also, some of those criteria are really
20 derived from inappropriate organisms. For example,
21 arsenic and manganese are really targeted to protect the
22 consumption of saltwater oysters, which obviously aren't
23 appropriate for this state.

24 In the case of arsenic, which again is a
25 naturally occurring element within our earth's crust, we

1 evaluated 152 stations to assess the level of arsenic
2 that's occurring in those, and essentially found that all
3 those sites would exceed the proposed criteria, which
4 obviously would result in about 150 unnecessary TMDLs
5 unless we really think that arsenic is a widespread issue
6 within the state of Missouri.

7 No Region 7 state has adopted the same
8 criteria that we have proposed, which again, as John
9 alluded to earlier, are the default recommendations from
10 U.S. EPA. However, there are some flexibilities in using
11 those. For example, the state of Ohio, which is
12 considered a great water quality standards framework, only
13 applies those -- some of these criteria for drinking water
14 standards in drinking water supplies. State of Washington
15 has rescinded their arsenic criteria, and EPA is currently
16 considering reevaluating the appropriateness of those
17 criteria.

18 Now, to move on to manganese, we evaluated
19 again 150 stations. About 40 percent of those violated
20 manganese, which is really considered a secondary or
21 aesthetic impact to water bodies, to drinking waters,
22 primarily with taste and with stains in laundry actually.

23 We faced this same set of criteria in 2005
24 and essentially did not assign those criteria based on --
25 based on this widespread issue of impairments or potential

1 impairments as well as the fact that manganese is not a
2 toxic actually.

3 Now to move on to some other criteria.
4 We've assigned an aluminum criteria for chronic exposure
5 for freshwater organisms. This criterion is also under
6 debate nationally. U.S. EPA'S own documents suggest that
7 the studies that were conducted to support those criteria
8 on striped bass and on brown trout were done in conditions
9 that are really not applicable throughout the country, and
10 the documents also recognize that a lot of water bodies
11 will naturally violate that criterion.

12 We did another assessment of about 110
13 stations that had aluminum data, and essentially all of
14 those, about I think it was 95 percent exceeded that as
15 the total amount of aluminum in the water.

16 This would also be particularly problematic
17 for dischargers and receiving streams that have advanced
18 phosphorus removal as aluminum is one of the compounds
19 that are used to remove phosphorus from wastewater
20 discharges.

21 West Virginia also saw some a similar issue
22 when they adopted those criteria. They had 88 percent of
23 their waters that violated that criterion. They rescinded
24 that and only applied it to trout waters, which U.S. EPA
25 approved. Pennsylvania also has rejected that criteria,

1 and EPA has approved that.

2 There's also some issues with salinity in
3 the drinking water supply criteria, and those will be
4 included in our specific comments. And lastly, my
5 recommendation with all those criteria are that we do some
6 additional research into the appropriateness of those
7 criteria and potentially take those up in the next
8 upcoming rulemaking.

9 So I thank you for your indulgence.

10 COMMISSIONER HUNTER: Thank you, Trent.
11 Robert Brundage.

12 MR. BRUNDAGE: Good morning, Chairman,
13 members of the Commission. My name is Robert Brundage.
14 I'm with the law firm Newman, Comley & Ruth here in
15 Jefferson City, and I like Trent and Mary and others who
16 tried to coordinate our comments here today for sake of
17 brevity. For example, Trent just testified on some
18 aspects of the human health protection beneficial use that
19 I'd like to follow up on briefly.

20 I'd like to be clear that I do support the
21 comments of the other people that came here today on
22 behalf of my clients, including Missouri Agri Business
23 Association.

24 As Trent mentioned, human health protection
25 is one of the beneficial uses in our Water Quality

1 Standards. In these proposed changes to the Water Quality
2 Standards there is a huge increase in the number of
3 standards for the human health protection. Just a few
4 statistics which I think are -- if they're not exactly
5 accurate, they're pretty doggone close. There is a --
6 there's a human health beneficial use where they look at
7 the organism plus drinking water, and for that organism
8 plus water standard, there's 113 brand-new standards
9 proposed in this rulemaking. For organism only, there's
10 30 new, and for some of the existing human health
11 protections that are in already, there's 75 revisions
12 where those have been changed.

13 So it's a tremendous change. There's a lot
14 of science that is behind these that has not really been
15 reviewed, and I think we need to take a closer look at
16 these things.

17 I want to note that EPA has not disapproved
18 our Missouri Water Quality Standards because we don't have
19 these in here. So we're not under any mandate from the
20 EPA to put these in there. We're not under any statutory
21 deadline to put these in there.

22 You know, during the last two years or
23 more, there's been a lot of meetings on at least what I
24 call the unclassified stream rule, a lot of what's in --
25 we have here today, and there's so many changes and so

1 many emphasis.

2 One of the things that was not emphasized
3 during the stakeholder meetings, and frankly was not
4 really discussed to my recollection to any extent, was
5 these 113 or more changes to the human health protection
6 in water quality standards.

7 If you read the Regulatory Impact Report,
8 there's really nothing in there on all of these changes.
9 So what is the regulatory impact of including these
10 changes? We already have for many of these things, for
11 many of these elements parameters in the standards. We
12 already have drinking water supply numbers that have been
13 on the books for a long time. So there are protections
14 out there for drinking water sources, and presumably
15 that's what the exact same water bodies of these organism
16 plus water would cover.

17 So if the Regulatory Impact Report doesn't
18 want to talk about it, it's either because we really
19 didn't have time to analyze it -- when I say we, the State
20 and the Department. They had enough to do in the first
21 place -- or it really doesn't have any impact because the
22 drinking water supply regs already adequately protect. So
23 that's one inference you can draw from the Regulatory
24 Impact Report.

25 I'd also like to note, to my knowledge, the

1 Missouri Department of Health and Senior Services has not
2 listed any health advisory for any of these except the
3 only ones that I really recall are mercury or lead. All
4 of the other 113 brand-new ones I haven't heard the
5 Department of Health and Senior Services raise concerns
6 about these. I'm not aware of any reported incident of
7 any endangerment to human health. So I don't know if
8 there's any urgent need to adopt all these standards.

9 Trent mentioned a few of the 113. He
10 mentioned arsenic. He mentioned manganese. For example,
11 another one for organism plus water we had no standard for
12 anything is iron. Now there's proposed standard for
13 organism plus water for iron, and we all know that that's
14 in vitamins and other things.

15 So what I would suggest is, is that this is
16 an issue that's worth consideration. I'm not sure if it's
17 an issue that's worth consideration right now. I know
18 we're going to have a phase 2 of water quality standard
19 review changes during the next year. I would like to have
20 some more emphasis put on this to try to better understand
21 all these and what potential impacts these would have.

22 As Trent pointed out in his testimony, some
23 of these were based on EPA 3 or 4A criteria which the
24 science behind that may have been really specific to some
25 other part of the country. For example, arsenic he

1 mentioned was based on some science done on saltwater
2 oysters. We all know that that's not applicable in
3 Missouri, and how many of the other 113 are applicable to
4 Missouri or should be?

5 Just to conclude, I don't think that
6 there's an urgent need for the EPA to adopt these. I
7 don't think there's an urgent need for human health
8 protection to adopt these right now, and I would like the
9 Commission to not promulgate these at your next meeting
10 when you vote on these but rather direct the Department to
11 have some stakeholder time to try to discuss this, because
12 one thing we do know is that the list of methodology
13 review list, there's a lot of information you have to look
14 at on this list of methodology document, frequency and
15 duration of these that I totally don't understand yet, and
16 I would like an opportunity to work with the Department to
17 understand that better.

18 Thank you very much for your time.

19 COMMISSIONER HUNTER: Thank you, Robert.
20 Ed Galbraith.

21 MR. GALBRAITH: Good morning, Mr. Chairman,
22 members of the Commission, for the opportunity to testify.
23 My testimony will be more helpful to you if you would turn
24 to your packets to page 12. Kind of hard to see over
25 there, Jane. Speak up if you need to.

1 I want to draw your attention to the first
2 column, about two-thirds of the way down, letter D, use
3 designation data set. Of all the parts of this rule, this
4 is one of the most important. You can read there, the
5 Department shall maintain a geospatial data set for
6 associated list of waters that receive these designations
7 as described in this rule.

8 And this is important because this is the
9 means of transparency for implementing this rule. This is
10 the data set that will let everyone know for purposes of
11 permitting, impairment and other things, implementation,
12 what waters have the presumed uses.

13 And as Roger described to you before, the
14 idea of this 100 K data set is not perfect. It doesn't
15 perfectly capture all of the permanent flow streams, but
16 it's a good start. We know that waters will have to be
17 added to this, and we think also that some waters will
18 probably be subtracted from this because it's not a
19 perfect definition of -- those -- there's going to need to
20 be some field work to say a particular segment doesn't
21 have permanent flow per the rule or does it not.

22 So what the rule lacks, though, is a
23 process or a definition of how -- how to go about the
24 study of a given segment to say, yes, it does or, no, it
25 does not support permanent flow, permanent rules.

1 The Department has such a protocol, the
2 final guidelines for water body classification approved by
3 the Clean Water Commission, March 2nd, 2005. So we know
4 there is a process for doing this. What we'd like to see
5 the rule do is outline or name that process so that the
6 rules are clear and everybody knows what they have to do
7 to either -- when investigating a segment to either
8 increase -- to either increase -- do I get five more
9 minutes to repeat myself?

10 COMMISSIONER HUNTER: We'll have to go into
11 closed session to rule on that.

12 MR. GALBRAITH: So we would like the rule
13 to make clear what the process will be for that or name a
14 protocol or -- as the rule does elsewhere when describing
15 what kind of process will be used for UAA, for example.

16 My second comment has to do with dissolved
17 oxygen. In the draft rule is a table, Table A3. It is on
18 page -- should be right on page 53, I think, although my
19 particular copy didn't have it. Hopefully yours does.
20 That is the new dissolved oxygen criteria adopted from
21 EPA's criteria.

22 We feel at this point that maybe it's
23 better not to go forward with that, but to leave the rule
24 as is or revert back, if you will, to the current
25 dissolved oxygen standard. The reason is that, depending

1 on how this gets implemented, it could be advantageous or
2 disadvantageous to people who have to meet these
3 standards.

4 We've been working hard with the DNR and
5 Department of Conservation to develop an implementation
6 procedure, but we just frankly ran out of time and didn't
7 get far enough. So rather than work on this, there are
8 other things that are just as important or more important
9 to work on. We'll get to a solution of the DO criteria.

10 So I think our suggestion, our comment will
11 be to not move forward with this proposed change to the DO
12 criteria, and I think, I believe the program and
13 Conservation are on board with that as well.

14 So those are my comments. I'd be happy to
15 answer any questions. Thank you.

16 COMMISSIONER HUNTER: Thank you, Ed. Next
17 is Ron Hardecke.

18 MR. HARDECKE: Good morning, Mr. Chairman
19 and Commissioners. My name is Ron Hardecke. I'm a farmer
20 from Owensville. And thank you for the opportunity to
21 comment.

22 The main thing I wanted to talk about was
23 cost, and that's been addressed by many of the speakers
24 this morning, and it's been brought up many times over the
25 last year and a half. I want to begin with on page 12

1 between where we are at 26,000 miles of classified streams
2 currently and the proposed 110,000 miles, and I think we
3 need to consider that before we just take a broad brush
4 and add all these classified streams and then put the
5 burden on the citizens to pay for a UAA to remove them
6 where obviously there's a lot of dry streams included on
7 this -- this list.

8 The fiscal note that DNR prepared about a
9 year ago, and I didn't go through and add all the numbers
10 up in the current one, but is \$95 million. There's been a
11 lot of testimony this morning about the cost, and I don't
12 think that that begins to address it. Even if it does,
13 that's a huge burden to impose on the ratepayers of the
14 citizens of these cities.

15 That only accounts for a thousand -- I
16 think it's 1,043 permitted dischargers. So there are a
17 lot of other imputations that are going to add to that
18 cost, and in a time when the economy's struggling, we're
19 trying to find ways to create jobs, I think we need to
20 evaluate that some more.

21 The other thing in cost is there's never
22 been any estimate or provision for the eventual cost of
23 non-point source pollution that would ultimately come
24 under this regulation.

25 I would ask you to reject this proposal and

1 tell DNR to find another scale or another means of adding
2 water bodies that need to be classified that is
3 realistically manageable for the Department and fiscally
4 responsible to impose on the citizens of Missouri. I
5 would also ask that you ask the Governor and the Attorney
6 General to push back on the EPA because I think we've all
7 recognized that there's no end to what EPA will send us if
8 we take it. And I thank you for the opportunity to
9 comment.

10 COMMISSIONER HUNTER: Thank you, Ron. Next
11 is Tom Ratermann.

12 MR. RATERMANN: Good morning. Happy new
13 year. Thank you. My name is Tom Ratermann, and I'm the
14 general manager of the Boone County Regional Sewer
15 District with an office and shop at 1314 North 7th Street
16 in Columbia, Missouri.

17 I'm here to speak neither in support nor
18 opposition to the proposed amendment to the Water Quality
19 Standards. My purpose today is to provide information
20 regarding the impact of the proposed regulations on the
21 sewer district.

22 First I'd like to provide a little
23 information on the sewer district. The sewer district has
24 about 6,500 customers, so we estimate our service
25 population to be between 18,000 and 24,000 people. The

1 sewer district owns 38 Missouri Department of Natural
2 Resources permitted wastewater treatment facilities in
3 unincorporated Boone County. Additionally, we maintain 76
4 miles of gravity sewer, 30 miles of force mains and 20
5 district-owned pump stations. The district employs 11
6 full-time employees.

7 In 2006 our rates were \$22 per month for
8 the typical user using 5,000 gallons of water a month. In
9 2007 they were \$24.20 a month. Our rate studies
10 anticipated 4 percent rate increases over 20 years.
11 Starting the first of this month, we just implemented an
12 11 percent rate increase.

13 Our current rates are \$45.70 per month for
14 that same customer using 5,000 gallons of water. Rates
15 are between 15.95 per month and 18.50 per month higher for
16 those customers that use pressure sewer systems such as
17 neighborhoods with onsite systems connected to public
18 sewer.

19 Our rates are proposed to be \$60.55 per
20 month in 2016 for that same typical customer using 5,000
21 gallons of water per month.

22 The 2009 median household income, or MHI,
23 in Boone County is \$46,439 annually. That's the most
24 readily available information on MHI, and I really don't
25 think that figure is representative of the sewer district

1 service areas. Currently sewer district customers spend
2 about 1.2 percent of MHI on wastewater treatment and
3 collection, and in 2016 will spend about 1.6 percent of
4 MHI on wastewater treatment and collection based on
5 current data.

6 In 2008, Boone County voters approved a
7 \$21 million revenue bond issue for the sewer district.
8 This bond issue was predicated upon closing about 20 sewer
9 district facilities to stay in compliance with expected
10 disinfection regulations. The sewer district is on
11 schedule to close 18 facilities by the end of 2013. Since
12 about 1990, the sewer district has closed about 25
13 facilities.

14 The proposed regulations in the Water
15 Quality Standards will require the district to close about
16 nine more facilities. By the end of 2020, the district
17 will have 11 permitted facilities. Our rate studies have
18 not considered the rate impact of closing these additional
19 nine facilities. Additional expected rate impacts are
20 ammonia removal, nutrient removal and any requirements of
21 the collection system.

22 The district's capital planning will need
23 to anticipate the cost associated with these changes to
24 the Water Quality Standards and future proposed regulation
25 changes. Boone County voters may need to consider more

1 bonded indebtedness to meet these regulations. All of
2 this planning, studying and consideration takes time and
3 money.

4 We ask that when you consider additional
5 regulations, you consider the time needed to fully plan
6 and implement the improvements needed to comply and that
7 the June 30th, 2020 deadline be removed or left open
8 ended. Thanks for your time and consideration, and I'd be
9 glad to answer any questions you might have.

10 COMMISSIONER HUNTER: Thank you, Tom.
11 Lorin Crandall.

12 MR. CRANDALL: I'd like to co-present with
13 Liz Hubertz and Peter Goode from the law clinic.

14 COMMISSIONER HUNTER: They're welcome to
15 come up here with you.

16 MR. CRANDALL: Is there a projector
17 available to project images? No projector?

18 COMMISSIONER HUNTER: No.

19 MS. HUBERTZ: But it has such pretty maps.

20 MR. CRANDALL: I've got some pretty awesome
21 maps I made so you guys could actually see what this looks
22 like. Unfortunately, you won't be able to see those
23 today, but I'll send them in with our official comments on
24 the 18th. Thank you.

25 MS. HUBERTZ: Good morning, Commissioners.

1 I'm Liz Hubertz. I'm clinic attorney with Washington
2 University School of Law representing Missouri Coalition
3 For the Environment in water quality matters along with
4 Mr. Crandall and Mr. Goode. We're going to divide this
5 up, as Lauren already said, into three separate sections.
6 My remarks are going to be brief.

7 Several people have suggested that the new
8 proposal will bring Missouri law into compliance with the
9 federal Clean Water Act. We don't think it will. It --
10 this assigns some stricter standards to some of Missouri's
11 waters of the United States. It doesn't cover all of
12 them. You're going to hear more about that from
13 Mr. Crandall and Mr. Goode about what doesn't get covered.

14 But it also really undoes the rebuttable
15 reassumption of what's supposed to be covered. The way
16 the Clean Water Act is written and interpreted by the EPA
17 is waters covered, waters of the United States, which
18 again is not all of the waters. It doesn't cover every
19 drop of water in Missouri, waters of the United States
20 covered until proven otherwise.

21 The way this rule is set up now, unless a
22 water is listed on page 12, included in that short list,
23 page 12 of your books, it's not covered. It gets no
24 protections, zero, until it turns purple or green.

25 The -- that's exact opposite of the way the

1 Clean Water Act was written. We had what we thought was a
2 good rule. It covered waters of the state. We presented
3 it to this body in March 2009, and it was withdrawn two
4 months later and replaced by the 100 K rule which was
5 developed at some point in the interim. We would ask that
6 the original rule that we presented back in March of 2009
7 be restored.

8 And I do want to say one short thing about
9 the cost of regulation and about heavy-handed EPA,
10 whatever. You know, the Clean Water Act was lawfully
11 passed by -- Missouri was represented in the process. It
12 was passed by the people of the United States, by the
13 Senate, by the Congress during the administration of that
14 wild-eyed environmentalist Richard M. Nixon.

15 And one of the things about the United
16 States is you don't get to pick the laws that you don't
17 like. I don't like paying federal income tax, but I pay
18 it. And I would suggest that Missouri has essentially
19 gotten a 40-year pass on complying with many of the
20 aspects of the Clean Water Act. It's gotten an 11-year
21 pass since the EPA told Missouri it needed to assign uses
22 to its unclassified waters.

23 And I would suggest that it's avoided
24 paying those costs the people of the United States
25 legitimately voted to place on the people who are

1 discharging into rivers and streams, and it's time for it
2 to step up and do what the law requires.

3 MR. CRANDALL: You know, one of the things
4 about this rule that I find really interesting is I
5 started cross referencing it with some of the other
6 projects that I've worked on. I'm doing a watershed plan
7 for a watershed in southwest St. Louis County. I helped a
8 family who was experiencing impacts from an upstream
9 animal feeding operation in Franklin County. I helped
10 other person who was impacted by five CAFOs that had built
11 all around his grass-fed cattle operation down in Barton
12 and Vernon County.

13 And one of the consistent factors that I've
14 run into time and again is that because the waters that
15 were impacted were not protected by these criteria, they
16 could do a civil suit, but there was nothing they could do
17 under clean water law to protect those waters.

18 Kiefer Creek, we had USGS data for eight
19 years. From 1996 to 2004 the USGS collected data on
20 Kiefer Creek on the unclassified segment just downstream
21 from one of the second largest springs in St. Louis
22 County. Their bacteria levels were on par with
23 River Des Pere which has combined sewage output. The
24 average level was 20,000 colony forming units per hundred
25 milliliters. The safe level according to whole body

1 contact standards is 126 colony forming units per hundred
2 milliliters. The levels that made the Lake of the Ozarks
3 a big deal were about 2,000 colony forming units per
4 hundred milliliters.

5 Now, why is Kiefer Creek a big deal? Maybe
6 it's a big deal because right after it leaves where it's
7 being monitored by the USGS, it flows down through
8 Castlewood State Park that sees over half a million
9 visitors a year, including hundreds or thousands of kids
10 swimming in that creek every day of the summer.

11 Is there a warning sign? Now there is,
12 thanks to our efforts. Is there a rating system that lets
13 you know if it's safe that day? No. Is the data made
14 widely available to the public? No. And was it protected
15 as a classified water using their criteria? No. We were
16 finally able to get it on the 303(d) list thanks to some
17 other monitoring that was done, not the USGS monitoring.

18 Now, the Menkes, they have one of our
19 illustrious Class 2 CAFOs, same with Darvon down in
20 southwest Missouri. Menkes are in Franklin County.
21 They've got a hog operation upstream from them with 2,600
22 animal units. Doesn't have a permit, although they've
23 called DNR numerous times to have them come out and look
24 at it.

25 Now, the flow -- the hog lagoon shows up on

1 the 1987 wetland inventory as a water body, and Menke Lake
2 does. However, neither of these water bodies, which are a
3 tributary to Big Burger Creek in Franklin County, has been
4 protected by any criteria. They wouldn't be protected by
5 the 100 K. They wouldn't be protected by the high
6 resolution 24 K. And yet they've experienced numerous
7 fish kills. They've got enough flow in their basin to
8 support a six-acre lake. Their kids got leptospirosis.
9 DNR's come out multiple times. Nothing done.

10 This guy, 2,600 hogs, he's violating the
11 animal unit limitation of a thousand animal units. Still
12 no permit. Soil and water conservation district has
13 repeatedly invested in wetlands between his lagoon and
14 their lake to try to intercept all those nutrients and
15 bacteria. It doesn't work. It hasn't worked. It's too
16 much. He doesn't have a permit, they're not classified,
17 and there's nothing they can do.

18 So, you know, is it important to extend
19 these protections? Yes, it is. You can look at almost
20 every 401 or 404 permit in Missouri in the St. Louis
21 district at least and see that the vast majority of them
22 include waters that don't show up on the 1 to 100 K map.

23 So, you know, make sure you guys don't
24 approve this until you actually look at a map of what this
25 is and look at southwest Missouri and northwest Missouri

1 and look at that difference in density of streams, and
2 then maybe you'll come back and you'll suggest that as DNR
3 moves forward with their watershed initiative, they can
4 expand the protections to meet the true waters of the U.S.
5 as they move from HUC 8 to HUC 8 to HUC 8 watershed and
6 evaluate them and write all the permits at the same time
7 in a very intelligent watershed response. Thank you.

8 MR. GOODE: Good morning, Commissioners.
9 My name is Peter Goode. I'm an environmental engineer
10 with the Interdisciplinary Environmental Clinic at
11 Washington University. As you already know, we represent
12 Missouri Coalition For the Environment.

13 My testimony is going to focus on three
14 types of waters that will not be protected by presumptive
15 beneficial uses required under the federal Clean Water Act
16 and state Clean Water Law.

17 The proposed amendment before you today
18 fails to protect the following waters: First, headwater
19 and temporary streams that have flow in pools but dry up
20 during the hottest, driest months of the year; second,
21 impoundments, also known as lakes and ponds, which are not
22 represented on the 100 K map; and third, wetlands.

23 All three of these types of waters are
24 vital to Missouri and require presumptive fishable/
25 swimmable protections under the Clean Water Act.

1 Headwater streams are vital parts of the
2 vast river network in Missouri. By some estimates,
3 headwaters comprise the vast majority of our waters.
4 Estimates range from two-thirds to three-quarters of all
5 waters. They provide important ecological functions by
6 providing habitat and providing energy and nutrients
7 downgrade to higher order streams. There's ample evidence
8 that aquatic life exists and thrives in headwaters beyond
9 the 100 K map.

10 The Coalition has commented to this effect
11 in a letter to the Department regarding the Regulatory
12 Impact Report for the proposed amendments. The Department
13 responded that, quote, biological stream survey data
14 collected by the Department and the Missouri Department of
15 Conservation indicate that presumed fishable/swimmable
16 uses cannot be satisfactorily rebutted for these two types
17 of waters.

18 Again, as Ms. Hubertz already noted, this
19 turns the Clean Water Act on its head. It is not the
20 Department's task to rebut the fishable/swimmable
21 presumption. It's also not clear that the Department did
22 an adequate job of looking beyond the 100 K map.

23 Just using one aquatic species as an
24 example, crayfish, there are several species of burrowing
25 crayfish in Missouri. However, most crayfish have the

1 ability to burrow. We came across one study that
2 documented two species of crayfish burrowing into the
3 stream bed when both flow and pools had ceased, and this
4 was in a tributary of the Table Rock Lake watershed.
5 There was no loss in crayfish density during the dry
6 period. This is just one example of how a seemingly dry
7 stream can harbor aquatic life. There are also ample
8 scientific studies document invertebrates using stream
9 beds during dry periods.

10 As also noted, the 100 K map omits many
11 waters, including impoundments. Impoundments are
12 typically formed by the damming of flowing, intermittent
13 and ephemeral waters and range in size from anywhere from
14 less than a acre to thousands of acres. As such, the
15 potentially negative effects on both humans and aquatic
16 life that can result from not providing fishable/swimmable
17 protections to lakes are of great concern.

18 In addition to recreational uses,
19 impoundments also provide habitat for aquatic life. Fish
20 are often found in impoundments regardless of their size.
21 Amphibians, including salamanders, frogs and toads, also
22 inhabit ponds and impoundments for at least a portion of
23 their life cycle. Missouri is home to 43 amphibian
24 species, including 26 species and subspecies of frogs and
25 toads. All Missouri frogs and toads must return to the

1 water to reproduce. This is a fact.

2 The location, size and permanence of
3 impoundments are influencing factors where amphibian
4 habitat is concerned but in no way create a barrier to
5 their use.

6 Finally, wetlands are also neglected in the
7 proposed amendments. Wetlands are identified in the rule
8 as a defined class, Class W, and a very general procedure
9 for developing criteria is referenced. However, wetlands
10 are completely absent from Section 2 of the rule which
11 applies designated uses. Nor are there any specific
12 criteria applied to wetlands in the rule.

13 U.S. EPA has issued guidance on the
14 protection of wetlands through water quality standards.
15 This guidance is included as an appendix to U.S. EPA's
16 water quality standards handbook. The guidance itself was
17 issued in 1990, so it's not a recent development, but a
18 requirement that should have been implemented by now.

19 The intent of the guidance was to ensure
20 that states, among other things, establish beneficial uses
21 for wetlands, adopt existing narrative and numeric
22 criteria for wetlands, adopt narrative biological criteria
23 for wetlands, and apply anti-degradation policies to
24 wetlands. Missouri has failed to meet these goals in the
25 past, and the proposed amendment does nothing to address

1 them now.

2 There are a multitude of studies that note
3 the existence of aquatic life in wetlands, so much so that
4 it rarely needs mentioning. Wetlands are home to fish,
5 crayfish, salamander, frogs, toads and many other wildlife
6 species.

7 Missouri already regulates dredge and fill
8 activities that affect wetlands through the 401 water
9 quality certification process. However, the 401 program
10 does not address other chemical impacts to wetlands or
11 aquatic life.

12 Wetlands must be presumed
13 fishable/swimmable under the rule, and specific criteria
14 must be applied to comply with the Clean Water Act. We
15 request that the proposed amendment be modified to include
16 wetlands under the rebuttable presumption in Section 2A.

17 The Coalition believes that these concerns
18 can be addressed for the most part by returning to the
19 waters of the state rule that we've referenced earlier
20 that was originally proposed by the Department back in
21 March of 2010. We have other concerns regarding the
22 proposed amendment, but for the sake of brevity we'll skip
23 those today and we will submit those in writing along with
24 documentation to support our comments today.

25 Thank you for the opportunity to testify.

1 COMMISSIONER HUNTER: Thank you all. I
2 would like to ask that Ms. Hubertz and Mr. Goode, please
3 fill out cards before you leave and submit them.

4 MS. HUBERTZ: I'm sorry. I told Lauren to
5 put us on his card, but we'll fill out separate ones.

6 COMMISSIONER HUNTER: Thank you very much.
7 Next is Leslie Holloway.

8 MS. HOLLOWAY: Good morning. Leslie Holloway
9 good morning. Leslie Holloway representing Missouri Farm
10 Bureau. I'd like to specifically address stream
11 reclassification.

12 I want to preface my comments by
13 recognizing the efforts made by department staff to
14 address the concerns of interested parties in a fair and
15 open manner through the workgroup process.

16 Although the Missouri Coalition for the
17 Environment contends that little if any attention was paid
18 to stream reclassification before they initiated legal
19 action, the record proves otherwise. As a participant in
20 the Department's stakeholder process, I find it especially
21 aggravating, then, that in its formal legal complaint the
22 Coalition states, quote, the workgroup came to an
23 agreement at the conclusion of its October 2009 meeting on
24 a draft rule that would have extended the
25 fishable/swimmable standard to all the state's waters.

1 Instead of continuing as planned to develop implementation
2 policies for this rule, the workgroup was effectively
3 disbanded by DNR at that point.

4 As a member of the workgroup, I want to
5 clarify that the workgroup that did not, quote, come to an
6 agreement. Furthermore, the workgroup was, quote,
7 effectively disbanded because of the Coalition's legal
8 action. This background is important to understanding the
9 position I'm voicing today on behalf of Missouri Farm
10 Bureau in opposition to the stream reclassification
11 proposal under consideration.

12 In March 2001, the Missouri Clean Water
13 Commission's meeting agenda included the item, quote,
14 Water Quality Standards revision. In the Commission's
15 briefing materials, the Department noted, due to delays in
16 EPA processing the review of three previous standards
17 revisions, this process was not started until EPA's
18 review was complete.

19 The briefing materials included a copy of
20 EPA's letter from September 2000 responding to standards
21 revisions submitted by the Department review in 1994 and
22 1996, revisions submitted four and six years earlier. In
23 its letter, EPA conveyed decisions on numerous, quote,
24 items, a term that covers a wide range of matters of
25 varying complexity. EPA identified nine items it was,

1 quote, neither approving nor disapproving, nine items that
2 were approved, four items disapproved, two for which,
3 quote, a finding of inconsistency by EPA administrator was
4 requested, 12 for which EPA called on DNR to address
5 during the 2000 triennial review, and one on which EPA
6 sought consultation with the U.S. Fish and Wildlife
7 Service.

8 The Department pointed out in its response
9 that, quote, there is a very large number of changes that
10 may be contemplated and indicated, quote, we plan to
11 conduct several separate consecutive rulemakings. The
12 Department also laid out a three-phase schedule for
13 addressing each item. Protection of unclassified waters
14 was listed among those assigned to Phase 3.

15 Also in March of 2001, the Department
16 notified stakeholders, including Farm Bureau, that
17 stakeholder meetings were scheduled on more than a dozen
18 topics addressing items requiring further action in
19 accordance with EPA's directive.

20 Dissatisfied with this approach, the
21 Coalition filed suit against EPA in 2003. The settlement
22 reached in December 2004 set an impressive timetable for
23 the time for the Department to act on several of the water
24 quality standards in question. However, although stream
25 classification was among the water quality standards the

1 Coalition sued over, it was not addressed in the
2 settlement.

3 While court action was underway, the
4 Department continued working on stream classification. At
5 the Commission's request, the Department developed the
6 classification guidelines that were placed on public
7 notice in early 2004 and adopted in March 2005.

8 My point is that clearly the record shows
9 that the Department had taken significant steps toward
10 addressing the deficiencies raised by EPA relative to
11 stream classification before the Coalition filed lawsuits
12 in 2003 and 2010. So now we're here talking about a
13 proposal being forced through the rulemaking process that
14 goes beyond what is necessary with potential costs ranging
15 from astronomical to unknown.

16 At the time that the workgroup sessions
17 were discontinued, options were delineating classified
18 rivers and streams, including the 1 to 100 K and 1 to 24 K
19 scale national hydrography dataset were under
20 consideration. The NHD dataset was developed by EPA and
21 U.S. Geological Survey for the purpose of providing a
22 comprehensive hydrologic database for the nation.

23 The 1 to 100 K scale dataset is the best
24 resolution that is readily available to most users. The
25 1 to 100 K comes closer than 1 to 24 K to targeting the

1 right streams, but the Department acknowledges that both
2 include waters that are beyond the stream reaches capable
3 of supporting certain default uses for classified waters.

4 In court documents filed in 2003, the
5 Coalition contended that the Department had not properly
6 classified waters and specified that the goals of the
7 Clean Water Act, including the fishable/swimmable goal,
8 apply to navigable waters. The 1 to 100 K proposals goes
9 way beyond navigable waters. There are other options that
10 were not considered after the workgroup process was
11 preempted.

12 The Regulatory Impact Report and fiscal
13 note underscore the magnitude of the proposal. I'm not
14 going to go through those numbers. You've already heard
15 them today. These cost estimates are alarming, but the
16 lack of actual estimates of costs to other affected
17 parties is even more so. No where in this proposal is
18 there an estimate of costs to farmers, ranches and other
19 rural landowners.

20 In response to Farm Bureau's comments on
21 the RIR, the Department states that it does not regulate
22 non-point sources of pollution and will continue to
23 encourage the voluntary implementation of best management
24 practices as well as offer cost share funding through
25 non-point source grants.

1 Nevertheless, whether non-point source
2 management remains voluntary or not, the cost of
3 implementing DMPs in all of the watersheds associated with
4 classified streams and lakes that would be considered
5 impaired under the proposed rule is, as the Department
6 states, difficult to estimate.

7 What we know is that under the proposed
8 rule, thousands of miles of very small streams, most of
9 which are nonnavigable and on private property, will be
10 subject to far more restrictive water quality standards
11 than they are now, not because of widespread problems, but
12 because of legal action.

13 We also know that regardless of the
14 Department's intent, the actual implementation of these
15 regulations may be driven largely by others. How this
16 translates into permit conditions, watershed management
17 plans and land use restrictions remains to be seen.

18 As Ron Hardecke noted, the first entry in
19 Table H, stream classifications and use designations,
20 reads, quote, with 84,845 miles statewide representing all
21 of the newly classified streams. Individual streams are
22 not identified.

23 If this proposed rule is adopted, we
24 strongly urge the Department to ensure that waters within
25 the new 84,845 mile entry that should not be classified

1 remain unclassified, and those incapable of supporting the
2 uses for which classified waters are otherwise designated
3 be identified accordingly before the regulations are
4 implemented.

5 In summary, putting into place new
6 regulations that put significant restrictions on such a
7 vast area of the state implies that there are rampant and
8 severe water quality problems statewide. This is not the
9 case.

10 These regulations are not necessary, and
11 they will result in public and private resources not only
12 being shifted from real water quality issues. That
13 approach will be extremely costly and ineffective. Thank
14 you.

15 COMMISSIONER HUNTER: Thank you, Leslie.
16 Jeff Theerman.

17 MR. THEERMAN: Thank you, member of the
18 Commission. My name is Jeff Theerman, Metropolitan
19 St. Louis Sewer District. With me is John Lodderhose,
20 assistant director of engineering. I suspect that I'll be
21 able to handle everything, but John's here as my lifeline
22 in case not.

23 COMMISSIONER HUNTER: The only thing we
24 will ask John to do is fill a card out.

25 MR. LODDERHOSE: My name's on his.

1 COMMISSIONER HUNTER: We need a separate
2 card.

3 MR. THEERMAN: We're glad to do that. My
4 comments are about a different topic regarding the rule,
5 and they'll be brief.

6 MSD is pleased with the Department's
7 decision to retain the secondary contact recreation use
8 and associated E-coli water quality standards on the
9 Mississippi River for the area between North Riverfront
10 with Meramec River confluence.

11 MSD provided extensive information during
12 the RIR process to address MDNR's data needs and to
13 provide for more informed decision processes. The
14 information that we provided included the following:
15 Additional interviews with federal and local officials
16 regarding the Mississippi River, further characterization
17 of the St. Louis area. Assessments, we assessed waterway
18 and operational modifications to remove existing physical
19 barriers to whole body contact recreation, evaluated
20 upstream and downstream characteristics, assessed the cost
21 and potential water quality benefits of various MSD system
22 controls, and addressed past agency comments on various
23 UAA submittals, and they were significant over the past
24 six years.

25 MSD appreciates the Department's efforts to

1 make the right decision for this issue and strongly
2 supports this decision, this decision and the proposed
3 rule. That concludes my comments. I'll be glad to take
4 questions if you have any.

5 COMMISSIONER HUNTER: Thank you very much.
6 Do we have any more any persons in the room that would
7 like to comment? Do we have a card?

8 MR. CARTER: I have a card. I don't know
9 if I checked. Please check that for me. Good morning.
10 My name is John Carter. I'm a private citizen. I retired
11 at the end of this last year. In my old job I've attended
12 most of the Clean Water Commission meetings since 1981.
13 It is something to be amazed by.

14 I'm here mainly to talk about the 1 to
15 100 K. The classification would bring it up onto the
16 property we own south of Rolla. I'm very familiar with
17 the stream for about a mile downstream from our property
18 line. We've ran cattle on it. I've hunted on it for
19 close to 30 years. And there are no permanent flow, no
20 permanent pools on that part of the stream, and I think
21 there are a lot of streams that are even more likely --
22 less likely to have permanent pools and permanent flows.

23 Whether there is a presumption that the
24 Department, the Clean Water Act mandates, I've read the
25 Clean Water Act, but I'm just an engineer, so I'm not

1 sure. I think the uses should be, the Department or EPA
2 should have to prove that there are uses and that there is
3 actually something to be protected.

4 I'd also like to comment on the cost of
5 some of these regulations. In 1981 when I first started
6 coming to these Clean Water Commissions, there were some
7 problems. The waters in streams are cleaner now than they
8 were back in 1981. The Clean Water Act did a lot of good
9 things. The Department, EPA has done a lot of good things
10 by putting in treatment facilities in communities and
11 mandating that there are treatment standards.

12 We're getting to the point now where we're
13 going for just because some scientist develops a new
14 instrument to get parts per billion and parts per
15 trillion, we go to that limits, and then some other
16 scientist will come up with a study that shows, well, that
17 particular compound, that very low level may impact
18 something.

19 I think we need to step back and look at
20 what's actually happened out there, be real proud of what
21 has been accomplished. And again, I thank you for this
22 opportunity to comment.

23 COMMISSIONER HUNTER: Thank you,
24 Mr. Carter. Anyone else?

25 The Commission will receive written

1 testimony on the proposed rule 10 CSR 20-7.031 Water
2 Quality Standards until 5 p.m. on January 18th, 2012. You
3 may submit this written testimony to Mr. John Hoke,
4 Missouri Department of Natural Resources, Water Protection
5 Program, P.O. Box 176, Jefferson City, Missouri 65102,
6 prior to that deadline.

7 On behalf of the Commission, I thank
8 everyone who has participated in this process. This
9 hearing is now closed.

10 (WHEREUPON, the hearing concluded at
11 10:35 p.m.)

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1 C E R T I F I C A T E

2 STATE OF MISSOURI)

3) ss.

4 COUNTY OF COLE)

5 I, Kellene K. Feddersen, Certified
6 Shorthand Reporter with the firm of Midwest Litigation
7 Services, do hereby certify that I was personally present
8 at the proceedings had in the above-entitled cause at the
9 time and place set forth in the caption sheet thereof;
10 that I then and there took down in Stenotype the
11 proceedings had; and that the foregoing is a full, true
12 and correct transcript of such Stenotype notes so made at
13 such time and place.

14 Given at my office in the City of
15 Jefferson, County of Cole, State of Missouri.

16

17

18

Kellene K. Feddersen, RPR, CSR, CCR

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