

GENERAL SESSION
HAZARDOUS WASTE MANAGEMENT COMMISSION
February 16, 2012; 10:00 A.M.
1730 E. Elm Street
Bennett Springs/Roaring River Conference Rooms
Jefferson City, MO 65102

(Note: The minutes taken at Hazardous Waste Management Commission proceedings are just that, minutes, and are not verbatim records of the meeting. Consequently, the minutes are not intended to be and are not a word-for-word transcription.)

The meeting was streamed live from the Department's website at: dnr.mo.gov/videos/live.htm.

COMMISSIONERS PRESENT IN PERSON

Chairman James Frakes
Commissioner Elizabeth Aull
Commissioner Deron Sugg
Commissioner Charles Adams

COMMISSIONERS PRESENT BY PHONE

Vice-Chair Andrew Bracker
Commissioner Michael Foresman

The phone line for the Commissioners calling in to today's meeting was opened at 9:45 a.m.

Chairman Frakes called the General Session to order at approximately 10:07 a.m.

1. PLEDGE OF ALLEGIANCE

Commissioner Aull led the Pledge of Allegiance, and it was recited by the Hazardous Waste Management Commission (Commission) and guests.

A roll call was taken of the Commissioners. Chairman Frakes, Commissioner Aull, Commissioner Adams and Commissioner Sugg were present in person. Vice-Chairman Bracker and Commissioner Foresman participated by telephone.

2. APPROVAL OF MINUTES

- Executive Session minutes from the December 15, 2011, meeting:
- General Session minutes from the December 15, 2011, meeting:

Commissioner Aull made a motion to approve the December 15, 2011, Executive Session minutes. The motion was seconded by Commissioner Sugg.

A vote was taken; all were in favor, none opposed. Motion carried. Minutes were approved.

Commissioner Aull made a motion to approve the December 15, 2011, General Session minutes. The motion was seconded by Commissioner Adams.

A vote was taken; all were in favor, none opposed. Motion carried. Minutes were approved.

3. RULEMAKING UPDATE

Mr. Tim Eiken, Director's Office, Hazardous Waste Program, addressed the Commission and provided a brief update on the Department's current rulemaking efforts. He advised the Commission that the Department was currently developing a rule package that included the Packaging, Marking and Labeling (PM&L) rule, which had been developed through the Hazardous Waste Forum stakeholder process. He noted that a formal request to begin the rulemaking process was working through management at this time, and if it was approved, a Regulatory Impact Report (RIR) would be the next step in the process. Following the usual process, it would have to be published and would be open to a public comment period, and then would be brought before the Commission for a final decision. He noted that, following the usual schedule, the RIR should be in the end of March timeframe, followed by the report being out for public comment.

Mr. Eiken went on to advise that also included in the rule package was language on Satellite Accumulation. He noted that this rule covered different issues than the rule on storage areas. He stated that the language provided for more flexibility, and that this rule language had also been developed with stakeholder input through the Forum process. The Commission was advised that it should follow the same schedule as the PM&L rule.

Mr. Eiken then advised the Commission that the final piece of the current rulemaking package was the Incorporation by Reference of recent Federal rules. Following the same schedule as the other developing rules, he noted that it should be ready to present to the Commission by the October 2012 meeting.

Mr. Eiken provided the Commission with a brief update on a Federal rule that had been under review recently, the zinc fertilizer exclusion. He noted that this provided an exclusion, under certain circumstances, for certain wastes, from the definition of hazardous waste. He noted that exclusion was for certain zinc bearing waste, if it was being used in the manufacturing of zinc fertilizer. Mr. Eiken advised the Commission that the Department had adopted the Federal rule in 2008 and were now looking at adding state specific requirements to make it more protective and to ensure the waste qualified for the exclusion.

Mr. Eiken went on to note another rule related item that he felt the Commission may be interested in, an authorization package to the Environmental Protection Agency. He advised that the Department had submitted a package in October 2010, regarding authorization of rules published in the Code of State Regulations through 2006. He noted that a decision was expected to be published by the 2nd quarter of this year, probably by the end of March, in the Federal Register. He advised that this would make our authorization fully effective for our most recent rule packages. He also advised that there would be a federal comment period

when they are published. Mr. Eiken informed the Commission that he would provide them with any updated information when it was received.

An opportunity was given for the Commissioners to pose any questions they had on the information Mr. Eiken had provided.

Vice-Chairman Bracker noted that he had concerns about the information that had been relayed to them that JCAR was no longer allowing guidance to be incorporated by reference, and that this was a significant change. He asked if his understanding that guidance would no longer be valid, unless it was included in the rule, was an accurate reflection of what that meant. He noted that he believed that this would make the process much lengthier, would require much more detail and would open the process up to an endless stream of changes, making it subject to ongoing amendments and revisions.

- Mr. Eiken responded that Mr. Bracker's understanding was correct, and that it could create the issues he had noted, and that it could create a lengthier process and add considerable effort for the Department.

Vice-Chairman Bracker stated that it would also create additional work for the Commission and that the Commission may need to make a statement to JCAR, or someone, to show how adverse an affect this will have.

4. MISSOURI PETROLEUM MARKETERS & CONVENIENCE STORE ASSOCIATION

Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), addressed the Commission and provided a presentation on the MPCA's position on Missouri's Tanks Risk Based Corrective Action rulemaking efforts. Mr. Leone provided the Commissioners and Commission staff with a handout containing speaking points, copies of three No Further Action letters that had been issued by the Department on tanks sites and a copy of several pages from the Code of State Regulations regarding the Technical Regulations on Underground Storage Tanks.

Mr. Leone began with background information on Risk Based Corrective Action, noting dates the first tank cleanup rules were developed, dates of guidance documents that had been developed and dates that amendments had been made to existing guidance.

Mr. Leone went on to note that 11,000 tank sites have been cleaned up since 1989 and discussed wording included in the three No Further Action letters, which he advised gave the Department the authority to revisit any site if new or additional contamination is discovered at a site.

Mr. Leone made the point that RBCA standards were designed to quicken cleanups and lower overall costs, and that Missouri has had risk based cleanup rules in effect since 1986. He noted that stakeholder input and negotiations with the Department had led to a compromise that was referred to as the 2004 Tanks RBCA Guidance Document, which he advised was agreed upon by all parties as the language for a rule the Department was supposed to codify.

He went on to state that the Department had failed to follow through with this agreement and that this has resulted in some tank cleanups taking longer and costing more, which was not the intent of RBCA. Mr. Leone referenced legislative action that his group had initiated in 2008, as a result, and the decision by JCAR to disapprove the Commission's RBCA rules in 2009. He also stated that on 12/30/11, the 2004 Tanks RBCA Guidance Document, containing several stakeholder agreed-to amendments, were finalized as rules. He noted that these rules will sunset on 12/31/12.

Mr. Leone noted that his position today was that Missouri currently has RBCA rules in place that he believes are protective of Missouri's natural resources and the health of Missouri citizens; are a compromise between the regulated community and the Department; have been working well, and will sunset on 12/31/12. He stressed again that there have been 11,000 cleanups since 1989, which have returned those sites to productive use, and that the Department still has the authority to revisit these sites should any information arise regarding new or additional contamination be received. He suggested that the Commission take a conservative "if it ain't broke, don't fix it" strategy and asked that they direct the Department to start the rulemaking process to delete the 12/31/12 sunset date. In addition, he asked that they instruct the Department to start with the current RBCA rules, which have been working to date, in any efforts towards developing new RBCA rules; keep the Commission apprised of any unresolved issues that come up in the stakeholder process during the development of these rules and ensure that any problems raised were legitimate.

Mr. Leone advised that his presentation had ended and inquired if the Commission had any questions.

Chairman Frakes thanked Mr. Leone for his presentation and asked if any of the Commissioners had any questions they wished to pose to Mr. Leone.

Commissioner Aull noted that Mr. Leone had spoken about two groups when referring to the parties providing input into the Tanks RBCA rule development: Stakeholders and the Hazardous Waste Program staff. She inquired as to whether citizens were considered in his groups, those people who may be living around or near these potentially contaminated sites.

- Mr. Leone responded that he believed input from this group was important, and noted that the Department made every effort to ensure that the public was given an opportunity to comment and provide input at every stage of the development. He noted that the Department had done a good job at making sure everyone was notified throughout the process.

Vice-Chairman Bracker advised that he had a question for Mr. Eiken. Chairman Frakes clarified that the question was in regards to the current agenda item, which Vice-Chairman Bracker confirmed that it was. Vice-Chairman Bracker then advised that he was trying to confirm Mr. Leone's point of view that the current Tanks RBCA rules will sunset on 12/31/12.

- Mr. David Lamb, Director, Hazardous Waste Program, responded to the question by noting that during the rulemaking, the Department did incorporate by reference the guidance, and that it would sunset on the date noted.

Chairman Frakes noted that if there were no other questions, the Commission would move on to Agenda Item #5.

No other questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission.

5. TANKS RISK BASED CORRECTIVE ACTION RULE DEVELOPMENT UPDATE

Mr. Tim Chibnall, Director's Office, Hazardous Waste Program, addressed the Commission and advised that he wished to clarify one point that had been made in Mr. Leone's prior presentation; he noted that the 2004 guidance document was incorporated by reference and that the language notes that the RBCA guidance document "may" be used, not that it "must" or "shall" be used. He advised that the enforceability of this would be a legal point of discussion.

Mr. Chibnall went on to provide an update on the Department's current Tanks RBCA rulemaking process, noting that the Department had asked the Commission for an extension, at the December 2011 meeting, until 2013. He advised that following the Commission's granting of that extension, the Department is on track to bring a final proposed rule before them at the February 2013 meeting. He noted that the Department was currently working on finalizing a revision of the guidance document and planning upcoming stakeholder meetings. He advised the Commission that the proposed rules developed in 2011 incorporate the guidance into rule by reference, and that this will give the guidance the force of a rule, making it enforceable. Therefore, it needs to be complete, clear, and free of errors. He advised the Commission that the primary focus of the first several stakeholder meetings will be on the guidance document. He noted that stakeholder meetings are scheduled to begin in April and occur every other month after that; but, that to keep in line with the schedule, back to back meetings would probably have to be scheduled towards the end of the year, during the October to November timeframe.

Mr. Chibnall went on to advise that a key element in this rule development will involve vapor intrusion; and, as the Commission had been advised during the request for the extension, the U.S. Environmental Protection Agency (EPA) would be coming out with a guidance document on petroleum vapor intrusion. He noted that the EPA was taking a separate, likely significantly different approach and that was one of the reasons the Department requested the extension, awaiting this draft EPA guidance document. He advised that the plan for the April meeting was to start going through the guidance document in "chunks," as there were fourteen sections in addition to the appendices. He stated that he believed they would need to review approximately four sections per meeting. He went on to advise that the Department would explain any proposed changes to and solicit comments from stakeholders, with a deadline,

between each of the stakeholder meetings. The group should be able to get through the guidance and into the proposed rules by October or November 2012.

Chairman Frakes thanked Mr. Chibnall for his presentation and asked if any of the Commissioners had any questions they wished to pose to Mr. Chibnall.

Commissioner Sugg inquired as to why Mr. Chibnall had pointed out the distinction between the “may” and “must/shall” that Mr. Leone had presented.

- Mr. Chibnall responded that there was nothing in the current rules that say “you have to use this RBCA process.”

Commissioner Sugg inquired as to whether the use of the word “may” provided an issue for enforcement.

- Mr. Chibnall noted that it could.

No other questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission.

6. LONG TERM STEWARDSHIP INFORMATION SYSTEM AND MAPPER

Dr. Chris Cady, Ph. D, Environmental Specialist IV, Brownfield/Voluntary Cleanup Section, addressed the Commission and provided a PowerPoint presentation on the Long Term Stewardship Information System and Mapper process that was being developed by the Department.

Dr. Cady began with providing an overview of what long term stewardship entails and noted that the Brownfields/Voluntary Cleanup Program had created a new GIS-based online mapping and information system that represents a quantum leap in providing information about remediated sites with land use controls, as well as active sites. He advised them that the new data system improves the visibility of long-term stewardship information to critical users such as local land use and building permitting authorities, developers and environmental professionals, which will enhance the safety of sites that were closed with contamination left in place and reduce accidental exposures.

Dr. Cady provided real world data on how populated areas have and are encroaching on historically isolated contaminated sites and how the system enhances the level of information available to the general public. This information includes links to key site documents in PDF form, reducing demands on staff to provide copies.

The Commission was advised that the map is automatically updated daily so that information is made available essentially in real time. The system is expected to replace various static maps and data layers which rapidly become dated and require manual updating.

Dr. Cady provided the Commission with an overview of the pilot project for the system, which was conducted with the city of Springfield. He provided slides and information on how the system integrated with their existing systems, and the benefits. Dr. Cady advised that the city of Springfield recognized the benefits of the system and were appreciative of their inclusion in the pilot project. Dr. Cady went on to note that the system is expandable, and sites from other cleanup programs will be added as their data becomes ready. These advantages apply equally to active cleanup sites as well, and the HWP envisions the map will eventually serve as a one-stop shop for information on active and closed sites in various programs.

Chairman Frakes thanked Dr. Cady for his presentation, noting that it was fascinating and that he appreciated the work that had gone in to it. He inquired as to whether there had been any discussion between the Department and other state agencies, utility companies, etc., so that it could become an all-inclusive, comprehensive site. He also inquired as to whether any of the other Commissioners had any questions they would like to address to Dr. Cady.

- Dr. Cady responded that it had not been done yet but that there was a data layer out there that other agencies could use.

Commissioner Aull asked if it just included BVCP sites, or if it was possible to list all the underground storage tank sites in the system?

- Dr. Cady advised the Commission that they were just starting to discuss this with providers of other databases, but that there was a lot of “scrubbing” of databases that will need to be done before they can be incorporated into the system to ensure accuracy of the information.

Commissioner Aull inquired as to the number of man-hours that went in to the project, to which Dr. Cady responded “a bunch.”

Vice-Chairman Bracker commended Dr. Cady on the presentation and noted that this type of system was vital to the Brownfield program. He inquired as to what the cost was to build and maintain this type of program or if there was a way to collect a fee for its use?

- Dr. Cady responded that the BVCP was fortunate that there was statutory authority which would allow them to recover fees. He noted that there were several areas involved so there were several funding sources available and they were being looked at, at this time. He also noted that resources were being evaluated, but that there were limitations.

Commissioner Aull inquired as to what the cost was to develop the system.

- Dr. Cady advised that the cost was unknown at this time, as IT had built the mapper.

- Ms. Hannah Humphrey, Long Term Stewardship Unit Chief, Brownfield Voluntary Cleanup Section, introduced herself and responded that the Department was currently doing cost estimating and that the preliminary findings provided an estimate that long term stewardship at a typical site costs approximately \$78,000.00, over 30 years. She noted that the program was currently authorized to collect a fee ranging from \$5,000 to \$15,000.

Mr. David Lamb, Director, Hazardous Waste Program, formally introduced Ms. Humphrey to the Commission, noting that she was the lead on the newly formed Long Term Stewardship unit. Mr. Lamb noted that additional information would be provided to the Commission in the future.

No other questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission.

Chairman Frakes called for a short break at 11:25 a.m.

The meeting reconvened at 11:37 a.m.

7. REGISTRY OF CONFIRMED ABANDONED OR UNCONTROLLED HAZARDOUS WASTE DISPOSAL SITES (REGISTRY) IN MISSOURI

Mr. Dennis Stinson, Chief, Superfund Section, addressed the Commission and provided a brief update on the recent Registry. He noted that the Registry was a list of Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites in Missouri, which is maintained by the Missouri Department of Natural Resources pursuant to the Missouri Hazardous Waste Management Law, Section 260.440, RSMo.

Mr. Stinson explained that sites listed on the Registry appear on a publicly available list, and a notice filed with the Recorder of Deeds documents hazardous waste contamination at the site. The use of a property listed on the Registry may not change substantially without the written approval of the Department. He went on to explain that when the presence of hazardous waste disposal is confirmed at a site, the Department notifies the owner(s) of the site that it intends to place the property on the Registry. The notification is sent by certified mail to the owner 30 days before the site is to be added to the Registry. The owner of the site can appeal the proposed placement on the Registry. If an appeal cannot be resolved, the Administrative Hearing Commission may convene a public hearing or assign a hearing officer to resolve the matter. He explained that a site can avoid Registry listing if the property owners elect to remove the contamination. This is achieved by the owner signing a consent agreement and implementing a cleanup with Department oversight. After cleanup of the property is completed, the Department will withdraw the proposal to place the property on the Registry.

The process described by Mr. Stinson noted that according to state law, each site listed on the Registry is placed in one of the following categories:

- Class 1: Sites that are causing or presenting an imminent danger of causing irreversible or irreparable damage to the public health or environment. Immediate action is required.
- Class 2: Sites that are a significant threat to the environment. Action is required.
- Class 3: Sites that do not present a significant threat to the public health or the environment. Action may be deferred.
- Class 4: Sites that have been properly closed and require continued management.

He advised the Commission that the Department publishes the "Missouri Registry Annual Report: Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites" each January. Mr. Stinson explained that there were currently 66 sites listed in the registry and there had been no new ones in seven or eight years. He noted that cleanups were addressed through the EPA, RCRA and Brownfields programs and that there currently were nine registry cleanup agreements in place for sites. A cleanup agreement is done instead of a listing on the registry. He went on to explain that of the listed sites, there have been only three changes since last year, which are the outcome of the Site Assessment Committee that meets each year. He noted that those changes were that the Farmland site in St. Joseph had changed from a Class #2 to a Class #3; that Centrex had changed from a Class #3 to a Class #4 and that the Solid State Circuit site had changed from a Class #4 to a Class #2, due to unknown soil contamination. He advised that in the Registry, the National Priorities Listing is included and that Missouri currently has 32 sites listed, with four of those being federal facilities.

Mr. Stinson advised the Commissioners that copies of the Registry were available if they wished to have them. He noted that they were available in print, on CD, or on-line.

No questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission.

8. LEGAL UPDATE

Ms. Kara Valentine, Commission Counsel, Missouri Attorney General's Office, addressed the Commission with an update on current Administrative Hearing Commission (AHC) appeals that were pending. She advised that there were just a couple she would mention, that there had been a Summary Injunctive Relief with Doe Run and noted that there was still one (1) appeal with the AHC, for the Buick Recycling Facility, and that a settlement proposal had been sent on that one. She advised that an appeal was expected.

With regards to the Injunctive Relief with Doe Run, Ms. Valentine noted that on December 21, 2011, a decree had been entered. She advised that this had been discussed as far back as October of 2010, but had been in limbo since that time, for approximately the last fourteen months. She went on to explain that the agreement contained the schedules for action and that it was a multi-media, joint effort, involving water, air and land issues. She advised that the agreement was a huge document, approximately 170 pages, with twelve to fifteen attachments and was approximately four inches thick. The agreement included a cost of approximately

\$65 million dollars to Doe Run and included the primary smelter shutting down by 2013, as Doe Run was now looking at new technologies for their processing.

Ms. Valentine advised that there were over 2300 acres affected with tailings and that financial assurance measures had been imposed. She noted that civil penalties were imposed equaling approximately \$7 million dollars, with half of that going to the state and the rest going to the affected counties. She advised the Commission that the agreement was now in effect.

Commissioner Sugg inquired as to what kind of monitoring system was in place to ensure that Doe Run complied with the agreement, and that it was complied with within the established timeframes.

- Ms. Valentine responded that there were stipulated penalties included in the agreement and that there was a schedule and plan submitted to the EPA and to the Department that monitored the deadlines. The stipulated penalties went in to effect if a deadline was missed. She also noted that Doe Run had been proactive in implementing many of the conditions of the agreement.

No other questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission.

9. PUBLIC INQUIRIES OR ISSUES

Mr. David J. Lamb, Director, Hazardous Waste Program, addressed the Commission and noted that no formal requests had been received to address the Commission. Mr. Ron Leone, who had presented earlier in the agenda, asked to speak again briefly.

Mr. Leone addressed the Commission and asked to be able to speak in response to the comment that Mr. Chibnall had made earlier. He advised that he wished to speak about the use of the word "may," making it seem permissive. Mr. Leone asked that the Commission refer to the copy of the CSR he had provided earlier and noted that the language there was that "owners and operators shall" use RBCA or they could ask the Department for permission to use some other pre-approved risk based action. He noted that this was not permissive, use of the word "may" is not a loophole; everyone uses RBCA. He advised that this was the information he wished to relay to the Commission.

No other questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission.

10. OTHER BUSINESS

Mr. David J. Lamb, Director, Hazardous Waste Program, addressed the Commission and advised them that the legislature was back in session and that there were currently two bills that had potential effects to the Department that he wished to speak about at this time.

Mr. Lamb advised that the first bill he wished to discuss, House Bill 1135, provided for sunset dates for regulations. He noted that, under the current language, the Department would have to go back every five years and ask for an extension, providing for a significant impact to the Program and the Commission. He advised that the current bill had passed the House. He went on to advise that there was also a Senate version of the bill, Senate Bill 469, which provided a requirement that agencies develop a report every five years, to JCAR, attesting to and justifying the continued need for the rules. Mr. Lamb noted that this was the more palatable of the two versions, although care would need to be taken to ensure the report was filed in a timely manner as this bill would void rules that were not reported within the established timeframes.

The second bill that Mr. Lamb discussed, Senate Bill 645, which had been introduced by Senator Schaeffer, concerned the Administrative Hearing Commission. This bill would remove the timeframes associated with appeals and would enforce statutory deadlines on permit applications. Mr. Lamb noted that this would be of benefit to the AHC and to the Commission as the current timeframes for decisions were a little tight, and this would be an improvement.

Mr. Lamb went on to advise the Commission that the governors recommended budget had come out in January, and was similar to FY12, with no significant impact. He noted that it did include a 2 percent pay increase for staff, which is something it has not included in several years. This would go into effect in January 2013 if it were to pass. He advised that the budget had been introduced in the House, was currently House Bill 2006, but that it had not had a hearing yet as it was still in the early stages.

Mr. Lamb also advised the Commission that the National Tanks Conference was being held in St. Louis in March. He noted that it was a joint effort between the Department and several other entities and that it was a good opportunity for staff and contractors to work together on underground storage tank issues.

Chairman Frakes inquired as to whether HB1135 had passed.

- Mr. Lamb responded that it had made it through the House but that the Senate had not taken up the House Bill; they had substituted their own version.

No other questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission.

Chairman Frakes addressed the Commission and staff and noted that he and Commissioner Aull's terms were set to expire on April 13, 2012, just a few days prior to the date of the next meeting. He noted that he had enjoyed his work with the Commission and advised that unless something happened between now and then, they hoped to be back for the April meeting.

11. FUTURE MEETINGS

Chairman Frakes noted that the next meeting was scheduled for April 19, 2012, and would be held in the Bennett Springs/Roaring River Conference Rooms at the 1730 E. Elm Street building.

Commissioner Aull made a motion to adjourn the meeting, which was seconded by Commissioner Sugg.

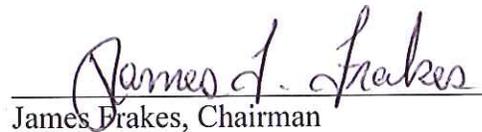
Chairman Frakes adjourned the meeting at 12:02 p.m.

Respectfully Submitted,



Debra D. Dobson, Commission Assistant

APPROVED



James Frakes, Chairman

6-21-12
Date