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Associated Industries of Missouri

Position Statement on Air Fee Increases

July 7, 2020

Associated Industries of Missouri (AIM) appreciates the opportunity to participate in the MDNR's Air Fee Stakeholder meetings. AIM is supportive of Missouri retaining its permitting authority. However, there are several issues that AIM would like to be addressed by the Department. Unless and until these issues are resolved or answered to AIM's satisfaction, we are not yet in a position to support any fee increase. AIM would like to enter into a dialogue with the Department on the following issues:

1. Guidance Documents: The MDNR needs to clarify to what extent it will follow guidance documents. AIM suggests that all guidance documents that have a significant fiscal impact on the regulated community undergo rulemaking. AIM further requests the MDNR cease activities across all programs that are based on guidance documents only and focus their limited resources on activities required by specific state or federal statute or properly promulgated state or federal regulations.
2. MDNR In-house Attorneys: Over the last several years, the department has experienced a significant increase in the number of in-house attorneys. At the same time, there has not been a corresponding decrease in the number of Assistant Attorneys General that are paid for by MDNR funds. MDNR should justify the increase of in-house attorneys if there has been no corresponding decrease in the number of attorneys paid for by the program in the Office of the Attorney General.
3. Attorney General's Office: During the hazardous waste fee process it was discovered that some programs were paying for assistant attorneys general that did not work for the corresponding MDNR program or fee program. For the last two fiscal years, AIM would like to see an accounting of the names and MDNR program assignments of all assistant attorneys general assigned to MDNR and how many hours each such attorney worked for each corresponding MDNR program during the fiscal year.
4. Low Pay for Permitting Staff: At a recent Missouri Air Conservation Commission meeting, permit chief Kendall Hale reported that he currently has four open permit engineer positions out of a total of nine positions. Permitting staff has experienced chronic turnover due to low pay for permitting staff. The department must work with the Office of Administration to get these positions reclassified at a higher pay grade. Without higher pay, the APCP will not be able to retain permitting staff and timely permit issuance will

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- continue to suffer. Higher pay would be an incentive to attract and retain quality staff and give the Department the ability to increase efficiency by eliminating less-productive staff.
5. Start-up Shut-down Malfunction (SSM) Regulation: Several years ago, EPA issued a SIP call requiring states to change their SSM regulations to provide fewer affirmative defenses to enforcement actions. As a result, Missouri eliminated some affirmative defenses from the state's SSM rule. Earlier this year, EPA issued a final rule allowing Texas to avoid the SIP call and retain affirmative defenses. In the rulemaking EPA said that it is "reasonable to determine that a SIP can provide for an affirmative defense against civil penalties for circumstances where it is not feasible to meet the applicable emission limits, and the narrowly tailored criteria that the source must prove can ensure that the source has made every effort to comply with those admission limitations." On June 22, 2020, EPA published in the Federal Register a rule to allow Region VII state Iowa to retain SSM defenses for its SO2 NAAQS. AIM requests the ACP and the Commission reinstate its former SSM rule and petition EPA to adopt the revised rule into Missouri's SIP. During the last several years, Texas challenged EPA's SIP call and EPA has subsequently withdrawn the SSM SIP call. After the initial SIP call, the MACC revised the SSM rule removing protections. Now that the SIP call has been withdrawn, AIM asks the ACP to work with the MACC to initiate a rulemaking reinstating former SSM protections.
 6. Permitting of "Parent Company": The department continues to require permit applicants and EIQs to identify the Parent Company. There appears to be no law or regulation that requires a corporate permit applicant to disclose whether it has a parent company or the identity of its parent company. The department needs to address why it requires this information on forms and issuing permits jointly to a company and its Parent Company which should not be a co-permittee. The department should make clear in regulation and in permit application and EIQ instructions if and when a Parent Company is required to be disclosed and if the Parent Company is considered a permittee and is legally liable for permit compliance of a subsidiary.

Thank you for allowing us the opportunity to offer comments and please let me know if you have any questions.

Sincerely,



Ray McCarty
President/CEO