

GENERAL SESSION
HAZARDOUS WASTE MANAGEMENT COMMISSION
August 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 Michael Foresman
Commissioner Elizabeth Aull
Commissioner Deron Sugg
Commissioner Charles Adams

COMMISSIONERS PRESENT BY PHONE

Vice-Chairman Andrew Bracker

Chairman Foresman called the General Session to order at approximately 09:59 a.m.

Chairman Foresman took a roll call of the Commissioners. Chairman Foresman, Commissioner Aull, Commissioner Adams and Commissioner Sugg were present in person. Vice Chairman Bracker was present by phone.

1. PLEDGE OF ALLEGIANCE

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

2. APPROVAL OF MINUTES

- General Session minutes from the June 21, 2012, meeting:

Commissioner Aull made a motion to approve the June 21, 2012, General Session minutes. Commissioner Sugg seconded the motion.

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

- Executive Session minutes from the June 21, 2012, meeting:

Commissioner Aull made a motion to approve the June 21, 2012, Executive Session minutes. Commissioner Sugg seconded the motion.

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

Chairman Foresman announced that the agenda would be varied slightly, that Agenda Item #8 would be heard first, as it was being presented by Department Director Sara Parker Pauley.

8. TANKS RISK BASED CORRECTIVE ACTION RULE DEVELOPMENT UPDATE

Ms. Sara Parker Pauley, Department Director, addressed the Commission and began by thanking them for allowing for the flexibility in their agenda. She advised the Commissioners that the Department had recently been focusing all available energy and resources on addressing the drought relief issue. She noted that the issue was critical to Missouri residents and that the Department had a large role in the Governors' recent Executive Order 12-8, which provides assistance to the agricultural community in the wake of the drought crisis.

Director Pauley went on to advise the Commissioners that she wished to provide some personal comments to them regarding the status of the Tanks RBCA rule development. She noted that the Commission had been engaged with this issue for years, and she recognized that it was not an easy issue to address, as had it been, it would have been resolved long ago. She stated that she would like to share what she was hopeful and believed was the status and future of the rule development, and then would like to ask for the Commission's guidance. She advised that the Commission was aware that the Department had cancelled the June and August stakeholders meetings and noted that the bottom line was that the Department greatly valued the time and effort of the stakeholders and did not believe that these meetings would prove fruitful at this time. She noted that the Department had continued to work with PSTIF and MPCA on some of the more complex and taxing issues, and that there had been progress made. Ms. Parker Pauley went on to state that during a recent meeting with PSTIF and MPCA representatives, 15 items had been recognized as needing to be addressed in any rule revision. She also advised the Commission that she wished to thank Department staff, PSTIF and MPCA for their effort in this meeting. But, she noted, the challenge still remains as the Department has not been able to find consensus on other significant and vitally important issues.

Director Pauley went on to state that she was here to assure the Commission that the Department is committed to continuing these important discussions in the hope of achieving consensus. She advised the Commission that she appreciated the commitment that PSTIF and the MPCA had made to do the same and stated that all parties agree that this is not going to be an easy task, and certainly not achievable by the years end. She noted that in light of that and because we will not have a new rule in place by the end of the year, the Department will obviously be continuing with implementation of the current guidance. And, as a practical matter, she noted that the sunset date that pertained to that guidance, which was promulgated with the Tanks Operational Rules, would become immaterial and she recommended the Commission consider its removal.

Director Pauley closed with advising the Commission that the Department was committed to moving forward with all the stakeholders, wrestling through and hopefully achieving consensus on the remaining issues. She asked for the Commission's patience as the Department endeavored to move forward and thanked the Commissioners for their ongoing efforts on this difficult issue.

The Commission was given an opportunity to ask questions or provide comments.

- Vice Chairman Bracker stated that he was concerned about a trend of cancelling meetings with stakeholders, but noted that a broader public needed a forum to express their concerns. He provided his concurrence that those not in agreement were dictating the timetable; that if this could continue to create a delay with issues keep being brought up, he feared that interest in the issue would die. He noted his disappointment in this. He went on to state that the Commission had been presented with the Department's reasoning, although he was not completely in agreement.
 - Director Pauley responded that the Vapor Intrusion subgroup was continuing to meet and advised that she appreciated his concern on the lack of a scheduled arena for stakeholder input. She went on to state that the Department wanted to ensure that when stakeholders spend their time coming to Jefferson City to meet on this issue, that it was a productive process.

No other questions were posed by the Commission. This was provided as information only and required no other action on the part of the Commission.

3. UPDATING COMMISSION OPERATING POLICIES

Mr. Tim Eiken, Rules Coordinator, HWP, addressed the Commission, and gave a brief overview of the proposed changes to the Commission Operating Procedures, which had been discussed or suggested during the June meeting. He noted that the PSTIF and REGFORM had also submitted suggestions, which were contained in the Commissioner's packet materials. Following his presentation, Mr. Eiken inquired as to whether the Commission had any questions on the changes that had been suggested.

Vice Chairman Bracker stated that he had reviewed the Open Communication section and had a modification to the language he had suggested at the last meeting. Chairman Foresman suggested that the Commission wait to hear this suggested modification until there had been more input and asked Kara Valentine, Commission Counsel, if she had any information to offer on this subject.

Ms. Valentine addressed the Commission and advised that she, at the previous meeting, had been asked to look in to the specific laws regarding Open Communications and Commission duties. She noted that the extent of the restriction on communication varied with the role the Commission had, as that role changed. She advised that one role was in a rulemaking capacity and that in that role, the public was encouraged to have early input and involvement,

and was very open to the public. She went on to state that another role was quasi-judicial, as when dealing with permit appeals. In that role, she noted, ex parte, or one sided, communication was to be avoided. She provided the Commission with a brief description of ex parte communication and advised that it was inappropriate for a Commissioner to have a one sided conversation with a party involved in this type of Commission duty. She stated that in that role, the Sunshine Law applies as the Commission is a government body and past, current and future business is included. She explained that permit appeals were restricted, but most other business before the Commission is not as restricted. Ms. Valentine went on to explain that one on one contacts were permissible, and you can discuss some Commission business; but, no decisions can be made.

Ms. Valentine provided the Commission with copies of a portion of a FAQ sheet that covered these types of questions. She noted that the Commissioners can have discussions outside of an open meeting setting as long as the discussions and topics did not subvert the Sunshine Law requirements. Ms. Valentine went on to state that the Commissioners could have public contact, but that it was their own personal decision as to the level of availability they chose for public contact outside of a meeting setting. Ms. Valentine also advised the Commissioners that if contact is made and information regarding that contact were to be e-mailed to at least two other Commissioners, it must also be copied to the Commission Counsel and Commission Assistant. This would be a public record.

Vice Chairman Bracker advised that he would be taking into account the information Ms. Valentine had provided, and was volunteering to draft language that takes this into account, in addition to the guidelines of public input and appropriate Commission response.

Chairman Foresman inquired as to whether anyone had any suggestions.

Vice Chairman Bracker made a motion, with regards to the language he had proposed as an amendment to the Communications portion of the Operating Procedures at the previous meeting, that the language be removed from the draft at this time and new language be drafted for review at the next meeting.

The motion was seconded by Commissioner Aull.

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

Chairman Foresman addressed the Commission and noted his past experience on another Commission and how he had personally dealt with this issue and received public input. He noted the need for the Commission to be open to input from the public and open to communication from everyone.

In response to a Public Comment Form received, Chairman Foresman introduced Mr. Kevin Perry, REGFORM, who had requested to address the Commission on this agenda item. Mr. Perry noted his appreciation for the information that Ms. Valentine had provided and advised that he supported her recommendation. He stated he did have some concern as what issue or problem the language in the Operating Procedures was trying to solve by trying to restrict

contact with the general public. He went on to state that he believed that some things that could assist the Commission to make decisions may be easier transmitted on a personal level instead of during an open forum.

Chairman Foresman inquired as to whether there were any other questions or comments, to which there were none. He noted that additional language and revisions would be reviewed at the next meeting.

No other questions were posed by the Commission. No other action was required on the part of the Commission.

4. BATTERY STORAGE TRAILER PARKING ISSUE – COMMISSION INQUIRY RESPONSE

Darleen Groner, Permits Section, addressed the Commission and noted that she was there today responding to questions that were raised by the Commission at the previous meeting. She advised the Commission that she would begin by discussing the "Indiana Rule," which was legislation that was currently being proposed in the state of Indiana. She noted that Exide had provided copies of a letter from EPA Region V, regarding this proposed rule, to the Commission at a previous meeting.

Ms. Groner advised the Commission that the actual rule language was not in the packets they had received, but that she had handed it out. She noted that she had reviewed the Indiana Rule, as it had been proposed, and advised the Commission that it was intended to regulate retailers, wholesalers, final reclamation facilities and intermediate storage facilities. She advised that the wording required retailers and wholesalers to store the batteries in good condition, inside, in appropriate areas; intermediate storage facilities were required to store batteries in good condition, intact, not broken; and the proposed rule language for reclamation facilities allowed for storage for 14 days. She stated that while no condition was specifically included for reclamation facilities, it was not their intent to allow the facilities to store broken batteries. The proposed language regarding reclamation facilities required weekly inspections to ensure there was no leakage in the trailers.

Ms. Groner advised the Commissioners that she had spoken to Ruth Jean, Indiana Department of Environmental Management, and had received some additional information on the intent of this rule. She noted that Ms. Jean had stated that they were not proposing any changes to address the condition of the batteries in the wording; but, that they would be continuing the inspections and if they observed any issues they would address them through enforcement actions or permit mods. She went on to state that Indiana had originally included language regarding shipment and containers, but had decided that those issues were governed by the Department of Transportation (DOT) regulations, just like Missouri had, and that those issues were required to conform to DOT regulations. She also noted that Indiana had discussed internal inspections but had determined it to be impractical and unsafe to have inspectors climbing around in the containers on a weekly basis, although their intent was that the batteries be in good condition during staging, prior to reclamation.

Ms. Groner also discussed a Consent Agreement, dated February 2012, from EPA Region II, that had been provided by Exide at a previous meeting. She noted that the agreement allowed facilities to stage trailers for up to 10 days, but that it did contain specific wording that stated the batteries must be labeled and packaged in accordance with DOT regulations; and if batteries were broken they must be processed immediately, which is similar to the conditions of Exide's permit in Missouri. Ms. Groner went on to note that the Commission had also requested clarification from DOT and that the Department was still awaiting a response from DOT on the inquiry. She advised that a copy of the letter to DOT was included in the Commission packet information.

Chairman Foresman noted that it was his understanding that the EPA did not have a problem with the wording on the Indiana regulations, as they were drafted now, that the problem still remained with having batteries that were broken. He noted that that issue was not addressed by the regulation; just that, as long as it conforms to DOT regulations, there is no problem. He noted that if Missouri added the 14 day time period to our own regulation, we would achieve the same result as Indiana.

Ms. Groner responded that the Department could change that wording.

Chairman Foresman stated that if it was worded that it must be shipped under DOT standards then it was up to the facility and the transporter to meet those DOT standards.

Ms. Groner responded that the Department could work with the EPA to see what changes could be made, but that it wouldn't resolve the underlying issue.

Chairman Foresman noted that the Commission could not address the underlying issue, that they could not issue an exemption to a federal regulation.

Ms. Groner went on to note that the Department also had to make the determination as to how or if any attempt at developing a rule on this issue would be affected by the "no stricter than" legislation.

Commissioner Sugg inquired as to whether both Missouri facilities met the Indiana standards for staging areas?

David J. Lamb, Director, Hazardous Waste Program, addressed the Commission and noted that the current permit allows for 1 year.

Ms. Groner advised the Commission that the Department would present any response received from DOT at the next meeting.

Mr. Lamb advised the Commission that a request had been received from Mr. Jim Price, from Spencer Fane, Exide counsel, to address the Commission on this issue.

Mr. Price addressed the Commission and began by noting that he believed that under the DNR's interpretation, any battery that is slightly cracked or just missing a cap is a violation.

He noted that Indiana places the burden on the shipper, not the receiver. He stated that his question to the Commission was if it was better for the batteries to be received and controlled in the parking area, if there was a problem, or returned to the highways. He also asked if there was some pragmatic way to resolve this issue.

Chairman Foresman advised Mr. Price that any action or decision the Commission made would have to be legal.

Mr. Price responded that he was requesting that the Department start on the regulatory process. He noted that Missouri could use a lot of the Indiana language as it also meets Missouri's needs. He advised that although it was not on the agenda for discussion, he noted that with the information that the Commission had received for review, it was possible for them to make a decision. He also noted that the "no stricter than" legislation would not impact this type of rulemaking effort. He stated that the problem is how DNR interprets the regulations. Mr. Price also advised the Commission that he would not be at the next meeting; that Mr. Andrew Brought would be there in his stead.

Commissioner Adams inquired as to whether the daily inspections were voluntary or regulatory.

Mr. Price responded that the inspections were done in accordance with an agreement with the Department and provided a brief background on the agreement.

Chairman Foresman inquired as to whether Mr. Price and Exide could take a look at the Indiana rule as drafted, and see if they could live with it. He also inquired as to whether anyone was present from Doe Run. Mr. Jim Lanzafame, from Doe Run, acknowledged the Chairman's inquiry and responded in his presence. Mr. Lanzafame advised that they would work with Exide and look at the rule language.

No other questions were posed by the Commission. This was provided as information only and required no other action on the part of the Commission.

5. TANKS UPDATE

Mr. Ken Koon, Chief, Tanks Section, addressed the Commission and provided them a PowerPoint presentation on tanks compliance activities. He noted that there was currently above 99% compliance with financial responsibility for operating stations. He stated that there were over 3200 facilities, with approximately 60 being federally or state exempt. He advised that approximately 80% were covered by the Petroleum Storage Tank Insurance Fund (PSTIF), with less than 1% in non-compliance. He also advised that there were approximately 50 new requests received each year.

Mr. Koon noted that with regards to Tank fees, 100% were currently compliant, in contrast with the 99.3% last year. He stated that there were approximately 100 new leaks each year, requiring cleanups, but that the trend of releases was decreasing each year.

Mr. Koon advised that cuts in funding were also an issue and that FY2013 was looking at additional cuts. He noted that this could result in corrective action being cut by 10%. But, he noted, their mindset needed to be "How do we work ourselves out of business?"

Mr. Koon also provided a brief overview of a special project, cleanups along old Rt. 66.

Following Mr. Koon's presentation, Heather Peters, Compliance and Enforcement Section, addressed the Commission and provided them with a PowerPoint presentation and brief overview of the Energy Policy Act. She noted that it was passed in 2005 and had portions that specifically addressed underground storage tanks (UST). She noted that UST requirements in the Act had provided for five basic areas; reporting and recordkeeping, delivery prohibition, an inspection program, financial responsibility/secondary containment, and operator training.

Ms. Peters advised that the EPA governs compliance with the Policy Act requirements as a three-fold process. She noted that the first was through grant guidelines that could impose financial sanctions; the second was by revoking state program approval, which provided for state authority; and the third was by proposing federal requirements that would require the state to also develop matching requirements that were no stricter than the federal regulations.

Ms. Peters provided the Commission with an overview of the five areas covered by the Act and how the Department had addressed each issue or what issues remain out of compliance. She advised that as of this time the EPA has not approved the financial responsibility component or the operator training, but that a lot of progress had been made on the issue. She stated that in 2006 Senate Bill 1020 gave the Department of Agriculture the statutory authority to require financial responsibility, and that under the UST rulemaking the Commission had approved last year, additional wording was added to strengthen the Department's authority. She went on to advise that only two states had previously opted to go with financial responsibility, Missouri and Kansas; although the Department had just received notice that Kansas had opted for secondary containment instead of financial responsibility. She advised that the EPA was still noting some deficiencies with Missouri's financial responsibility regulations, specifically with regards to terms of coverage, length of coverage and clarification of the Department of Agriculture's role. She advised that following a recent meeting with EPA representatives, it is hoped that these issues have been resolved.

Ms. Peters advised that operator training was also an area noted as deficient by the EPA. She went on to explain that 2011's Senate Bill 135 made provisions for Operator Training and directed the PSTIF to determine if they were going to develop a program to meet EPA's compliance objectives. The PSTIF board met recently and voted to proceed with this, therefore moving this component forward.

Chairman Foresman inquired as to the definition of "operator" with regards to the training requirements.

Ms. Peters advised that operators were broken down into three different classifications, Class A, Class B and Class C. She noted that Class C operators were the store clerks, the front line employees, and required minimal training. She went on to note that the Class A operators

were at the corporate level, were required to know all the regulations and were responsible for all technical knowledge; and the Class B were the regional staff, or maintenance staff, responsible for doing the work on the equipment. She noted that there were different training requirements for each class. She also noted that some states have combined Classes A & B. Ms. Peters then stated that this just leaves the two unresolved items at this time. She advised that the EPA has notified the states that they could lose funding if not in compliance; but, that the EPA is reviewing the information on Missouri's financial responsibility requirements and that they are aware that the PSTIF voted recently to begin moving forward with developing an operator training program and will be keeping abreast of the developments. She noted that all in all, the Department was receiving positive feedback on their efforts.

No other questions were posed by the Commission. This was provided as information only and required no other action on the part of the Commission.

6. RULEMAKING UPDATE

Mr. Time Eiken, Rules Coordinator, HWP, addressed the Commission and advised that he would be providing a brief update on planned rule changes that had been discussed over the past year. He noted that he would be addressing three general items: the new federal rules, which are an ongoing update; the hazardous waste container labeling rule, which was a product of stakeholder meetings and Forum discussion; and also from the Forum, the rules on satellite accumulation. He advised the Commission that the "no stricter than" legislation had placed rulemaking efforts on hold as the Department was waiting to see how the final language looked and how it would affect rulemaking efforts. He noted that the legislation had now been signed and that Director Lamb would be discussing how the Department would be implementing those provisions. Mr. Eiken went on to advise that the federal rules package was unaffected by this legislation, but that our other rules had some elements that were different than federal guidelines and that the Department would have to look at these differences and meet with stakeholders to see what changes needed to be made or what statutory restrictions there were.

Mr. Eiken noted that a Forum was scheduled for late September and changes will have to be made to the container management rulemaking to make it compliant with federal restrictions. The differences were currently being reviewed for discussion. He also noted that the Department would be proceeding with the new federal rules and that information would be provided at the next meeting as there were two or three federal rules that needed to be added. He advised that beyond that, there would be meetings with Forum participants to discuss changes.

No questions were posed by the Commission. This was provided as information only and required no other action on the part of the Commission.

7. PESTICIDE COLLECTION EVENTS

Ricardo Jones, Compliance and Enforcement Section, provided the Commission with a

PowerPoint presentation and background information on recent pesticide collection events across Missouri. He noted that the collection events were part of the settlement agreement with WalMart and included household hazardous waste, no businesses were included, and only applied to Missouri residents. He provided information on the events held to date and those scheduled for the future.

Mr. Jones inquired as to whether the Commission had any suggestions on how the Department may better advertise these events and Farm Bureau publications, farm supply stores, Extension Services, Ag Coops, Department of Agriculture website and Soil & Water District offices were suggested. Mr. Jones also responded to inquiries regarding limits on amounts that could be brought in.

No other questions were posed by the Commission. This was provided as information only and required no other action on the part of the Commission.

9. QUARTERLY REPORT

Dee Goss, Public Information Officer, Hazardous Waste Program, addressed the Commission and gave brief highlights from the January through March 2012 Quarterly Report. Items of interest included the Lead Task Force and the Kiel Opera House redevelopment project.

No questions were posed by the Commission. This was provided as information only and required no action on the part of the Commission.

10. LEGAL UPDATE

Ms. Kara Valentine, Commission Counsel, addressed the Commission and noted that there were no current permit appeals or enforcement cases; that updates would be provided as new issues arose.

No questions were posed by the Commission. This was provided as information only and required no action on the part of the Commission.

11. PUBLIC INQUIRIES OR ISSUES

Mr. Ron Leone, Executive Director, Missouri Petroleum and Convenience Store Association, requested to address the Commission at this time. Mr. Leone provided the Commission with his organization's position on the Tanks RBCA issue and echoed Director Pauley's earlier message regarding the efforts made. He also noted that he believed the Commission needed to address the sunset date issue, but that his organization was committed to moving forward to resolve the remaining issues; but, that if they could not be resolved, he advised that the Department could propose a rule for consideration.

Ms. Carol Eighmey, Executive Director, PSTIF, also requested to address the Commission, and noted that she had three points she wished to express. First point was that she supported Director Pauley in the Department's efforts and that there were no parties involved that did not want what the Commission was asking for, open and productive dialogue on issues of concern. She noted that considerable ground has been covered on this issue and that stakeholder meetings that did occur were not really productive. She stated that just having meetings may not always be the best forum for productive dialogue. She went on to state that she believed the Commission would be surprised when they saw the changes that have been accomplished recently and there should be a draft document for their review in the near future. She noted that she believed they were precise and protected the public effort.

The second point was with regard to the Commission's Operating Policies. She noted that the efforts to update them were a healthy conversation to listen to and gave her ideas on how to improve her own organizations policies. She noted that PSTIF would be adopting some of them with regards to their own meetings. She went on to state that the information provided by Ms. Valentine was helpful and that she believed the definitions were also helpful. Ms. Eighmey noted that discussions regarding UST's would not be ex parte.

Ms. Eighmey's third point was that it was gratifying to hear Department staff confirming that the current program was working well and that collaboration between the agencies has a terrific approach.

The last request to be heard came from Kevin Perry, REGFORM, who made a brief comment on the regulation updates. He noted that the current rule requires labeling within the management area, and that he believed the law allows the Commission the option of changing this.

No questions were posed by the Commission. This was provided as information only and required no action on the part of the Commission.

11. OTHER BUSINESS

Mr. David J. Lamb, Director, Hazardous Waste Program, addressed the Commission and provided them with an update on a couple of items he felt would be of interest or of impact to the Commission. Mr. Lamb began by noting that the Governor's recent Executive Order 12-08, which established drought assistance to Missouri farmers, had greatly impacted the Department. He advised the Commission that the Department had been instrumental in initiating the program and staff were working nights and weekends, doing site visits, performing data entry, reviewing applications, and working in the call center. He noted that this was a joint effort with the Department of Agriculture and that the Department was currently redirecting staff priorities to assist with this worthwhile effort. Mr. Lamb expressed pride in the effort that Department staff had made towards this project.

Mr. Lamb went on to address HB1251, which was signed on July 10, going into effect on August 28. Mr. Lamb noted that this legislation restricts the Commission from promulgating

rules or regulations that are stricter than federal regulations. He stated that the legislation also requires the Department to review the rules found in chapters 3, 4, 5 and 7 of the hazardous waste regulations and determine which rules are inconsistent with current federal rules. He advised that staff is currently evaluating the Department's rules through two teams. One will be reviewing the Compliance & Enforcement aspect, while the second one will be reviewing the Permit aspects. He went on to state that the changes brought about by HB1251 will affect technical bulletins, guidance documents, and will require retraining of inspectors, in addition to educational outreach to the regulated community. He noted that this would be no small undertaking and would take years to accomplish. He advised that Compliance & Enforcement and Permits staff will need to be involved, and that the Hazardous Waste Forum, scheduled for September 24th, would initiate the stakeholder dialogue on this issue.

No questions were posed by the Commission. This was provided as information only and required no action on the part of the Commission.

12. FUTURE MEETINGS

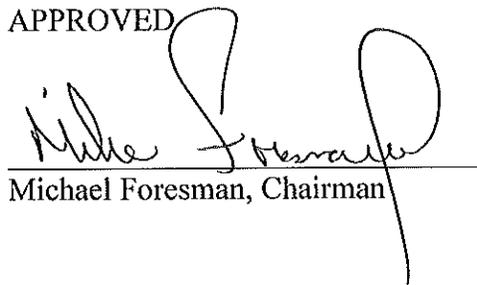
Chairman Foresman noted that the next meeting was scheduled for October 18, 2012.

Commissioner Adams made the motion to adjourn the meeting at 12:17 a.m. The motion was seconded by Commissioner Aull.

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

Respectfully Submitted,


Debra D. Dobson, Commission Assistant

APPROVED

Michael Foresman, Chairman

10/18/12
Date