



DRAFT

NOTICE OF OPEN MEETING

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

**DEPARTMENT OF NATURAL RESOURCES
HAZARDOUS WASTE PROGRAM
HAZARDOUS WASTE MANAGEMENT COMMISSION
AGENDA**

October 18, 2012

**Department of Natural Resources, Hazardous Waste Program
Bennett Springs/Roaring River Conference Rooms
1730 E. Elm Street
Jefferson City, MO 65102**

Note: Persons with disabilities requiring special services or accommodations to attend the meeting can make arrangements by calling the commission assistant at (573) 751-2747 or writing to the Hazardous Waste Program, P.O. Box 176, Jefferson City, MO 65102. Hearing impaired persons may contact the Hazardous Waste Program through Relay Missouri at 1-800-735-2966.

9:45 A.M. EXECUTIVE (CLOSED) SESSION

In accordance with Section 610.022 RSMo, this portion of the meeting may be closed by an affirmative vote of the Commission to discuss legal matters, causes of action or litigation as provided by Subsection 610.021(1). RSMo.

10:00 A.M. GENERAL (OPEN) SESSION

The General (Open) Session will begin promptly at 10:00 a.m., unless an Executive (Closed) Session has been requested; after which, the General Session will start as specified by the Commission's chairman.

Commissioner Roll Call

1. Pledge of Allegiance – Commissioners
2. Approval of Minutes – General (Open) Session, August 16, 2012 – Commissioners

Action Items:

3. Tanks Risk Based Corrective Action Rule Sunset Date – Sara Parker Pauley, Director, DNR

Action Items (continued):

4. Finding of Necessity – Federal Rules Package – Tim Eiken, Director’s Office - HWP
5. Battery Storage Trailer Parking Issue – Commission Inquiry Response
Andrew Brought, Spencer Fane – Exide Counsel
Kathy Flippin - Chief, Compliance and Enforcement Section, HWP

Information Only:

6. Updating Commission Operating Policies – Tim Eiken, Director’s Office - HWP
7. Rulemaking Update – Tim Eiken, Rule Coordinator – HWP
8. Tanks Financial Responsibility: Quarterly Update – Angela Oravetz, Compliance and Enforcement Section, HWP
9. Drycleaners Environmental Response Trust (DERT) Fiscal Year Update – Scott Huckstep, Brownfields Voluntary Cleanup Program, HWP
10. Quarterly Report – Dee Goss, Public Information Officer, HWP
11. Legal Update – Kara Valentine, Commission Counsel
12. Public Inquiries or Issues – David J. Lamb, Director, HWP
13. Other Business – David J. Lamb, Director, HWP
14. Future Meetings
 - Thursday, December 20, 2012 – to be held at the Bennett Springs/Roaring River Conference Rooms, 1730 E. Elm Street Conference Center, Jefferson City, MO

Adjournment

**MISSOURI DEPARTMENT OF NATURAL RESOURCES
HAZARDOUS WASTE MANAGEMENT COMMISSION**

Meeting Date: October 18, 2012

ROLL CALL ROSTER

	In Person:	By Phone:	Absent
Chairman Michael Foresman	_____	_____	_____
Vice-Chair Andrew Bracker	_____	_____	_____
Commissioner Elizabeth Aull	_____	_____	_____
Commissioner Jamie Frakes	_____	_____	_____
Commissioner Charles Adams	_____	_____	_____
Commissioner Deron Sugg	_____	_____	_____

Missouri Hazardous Waste Management Commission Meeting

October 18, 2012

Agenda Item # 1

Pledge of Allegiance

Missouri Hazardous Waste Management Commission Meeting

**October 18, 2012
Agenda Item # 2**

Approval of Minutes – August 16, 2011, Meeting

Issue:

Commission to review the General Session minutes from the August 16, 2012, Hazardous Waste Management Commission meeting.

Recommended Action:

Commission to approve the General Session minutes from the August 16, 2012, Hazardous Waste Management Commission meeting.

GENERAL

SESSION

MEETING

MINUTES

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 year's 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 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

Date

Missouri Hazardous Waste Management Commission Meeting

October 18, 2012

Agenda Item # 3

Tanks Risk Based Corrective Action (RBCA) Rule Sunset Date

Issue:

Information on Tanks Risk Based Corrective Action Rule Sunset Date

Recommended Action:

Presented by:

Sara Parker Pauley – Director – Department of Natural Resources

Missouri Hazardous Waste Management Commission Meeting

October 18, 2012

Agenda Item # 4

Finding of Necessity – Federal Rules Package

Issue:

Should the Commission approve a Finding of Necessity to allow the Department to file a group of proposed amendments to update the incorporation by reference of the Code of Federal Regulations from July 1, 2010, to July 1, 2012?

Information:

The purpose of updating the incorporation by reference of the Code of Federal Regulations is to adopt federal rules made between July 1, 2010, and July 1, 2012. As a condition of authorization by the Environmental Protection Agency to operate the RCRA Subtitle C program in Missouri, state regulations must be kept up to date with federal regulations. Therefore, on a routine basis as new federal rules are published and added to the Code of Federal Regulations, state regulations must be amended to incorporate by reference those changes.

As of last year our regulations incorporate by reference the July 1, 2010, Code of Federal Regulations. However, between July 1, 2010, and July 1, 2012, the EPA adopted four additional rules that are important for the state to adopt. There is strong support for the state to adopt these recent federal rules in order to maintain consistency between state and federal requirements. We will also be in position to update our authorization status from the EPA to operate the hazardous waste program in Missouri. Timely adoption of the rules also benefits the regulated community because they are free to operate under one set of regulations instead of two, as is the case until the state adopts federal regulations and is subsequently approved for authorization of those same regulations. The individual rules that are included in the group to be adopted are listed below:

- Removal of Saccharin and its Salts from the Lists of Hazardous Wastes
- Corrections to the Academic Laboratories Generator Standards
- Revision of the Treatment Standards for Carbamate Wastes
- Hazardous Waste Technical Corrections and Clarifications

Page Two

Recommended Action:

Commission to approve a Finding of Necessity to allow the Department to file thirteen amendments to Title 10, Division 25 of the Code of State Regulations

Presented by:

Tim Eiken, Rule Coordinator, Hazardous Waste Program

Suggested Motion Language:

“I move that the Commission adopt/not adopt/or adopt with modifications, the Finding of Necessity that the proposed amendments to Title 10, Division 25 are necessary to carry out the commission’s rulemaking authority and that the Department proceed with the filing of the proposed amendments with the Secretary of State.”

**Missouri Department of Natural Resources
Hazardous Waste Management Commission
Certification of Decision**

“I move that the Commission adopt/not adopt/or adopt with modifications, the Finding of Necessity that the proposed amendments to Title 10, Division 25 are necessary to carry out the commission’s rulemaking authority and that the Department proceed with the filing of the proposed amendments with the Secretary of State.”

DATE: October 18, 2012

Michael Foresman, Chairman

Elizabeth Aull, Commissioner

Andrew Bracker, Vice-Chairman

Jamie Frakes, Commissioner

Deron Sugg, Commissioner

Charles Adams, Commission

Missouri Hazardous Waste Management Commission Meeting

October 18, 2012

Agenda Item # 5

Battery Storage - Trailer Parking Issue – Commission Inquiry Response

Issue:

This is an update requested by the Missouri Hazardous Waste Management Commission (MHWMC) regarding a regulated facility's concerns regarding requirements for battery storage.

Information:

Commissioners have heard and reviewed information from Exide Technologies (Exide), Doe Run Buick Recycling Facility, the U.S. Environmental Protection Agency and Department staff on the management and regulation of batteries at recycling facilities. Exide proposed rule changes and at the August 16, 2012, Commission meeting, the Department proposed two motions for the Commission's consideration: one to retain current regulations and another to direct the Department to proceed with making rule changes on battery management and storage time. The Commissioners declined to vote for either motion. Mr. Jim Price, representing Exide presented information that the state of Indiana was in process of changing its rules.

The Commissioner's directed Department staff to review the proposed Indiana rules and inform them on the intent of that rule, on the federal requirements cited in the document and to determine how and if the rule had been adopted. The Commission also asked the Program's thoughts on similar regulations in other states that Exide had discussed and if these might resolve concerns for Missouri. Program staff will comment on these regulations in this context.

A Commissioner stated that he hoped to see different language for the Commission to consider from the two facilities in Missouri that are most affected by battery storage regulations. Spencer Fane Britt & Brown LLP submitted draft language on behalf of Exide on the afternoon of October 5, 2012, which are attached. Department staff have not yet reviewed the proposed rule or attachments, but hope to provide comments at the October 18, 2012, Commission meeting.

In response to Commissioner's questions regarding U.S. Department of Transportation regulations on battery transport and receipt, the Department sent a letter to the U.S. Department of Transportation. Though a response was anticipated by the October 18, 2012, meeting, it has not yet arrived. If the Department receives this information prior to the meeting it will be included in the discussion.

Recommended Action:

Commission to consider information and options provided by the Department and Exide and take action as they deem appropriate.

Presented by:

Kathy Flippin – Chief, Compliance and Enforcement Section, Hazardous Waste Program
Andrew Brought – Spencer Fane, Exide Counsel

SPENCER FANE

BRITT & BROWNE LLP

ATTORNEYS & COUNSELORS AT LAW

ANDREW C. BROUGHT
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File No. 1163000-0009

October 5, 2012

VIA ELECTRONIC MAIL AND FED EX

Ms. Debra Dobson
Missouri Hazardous Waste Management Commission
1730 E. Elm Street
Jefferson City, Missouri 65101
debra.dobson@dnr.mo.gov

**Re: Temporary Staging of Lead-Acid Batteries at Recycling Centers,
Rule Amendment Proposed by Exide Technologies, and Follow-Up on
Commission's Request on Indiana Proposed Rule on Temporary Staging**

Dear Ms. Dobson:

Exide Technologies requests and recommends that the Missouri Hazardous Waste Management Commission (HWMC) direct the Missouri Department of Natural Resources (MDNR) to codify a rule amendment to Missouri's regulations regarding the temporary staging of in-bound shipments of lead-acid batteries for recycling at reclamation facilities in Missouri.

At the last Commission meeting on August 16, 2012, the Commission requested that Exide review and report back on the provisions of the Indiana Department of Environmental Management's (IDEM) April 20, 2011 (LSA Doc. #09-365), proposed rule regarding "Section 5 Standards for Reclaimers" to amend Indiana Administrative Code 329 IAC 3.1-11.1-5.

Exide supports and agrees with the approach recommended by IDEM as it pertains to temporary staging of in-bound trailers for up to 14 days. Section 5.c. of the IDEM proposed rule addresses the staging language and provides the following operational requirements: 14-day temporary staging on an asphalt or concrete surface in good condition; weekly inspections of the staging area (*i.e.*, external trailer inspections); corrective action if a trailer is leaking; spill response per approved plans; and operating records for the weekly inspections. The remainder of the IDEM Section 5 proposed rule "Standards for Reclaimers" are concepts that are already incorporated or otherwise covered by Missouri's regulations and Exide also concurs with them.

IDEM's staging approach and related ones endorsed by EPA Regions 2 and 5 are consistent with federal and state regulations and they are environmentally preferably compared with MDNR's current policy that encourages Exide to reject shipments and send them back on Missouri's roads and highways. Exide has prepared an amendment to its proposed rule language of April 19, 2012, which incorporates the technical requirements of the IDEM staging proposal.

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WA 3779997.1

Ms. Debra Dobson
October 5, 2012
Page 2

Enclosed with this letter the Commission will find an Exide Position Summary that summarizes the recommended action and issue before the Commission and includes a proposed rule amendment to implement temporary staging of lead-acid batteries in Missouri, in an approach consistent to that of IDEM and EPA Regions 2 and 5.

Exide is prepared to and would like to move forward with the temporary staging provision and requests a dedicated Agenda Item and vote to proceed on the Exide proposal at the October 18, 2012, HWMC meeting, or if there are not enough Commission members present then, at the December 20, 2012, HWMC meeting.

Exide representatives, including myself, plan to be present at the October 18 Commission meeting and we look forward to any comments or questions the Commission may have.

As a professional courtesy, we have enclosed 11 copies of supporting materials for the Commission in the Fed Ex transmittal. Please contact me at (816) 292-8886 should you have any questions. I look forward to meeting you and the Commission members on October 18.

Sincerely,



Andrew C. Brought

Enclosure: Exide Position Summary on Temporary Staging of Lead-Acid Batteries
- Ex. 1: Missouri Proposed Rule Amendment and Resolution
- Ex. 2: IDEM Proposed Rule April 20, 2011 (current as of 10.1.2012)
- Ex. 3: Approved IDEM Hazardous Waste Permits with Temporary Staging

cc: Kara Valentine, Esq., Assistant Attorney General (via U.S. First Class Mail)
Mr. David Lamb, Director, MDNR-HWP (via U.S. First Class Mail)

Exide Technologies' Position Summary on Temporary Staging of Lead-Acid Batteries for Missouri Hazardous Waste Management Commission Oct. 18, 2012 Meeting

Recommended Action

- Exide seeks a rule amendment to Missouri's regulations to codify the temporary staging of in-bound shipments of lead-acid batteries at the Canon Hollow Recycling Center.
- Exide has worked diligently for more than two years to negotiate a solution with MDNR. At the December 2011 meeting of the HWMC, the Commission directed Exide and MDNR to work together to devise a solution to allow temporary staging of lead-acid batteries on in-bound trailers. MDNR prefers to argue that any allowance for temporary staging of batteries would violate this Commission's and EPA regulations.
- Exide's proposal comports with similar approaches of EPA Regions 2 and 5, and the Indiana Department of Environmental Management ("IDEM"), all of which allow temporary staging.
- Exide proposed rule amendment language at the HWMC meeting on April 19, 2012. Exide has slightly tailored the language to incorporate the technical elements of IDEM's approach.
- Exide's proposed solution is similar to the previously agreed-upon approach between Exide and MDNR in a 1998 Management Plan regarding trailer staging.
- The HWMC has the authority to provide the relief Exide is seeking. The recommended action does not contravene federal or state hazardous waste regulations, and, in fact, is more protective of human health and the environment than the current approach MDNR proposes.
- Exide respectfully requests and recommends that the HWMC direct MDNR to propose a package of regulations that adopts the language and specific approach presented in the enclosed Exide Resolution. EXHIBIT 1.

The Canon Hollow Recycling Center

- The Recycling Center recycles automotive lead-acid batteries. The automotive lead-acid batteries arrive in semi-trailers, palletized and shrink-wrapped, with approximately 75 batteries per pallet. Some loads contain 50 batteries per pallet.
- The Recycling Center operates Monday through Friday. The facility does not operate on the weekends or during routine and unplanned maintenance.
- In-bound trailers are staged in a Trailer Staging Area until the batteries are ready for processing. The trailers may be staged for a few hours, sometimes they are taken directly to the battery breaker, and sometimes the trailers are staged for a few days.
- The Trailer Staging Area is within the secured, gated portion of the Recycling Center and the trailers are subject to daily external inspections. The staging area is a paved asphalt surface and stormwater drains from the parking lot to an on-site collection system and is treated in the facility's wastewater treatment plant.

The Issue

- To encourage recycling, spent lead-acid batteries are exempt from hazardous waste regulations under Missouri law and federal law throughout their entire life span until “stored” at reclamation facilities. Spent lead-acid batteries are regulated by DOT during transportation.
- Since 2009 (but not before) MDNR has asserted that spent-lead acid batteries lose their RCRA-exempt status the moment an in-bound shipment crosses the gate at the Recycling Facility. Consequently, MDNR asserts that the full array of RCRA container storage requirements apply immediately, including an MDNR-specific 24-hour rule, compelling “storage” in a permitted container storage area within 24 hours of arrival. As a result of MDNR’s interpretation, a battery that is cracked, damaged, or missing a cap on an in-bound shipment does not satisfy the RCRA requirements.
- MDNR’s interpretation places the Recycling Center in an untenable position of being held responsible for the compliance of those in-bound shipments with DOT and RCRA requirements, despite not having packed those shipments and notwithstanding the fact that the shipments will be processed and the batteries recycled in a matter of hours, or a few days at most.
- Exide has already been subject to MDNR enforcement and has paid a penalty for allegations of an open battery case on a trailer that had been on the property for less than one day at the time of the inspection.
- Exide is currently rejecting shipments of non-conforming loads because it cannot assure that all in-bound shipments are processed within 24 hours (especially those arriving on or close to weekends or holidays), and because there is no feasible operational alternative to the current practice of rejecting loads, despite MDNR’s unsubstantiated suggestions (*i.e.*, overpacking, just-in-time arrivals).
- Rejected shipments are sent back on Missouri’s roads and highways. They may make their way to parking lots, cities, neighborhoods, rest areas, and truck stops.
- As a result of MDNR’s new interpretation, Exide no longer allows trailers to arrive on Friday afternoon or on the weekend. This means that trailers on route to the facility must wait or park outside the gate or along the highway. This has also caused a severe operational and logistics challenge for Exide. Among other things, it has a significant impact on Monday morning start-up and plant efficiency.

Temporary Staging is More Protective of the Environment Than Rejecting Loads

- Exide can temporarily stage in-bound shipments in a gated, secured facility, subject to daily external inspections, and immediate corrective action if spills/leaks are identified. The Recycling Center’s Trailer Staging Area is an asphalt surface that drains to a collection basin treated by the plant’s wastewater treatment plant.
- This issue is unique to lead-acid batteries and involves only two battery recycling facilities in the state of Missouri. Exide’s requested relief, therefore, is narrow in scope.

Exide's Proposal is Consistent with EPA's Regulations and Related Actions Elsewhere

- IDEM Battery Staging Proposed Rule Amendment (2012)
 - The Recycling Center supports IDEM's staging language and is willing to amend its April 19, 2012, proposal to incorporate the technical requirements in that proposal.
 - IDEM's staging proposal is consistent with what the Recycling Center and MDNR previously agreed to in the 1998 Management Plan.
 - IDEM's proposal allows temporary staging of spent batteries on trailers for up to 14 days, which is more than Exide seeks.
 - IDEM's proposal requires weekly inspections of the staging area. No interior inspection of trailer. As noted in the June 25, 2012, correspondence from IDEM to MDNR (enclosed with MDNR's August 16, 2012, HWMC materials):
 - "Regarding exterior vs interior inspection of the trailers, IDEM agreed that exterior inspection of the trailers for signs of leakage is adequate, when in conjunction with the surface management requirements of the proposed rule. IDEM had initially proposed interior inspections of the trailers, but agreed with comments that this would involve climbing over pallets of batteries to see if any batteries at the head end of the trailer were damaged or leaking, which is not practical or safe. IDEM had initially required inspection of trailers from the outside within 24 hours of arrival, but that was dropped since the tracking and enforcement of the 24 hours from arrival time adds complexity for facilities and inspectors."
 - 329 IAC 3.1-11.1-5 Standards for Reclaimers (as of 10.1.2012) EXHIBIT 2.
 - (c) Trailers of incoming whole spent lead acid batteries may be staged on an asphalt or concrete surface maintained in good condition and shall be processed, or put into permitted storage, within fourteen (14) calendar days of receipt. The following conditions shall be met for staged batteries:
 - (1) Weekly inspections of the staging area shall be performed as long as trailers remain in the area.

Any indications that a trailer is leaking will require an immediate inspection to determine the source of the leak. If the batteries are the source of the leak, either the entire load shall be processed immediately or the source of the leak must be stored in a covered container that is:

 - (A) in good condition; and
 - (B) chemically compatible with the contents of the battery.
 - (2) Spills must be addressed per the facility's IDEM approved contingency plan or spill response plan.
 - (3) Operating records will consist of documentation of inspections conducted under subdivision (1).
 - IDEM's proposal is consistent with two current hazardous waste permits in Indiana for (IND000717959, and IND000199653) – Providing for 14-day staging, weekly exterior inspections. EXHIBIT 3.
- EPA Region 2 Agreement with The Battery Recycling Co. (2012)
 - The agreement between EPA Region 2 and the reclaimer allows temporary staging on in-bound shipments for up to 10 days.

- The batteries must be processed within 24 hours of “receipt” – defined as commencing “upon the unpacking or off-loading of the batteries from the transporting vehicle or trailer.”
- EPA Region 5 Guidance to IDEM (2002)
 - EPA’s directive provides discretion to state-delegated RCRA programs to allow temporary staging on lead-acid battery shipments to reclaimers.
 - “[S]ome states have chosen to allow a limited time period for staging. U.S. EPA believes that an authorized state regulatory agency may specify a holding time on a site specific basis but has not provided any guidance on the length of time that might be appropriate for such storage.”

MDNR’s Position is Not Compelled and Creates Misguided Consequences

- MDNR asserts that only “intact” or “whole” batteries may be staged or stored in compliance with DOT and RCRA requirements for its basis that in-bound shipments of batteries that have just arrived at the facility may not be kept in the Trailer Parking Area if they are missing caps or are leaking.
 - Exide will properly close the Trailer Staging Area as a permitted container storage unit in accordance with the MDNR-approved closure plan under permit (MOD030712822), in recognition that only RCRA closed containers may be “stored” in RCRA “container storage areas.” (Note: Exide only permitted the unit in response to a request to do so from MDNR during the last permit renewal). With respect to DOT compliance, the shipper bears responsibility for compliance.
 - Further, Exide (like Indiana and the EPA) believes that common sense technical requirements (*i.e.*, exterior visual inspections) adequately ensure compliance, particularly when balancing the risk of temporary staging versus rejected loads. MDNR’s proposal to “over-pack”/containerize a pallet of batteries is not feasible and makes no sense when the pallets will be processed within a few hours or a few days.
- MDNR’s request to DOT-PHMSA, although perhaps useful for shedding guidance in the transportation context and associated responsibility, bears little relevance to crafting a solution that avoids the need for a reclaimer to reject shipments. The temporary staging concept presented by Exide and adopted or approved in Indiana, EPA Region 5, and EPA Region 2 solves the dilemma.
- MDNR has not cited to any situation involving the Recycling Center, or any other lead-acid battery recycling facility in Missouri where temporary staging for a matter of days has resulted in any environmental harm from significant leaks or spills or battery acid or lead plates.
- In contrast, MDNR’s interpretation will prompt the Recycling Center to continue rejecting non-compliant shipments, increasing the opportunity for leaks and spills along Missouri’s roads and highways.

EXHIBIT 1

Exide Technologies' Position Paper
Hazardous Waste Management Commission Meeting on October 18, 2012

**Missouri Department of Natural Resources
Hazardous Waste Management Commission
Certification of Decision**

“I move that the Commission, having heard testimony and received the material and data provided by the parties having presented before this Commission, direct the Department to propose a rulemaking package of regulations that adopts the language and specific approach presented in the attached Exide resolution provided to the Commission on October 18, 2012, in compliance with the public notice, comment, and other requirements for adopting regulations under the Missouri Hazardous Waste Management Law.”

DATE: October 18, 2012

Jamie Frakes, Commissioner

Elizabeth Aull, Commissioner

Andrew Bracker, Commissioner

Michael Foresman, Commissioner

Deron Sugg, Commissioner

Charles Adams, Commissioner

The attached set of proposed revisions to Missouri Hazardous Waste Management regulations would address temporary staging of in-bound trailers of lead-acid batteries pending processing at a battery recycling and reclamation facility:

- 24-hour rule
- Missouri Part 266 regulations
- Missouri Universal Waste regulations

Proposed additions are shown in underlining; deletions are shown with strike-throughs.

Proposed Revisions to Missouri 24-hour Rule

10 CSR 25-7.264(2)(A)3.

Hazardous waste which must be managed in a permitted unit (for example, waste generated on-site and stored beyond the time frames allowed without a permit pursuant to 10 CSR 25-5.262, waste received from off-site, certain hazardous waste fuels, etc.) shall not be stored or managed outside an area or unit which does not have a permit or interim status for that waste for a period which exceeds twenty-four (24) hours. This provision shall not apply to; (1) railcars held for the period allowed by, and managed in accordance with, 10 CSR 25-7.264(3) of this regulation; (2) reclamation facilities managing spent lead-acid batteries in accordance with, 10 CSR 25-7.266(2)(G) (Spent Lead-Acid Batteries Being Reclaimed); and (3) destination facilities managing universal waste lead-acid batteries in accordance with 10 CSR 25-16.273(2)(E) (Standards for Destination Facilities). (Comment: The purpose of this paragraph is to allow necessary movement of hazardous waste into, out of, and through facilities, and not evade permit requirements.)

Proposed Revisions to Missouri Spent Lead-Acid Battery Regulations

10 CSR 25-7.266(2)(G).

(G)Spent Lead-Acid Batteries Being Reclaimed. In addition to the requirements in 40 CFR part 266 subpart G a person who reclaims materials from spent lead-acid batteries shall obtain a hazardous waste resource recovery certification pursuant to 10 CSR 25-9.020.

In addition, the reclamation facility must either process or store spent lead-acid batteries within 24 hours of Reclamation Facility Receipt. For purposes of this subsection, “Reclamation Facility Receipt” occurs when a reclamation facility removes spent lead-acid batteries from a delivery trailer for storage or for direct introduction into the recycling process. Reclamation Facility Receipt shall occur no more than seven (7) days following the arrival of the delivery trailer at the reclamation facility.

1. Owners or operators of facilities that stage trailers of spent lead acid batteries on site prior to Reclamation Facility Receipt are subject to the following requirements:
 - A. The trailers must be staged on an asphalt or concrete surface maintained in good condition.
 - B. Daily inspections shall be performed on the staging area for evidence of leaking trailers and/or deterioration of the staging area surface.
 - C. Any spent lead-acid battery trailers parked on the staging area observed to be leaking, during an inspection, shall be unloaded for processing as soon as a loading dock space becomes available.
 - D. Any spills or leakage in the staging area from a spent lead-acid battery trailer, observed during an inspection, shall be immediately contained and the clean-up residue disposed of properly.

- E. Significant deterioration of, or damage to, the staging area surface, observed during an inspection, shall be repaired as soon as possible, weather conditions permitting.
- F. Operating records of the required daily inspections of the staging area shall be maintained and kept on site, and available for inspection by the department. A description of any follow-up action required subsequent to an inspection shall be included as part of the operating record.

2.B. Owners or operators of facilities that store spent batteries before reclaiming them are subject to the following requirements:

A. Notification requirements under section 3010 of RCRA;

B. All applicable provisions in subparts A, B (but not 40 CFR 264.13 (waste analysis)), C, D, E (but not 264.71 or 264.72 (dealing with the use of the manifest and manifest discrepancies)), and F through L of 40 CFR part 264, as incorporated by reference in 10 CSR 25-7.264(1) and modified in 10 CSR 25-7.264(2)(A) through 10 CSR 25-7.264(2)(L);

C. All applicable provisions in subparts A, B (but not 40 CFR 265.13 (waste analysis)), C, D, E (but not 265.71 or 265.72 (dealing with the use of the manifest and manifest discrepancies)), and F through L of 40 CFR part 265, as incorporated by reference in 10 CSR 25-7.265(1) and modified in 10 CSR 25-7.265(2)(A) through 10 CSR 25-7.265(2)(L);

D.All applicable provisions in parts 270 and 124 of the CFR, as incorporated by reference in 10 CSR 25-7.270 and 10 CSR 25-8.124. (Note: The language printed at 10 CSR 25-7.266(2)(g)1.A.-D. above was originally incorporated by reference from 40 CFR 266.80(b), 1994 edition. The language is reprinted here because it was mistakenly omitted from subsequent editions of the *Code of Federal Regulations*.)

Proposed Revisions to Missouri Universal Waste Rules

10 CSR 25-16.273(2)(A) 2. and 10 CSR 25-16.273(2)(E)

(2)(A) General. In addition to the requirements in 40 CFR part 273 subpart A, the following regulations also apply:

1. *(Reserved)*
2. Applicability – batteries.

A. The additional state specific requirements described in this rule do not apply to batteries as described in 40 CFR ~~273.2273.2.~~ except with respect to destination facilities that recycle universal waste lead-acid batteries as set forth in subsection (E) below:

(2)(E) Standards for Destination Facilities. In addition to the requirements in 40 CFR part 273 subpart E, the following regulations also apply:

1. A universal waste destination facility that is also a permitted or interim status hazardous waste storage, treatment, or disposal facility must manage all universal wastes in an area which is separate from the permitted area or the waste loses its identity as universal waste and must be managed in compliance with the facility's permit or interim status;

2. A universal waste destination facility may be a Missouri-certified resource recovery facility if operating in compliance with the requirements for the universal waste in question and the standards of an R2 resource recovery facility as described in 10 CSR 25-9.020(3)(A)3.

3. A universal waste destination facility that recycles universal waste lead-acid batteries must either process or store universal waste lead-acid batteries within 24 hours of

Destination Facility Receipt. For purposes of this subsection, "Destination Facility Receipt" occurs when a reclamation facility removes universal waste lead-acid batteries from a delivery trailer for storage or for direct introduction into the recycling process. Destination Facility Receipt shall occur no more than seven (7) days following the arrival of the delivery trailer at the destination facility.

A. Owners or operators of facilities that stage trailers of spent lead acid batteries on site prior to Reclamation Facility Receipt are subject to the following requirements:

- (I) The trailers must be staged on an asphalt or concrete surface maintained in good condition.
- (II) Daily inspections shall be performed on the staging area for evidence of leaking trailers and/or deterioration of the staging area surface.
- (III) Any spent lead-acid battery trailers parked on the staging area observed to be leaking, during an inspection, shall be unloaded for processing as soon as a loading dock space becomes available.
- (IV) Any spills or leakage in the staging area from a spent lead-acid battery trailer, observed during an inspection, shall be immediately contained and the clean-up residue disposed of properly.
- (V) Significant deterioration of, or damage to, the staging area surface, observed during an inspection, shall be repaired as soon as possible, weather conditions permitting.

(VI) Operating records of the required daily inspections of the staging area shall be maintained and kept on site, and available for inspection by the department. A description of any follow-up action required subsequent to an inspection shall be included as part of the operating record.

EXHIBIT 2

Exide Technologies' Position Paper
Hazardous Waste Management Commission Meeting on October 18, 2012

TITLE 329 SOLID WASTE MANAGEMENT BOARD

Proposed Rule
LSA Document #09-365

DIGEST

Amends [329 IAC 3.1-11-2](#) and adds [329 IAC 3.1-11.1](#) concerning temporary storage and management of spent lead acid batteries. Effective 30 days after filing with the Publisher.

HISTORY

First Notice of Comment Period: June 3, 2009, Indiana Register (DIN: [20090603-IR-329090365FNA](#)).

Second Notice of Comment Period: November 4, 2009, Indiana Register (DIN: [20091104-IR-329090365SNA](#)).

Notice of Public Hearing: November 4, 2009, Indiana Register (DIN: [20091104-IR-329090365PHA](#)).

Change in Notice of Hearing: February 23, 2011, Indiana Register (DIN: [20110223-IR-329090365CHA](#)).

Date of First Hearing: March 15, 2011.

PUBLIC COMMENTS UNDER [IC 13-14-9-4.5](#)

[IC 13-14-9-4.5](#) states that a board may not adopt a rule under [IC 13-14-9](#) that is substantively different from the draft rule published under [IC 13-14-9-4](#), until the board has conducted a third comment period that is at least 21 days long. Because this proposed rule is not substantively different from the draft rule published on November 4, 2009, at DIN: [20091104-IR-329090365SNA](#), the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from November 4, 2009, through December 4, 2009, on IDEM's draft rule language. IDEM received comments from the following parties:

Battery Council International (BCI)

Barnes and Thornburg, LLP (BT)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: Proposed [329 IAC 3.1-11.1-3\(4\)](#) puts a 90-day storage time limit on retailers, wholesalers, manufacturers, and auto salvage yards. This provision is inconsistent with the exemption for generators under 40 CFR 266 Subpart G, which exempts such entities from the 90 day storage requirements of 40 CFR 262. Patchwork requirements at the state level only serve to frustrate collection and recycling efforts. We therefore request that this 90 day requirement be removed or, at the very least, extended to one year (365 days). Three hundred sixty-five days is the maximum storage time allowed for batteries under the Universal Waste Rule (40 CFR Part 273). (BCI)

Response: IDEM has removed auto salvage yards and the ninety (90) day storage time limit from [329 IAC 3.1-11.1-3](#). This is in recognition of the fact that [IC 13-20-16-3](#) already states that a retailer or wholesaler that accepts a used lead acid battery may not retain possession of the battery for more than 90 days.

Comment: Proposed [329 IAC 3.1-11.1-4\(2\)\(A\)](#) requires that large quantity intermediate storage facilities such as warehouses notify the IDEM of the location of storage sites. Proposed [329 IAC 3.1-11.1-4\(1\)\(E\)](#) and [3.1-11.1-4\(2\)\(F\)](#) also require that small and large quantity intermediate storage facilities have spill response plans maintained on site, respectively.

It is not uncommon for battery manufacturers, wholesalers and secondary lead smelters to use commercial storage warehouses to store used lead-acid batteries when they have quantities that exceed their own storage capacity. BCI is concerned that these commercial warehouses will be wary and refuse to accept these batteries for storage if they have to register with the IDEM. This would inhibit the existing recycling infrastructure that is now so successful (footnote 1: The latest calculated U.S. recycling rate for lead from lead-acid batteries is 96% for the years 2004-2008. BCI National Recycling Rate Study, August 2009, SmithBucklin). Furthermore, the proposed provision is inconsistent with 40 CFR 266 Subpart G, and patchwork requirements at the state level only serve to frustrate recycling.

Moreover, requiring these facilities storing lead-acid batteries to maintain spill response plans on site would be inconsistent with both 40 CFR 266 Subpart G and the Universal Waste Rule. After the IDEM's 266.80 equivalent rule is amended, the exact same lead-acid batteries could be handled as Universal Waste in Indiana and no spill response plans would be required. The IDEM is proposing inconsistent regulation without explanation.

BCI requests that both the proposed notification and spill response plan requirements be eliminated. Mandating that the warehouses comply with the regimented storage requirements, as proposed under [329 IAC 3.1-11.1-4\(1\)](#) and [3.1-11.1-4\(2\)](#), should be sufficient to ensure that batteries in commercial warehouses are

properly managed, while still keeping such facilities available for storage. (BCI)

Response: IDEM believes that [329 IAC 3.1-11-4\(2\)\(A\)](#) reflects very basic best management practices and will provide clarity to intermediate storage facilities as to management expectations. We do not believe a simple notification requirement is overly burdensome. Both requirements are consistent with the universal waste rules cited by the commentor. IDEM agrees with BCI comments regarding spill response plans and the requirement for spill response plans has been deleted.

Comment: Proposed [329 IAC 3.1-11.1-5\(d\)\(1\)](#) and (2) require asphalt or concrete surfaces in loading and unloading areas to be maintained in "good condition" and that cracks and gaps be repaired "as soon as possible". BCI is concerned that these requirements are too subjective and not practicable. The term "good condition" needs to be qualified so that it does not lead to conflicting interpretations by the regulated community and IDEM inspectors. "As soon as possible" also needs to be clarified, since it is difficult to do asphalt or concrete repairs except during shut down periods, particularly because of daily water flushing requirements in air permits. This would cause a direct interference and regulatory conflict with performing repairs. BCI therefore asks that the language in [329 IAC 3.1-11.1-5\(d\)\(1\)](#) and (2) be revised to read:

"Loading and unloading areas shall be: (1) on an asphalt or concrete surface maintained in good condition. Asphalt and concrete are maintained in good condition by making necessary repairs to significant cracks or gaps as soon as practicable, taking into account facility operation and shut-down schedules and environmental permit requirements." (BCI)

Response: Loading and unloading areas are already regulated by the application of the general facility standards incorporated by reference in [329 IAC 3.1-11.1-5\(a\)](#); therefore, rather than revising the language IDEM deleted [329 IAC 3.1-11.1-5\(d\)\(1\)](#) and (2).

Comment: Proposed [329 IAC 3.1-11.1-5\(c\)](#) says that trailers of incoming whole spent lead-acid batteries may be staged on an asphalt or concrete surface maintained in "good condition". Again, BCI is concerned that this term is so subjective that it could lead to confusion among the regulated community and IDEM inspectors. BCI recommends that the language be revised to read: ".. trailers of incoming whole spent lead-acid batteries may be stored on asphalt or concrete maintained in good condition. Asphalt and concrete are maintained in good condition by making necessary repairs to cracks or gaps as soon as practicable, taking into account facility operation and shutdown schedules and environmental permit requirements." (BCI)

Response: Current hazardous waste rules and permits do not address "staging" areas as provided for in this proposed rule. A major purpose of this rule is to resolve long standing differences of opinion regarding the regulatory status of staging areas. These requirements (if adopted), will be reflected in future permits where facility specific concerns may be resolved through the permitting process. IDEM is maintaining the draft rule language as is.

Comment: Proposed [329 IAC 3.1-11.1-5\(d\)\(2\)](#) requires loading and unloading areas at battery recycling facilities to be inspected daily for spills and deterioration. However, secondary lead smelters are already subject to effective inspection schedules that are set forth in facilities' Part B permits, which the IDEM prepares. BCI therefore recommends that the inspection schedule in [329 IAC 3.1-11.1-5\(d\)\(2\)](#) be revised to be consistent with existing Part B permit inspection schedules. Further, BCI believes that the term "deterioration" is too broad and subjective. To address both issues, BCI suggests that [329 IAC 3.1-11.1-5\(d\)\(2\)](#) be revised to read: "(2) inspected for spills and significant cracks and gaps on a schedule consistent with the facility's RCRA Part B permit." (BCI)

Response: IDEM believes the cite referenced by BCI in this comment is actually for [329 IAC 3.1-11.1-5\(d\)](#); rather than limited to (d)(2). IDEM agrees that loading and unloading areas are already regulated by the application of the general facility standards incorporated by reference in [329 IAC 3.1-11.1-5\(a\)](#). All of [329 IAC 3.1-11.1-5\(d\)](#) has been deleted.

Comment: Proposed [329 IAC 3.1-11.1-5\(e\)](#) seeks to regulate the recycling process which is exempt from hazardous waste regulations pursuant to 40 CFR 261.6(c)(1), and should be substantially revised. First, the draft rule defines the term "intermittent storage" as storage that occurs after reclamation has commenced and before it is complete. See proposed [329 IAC 3.1-11.1-2\(f\)](#). This is inconsistent with the scope of the recycling exemption in 40 CFR 261.6(c)(1), which has been interpreted to mean that "the temporary staging of materials during and incidental to the recycling process... is not subject to regulation", and the fact that the recovered battery components "are an integral part of the recycling process [and] are not discarded and thus are exempt from RCRA regulations." (footnote 2: Ind. Dept. Of Environmental Management v. Quemetco, Inc., Cause No. N-113, Modification of the Final Order of the Solid Waste Management Board, Conclusions of Law Numbers 10 and 12 (1991)). Moreover, the draft rule regulates the recycling of spent lead-acid batteries differently from the recycling of other hazardous waste by making "intermittent storage" by battery reclaimers subject to regulation, while "intermittent storage" by other hazardous waste recyclers is not subject to regulation. IDEM has provided no justification for such inconsistent regulation.

Second, the draft rule would require that new lead-acid battery breaking facilities or new secondary lead smelters obtain a containment building permit in accordance with 40 CFR 264 Subpart DD to store partially reclaimed waste in piles. See proposed [329 IAC 3.1-11.1-5\(g\)](#). However, as indicated above, 40 CFR 261.6(c)(1) exempts the recycling process from regulation and since the "temporary storage and piling are integral parts of

the cracking/recycling process, the components are exempt pursuant to [329 IAC 3-3-6\(c\)\(1\)](#)" [now 40 C.F.R. 261.6(c)(1)]. (footnote3: See footnote 2). Thus, IDEM is seeking to require that the recycling process which is exempt from the hazardous waste regulation be conducted within a RCRA regulated unit.

Finally, the draft rule proposes that existing battery breaking/secondary smelters that have "intermittent storage" meet various requirements. See the proposed [329 IAC 3.1-11.1-5\(e\)](#) general provisions and [329 IAC 3.1-11.1-7\(2\)](#) regarding storage area closure. As discussed above, what IDEM calls "intermittent storage" is an integral part of the battery cracking/recycling process which is exempt from RCRA regulations under 40 CFR 261.6(c)(1). IDEM has not provided any explanation for imposing regulations on an integral part of the battery recycling process, nor has IDEM justified why battery recyclers should be subject to regulations not imposed on other hazardous waste recyclers. In addition, such regulation is burdensome with no corresponding benefit.

For all of the reasons above, BCI suggests that IDEM delete 329 IAC §§ 3.1- 11.1-2(f), 3.1-11.1-5(e), (f) and (g) and [329 IAC 3.1-11.1-7\(2\)](#). (BCI)

Response: It is beyond the scope of these comments to debate in-depth prior interpretations of regulations in an Indiana administrative proceeding. It suffices to say that the recycling exemption at 40 CFR 261.6(c)(1) is not applicable to the case-by-case recycling activities regulated under 40 CFR part 266. This is clearly indicated in the language preceding the recycling process exclusion at 40 CFR 261.6(a)(2). IDEM is not bound by prior interpretations of regulatory language in this new rulemaking. In addition we do not consider "intermittent storage" (even if the recycling process exclusion was applicable) to be included within the recycling process exemption.

IDEM believes these rules are much clearer and less subject to debate than current rules. They will also remove inconsistencies in how our lead acid battery reclaimers have been regulated. Upon adoption, prior interpretations of the old rules will be a moot issue.

Comment: The draft rule should not regulate the recycling process because it is exempt from hazardous waste regulation. The draft rule seeks to regulate the recycling process which is exempt from hazardous waste regulations pursuant to 40 CFR. 261.6(c)(1). First the draft rule defines the term "intermittent storage" as storage that occurs after reclamation has commenced and before it is complete. See Draft [329 IAC 3.1-11.1-2\(f\)](#). However, the scope of the recycling exemption in 40 CFR 261.6(c)(1) has been interpreted to mean that "the temporary staging of materials during and incidental to the recycling process.... is not subject to regulation" and that the recovered battery components "are an integral part of the recycling process [and] are not discarded and thus are exempt from RCRA regulations." (footnote 1: Ind. Dept. Of Environmental Management v. Quemetco, Inc., Cause No. N-113, Modification of the Final Order of the Solid Waste Management Board, Conclusions of Law Numbers 10 and 12 (1991)). Moreover, the draft rule regulates the recycling of spent lead acid battery differently from the recycling of other hazardous waste recyclers is not subject to regulation. IDEM has provided no justification for such differential regulation.

Secondly, the draft rule requires that new lead acid battery breaking facilities or secondary lead smelters obtain a containment building permit in accordance with 40 CFR 264 Subpart DD to store partially reclaimed waste in piles. See Draft [328 IAC 3.1-11.1-5\(g\)](#). As indicated above, 40 CFR 261.6(c)(1) exempts the recycling process from regulation and because the "temporary storage and piling are integral parts of the cracking/recycling process, the components are exempt pursuant to [329 IAC 3-3-6\(c\)\(1\)](#)" [now 40 CFR 261.6(c)(1)]. (footnote 2: See footnote 1). Thus IDEM is seeking to require that the recycling process, which is exempt from the hazardous waste regulation, be conducted within a RCRA regulated unit. Finally, the draft rule proposes that existing battery breaking/secondary smelters that have "intermittent storage" meet various requirements. See Draft [329 IAC 3.1-11.1-5\(e\)](#). As discussed above, what IDEM calls "intermittent storage" is an integral part of the battery cracking/recycling process nor has IDEM justified why battery recyclers should be subject to regulations not imposed on other hazardous waste recycler. Therefore, IDEM should delete 329 IAC section 3.1-11.1-2(f), 3.1-11.1-5(d), (e), (f) and (g), and 3.1-11.1-7 from the draft rule. (BT)

Response: Most of this comment is the same as the BCI comment above and the response is the same. IDEM's approach to "intermittent storage" is the same everywhere. IDEM is not aware of other recycling facilities of regulated recyclable materials being treated differently. The commentor has suggested the draft rule requires a containment building permit for new facilities. The rule language cited actually only requires a permit if an exemption is not granted.

Comment: Standards for Retailers, Wholesalers, Manufacturers and Auto Salvage Yards. [329 IAC 3.1-11.1-3](#) requires that if batteries are stored in containers, the container must be in good condition and be a covered container. [328 IAC 3.1-11.1-3](#) should also require that if batteries are shipped in containers, for any reason, then the container must have sufficient structural integrity to contain the spent lead acid batteries during shipment and the container must be a covered container. This requirement would make subsequent handling of the batteries safer. (BT)

Response: IDEM does not have authority to regulate shipping containers. Shipping containers are under the jurisdiction of Indiana Department of Transportation, therefore, IDEM will not add any additional requirements. The draft rule does not prevent lead acid battery handlers to require such containers be used for shipping as a condition of acceptance.

Comment: Requirements Applicable to Reclaimers. The purpose of this rulemaking is to make Indiana's

hazardous waste management rules reflect the way reclaimers have historically handled whole spent lead acid batteries by staging them in trailers and subsequently offloading the spent lead acid batteries from the trailers into battery wreckers. This management practice reduces double handling costs. However, IDEM proposes to also impose new and unnecessary requirements on reclaimers. (BT)

Response: IDEM does not agree that the only purpose of this rule is to make the IDEM rules reflect the way reclaimers have historically handled whole spent lead acid batteries. The purpose of this rule is to assure staging and other activities that have historically been issues are done in a manner that is protective of human health and the environment. This rule will bring clarity and consistency to lead acid battery management in Indiana.

In addition, reclaimers often store batteries in areas after off-loading from trailers and prior to reclamation. Therefore, IDEM is providing clarification in [329 IAC 3.1-11.1-5\(c\)](#) by adding the word "permitted" before "storage".

Comment: [329 IAC 3.1-11.1-5\(c\)](#) should be revised in two ways. First, the rule should allow for staging of batteries for up to 14 scheduled operating days. This would provide needed flexibility for different operations when not all equipment operates either all the time or every day. Second, the requirements to inspect trailers from the outside within twenty-four (24) hours should be dropped. While this requirement is safer than what IDEM had previously required having the inspector walk across the top of the batteries inside the trailer, this inspection requirement still poses a safety hazard. Employees would either have to climb up on the back of the trailer to view the batteries or inspect using a step ladder. While this may be a safer to inspect, even if an employee looks into the trailers from the outside, it is doubtful that the employee could see any leaking batteries at the head end of the trailer or to be able to readily tell if a pallet has overturned. Exterior inspection of the trailers for signs there are leaking batteries in the trailer (and taking appropriate action if a leak is discovered) provides sufficient environmental safeguards and reduces the risk of falls associated with inspecting the trailers. (BT)

Response: IDEM believes that fourteen (14) calendar days are more than adequate and that tracking "operating time" is overly complex to enforce. At one time, U.S. EPA requested comments on allowing fourteen (14) calendar day staging on batteries held in trailers, but never adopted the provision. Based on prior discussions with the US EPA, IDEM believes that these rules would be challenged if more than fourteen (14) calendar days of staging were allowed. IDEM also believes that fourteen (14) days of battery staging needs to be coupled with the associated management requirements proposed here to protect human health and the environment.

IDEM does agree that exterior inspection of trailers for signs of leakage is adequate, when in conjunction with the surface management requirements of these rules, and has revised the rules accordingly. IDEM also agrees the tracking and enforcement of the twenty four (24) hours from arrival time adds complexity for facilities and inspectors and has revised the rules to eliminate that time frame.

Comment: Finally, [329 IAC 3.1-11.1-5\(d\)](#), (e), (f) and (g) imposes requirements which IDEM has never demonstrated are needed and which are contrary to Indiana's hazardous waste rules. Moreover, the requirements are not imposed on any other hazardous waste reclaimers. [329 IAC 3.1-11.1-5\(d\)](#), (e), (f) and (g) should be deleted. (BT)

Response: IDEM disagrees. Singling out spent lead acid batteries for specific regulation was initiated by the US EPA. Every item in the draft rule contained in this notice is in response to past concerns with battery reclaimers, enforcement issues, and the clarity of current rules, all of which have been encountered during the last twenty-nine (29) years of inspections and enforcement experiences with lead acid battery handlers.

Comment: Standards for intermediate storage. IDEM has not demonstrated that there is a need for the requirements set out in [329 IAC 3.1-11.1-3](#). This rule imposes requirements that are not imposed on entities handling batteries under the Universal Waste Rule. If IDEM wishes to identify the locations where intermediate storage is being conducted, it could require notification by those entities conducting intermediate storage. IDEM has not demonstrated an environmental basis for the requirements in [329 IAC 3.1-11.1-3](#) and it should be deleted. (BT)

Response: IDEM believes BT is referring to [329 IAC 3.1-11.1-4](#) which are the standards for intermediate storage facilities. As indicated in the response to BCI's similar comment above, IDEM has removed the spill response plan requirement making it consistent with the Universal Waste rules cited. The rule does require notification for large quantity intermediate storage facilities section (2)(A) also consistent with the universal waste rules.

Comment: Closure and Corrective Action. IDEM has not provided any evidence that [329 IAC 3.1-11.1-7](#) is necessary. [329 IAC 3.1-11.1-7](#) imposes requirements on persons handling spent lead acid batteries that are not imposed on persons who handle batteries under the Universal Waste Rule. Finally, the requirements are duplicate of other requirements that already apply to entities managing waste under the RCRA requirements. [329 IAC 3.1-11.1-7](#) should be deleted. (BT)

Response: IDEM disagrees that the agency is limited in this rulemaking by the scope of existing rules. The commentor is confusing "intermediate storage facilities" regulated in section 4 of the draft rule with "intermittent storage" which is addressed in the standards for reclaimers in section 5 of the draft rule. [329 IAC 3.1-11.1-7](#) was added to clarify that if contamination at the unpermitted intermittent storage areas units cannot be removed the department will address the matter in accordance with the department's risk integrated system of closure (RISC).

All intermittent storage areas at existing facilities are either subject to the standards for existing facilities in section 5(e), corrective action, or subject to existing variances.

The commenter is correct in that this section is somewhat redundant. These rules are intended to provide clarity and consistency to the management of spent lead acid batteries. The redundant portions of this language is intentional and must be referenced as a lead in to the language addressing RISC.

IDEM has removed the reference to [329 IAC 3.1-11-2\(3\)](#). That section of the rule is no longer necessary, as those requirements are now at section 5(a) of this rule.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On March 15, 2011, the Solid Waste Management Board (board) conducted the first public hearing/board meeting concerning the development of new rules and amendments to [329 IAC 3.1](#), temporary storage and management of spent lead acid batteries. No comments were made at the first hearing.

[329 IAC 3.1-11-2](#); [329 IAC 3.1-11.1](#)

SECTION 1. [329 IAC 3.1-11-2](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-11-2](#) Exceptions and additions; specific standards

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-15-2](#); [IC 13-22-2](#); **40 CFR 266**

Sec. 2. Exceptions and additions to standards for the management of specific hazardous waste and specific types of hazardous waste facilities are as follows:

(1) Delete 40 CFR 266.23(b) and substitute the following: "No person may apply or allow the application of used oil as defined in [329 IAC 3.1-4](#) to any ground surface except for purposes of treatment in accordance with a permit issued by the department under [IC 13-15-2](#). The use of unused waste oil or other waste material, which is contaminated with dioxin or hazardous waste or exhibits any characteristic of hazardous waste except ignitability for dust suppression or road treatment is prohibited."

(2) In 40 CFR 266.102(a)(2)(viii) dealing with applicable financial requirements for burners, the references to federal cites shall be converted as follows:

(A) 264.141 means [329 IAC 3.1-15-2](#).

(B) 264.142 means [329 IAC 3.1-15-3](#).

(C) 264.143 means [329 IAC 3.1-15-4](#).

(D) 264.147 through 264.151 means [329 IAC 3.1-15-8](#) through [329 IAC 3.1-15-10](#).

(3) Delete ~~40 CFR 266.80(b)~~ **40 CFR 266, Subpart G** and substitute the following: "Owners or operators of facilities that store spent lead acid batteries before reclaiming them, other than spent batteries that are to be regenerated, are subject to the following requirements:

(A) Notification requirements under Section 3010 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq.

(B) All applicable provisions in the following subparts of 40 CFR 264:

(i) Subpart A through subpart B, excluding 40 CFR 264.13.

(ii) Subpart C through subpart E, excluding 40 CFR 264.71 and 40 CFR 264.72.

(iii) Subpart F through subpart L.

(C) All applicable provisions in the following subparts of 40 CFR 265:

(i) Subpart A through subpart B, excluding 40 CFR 265.13.

(ii) Subpart C through subpart E, excluding 40 CFR 265.71 and 40 CFR 265.72.

(iii) Subpart F through subpart L.

(D) All applicable provisions in 40 CFR 270 and 40 CFR 124." insert [329 IAC 3.1-11.1](#).

(Solid Waste Management Board; [329 IAC 3.1-11-2](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 939; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Oct 23, 1992, 12:00 p.m.: 16 IR 849; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2743; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 2. [329 IAC 3.1-11.1](#) IS ADDED TO READ AS FOLLOWS:

Rule 11.1. Spent Lead Acid Batteries

[329 IAC 3.1-11.1-1](#) Applicability

Sec. 1. (a) This rule applies to:

- (1) retailers;
- (2) wholesalers;
- (3) manufacturers;
- (4) owners or operators of reclamation facilities;
- (5) owners or operators of intermediate storage facilities; and
- (6) owners or operators of other storage facilities;

that discard, dispose of, store, or recycle spent lead acid batteries.

(b) Generators of spent lead acid batteries not listed in subsection (a) are not subject to this article provided the batteries are reclaimed.

(Solid Waste Management Board; [329 IAC 3.1-11.1-1](#))

[329 IAC 3.1-11.1-2](#) Definitions

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-11-2-118](#); [IC 13-15-2](#); [IC 13-22-2](#)

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Battery breaking" or "battery cracking" means decapitating, cutting, or otherwise liberating the contents of a spent lead acid battery. This activity includes the following:

- (1) Separating any component of the battery from the other components.
- (2) Draining acid from the battery.
- (3) Removing plates and groups from the battery.

(c) "Battery breaking facility" means a facility that engages in battery breaking or battery cracking.

(d) "Component" means any of the various materials and parts of a spent lead acid battery, including, but not limited to, the following:

- (1) Plates and groups.
- (2) Rubber and plastic battery chips.
- (3) Acid.
- (4) Paper cellulose material.

(e) "Intermediate storage facility" means a warehouse or other collection facility used for the temporary storage of whole spent lead acid batteries before sending the batteries to a spent lead acid battery reclamation facility. An intermediate storage facility excludes facilities belonging to the following:

- (1) Retailers.
- (2) Wholesalers.
- (3) Manufacturers.

(f) "Intermittent storage" means any storage activity that occurs after reclamation has commenced but before it is completed.

(g) "Large quantity storage facility" means a facility that accumulates more than five thousand (5,000) kilograms or eleven thousand twenty-three (11,023) pounds of spent lead acid batteries.

(h) "Lead acid battery", as defined in [IC 13-11-2-118](#), means a battery that:

- (1) contains lead and sulfuric acid; and
- (2) has a nominal voltage of at least six (6) volts.

(i) "Partially reclaimed material" means a solid waste material that has been processed but must be processed further before recovery is complete. Partially reclaimed material results from the process of:

- (1) battery breaking; and
- (2) component separation;

which results in components including partially reclaimed lead bearing material known as plates and groups.

(j) "Plastic battery chips" means post consumer whole components and any pieces thereof that are constructed of plastic and used in a lead acid battery.

(k) "Plates and groups" means the internal components of a lead acid battery that are constructed of lead or lead alloys, or both. Because of the concentration of leachable lead contained in them, plates and groups are:

- (1) spent material which is solid waste; and
- (2) hazardous waste (waste code D008).

(l) "Reclaimers" means the following:

- (1) Battery breaking facilities.
- (2) Smelters.

(m) "Reclamation facility" means a facility involved in the recovery of material from wastes.

(n) "Reclamation process" includes both:

- (1) battery cracking; and
- (2) smelting;

of spent lead acid batteries for the purpose of recovering lead and other components.

(o) "Recycling facility" means a battery breaking facility or a secondary lead smelter.

(p) "Rubber battery chips" means post consumer whole components of batteries and pieces of batteries that are constructed of rubber and used in a lead acid battery.

(q) "Small quantity storage facility" means a facility that does not accumulate more than five thousand (5,000) kilograms or eleven thousand twenty-three (11,023) pounds of spent lead acid batteries.

(r) "Spent lead acid battery", for purposes of this rule, means any lead acid battery that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing, or any lead acid battery being discarded, abandoned, disposed of, or reclaimed.

(s) "Staging" means holding whole spent lead acid batteries in trailers, which have arrived at a battery breaker or secondary lead smelter, or both, until the batteries can be transferred to a permitted storage area or moved into the processing unit.

(t) "Whole spent lead acid battery" means a spent lead acid battery that has not been subjected to battery-breaking operations.

(Solid Waste Management Board; [329 IAC 3.1-11.1-2](#))

[329 IAC 3.1-11.1-3](#) Standards for retailers, wholesalers, and manufacturers

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-15-2](#); [IC 13-20-16](#); [IC 13-22-2](#)

Sec. 3. Retailers, wholesalers, and manufacturers that store spent lead acid batteries must comply with [IC 13-20-16](#) and the following:

- (1) Spent lead acid batteries must be stored in a:
 - (A) building with a roof; or
 - (B) covered container that is:
 - (i) in good condition; and
 - (ii) chemically compatible with the contents of the battery.
- (2) Spent lead acid batteries must be stored upright and secured to prevent overturning.
- (3) If the spent lead acid battery is not in good condition or begins to leak, the owner or operator of the facility must transfer the battery to a container that is:
 - (A) in good condition; and
 - (B) chemically compatible with the contents of the battery.
- (4) Any spent lead acid battery being discarded shall be sent to:
 - (A) a secondary lead smelter authorized by the department;
 - (B) an intermediate storage location with the intent to deliver to a secondary lead smelter authorized by the department; or
 - (C) a universal waste handler in accordance with [329 IAC 3.1-16](#).

(Solid Waste Management Board; [329 IAC 3.1-11.1-3](#))

[329 IAC 3.1-11.1-4](#) Standards for intermediate storage facilities

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-15-2](#); [IC 13-22-2](#)

Sec. 4. Intermediate storage facilities shall comply with the following:

- (1) For small quantity storage facilities that do not accumulate more than five thousand (5,000) kilograms of spent lead acid batteries, the following:
 - (A) If the lead acid battery is not in good condition or begins to leak, the owner or operator must transfer the battery to a container that is:
 - (i) in good condition; and
 - (ii) chemically compatible with the contents of the battery.
 - (B) Batteries must be stored upright and secured to prevent overturning.
 - (C) Batteries must be stored in a building with a roof or stored in a covered container that is:
 - (i) in good condition; and
 - (ii) chemically compatible with the contents of the battery.
 - (D) Batteries may not be stored for more than three hundred sixty-five (365) consecutive days.
 - (E) Any spilled waste and contaminated equipment must be disposed or recycled in accordance with applicable solid waste rules at [329 IAC 10](#) and [329 IAC 11](#) or hazardous waste rules in this article.
- (2) For large quantity storage facilities that accumulate more than five thousand (5,000) kilograms of spent lead acid batteries, the following:
 - (A) The storage facility owner or operator must notify the commissioner of the location of the storage site.
 - (B) If the lead acid battery is not in good condition or begins to leak, the owner or operator must transfer the battery to a container that is:
 - (i) in good condition; and
 - (ii) chemically compatible with the contents of the battery.
 - (C) Batteries must be stored upright and secured to prevent overturning.
 - (D) Batteries must be stored in a building with a roof or stored in a covered container that is:
 - (i) in good condition; and
 - (ii) chemically compatible with the contents of the battery.
 - (E) Batteries may not be stored for more than three hundred sixty-five (365) consecutive days.
 - (F) Any spilled waste and contaminated equipment must be disposed or recycled in accordance with applicable solid waste rules at [329 IAC 10](#) and [329 IAC 11](#) or hazardous waste rules in this article.

(Solid Waste Management Board; [329 IAC 3.1-11.1-4](#))

[329 IAC 3.1-11.1-5](#) Standards for reclaimers

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Sec. 5. (a) Owners or operators of facilities that store spent lead acid batteries before reclaiming them, other than spent batteries that are to be regenerated, are subject to the following requirements:

- (1) Notification requirements under [329 IAC 3.1-1-11](#).**
- (2) All applicable provisions in the following subparts of 40 CFR 264:**
 - (A) Subpart A through Subpart B, excluding 40 CFR 264.13.**
 - (B) Subpart C through Subpart E, excluding 40 CFR 264.71 and 40 CFR 264.72.**
 - (C) Subpart F through Subpart L.**
- (3) All applicable provisions in [329 IAC 3.1-13](#)**

(b) Battery breaking facilities that do not recycle the components on-site shall comply with all applicable generator requirements of 40 CFR 262.34 for the components of the battery that are hazardous wastes, unless an exemption pursuant to [329 IAC 3.1-5-4](#) referencing 40 CFR 260.30 and 40 CFR 260.31 is granted by the commissioner.

(c) Trailers of incoming whole spent lead acid batteries may be staged on an asphalt or concrete surface maintained in good condition and shall be processed, or put into permitted storage, within fourteen (14) calendar days of receipt. The following conditions shall be met for staged batteries:

- (1) Weekly inspections of the staging area shall be performed as long as trailers remain in the area. Any indications that a trailer is leaking will require an immediate inspection to determine the source of the leak. If the batteries are the source of the leak, either the entire load shall be processed immediately or the source of the leak must be stored in a covered container that is:**
 - (A) in good condition; and**
 - (B) chemically compatible with the contents of the battery.**
- (2) Spills must be addressed per the facility's IDEM approved contingency plan or spill response plan.**
- (3) Operating records will consist of documentation of inspections conducted under subdivision (1).**

(d) For reclamation facilities existing on the effective date of this rule, the following standards for intermittent storage during reclamation must be met for partially reclaimed wastes, unless an exemption under [329 IAC 3.1-5-4](#) referencing 40 CFR 260.30 and 40 CFR 260.31 is granted by the commissioner:

- (1) Wastes must be stored inside a completely enclosed structure (with walls and under roof) maintained free of cracks, gaps, corrosion, or other deterioration that could allow hazardous waste to be released.**
- (2) Wastes must be either:**
 - (A) stored in a container meeting the applicable requirements of 40 CFR 264, Subpart I; or**
 - (B) stored on a base that is chemically compatible with the waste, and constructed of sufficient strength and thickness to support the weight of the waste and any personnel and heavy equipment operating on the base.**
- (3) If the base is impervious, such as coated concrete, it must be inspected weekly for evidence of cracks or other deterioration and any defects repaired immediately. If the base is not impervious, it must be inspected daily and any deterioration repaired within seventy-two (72) hours of discovery.**
- (4) For units managing free liquids or treated with free liquids, the owner or operator must include a liquid collection and removal system. The concrete base must be sloped to facilitate drainage.**
- (5) Waste acid and any other liquid wastes from the recycling process shall be either:**
 - (A) sent to an on-site wastewater treatment facility; or**
 - (B) managed in accordance with all applicable hazardous waste rules.**
- (6) Contaminants must be contained within the building. An area must be designated for decontamination of personnel and equipment. Any rinsate, if hazardous, must be collected and properly managed according to 40 CFR 262.34. If rinsate is not hazardous, it must be managed in accordance with applicable solid waste rules at [329 IAC 10](#).**
- (7) Fugitive dust emissions must be controlled in accordance with 40 CFR 264.1101(c)(1)(iv).**

(e) All waste streams generated during the reclamation process identified as hazardous waste under 40 CFR 261 must be managed according to 40 CFR 262.34.

(f) Secondary lead smelters or lead acid battery breaking facilities commencing operations on or after

the effective date of this rule must obtain a containment building permit in accordance with 40 CFR 264, Subpart DD to store partially reclaimed waste in piles, unless an exemption under [329 IAC 3.1-5-4](#) referencing 40 CFR 260.30 and 40 CFR 260.31 is granted by the commissioner.

(Solid Waste Management Board; [329 IAC 3.1-11.1-5](#))

[329 IAC 3.1-11.1-6](#) Transporters

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-15-2](#); [IC 13-22-2](#)

Sec. 6. (a) Persons who engage in transporting separated components of a spent lead acid battery must comply with [329 IAC 3.1-8](#).

(b) Facilities that receive and store separated components of spent lead acid batteries that are a hazardous waste as identified in 40 CFR 261 must comply with the manifest requirements of 40 CFR 264, Subpart E as incorporated by reference in [329 IAC 3.1-9-1](#).

(c) The requirements of 40 CFR 264, Subpart E do not apply to the transportation of whole spent lead acid batteries.

(Solid Waste Management Board; [329 IAC 3.1-11.1-6](#))

[329 IAC 3.1-11.1-7](#) Closure and corrective action

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-12-3-2](#); [IC 13-15-2](#); [IC 13-22-2](#); [IC 13-25-5-7](#)

Sec. 7. In addition to the closure requirements incorporated by reference in this rule, the following requirements apply:

- (1) Permitted facilities are subject to the closure and postclosure requirements of 40 CFR 264, Subpart G.
- (2) At closure of unpermitted intermittent storage areas, the owner or operator must remove all waste residues and contamination from the storage area, including residue on equipment, structures, and soil.
- (3) If the contaminated soils cannot be completely removed, the owner or operator must prepare a written plan to close the area in accordance with [IC 13-12-3-2](#) and submit the plan to the commissioner for approval. The written plan must provide information equivalent to a proposed work plan under [IC 13-25-5-7\(b\)](#). If closure requirements are addressed in an exemption received under [329 IAC 3.1-5-4](#), the facility must follow the closure requirements contained in the exemption.
- (4) Corrective action for solid waste management units may be initiated at any time during the life of the facility.

(Solid Waste Management Board; [329 IAC 3.1-11.1-7](#))

[Notice of Public Hearing](#)

Posted: 04/20/2011 by Legislative Services Agency
An [html](#) version of this document.

EXHIBIT 3

Exide Technologies' Position Paper
Hazardous Waste Management Commission Meeting on October 18, 2012

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
HAZARDOUS WASTE MANAGEMENT PERMIT

Name of Permittee: Exide Technologies

Facility Location: Muncie, Indiana

EPA Identification Number: IND000717959

Issuance Date: May 7, 2010

Expiration Date: May 25, 2015

Authorized Activities

Pursuant to Indiana Environmental Statutes (IC 13) and the rules promulgated thereunder and codified in Title 329 of the Indiana Administrative Code, Article 3.1 (329 IAC 3.1), the State permit conditions (hereinafter called the permit) of the Resource Conservation and Recovery Act of 1976 (RCRA) permit are issued to Exide Technologies (hereinafter called the Permittee) to operate a hazardous waste facility located in Muncie, Indiana, Section 29, Township 20 North, Range 10 East at latitude 40° 9' 25" and longitude 85° 25' 0", Muncie West Quadrangle, on the U.S. Geological Survey topographic map.

The State RCRA program is authorized under 40 CFR Part 271 and Section 3006 of RCRA to administer the hazardous waste management program in lieu of the Federal program, including administration of most of the Hazardous and Solid Waste Amendments (HSWA) of 1984. Since the State of Indiana has not yet received authorization to administer the most recent hazardous waste program requirements under HSWA, additional permit conditions may be issued by the U.S. EPA to address these new requirements.

E. MANAGEMENT OF CONTAINERS

1. The Permittee shall manage containers as follows as required by 329 IAC 3.1-9 and 40 CFR 264.173.
 - (a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
 - (b) A container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.
 - (c) Containers of thirty (30) gallons or more must be stored so that they can be inspected for leaks and for deterioration caused by corrosion or other factors, without having to move the containers during the inspection and must have adequate aisle space between rows (approximately two and one-half feet (2 1/2)) to facilitate inspection. If, in the opinion of the IDEM, the observed space is too narrow, Exide will be provided an opportunity to demonstrate that an inspection for leaks could be conducted without moving the containers. If Exide is able to conduct an inspection for leaks without moving the containers (visible inspection between the pallets of containers for evidence of leaks on the floor or edge of the pallets), then this permit requirement will have been met.

2. Trailers of incoming whole spent lead-acid batteries, may be staged on an asphalt or concrete surface maintained in good condition, and shall be processed, or put into storage, within fourteen (14) calendar days of receipt. Asphalt and concrete are maintained in good condition by making necessary repairs to cracks or gaps as soon as practicable. The following conditions shall be met for staged batteries:
 - (a) Each visual inspection shall include checking the exterior of the trailer(s) ensuring that there are no leaks. Any trailers that are received with evidence that the integrity of the batteries have been disturbed in transit and are leaking upon receipt will be processed immediately and will not be placed in the trailer staging area.
 - (b) Weekly inspections of the staging area shall be performed as long as trailers remain in the area. Any indications that a trailer is leaking will require an immediate inspection to determine the source of the leak. If the batteries are the source of the leak, either the entire load shall be processed immediately or the source of the leak must be containerized.
 - (c) Spills must be addressed per the facility's IDEM approved contingency plan or spill response plan.

- (d) Operating records will include documentation of inspections conducted pursuant to conditions E.2.(a-b) above.
 - (e) Loading and unloading areas shall be on an asphalt or concrete surface, inspected daily for spills and deterioration, and maintained in good condition by making necessary repairs to cracks or gaps as soon as practicable, taking into account facility operation and maintenance rebuild schedules, other environmental permit requirements and weather conditions.
- 3.
- (a) The Permittee shall be allowed to "stage" incoming containerized wastes (other than whole spent lead-acid batteries) in designated areas. Incoming waste shall be placed in permitted units within 3 operating days of entering the facility boundary (or contiguous property controlled by the permittee) unless the permittee rejects all or part of the shipment. In the case of rejected loads, the permittee shall have an additional sixty (60) days to ship the waste off-site to an alternate TSDF or to the generator, in accordance with the requirements of 40 CFR 264.72. During this timeframe the Permittee must ensure that the rejected load is maintained in a secure location and clearly labeled. Operating day is defined as any 24 hour period during which at least a partial shift is worked by employees who process, treat, place into storage, or dispose of hazardous waste at the facility.
 - (b) Containerized waste being transferred from one permitted unit to another (such as from container storage to tank storage) shall remain outside of permitted units only for the minimum time necessary to move the containers and transfer the waste. In no instance shall this transfer period exceed 8 hours.
 - (c) The Permittee shall not have more than 485,102 gallons (231,440 gallons with free liquids) of containerized hazardous waste at the facility at any one time. All containers of waste in the Container Storage Areas, in the processing areas, on the loading docks, and all manifested hazardous wastes in trucks and trailers shall be included in this calculation.
- F. CONTAINMENT The Permittee shall construct, operate, and maintain the containment system in accordance with the requirements of 329 IAC 3.1-9 and 40 CFR 264.175 as specified in Process Information, Attachment D, which is incorporated herein by reference.
- G. INSPECTION The Permittee shall inspect the container storage areas at least weekly, to detect leaking containers and deterioration of containers and the containment system, caused by corrosion or other factors, as required by 329 IAC 3.1-9 and 40 CFR 264.174.

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
HAZARDOUS WASTE MANAGEMENT PERMIT

Name of Permittee: Quemetco, Inc.

Facility Location: Indianapolis, Indiana

EPA Identification Number: IND000199653

Issuance Date: April 14, 2010

Expiration Date: May 2, 2015

Authorized Activities

Pursuant to Indiana Environmental Statutes (IC 13) and the rules promulgated thereunder and codified in Title 329 of the Indiana Administrative Code, Article 3.1 (329 IAC 3.1), the State permit conditions (hereinafter called the permit) of the Resource Conservation and Recovery Act of 1976 (RCRA) permit are issued to Quemetco, Inc. (hereinafter called the Permittee) to operate a hazardous waste facility located in Indianapolis, Indiana, Section 10, Township 15 North, Range 2 East at latitude 39° 45' 14" and longitude 86° 17' 59", Bridgeport and Clermont Quadrangles, on the U.S. Geological Survey topographic map.

The State RCRA program is authorized under 40 CFR Part 271 and Section 3006 of RCRA to administer the hazardous waste management program in lieu of the Federal program, including administration of most of the Hazardous and Solid Waste Amendments (HSWA) of 1984. Since the State of Indiana has not yet received authorization to administer the most recent hazardous waste program requirements under HSWA, additional permit conditions may be issued by the U.S. EPA to address these new requirements.

- (a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
 - (b) A container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.
 - (c) Containers of thirty (30) gallons or more must be stored so that they can be inspected for leaks and for deterioration caused by corrosion or other factors, without having to move the containers during the inspection and must have adequate aisle space between rows (approximately two and one-half feet (2 1/2)) to facilitate inspection.
2. Trailers of incoming whole spent lead-acid batteries, may be staged on an asphalt or concrete surface maintained in good condition, and shall be processed, or put into storage, within fourteen (14) calendar days of receipt. The following conditions shall be met for staged batteries:
- (a) Each visual inspection shall include checking the exterior of the trailer(s) ensuring that there are no leaks. If any leaks are detected, the source must be corrected immediately by either processing the load immediately or containerizing the leaking container. Any released material must be adequately removed and appropriately disposed of. If no exterior leaks are evident and a leak inside the trailer is found upon processing, Quemetco must respond by cleaning up the spilled material following the removal of any containers in the trailer. Any trailers that are found leaking upon receipt will be processed immediately and will not be placed in the trailer parking lot.
 - (b) Weekly inspections of the staging area shall be performed as long as trailers remain in the area. Any indications that a trailer is leaking will require an immediate inspection to determine the source of the leak. If the batteries are the source of the leak, either the entire load shall be processed immediately or the source of the leak must be containerized.
 - (c) Spills must be addressed per the facility's IDEM approved contingency plan or spill response plan.
 - (d) Operating records will include documentation of inspections conducted pursuant to conditions E.2.(a-b) above.
 - (e) Loading and unloading areas shall be on an asphalt or concrete surface maintained in good condition and shall be inspected daily for spills and

deterioration. Cracks or gaps that are observed during daily inspections shall be repaired as soon as possible, weather permitting.

3. (a) The Permittee shall be allowed to "stage" incoming containerized wastes (other than whole spent lead-acid batteries) in designated areas. Incoming waste shall be placed in permitted units within 3 operating days of entering the facility boundary (or contiguous property controlled by the permittee) unless the permittee rejects all or part of the shipment. In the case of rejected loads, the permittee shall have an additional sixty (60) days to ship the waste off-site to an alternate TSDF or to the generator, in accordance with the requirements of 40 CFR 264.72. During this timeframe the Permittee must ensure that the rejected load is maintained in a secure location and clearly labeled. Operating day is defined as any 24 hour period during which at least a partial shift is worked by employees who process, treat, place into storage, or dispose of hazardous waste at the facility.
- (b) Containerized waste being transferred from one permitted unit to another (such as from container storage to tank storage) shall remain outside of permitted units only for the minimum time necessary to move the containers and transfer the waste. In no instance shall this transfer period exceed 8 hours.
- (c) The Permittee shall not have more than 8,447 gallons of containerized hazardous waste stored in the permitted storage area at any one time. Lead acid batteries received for on-site reclamation may be staged in designated areas for up to the maximum allowable days prior to being placed into the permitted storage unit or processed directly. All wastes in the processing areas are currently not included in container storage volume.

- F. CONTAINMENT The Permittee shall construct, operate, and maintain the containment system in accordance with the requirements of 329 IAC 3.1-9 and 40 CFR 264.175 as specified in Process Information, Attachment D, which is incorporated herein by reference.
- G. INSPECTION The Permittee shall inspect the container storage areas at least weekly, to detect leaking containers and deterioration of containers and the containment system, caused by corrosion or other factors, as required by 329 IAC 3.1-9 and 40 CFR 264.174.
- H. SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE The Permittee shall not locate containers holding ignitable or reactive waste within fifteen (15) meters (fifty (50) feet) of the facility's property line, as required by 329 IAC 3.1-9 and 40 CFR 264.176.

Missouri Hazardous Waste Management Commission Meeting

October 18, 2012

Agenda Item # 6

Updating Commission Operating Policies

Recommended Action:

Commission to review and vote on updated language, edits and additions to the Commission Operating Policies.

Presented by:

Tim Eiken, Rules Coordinator, HWP

**Department of Natural Resources
Hazardous Waste Management Commission Operating Policies
October 2012**

Draft – October 2012

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Purpose

Environmental statutes and regulations of the State of Missouri embody the goals of the people for protection of the environment and public health in a balanced manner consistent with economic growth. To achieve these goals, laws describe and assign powers and duties to the Department of Natural Resources and the environmental commissions and boards.

The operating policy set forth herein is intended to be adopted by the members of the Missouri Hazardous Waste Management Commission. The purpose of this policy is to promote a higher level of commission competence and independence, transparency and clarity in action, and predictability and consistency in processes, thus enhancing public trust and commission accountability. Throughout this document the term “commission” is understood to mean the Missouri Hazardous Waste Management Commission.

This document establishes an element of policy uniformity with the other boards and commissions in the Department of Natural Resources. The commission will review this policy on a biannual basis and modify as necessary to conform with any changes to the statutes that give the commission its authority or as necessary to reflect changes in commission practice or procedure. The commission will review the policy at its regularly scheduled meeting in June of every other calendar year, beginning in 2012. This policy does not have the force and effect of law, and is not intended to set legally binding procedural rules

Commission Structure

1. Authority and Powers

The Hazardous Waste Management Commission was established in 1977 by section 260.365 RSMo. The commission oversees the implementation of laws and regulations that provide for the safe management of hazardous wastes and substances to protect human health and the environment. Responsibilities carried out by the commission include:

- Categorizing hazardous waste
 - Designating which wastes may be disposed of through alternate technologies;
 - Regulating storage, treatment, disposal, transportation, containerization and labeling of hazardous waste
 - Regulating the issuance of licenses and permits
 - Granting variance requests
 - Conducting hearings and rulemaking
 - Deciding appeals and issuing orders
 - Promoting recycling, reuse and reduction of hazardous wastes
 - Updating a state hazardous waste management plan
- The commission has the power to acquire information and services useful for carrying out its responsibilities through obtaining independent technical or other professional support.

2. Members

The commission shall have seven members who are appointed by the Governor and confirmed by the Missouri Senate.

No more than four members shall belong to the same political party.

All members shall be representative of the general interest of the public and shall have an interest in and knowledge of waste management and its effects on human health and the environment.

- Three members, respectively, shall have knowledge of and may be employed in:
 - Agriculture
 - The waste generating industry
 - The waste management industry.

Members shall serve for four years and until their successors are selected and qualified. There is no limitation on the number of terms any appointed member may serve.

Members shall be reimbursed for travel and other reasonable and necessary expenses incurred in the performance of their duties and shall receive fifty dollars per day for each day spent in performance of their duties at regular commission meetings.

A member may resign from the commission with written notice to the chair or applicable program director.

Any commission member absent from four consecutive regular commission meetings for any cause shall be deemed to have resigned.

The governor may remove any appointed member for cause.

- The governor may appoint a member for the remaining portion of the unexpired term created by a vacancy.

3. Officers

- The members shall annually select from among themselves a chairman and a vice chairman.
- The members shall annually select amongst themselves a chairman and a vice-chairman during the second calendar meeting of each calendar year. As a suggestion, it is recommended that the chairmanship/vice-chairmanship be rotated amongst willing candidates at least every two years.

4. Staff

- The Hazardous Waste Management Program provides the commission all necessary professional and administrative support the commission may require to carry out its powers and duties.
- The Attorney General's Office provides legal advice to the commission and acts as attorney for the commission

5. Meetings

The commission shall routinely meet at least four times a year, at times and places determined by the chair in consultation with staff and members of the commission. The commission intends to vary meeting locations and times to offer more opportunity for interested persons to attend.

The commission may hold special meetings as necessary to the timely performance of commission responsibilities. Special meetings may be called by three members upon written notice to each member of the commission.

Issues may arise from time to time that are of interest to other commissions. In such instances, the commission may hold a joint meeting to discuss topics of mutual interest. Joint meetings may be called by the chairmen of the two commissions in consultation with each program director.

The commission may, from time to time, tour facilities or locations of interest. Tours will have an agenda as with any other meeting. Consideration must be given to providing access to the public during the tour.

The commission may hold working meetings, at which no decisions are made, to discuss topics pertaining to the commission.

Pursuant to the Missouri Sunshine Law, all meetings of the commission at which a quorum of the commission is present, other than social gatherings, shall be meetings open to the public.

The commission may hold closed sessions or meetings only in accordance with the procedures and exceptions provided in the Missouri Sunshine Law. The motion to close the meeting shall cite the specific statutory exception or exceptions under which the closed meeting is being held. The number of staff attending the closed meeting will be limited, the time spent in a closed meeting will be as brief as necessary and the discussion shall be limited to only the specific topic or topics for which the meeting was closed. Roll call votes will be taken to close a meeting.

After a closed meeting the commission should return to open session. The chair should state the general topic of the discussion held during the closed session.

6. Agendas

An agenda is a tool to organize a meeting, to notify members, staff, and any interested parties about topics to be discussed, and to assist in the orderly conduct of a meeting.

The agenda for each commission meeting will contain the following:

- Name of the commission

- Meeting time, date and location

- Notice that members of the public may ask to address any agenda item at the time it is discussed, together with instructions for signing a form or card to speak to an agenda item.

- A standing item to allow for public comment on any topic

- Items for consideration, brief, but clear as to the topic

- Anticipated action for each item such as: decision, no action-information only or further direction sought

- An item to discuss or set future agendas

- An item for future meetings

If a meeting is to contain a closed session in accordance with the Sunshine Law, a statement of when the closed session will be held and when the open session will be held, whenever possible

Contact information for the commission and program, referencing how copies of materials provided to commission members in preparation for the meeting may be requested

Other agenda items as appropriate, such as legislative updates

Contact information for those with disabilities

Where possible, preliminary agendas should be developed and provided, with the statement that the agenda is preliminary and subject to change.

Agenda items shall generally be determined by the program director in consultation with the commission chair. Any commissioner or the public may request that an item be brought before the commission. Such requests should be received at least fourteen days before a meeting.

Agendas for any meeting will be posted according to the provisions of the Sunshine Law as well as posting on department and Office of Administration (if available) websites. Agendas will be routinely provided to stakeholders who have requested to be placed on a mailing list, or to anyone requesting an agenda.

7. Conduct of Meetings

Roberts Rules of Order will be followed for the orderly conduct of commission business and actions.

The work of the commission will be conducted with respect and courtesy toward the staff, interested parties and the public. Decision-making will reflect independence and impartiality.

Four of the members of the commission must appear in person or by electronic conference to constitute a quorum for the conduct of business. If there is no quorum, members may conduct a working meeting.

If a quorum is present, the affirmative vote of the majority of the members entitled to vote on the subject shall be the act of the commission.

The commission welcomes information and views from all interested parties regarding the work of the commission. Members of the public shall be afforded the opportunity to comment on any agenda item at the time it is addressed and may be asked to sign a form or card to address the particular item.

If it has been decided before the meeting how much time will be allowed for public comment (for example, 3 minutes per person) and how the order of speakers will be determined, that information should be placed on the agenda. The procedures for public comment should be announced by the chair.

Records and Information

1. Meeting Materials

Materials that are provided to commission members for any meeting will also be made available to the public on request, unless the material relates to a closed meeting topic under the Sunshine Law. Materials can be made available either as hard copies or by electronic means.

As with requests for agenda items, effort should be made to make all meeting materials available to the commission secretary at least fourteen days prior to the date of the meeting, especially those that will be relied upon for the meeting. This ensures that the commission secretary and department staff have sufficient time to compile and distribute meeting materials to commissioners and other interested parties and to make this information available on the commission's web page within a reasonable timeframe prior to the meeting. The commission, in its sole discretion, may determine whether or not to consider any materials provided to the commission less than fourteen days prior to the date of the meeting.

2. Minutes

The commission secretary will maintain minutes of commission meetings and draft minutes shall become final upon approval at a subsequent commission meeting.

3. Records

The commission shall maintain the types of records listed below. Except for records closed in accordance with the Sunshine Law, the records shall be made available to the general public, by the commission webpage if possible. In addition, citizens can obtain copies of records upon request to the commission's custodian of records and payment of appropriate fees.

- Policies
- Meeting dates, times, places and agendas
- Minutes
- Meetings packet materials and handouts
- Rulemaking reports
- Regulatory Impact Reports
- Instruction on participation and submission of information
- Commission member contact information
- Other materials utilized by the commission

Most commission meetings are streamed live on the Department of Natural Resources' live meeting page at www.dnr.mo.gov/videos/live.htm. In addition,

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meetings are recorded and the livestream recordings of past meetings are available at the Hazardous Waste Management Commission's website at:

<http://www.dnr.mo.gov/env/hwp/commission/commis.htm>

Roles and Responsibilities

1. Commission Members

Each commission member represents the interest of the general public and the concerns for which he/she was appointed. Members also provide representation to facilitate open communication between the regulated community, interested groups, the general public and the department.

The authority of the commission rests in the commission as a whole, not in individual members. Members shall faithfully carry out the powers and duties placed upon them by law, which may include:

- Establishing policy and direction for the program.
- Rule-making in accordance with the laws and policies governing rule-making.
- Performing a quasi-judicial function with respect to decisions on appeals.

Each commissioner is expected to attend training events in accordance with the Training Policy contained in Appendix 2.

Each commissioner is expected to fully review the materials provided prior to each meeting.

2. Director of the Department of Natural Resources

- By statute, the director of the Department of Natural Resources is directed to execute policies established by the commission and is subject to commission decisions as to all substantive and procedural rules. Department decisions are subject to appeal to the commission. The director is also responsible for recommending policies to the commission to achieve effective and coordinated environmental control.

3. Hazardous Waste Program Director

- The Hazardous Waste Program Director is directly responsible to the commission and has primary responsibility for commission support and for implementation of commission decisions. The program director's responsibilities include preparing and disseminating meeting agendas and supporting materials, issuing notices, arranging logistics for commission meetings, and coordinating staff presentations, analyses and rule development.
- According to Chapter 640, the program director is approved and may be removed or reassigned by the commission through a written request to the department director.

4. Commission Secretary and Program Staff

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- The commission secretary and program staff assist the program director. Program staff are appointed by the department director and are required to provide optimum service, efficiency and economy. Commissions should discuss any staff issues first with the program director.

5. Department of Natural Resources Legal Counsel

- The department's or division's legal counsel provides advice and assistance to the director, divisions and programs, and commissions as necessary

6. Attorney General's Office

- An assistant attorney general is assigned to provide legal counsel to the commission. The Office of the Attorney General represents the department in appeals. The Office of the Attorney General represents the State at the relation of the commission in matters referred by the commission or in suits brought against the commission. An assistant attorney general addressing the commission should state who he or she is representing (the department, the commission or the State).

Appeal Hearings and Decisions

1. Appeal Hearings

Appeals of agency decisions shall be initiated in accordance with the procedure established in section 621.250 RSMo and 10 CSR 25-2.020, Hazardous Waste management Commission Appeals and Requests for Hearings

2. Decision after Hearing

As specified in 10 CSR 25-2.020, upon receipt of the Administrative Hearing Commission's recommendation and the record in the case, the commission shall:

- Distribute the recommendation to the parties or their counsel.
- Allow the parties or their counsel an opportunity to submit written arguments regarding the recommendation
- Provide a reasonable time for oral argument upon the request of any party before the commission makes the final determination.
- Base its decision on the appeal only on the facts and evidence in the hearing record.
- Issue a written decision including findings of facts and conclusions of law.
- Change a finding of fact or conclusion of law made by the Administrative Hearing Commission, or vacate or modify the recommended decision, only if the commission states in writing the specific reason for the change.
- Appeal from a final decision of the commission may be filed in the manner provided by law.
- A record of the decision in the appeal shall be preserved as provided by law and shall be available to the public.

Communications

1. Open Communication

Commission members will strive to solicit balanced viewpoints on significant issues. Members will be aware that hearing views from just one source (such as department staff, industry or environmental groups) may not adequately present the whole issue.

On rule-makings that are expected to be significant or controversial, the commissioners will encourage early input and involvement from all interested stakeholders, since waiting for the public hearing may be too late in the process to fully consider competing viewpoints.

Commissions serve both a quasi-legislative and quasi-judicial role. Commission members will be open to all comments in the quasi-legislative role, such as comments related to rulemaking.

In their quasi-judicial role, commissioners will avoid any ex parte communications on pending appeals with litigants to the dispute, including department staff, as well as any other persons who may have an interest in the pending appeal.

2. Commission Contact

Each commission shall provide a means for public contact, generally including a phone number, address and email address.

3. Commission Webpage

The department will maintain a board and commission webpage that provides information on each commission and its members, contact information regarding the commission and its members and meeting agendas. Commissions are strongly encouraged to also post meeting minutes, public notices or other materials to provide for public access.

Compliance with other Laws

1. Missouri's Sunshine Law

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- All activities of the commission shall be carried out in strict accordance with the Missouri Sunshine Law, RSMo Chapter 610. The commission honors the letter and the spirit of the Sunshine Law.

2. Personal Finance Disclosure

- Each commissioner shall annually file a Personal Finance Disclosure Statement in accordance with RSMo Chapter 105.

3. Conflict of Interest

Commissioners shall comply with all applicable statutory requirements regarding conflict of interest, including RSMo Chapter 105

- In the quasi-judicial role, commissioners recognize that they are acting as judges in appeals to the commission. In this capacity, members will strive to remain fair, independent, and open-minded. Commissioners will avoid both actual and perceived conflicts of interest in their quasi-judicial role.
- If a commissioner publicly takes or expresses a position on an issue that later comes before the commission on an appeal, the commissioner will recuse himself on the record from any discussion, deliberation, or decision making on the issue.

4. Administrative Procedures

- The commission shall comply with the rule-making and other applicable requirements of the Missouri Administrative Procedures Law, RSMo Chapter 536.

Boards and Commission's Operating Policies
Appendix 1
Regulatory Impact Report
Requirements and Content



Missouri Department of Natural Resources

Draft – October 2012

Missouri Department of Natural Resources
Directions for the Regulatory Impact Report
 September 2004

Endorsed by the Commission Core Workgroup January 9, 2004 and September 24, 2004 as revised

The Regulatory Impact Report (RIR) is a means to provide to the public and interested parties information on some rule development within the Department of Natural Resources. It is a summary of the information, discussion, input and rationale used by the department in rulemaking that prescribes environmental standards or conditions.

The goal of this RIR is to ensure accountability, consistency and transparency in the process for those specific rulemakings. Distribution of the RIR will make this information readily available to a wide audience in a timely manner.

Rulemaking that meets the criteria in 536.025.1 RSMo as emergency rules may be promulgated without following the standard rulemaking process if approved by the department director. In this situation, the questions pertinent to 640.015 RSMo must be completed within 180 days of adoption of the rule.

References

640.015, RSMo Department of Natural Resources

An excerpt:

640.015. 1. All provisions of the law to the contrary notwithstanding, all rules that prescribe environmental conditions or standards promulgated by the department of natural resources, a board or a commission, pursuant to authorities granted in this chapter and chapters 260, 278, 319, 444, 643, and 644, RSMo, the hazardous waste management commission in chapter 260, RSMo, the state soil and water districts commission in chapter 278, RSMo, the land reclamation commission in chapter 444, RSMo, the safe drinking water commission in this chapter, the air conservation commission in chapter 643, RSMo, and the clean water commission in chapter 644, RSMo, shall cite the specific section of law or legal authority. The rule shall also be based on the regulatory impact report provided in this section.

Definitions

Rulemaking: Any action by the department to add, amend or rescind a rule in the Code of State Regulations.

Promulgate: For the purposes of the department's rulemaking, the filing of a proposed rulemaking with the Secretary of State for publication in the Missouri Register.

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Complete or Completed Regulatory Impact Report: The finished Regulatory Impact Report signed by the division director. The RIR is completed before it is submitted to the Secretary of State with the proposed rule.

Draft rule or rulemaking: A rule that is in the development stage within the department.

Proposed rule or rulemaking: A rulemaking that has been filed with the Secretary of State.

Applicability

The Regulatory Impact Report is required for any rulemaking that meets the requirements of 640.015 RSMo; that is, one that prescribes environmental standards or conditions.

The following guidance describes what divisions or programs will typically have to complete a Regulatory Impact Report and which may not. *If you have any questions – please talk with your legal counsel.*

Regulatory Impact Report	No Regulatory Impact Report
Rulemakings impacted by the requirements for Regulatory Impact Report (640.015 RSMo)	Rulemakings that do not meet requirements for Regulatory Impact Report
Summary of who must complete a Regulatory Impact Report based on 640.015 RSMo	Summary of who may not need to complete the Regulatory Impact Report based on 640.015 RSMo
<ul style="list-style-type: none"> ▪ Any rulemaking prescribing environmental conditions or standards 	<ul style="list-style-type: none"> ▪ Division of State Parks
<ul style="list-style-type: none"> ▪ Hazardous Waste Commission 	<ul style="list-style-type: none"> ▪ State Historic Preservation Office
<ul style="list-style-type: none"> ▪ Soil and Water Districts Commission 	<ul style="list-style-type: none"> ▪ Division of Administrative Support
<ul style="list-style-type: none"> ▪ Safe Drinking Water Commission 	<ul style="list-style-type: none"> ▪ Communication and Education Office
<ul style="list-style-type: none"> ▪ Land Reclamation Commission 	<ul style="list-style-type: none"> ▪ Any divisional administrative programs
<ul style="list-style-type: none"> ▪ Air Conservation Commission 	<ul style="list-style-type: none"> ▪ Land Survey Program
<ul style="list-style-type: none"> ▪ Clean Water Commission 	<ul style="list-style-type: none"> ▪ Environmental Assistance Office
<ul style="list-style-type: none"> ▪ Geologic Survey Program 	
<ul style="list-style-type: none"> ▪ Water Resources Program 	
<ul style="list-style-type: none"> ▪ Solid Waste Management Program 	
<ul style="list-style-type: none"> ▪ Environmental Services Program 	
<ul style="list-style-type: none"> ▪ Energy Center 	
<ul style="list-style-type: none"> ▪ EI ERA 	
<ul style="list-style-type: none"> ▪ PSTIF 	
References: Chapter 260 – EI ERA, SWMP, HWP, EC Chapter 278 – SWCP Chapter 319 – PSTIF Chapter 444 – LRP Chapter 643 – APCP Chapter 644 – WPP Chapter 640 – DNR	

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Drafting the Regulatory Impact Report

The length of the RIR will vary widely, depending on the complexity and scope for the rulemaking. For some rulemaking proposals, a detailed RIR with numerous technical and scientific references, explanations, stakeholder meeting notes or recommendations will be warranted. Other rulemakings may require a simple RIR of two to three pages. Supporting documents should be made available via references, hypertext links, embedded PDF files or paper copies on file as appropriate for the rulemaking.

Peer reviewed and published data or scientific information and references

640.015 RSMo requires the use of available peer-reviewed science and an explanation of that scientific information used that has not undergone peer review. In order to meet the requirements of 640.015 RSMo the following process is to be used to delineate the scientific support of any new rulemaking or amended rule/regulation. The purpose of these guidelines is to address any questions that arise about the scientific support for any proposed rulemaking.

All scientific information used in the creation of the rulemaking is to be documented. This includes any information introduced into the process by department staff or brought to our attention by stakeholders during the rulemaking process. The information listed below shall be compiled and provided to the public upon request. This documentation shall be submitted following the standardized format presented below in order to allow a careful examination of the record.

1. Peer-reviewed publications – journal articles (whether paper or electronic), proceedings, books, and government reports that have undergone scientific peer-review. This would include internally produced reports that have undergone peer review under the process formally approved by the department director
2. Non peer-reviewed publications – This would include reports from university, government, consulting firms or other researchers, manuscripts submitted, but not yet reviewed, and internally generated reports, memos and letters. It includes all documents that do not meet the criteria for peer-reviewed publications established above.
3. Raw data – This would include data collected by the department staff or external groups that has not been published in a report, but is still useful in explaining the reason for a particular regulation or section thereof. For all raw data, the Quality Assurance Performance Plan should be available.

At the beginning of the peer-review section, list all the documents included in that section. If peer reviewed data is not reasonably available, provide an explanation of why it is not available.

For the other two sections, list all the documents and then a short explanation of how and why that information was used in creating the proposed rulemaking. For those documents that exist on-line, the complete URL for the document can be supplied.

This documentation of the record, as noted in the paragraph directly above shall be included in the submission of the rulemaking to the Secretary of State's Office and the Joint Committee on Administrative Rules. If it were not included the proposed rulemaking as filed would be subject to challenge and voiding.

Providing the draft rulemaking to the Departments of Health and Senior Services, Economic Development, Conservation and Agriculture and Governor's Office

According to Executive Order 02-05 any rulemaking by the department regarding environmental quality, human health, or economic and rural development must be provided to the Departments of Health and Senior Services, Economic Development, Conservation and Agriculture and the Governor's Office for a 30 day review time before the proposed rule is filed with the Secretary of State. The Regulatory Impact Report may be provided with the draft rule, at the decision of the division. This interagency review time may coincide with the required 60-day public comment period for the Regulatory Impact Report (see next section).

Distribution of the Complete Regulatory Impact Report

The complete Regulatory Impact Report is signed by the program director and is provided with the other rulemaking information to the department director for approval to proceed. The Orange Folder process is used.

The complete RIR is then placed on the department's or program's web site, and conspicuously labeled as a new addition on the Regulatory Agenda page. Paper copies will be sent to those requesting copies at the same time.

The department, board or commission also publishes in at least one newspaper of general circulation with an average circulation of 20,000 or more, a notice of availability of the Regulatory Impact Report. The public shall have at least 60 days to comment. All comments and responses to significant comments shall be posted before the proposed rule is filed with the Secretary of State.

Filing of the Regulatory Impact Report and Proposed Rule

A program may change wording in the draft rulemaking based on comments received on the Regulatory Impact Report and input from boards, commissions or others.

The complete Regulatory Impact Report shall be filed with the Joint Committee on Administrative Rules concurrently with the filing of the proposed rule with the Secretary of State.

Missouri Department of Natural Resources
Regulatory Impact Report
In Preparation For Proposing
[A New Rule **OR** An Amendment to **OR** A Rescission of] [rule number]

Division/Program: _____

Rule number: 10 CSR [XX-YYY.ZZZ] **Rule title:** _____

Type of rule action: [Select one: New Rule, Amendment to Existing Rule, Rescission of Existing Rule]

Nature of the rulemaking: [Select as many as apply: Affects environmental conditions, Prescribes environmental standards, Administrative, Other conditions]

Approval of the Completed Regulatory Impact Report

Program Director

Date

Missouri Department of Natural Resources
Regulatory Impact Report
In Preparation For Proposing
[A New Rule *OR* An Amendment to *OR* A Rescission of] [rule number]

Applicability: Pursuant to Section 640.015 RSMo, “all rulemakings that prescribe environmental conditions or standards promulgated by the Department of Natural Resources...shall... be based on the regulatory impact report...” This requirement shall not apply to emergency rulemakings pursuant to section 536.025 or to rules of other applicable federal agencies adopted by the Department “without variance.”

Determination: The Missouri Department of Natural Resources has determined this rulemaking prescribes environmental conditions or standards and verifies that this rulemaking is not a simple unvarying adoption of rules from other federal agencies. Accordingly, the Department has produced this regulatory impact report which will be made publicly available for comment for a period of at least 60 days. Upon completion of the comment period, official responses will be developed and made available on the agency web page prior to filing the proposed rulemaking with the Secretary of State. Contact information is at the end of this regulatory impact report.

1. Describe the environmental conditions or standards being prescribed.
2. A report on the peer-reviewed scientific data used to commence the rulemaking process.
3. A description of the persons who will most likely be affected by the proposed rule, including persons that will bear the costs of the proposed rule and persons that will benefit from the proposed rule.
4. A description of the environmental and economic costs and benefits of the proposed rule.
5. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue.
6. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction, which includes both economic and environmental costs and benefits.
7. A determination of whether there are less costly or less intrusive methods for achieving the proposed rule.
8. A description of any alternative method for achieving the purpose of the proposed rule that were seriously considered by the department and the reasons why they were rejected in favor of the proposed rule.
9. An analysis of both short-term and long-term consequences of the proposed rule.

10. An explanation of the risks to human health, public welfare or the environment addressed by the proposed rule.
11. The identification of the sources of scientific information used in evaluating the risk and a summary of such information
12. A description and impact statement of any uncertainties and assumptions made in conducting the analysis on the resulting risk estimate.
13. A description of any significant countervailing risks that may be caused by the proposed rule
14. The identification of at least one, if any, alternative regulatory approaches that will produce comparable human health, public welfare or environmental outcomes.
15. Provide information on how to provide comments on the Regulatory Impact Report during the 60-day period before the proposed rule is filed with the Secretary of State
16. Provide information on how to request a copy of comments or the web information where the comments will be located.

Boards and Commission's Operating Policies

Appendix 2

Training for Commissioners

Adopted by the Commissioners' Core Workgroup
February 27, 2004

Premise: Comprehensive knowledge and understanding of the commissioner's responsibilities and roles, as well as of the substantive laws and regulations governing each commissioner's respective program, is key to competent and consistent performance of commissioners.

1. New Commissioner Information

Upon appointment, each new commission/board member shall receive orientation from their respective commission/board and, at a minimum, a notebook containing copies of the following:

- a. The commission's/board's operating policies.
- b. The statutes and regulations governing the respective program and its authority, summarized as appropriate because of volume, including roles and responsibilities of the Staff Director and the Commission/Board.
- c. The Sunshine Law.
- d. The financial disclosure and conflict of interest statutes (Ethics Commission).
- e. Department of Natural Resources general information, including mission, list of commissions/boards, Department budget and organizational chart.
- f. Description of commissioner's quasi-judicial role (where appropriate).
- g. General overview of the rule-making process (where appropriate).
- h. A summary of the state revolving fund and the bond process (where appropriate).

2. Training (offered once a year)

Within 12 months following appointment, all new commission/board members shall attend a standardized training module. Other commission/board members are encouraged to attend one of the standardized training opportunities. Training modules may provide in-depth presentations on the subjects listed below:

- a. Rulemaking process, including Regulatory Impact Report (RIR).
- b. MoDNR Budget.
- c. Quasi-judicial role.
- d. Policies.

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- e. Services of the Attorney General's Office.
- f. Sunshine Law.
- g. Financial disclosure laws and conflicts of interest.
- h. Authority of commissions/boards.
- i. Organizational structure.
- j. Permits process.

Alternate means (electronic, etc.) of training will be provided for new members unable to physically attend a comprehensive training session.

3. Commissioners Conference (to be held every two years)

All commission/board members will be expected to attend a biennial one-day conference that will provide:

- a. Updated training refresher sessions (one-half day).
- b. Issues seminar in break-out sessions (one-half day). The Department, environmental groups, business/industry groups, legislators and other interested parties will be invited to give presentations on relevant issues pertinent to the commissions/boards.

4. Training Providers

Planning for the training events will be managed by the Outreach and Assistance Center in consultation with commission/board chairs, representative Division and Program Directors, and external constituencies. Presentations of the various topics at the training sessions will be provided, as appropriate, by:

- a. The Director's Office and Outreach and Assistance Center.
- b. Program staff.
- c. The Attorney General's Office.
- d. The Ethics Commission.
- e. Environmental groups.
- f. Business/industry groups.
- g. Agencies or groups representing the general public.
- h. The Environmental Protection Agency (EPA).
- i. Other federal or state agencies.
- j. Environmental Improvement and Energy Resources Authority (EIERA).

5. Training Costs

- a. Training and incidental tasks by MoDNR and other state personnel will be provided by existing personnel as part of their work assignments.

- b. Costs of information notebooks, incidentals, travel, meals and lodging will be borne by each respective program for its commission/board member.
- c. Logistic costs of meeting place and incidentals will be borne by the Department.
- d. Members of the public attending the training shall

Missouri Hazardous Waste Management Commission Meeting

October 18, 2012

Agenda Item # 7

Rulemaking Update

Recommended Action:

Information Only.

Presented by:

Tim Eiken, Rules Coordinator, HWP

Missouri Hazardous Waste Management Commission Meeting

**October 18, 2012
Agenda Item # 8**

Tanks Financial Responsibility – Quarterly Update

Issue:

This is an update on the current status of the Hazardous Waste Program's (HWP's) expedited enforcement process for sites without a financial responsibility (FR) mechanism to cleanup releases from underground storage tanks (USTs).

Information:

- Missouri law and regulation requires tank owners and operators to maintain FR so that they will have funds to take corrective action and compensate third parties for bodily injury and property damage if they have petroleum releases from their USTs.
- The Compliance and Enforcement Section (CES) continues with the tasks and responsibilities of ensuring compliance with FR.
- The expedited program remains successful at prompting compliance. As of September 30, 2012, of the 3,259 regulated active tank sites in Missouri, 2,600 currently have coverage from the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), 568 facilities have acceptable coverage other than PSTIF, 59 are exempt from FR requirements, and only 32 sites have unknown coverage.
- As of the September 5, 2012, report of the sites with unknown FR coverage, 5 were recently cited with Notices of Violation by the CES, 2 are being prepared for referral to the Attorney General's Office (AGO) by the CES, and 14 have been referred to the AGO for legal action.

Recommended Action:

Information only

Presented by:

Angela Oravetz, Environmental Specialist, Tanks Compliance and Enforcement Unit, CES,
HWP

Missouri Hazardous Waste Management Commission Meeting

October 18, 2012

Agenda Item # 9

Drycleaners Environmental Response Trust (DERT) Annual Report

Issue:

Update the Commission on the DERT Fund activities during fiscal year 2011 and the fund's balance and expected solvency.

Recommended Action:

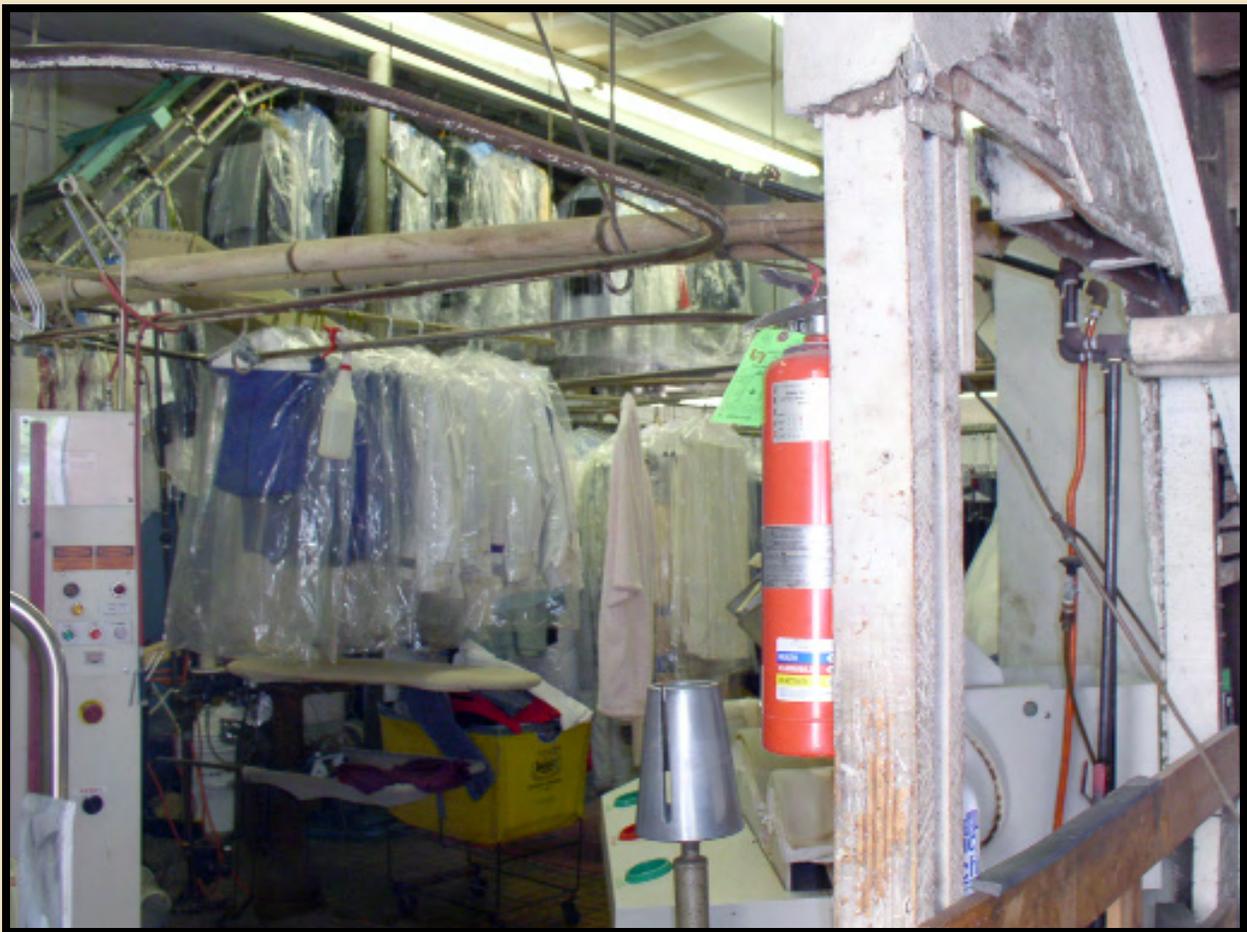
Information Only.

Presented by:

Scott Huckstep, Brownfields/Voluntary Cleanup Section

DEERT FUND

DRYCLEANING ENVIRONMENTAL RESPONSE TRUST



ANNUAL PROGRAM REPORT 2011



MISSOURI
DEPARTMENT OF
NATURAL RESOURCES

HISTORY

In 2000, Senate Bill 577 established the Drycleaning Environmental Response Trust Fund, or DERT Fund, and Section 260.960, Revised Statutes of Missouri, or RSMo, authorized it. The DERT Fund, provides funding for the investigation, assessment and cleanup of releases of chlorinated solvents from dry cleaning facilities. The DERT Fund is a state fund and is administered by the Missouri Department of Natural Resources' Hazardous Waste Program according to rules published by the Hazardous Waste Management Commission. The laws and regulations governing the DERT Fund are found in Sections 260.900 to 260.965 RSMo and 10 Code of State Regulations 25-170.010 to 10 CSR 25-17.170 respectively. In 2011, Senate Bill 135 extended the expiration date of the DERT Fund from Aug. 28, 2012 to Aug. 28, 2017.

Operators of active dry cleaning facilities are required to register with the Missouri Department of Natural Resources, as outlined in Section 260.915 RSMo. Each active and operating dry cleaning facility is required to pay an annual registration surcharge based upon the number of gallons of chlorinated solvents used during the calendar year, as outlined in Section 260.935 RSMo. This includes coin-operated dry cleaning facilities. Laundry facilities located in prisons, government entities, hotels, motels and industrial laundries are specifically exempt from the requirements of this statute. All solvent suppliers that sell or provide chlorinated solvents to a dry cleaning facility are required to pay the solvent surcharge fees to the department.

Section 260.955 RSMo, requires the department to provide an annual report to the General Assembly and the governor regarding:

- Receipts of the fund during the preceding calendar year and the sources of the receipts.
- Disbursements from the fund during the preceding calendar year and the purposes of those disbursements.
- The extent of corrective action taken during the preceding calendar year.
- The prioritization of the sites for expenditures from the fund.

DISBURSEMENTS FROM THE DERT FUND

Expenditures from the fund are used to:

1. Reimburse participants for the costs of addressing releases of chlorinated solvents from dry cleaning facilities. Participants are liable for the first \$25,000 of eligible cleanup related costs as a deductible.
2. Administer the program by collecting the surcharges and guiding and assisting the cleanup activities.

Table 1 describes the expenditures from the fund, which were prohibited until, on or after July 1, 2002, by Section 260.925 RSMo. Reimbursements for eligible environmental cleanup costs were not made until the regulations went into effect on May 30, 2006.

TABLE 1 - EXPENDITURES OF THE DERT FUND

Calendar Year ⁽¹⁾	Salaries & Wages	Expense & Equipment	Fringe, etc. ⁽⁴⁾	Reimbursements ⁽⁵⁾	Total Costs
2000 ⁽²⁾	\$0	\$0	\$0	\$0	\$0
2001 ⁽²⁾	\$0	\$0	\$0	\$0	\$0
2002 ⁽²⁾	\$1,163	\$0	\$2,350 ⁽³⁾	\$0	\$3,513
2003	\$77,271	\$14,995	\$35,655	\$0	\$127,921
2004	\$106,083	\$59,642	\$73,437	\$0	\$239,162
2005	\$99,583	\$63,909	\$92,528	\$0	\$256,020
2006	\$187,488	\$145,789	\$140,850	\$176,031	\$650,158
2007	\$186,019	\$64,858	\$155,026	\$258,785	\$664,688
2008	\$192,387	\$25,814	\$171,884	\$140,000	\$530,085
2009	\$183,108	\$9,316	\$200,064	\$456,733	\$849,221
2010	\$178,337	\$8,450	\$172,540	\$303,651	\$662,978
2011	\$137,229	\$8,210	\$143,355	\$284,689	\$573,483
Totals	\$1,348,668	\$400,983	\$1,187,689	\$1,619,889	\$4,557,229

⁽¹⁾ Source: SAM II Data Warehouse Information.

⁽²⁾ RSMo, Section 260.925 prohibited expenditures from the DERT Fund until on or after July 1, 2002.

⁽³⁾ House Bill 1115, Section 15.220, RSMo, authorized a transfer of \$1,289 out of the State Treasury on May 6, 2002, chargeable to various funds, such amounts as are necessary for allocation of costs to other funds in support of the state's central services, to the General Revenue Fund.

⁽⁴⁾ Fringe amount includes OASDI, Retirement Sys, Deferred Comp, MCHCP, Cost Allocation Plan (OA), Cost Allocation (MoDNR), State Office Bldg M&R, etc.

⁽⁵⁾ Reimbursements were not made until the regulations went into effect on May 30, 2006.

RECEIPTS TO THE DERT FUND

The Hazardous Waste Program is responsible for the collection of all applicable surcharges from dry cleaning facilities and solvent suppliers. There are two main sources of revenue for the fund. The first is a dry cleaning facility annual registration surcharge paid by owners and operators of dry cleaning facilities (\$500, \$1,000 or \$1,500 based on chlorinated solvent used during the calendar year). The second is a solvent surcharge paid by the solvent suppliers on a quarterly basis of \$8 per gallon of perchloroethylene, trichloroethylene and other chlorinated solvents sold.

Table 3 describes the surcharge collections. The collection of the registration surcharges began on April 1, 2001. The collection of the solvent surcharge began with the April 1, 2001 to June 30, 2001 quarter.

TABLE 2 - 2011 DRY CLEANER FACILITY ANNUAL REGISTRATION SURCHARGE

Size of Facility	No. of Facilities Registering by 5/1/12	Gallons of Solvent Used	Annual Registration Fee
Small	147	0 to 140	\$500
Medium	23	141 to 360	\$1,000
Large	1	>360	\$1,500

TABLE 3 - RECEIPTS TO THE DERT FUND⁽¹⁾

Calendar Year	Registration Surcharge	Solvent Surcharge	Interest & Penalties	Totals
2000	\$0	\$0	\$0	\$0
2001	\$221,500	\$170,208	\$5,995	\$397,703
2002	\$222,150	\$435,859	\$17,886	\$675,895
2003	\$303,126	\$427,880	\$26,892	\$757,898
2004	\$319,488	\$409,293	\$43,178	\$771,959
2005	\$234,150	\$367,598	\$73,595	\$675,433 ⁽²⁾
2006	\$204,993	\$308,678	\$121,077	\$635,248 ⁽³⁾
2007	\$185,371	\$259,175	\$138,931	\$583,477
2008	\$191,888	\$237,874	\$132,377	\$562,139
2009	\$154,991	\$182,459	\$54,143	\$391,598 ⁽⁴⁾
2010	\$135,573	\$173,448	\$28,387	\$337,408
2011	\$131,706	\$130,997	\$17,575	\$280,312 ⁽⁵⁾
Totals	\$2,304,936	\$3,103,469	\$660,036	\$6,069,070

⁽¹⁾ Source: SAM II Data Warehouse Information.

⁽²⁾ 2005 total includes a \$90 refund to the fund.

⁽³⁾ 2006 total includes a \$500 transfer in.

⁽⁴⁾ 2009 total includes a \$5 vendor refund to the fund.

⁽⁵⁾ 2011 total includes a \$34 overpayment

PRIORITIZATION OF SITES FOR EXPENDITURES FROM THE FUND

10 CSR 25-17.140 allocates DERT Fund monies to prioritized sites in the following proportions: high priority sites: 60 percent; medium priority sites: 30 percent; low priority sites: 10 percent. In any fiscal year, if the funding allocation in any priority category is not used, those funds may be reallocated to other priority categories, starting with any high priority sites and followed by medium and then low priority sites.

Sites applying to the program must submit the results of one soil, groundwater or surface water sample that exhibits contamination of dry cleaner solvent that is in excess of the department cleanup levels. The initial assessment will allow the department to determine the eligibility of the site in the fund. Some sites will provide enough information during the application process to receive a ranking score. Other sites will require additional information before a ranking score can be determined.

If the site has not provided enough information to have a ranking score determined, the department will direct the owner or operator to conduct the necessary assessments to determine a ranking score. The ranking score is based on such factors as environmental contamination, potential economics, potential receptors, risk based cleanup parameters, site history, threat to drinking water sources, threat to off-site properties, etc. A copy of the prioritization form is available on the department's DERT Fund website at www.dnr.mo.gov/env/hwp/dert/hwpvcp-dryclean.htm.

On May 30, 2006, the DERT Fund began accepting applications for enrollment into the fund for oversight and reimbursement of investigation and cleanup activities. By the end of 2011, the fund had received applications for 38 sites. Five of these sites received a certification of completion letter from the Brownfields/Voluntary Cleanup Program and enrolled into the fund for reimbursement of eligible costs. Fourteen of the 38 sites transferred from the BVCP to the DERT Fund during 2006.

By the end of 2011, the DERT Fund issued 10 certification of completion letters and reimbursed \$1,619,889 in eligible costs to participants (See Table 1).

TABLE 4 - DERT FUND SITES

Site Name and City	High Priority	Medium Priority	Low Priority	Amount Reimbursed	Comments
AG Cleaners, Kirkwood			X		
American Cleaners-Dorsett Road, Maryland Heights			X	\$5,090	Completion Letter issued on 5/21/09
American Cleaners-Fenton Plaza, Fenton		X		\$62,495	
American Cleaners-Mid Rivers Mall, St. Peters*		X		\$144,486	Reimbursements completed
American Cleaners – Natural Bridge, Bridgeton		X			Completion Letter issued on 11/29/10
American Cleaners-Southroads, St. Louis		X		\$53,547	Completion Letter issued on 6/11/09
American Cleaners, University City			X		
A to Z Auto Center - Crestwood			X		
Bright and Free Laundry & Dry Cleaners – St. Louis			X		
Busy Bee Laundry, Rolla	X			\$302,533	
Charter Dry Cleaning – Ellisville		X			
Clayton Cleaners, St. Louis	X			\$32,981	
Colonial Cleaners-Arsenal Street, St. Louis	X			\$14,468	
Colonial Cleaners-Brentwood Blvd., St. Louis	X				Completion Letter issued on 7/2/08
Community Laundromat, Ava	X				Terminated by DERT
Cypress Village Shopping Center, St. Ann*		X		\$366,200	Reimbursements completed
First Capitol Cleaners, St. Charles		X		\$12,647	
Foster’s Cleaners, Blue Springs			X	\$17,353	Completion Letter issued on 6/18/09
Frontenac Cleaners-West End, St. Louis		X			Completion Letter issued on 5/14/08
Grandview Plaza, Grandview					
Kingshighway Retail Center, Sikeston		X		\$13,068	
Ma Ma Bessie’s Cleaners, Columbia					
McDonald’s State Line, Kansas City		X			
Mission River/Antioch Cleaners, Kansas City		X			
Paramount Cleaners, Florissant*		X		\$42,035	Reimbursements completed
Park Lane Cleaners, Chillicothe			X	\$3,619	
Plaza Ford Ideal Laundry & Dry Cleaners, Inc., Kansas City	X			\$37,191	
Premier Dry Cleaners of KC, Kansas City			X		Completion Letter issued on 9/22/11
Regal Cleaners, University City		X			
Shamrock Cleaners, Kansas City					
Stanford Saper Cleaners, Kansas City*			X		No claims filed
Staten Island Cleaners, Florissant	X			\$203,562	Completion Letter issued on 12/30/08
Tri-States Service Company - Boonville Avenue, Springfield	X			\$246,190	
Tri-States Service Company - East Trafficway, Springfield		X		\$33,767	
VIP Cleaners, St. Peters			X		Completion Letter issued on 1/13/10
West Gate Cleaners, St. Louis		X			Completion Letter issued on 10/19/07
Yorkshire Cleaners, Marlborough		X		\$21,305	
Zehrt Printing, St. Louis*		X		\$7,352	Reimbursements completed

*Reimbursement only, site received certification of completion letter from Brownfields/Voluntary Cleanup Program.

TABLE 5: CORRECTIVE ACTION CONDUCTED IN 2011

Site Name and City	Corrective Action Conducted
AG Cleaners, Kirkwood	Initial assessment to identify extent of soil and groundwater contamination
American Cleaners-Fenton Plaza, Fenton	Groundwater monitoring to determine plume stability
American Cleaners, University City	Groundwater monitoring; Installation of additional monitoring wells; Soil vapor sampling
Bright and Free Laundry & Dry Cleaners, St. Louis	Groundwater monitoring to determine plume stability
Busy Bee Laundry, Rolla	Groundwater monitoring; Pumping & treating of contaminated groundwater
Charter Dry Cleaning, Ellisville	Groundwater monitoring; Installation of additional monitoring wells
Clayton Cleaners, St. Louis	Groundwater monitoring
Colonial Cleaners-Arsenal Street, St. Louis	Groundwater monitoring
First Capitol Cleaners, St. Charles	Groundwater monitoring
Grandview Plaza, Grandview	Groundwater monitoring
Kingshighway Retail Center, Sikeston	Installation of additional wells; Additional soil and groundwater sampling to determine extent of contamination
McDonalds State Line, Kansas City	Groundwater monitoring; Remediation via chemical oxidation
Mission River/Antioch Cleaners, Kansas City	Installation of additional monitoring wells; Additional soil and groundwater sampling to determine extent of contamination
Park Lane Cleaners, Chillicothe	Groundwater monitoring to determine plume stability
Plaza Ford Ideal Laundry & Dry Cleaners, Kansas City	Groundwater monitoring to determine plume stability
Premier Dry Cleaners of KC, Kansas City	Groundwater monitoring to determine plume stability; Certification of Completion Letter issued
Regal Cleaners, University City	Initial assessment to determine extent of soil and groundwater contamination
Tri-States Service Company-Boonville Avenue, Springfield	Installation of additional monitoring wells; Additional soil and groundwater sampling to determine extent of contamination
Tri-State Service Company-East Trafficway, Springfield	Installation of additional monitoring wells and bedrock monitoring wells to determine extent of soil and groundwater contamination; Electrical imaging survey and soil gas testing to identify additional areas of contamination
Yorkshire Cleaners, Marlborough	Installation of additional monitoring wells; Additional soil and groundwater sampling; Remediation via multi-phase extraction

COMPLIANCE WITH SURCHARGES

The two main sources of revenue for the fund are the dry cleaning facility annual registration surcharge and the solvent surcharge. State law requires that owners and operators of dry cleaning facilities pay the annual registration and solvent suppliers pay the solvent surcharge on quarterly basis.

When a facility or solvent supplier is not in compliance with the law, DERT Fund uses the department's conference, conciliation and persuasion process to return them to compliance. In 2006, the department's Hazardous Waste Program began referring facilities and solvent suppliers that continued to fail compliance to the Attorney General's Office.

Active and abandoned dry cleaners eligible for the fund must be in compliance with all applicable environmental laws in order to receive funding for environmental cleanup from the fund. Consequently, it is in everyone's interest to assist businesses in returning to compliance with the law so they are covered by the fund.

On Sept. 1, 2008 the DERT Fund began notifying the registered solvent suppliers of the active dry cleaning facilities that have not paid their required registration surcharges. According to 10 CSR 25-17.030(2)(G) "a solvent supplier shall not provide dry cleaning solvents to an active dry cleaning facility that has not paid its annual dry cleaning facility registration surcharge."

A solvent supplier who knowingly supplies solvent to a dry cleaning facility that is not in compliance with payment of the surcharges will be in violation of the above regulation. The DERT Fund also posts a listing of these dry cleaning facilities on its webpage similar to that for solvent suppliers who do not pay the required solvent surcharges.

Table 6 indicates the compliance rate for annual dry cleaning facility registration surcharges. Failure to pay the registration surcharges represents approximately 90 percent of the violations that occur in the DERT Fund.

TABLE 6 - DRY CLEANING FACILITY REGISTRATION COMPLIANCE

Calendar Year	No. of Active Dry Cleaning Facilities	Facilities Submitting Registration Form and Surcharges by 5/1/12	Percent Compliance with Annual Facility Registration
2011	209	163	78

TABLE 7 - COMPLIANCE/ENFORCEMENT ISSUES WITH DRY CLEANING FACILITIES

Calendar Year	Facilities Issued a NOV	Facilities Referred to Compliance/Enforcement	Facilities Referred to the AGO	Facilities Returned to Compliance
2011	30	24	18	162

TABLE 8 - SOLVENT SUPPLIERS QUARTERLY REPORTING COMPLIANCE

Calendar Year	No. of Active Solvent Suppliers	Suppliers Submitting Quarterly Reports and Surcharges on Time	Percent Compliance Quarterly Reporting
2011	11	10	91

TABLE 9 - COMPLIANCE/ENFORCEMENT ISSUES WITH SOLVENT SUPPLIERS

Calendar Year	Suppliers Issued a NOV	Suppliers Referred to Compliance/Enforcement	Suppliers Referred to the AGO	Suppliers Returned to Compliance
2011	1	0	0	3

OUTREACH ACTIVITIES

The department has additional information, publications, forms and answers to questions about the fund available on the Web at www.dnr.mo.gov/env/hwp/dert/hwpcp-dryclean.htm. The department also distributes the DERT newsletter to dry cleaning facilities and solvent suppliers. The newsletter keeps the regulated community up to date on issues involving the industry, the DERT Fund and cleanup efforts at active and abandoned dry cleaner sites.

The department is a member of the State Coalition for the Remediation of Drycleaners. The coalition is comprised of states that have formal dry cleaner cleanup programs. The U.S. Environmental Protection Agency's Technology Innovation Office funds this coalition. The coalition conducts conference calls every other month and holds an annual meeting to discuss issues related to dry cleaner program administration and technical site investigation or cleanup topics. The coalition serves as an invaluable asset for Missouri as the department manages the fund and provides oversight of assessments and cleanup of dry cleaner sites.

REFERENCES

State Program To Clean Up Drycleaners. Schmidt, Robin, R. DeZeeuw, L. Henning and D. Tripler. June 2001.

State Coalition for Remediation of Drycleaners. www.drycleancoalition.org/survey/

Departmental Missouri Risk-Based Corrective Action (MRBCA) Technical Guidance, Missouri Department of Natural Resources, April 2006. www.dnr.mo.gov/env/hwp/mrbca/mrbca.htm.

CONTACT INFORMATION

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hazwaste@dnr.mo.gov
 800-361-4827 or 573-751-3176



MISSOURI
DEPARTMENT OF
NATURAL RESOURCES

www.dnr.mo.gov

Missouri Hazardous Waste Management Commission Meeting

**October 18, 2012
Agenda Item # 10**

Quarterly Report

Issue:

Presentation of the current Quarterly Report.

Recommended Action:

Information Only.

Presented by:

Dee Goss, Public Information Officer, Division of Environmental Quality

Hazardous Waste Management Commission Report

April through June 2012

Quarterly Report



Ozark Cave Fish

Hazardous Waste Management Commissioners

Michael Foresman, Chair
Andrew Bracker, Vice Chair
James "Jamie" Frakes
Elizabeth Aull
Deron Sugg
Charles "Eddie" Adams

"The goal of the Hazardous Waste Program is to protect human health and the environment from threats posed by hazardous waste."

For more information

**Missouri Department of Natural Resources
Hazardous Waste Program**
P.O. Box 176, Jefferson City, MO 65102-0176
dnr.mo.gov/env/hwp/index.html
Phone: 573-751-3176
Fax: 573-751-7869

Past issues of the Hazardous Waste Management Commission Report are available online at dnr.mo.gov/env/hwp/quarterlyreport.htm.



**Missouri Department of Natural Resources
Hazardous Waste Program**

Program Update

June marks the official change from spring to summer. It is a time of year when our staff takes advantage of the fair weather to get out in the field to conduct their inspections, perform sampling activities and conduct other oversight activities. However, the end of June also marks the end of the state fiscal year and that keeps our Budget and Planning employees working hard, to make sure everything balances, so they can close out the year. Included in this report are several charts showing the overall Department of Natural Resources operating budget and a couple of specific Hazardous Waste Program budget charts.

Something we always look forward to in the summer months is The Missouri Waste Control Coalition Conference, which was held June 17 through 19 at the Lodge of the Four Seasons in Lake Ozark. More than 320 people from various industries and agencies attended the conference. Since 1972, this conference has covered such topics as solid waste, environmental issues, brownfields and tanks. For example, the Tanks Section held a workshop targeted toward environmental consultants who provide services to tank owners and operators. This workshop provided consultants with information and training regarding monitoring well registration and installation. Next year's conference is scheduled for June 30 through July 2, 2013 and is moving to the Tan-Tar-A Resort in Lake Ozark. Please mark your calendars for next year! For more information about MWCC visit www.mowastecoalition.org.

Also, in this edition, you can look forward to reading more about the Brownfields Voluntary Cleanup Program. This program issued three certificates of completion for Bellerive Plaza, Chouteau Crossing and US Ink Facility. Each site was established more than 50 years ago, and reflects a lot of St. Louis history. Program staff work hard to make historic sites like these safe for future use.

This leads us to this quarter's feature articles about Natural Resource Damages, or NRD, and the Springfield Plateau Regional Restoration Plan. These articles, which are located in the Permits and Superfund Sections of the report, highlight the increasing effort the department is making in regard to NRD assessment and restoration. While the Permits Section article discusses more broadly the concept of NRD, the Superfund Section article focuses on a more specific issue, the Springfield Plateau Regional Restoration Plan. Through this plan, the natural resource trustees have developed a process for expediting more comprehensive and efficient restoration actions by combining multiple natural resource damages settlements, making for more efficient use of the funds available.

As you can see, things have been very busy in the program this quarter. We thank you for your interest in these activities and hope you enjoy this edition.

Sincerely,



David J. Lamb

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Missouri Department of Natural Resources - Hazardous Waste Program Budget and Planning Section

Fiscal Year 2013 Budget

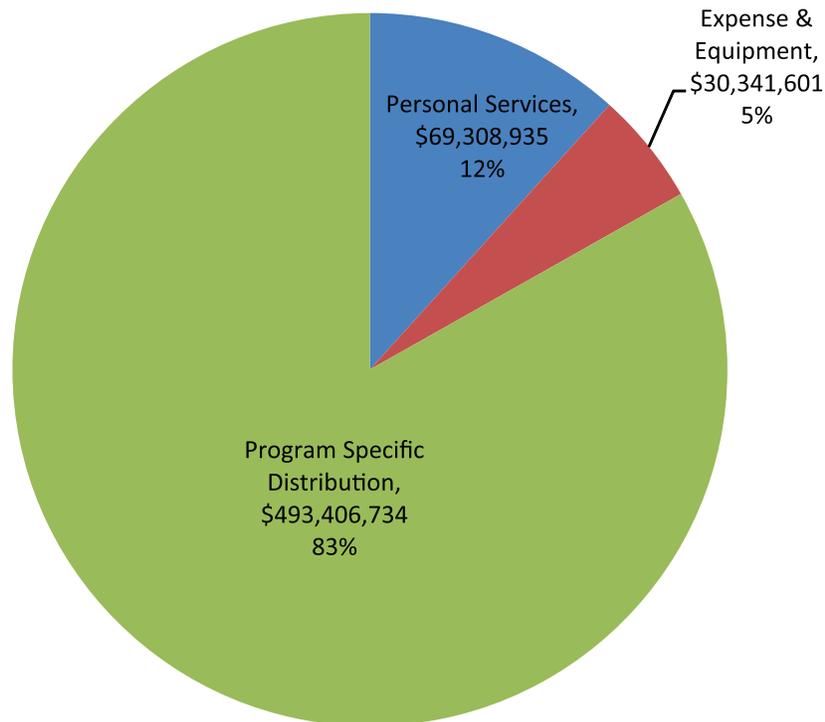
The Budget and Planning Section is responsible for the financial management of the Hazardous Waste Program. It is the section's responsibility to coordinate the program's budget requests each fiscal year. The state is currently operating in fiscal year 2013, which began on July 1, 2012 and runs through June 30, 2013. The process to establish the fiscal 2013 budget began in July 2011 when the state budget director issued budget preparation instructions.

The Budget Program within the Division of Administrative Support coordinates the overall Department of Natural Resources' operating, leasing and capital improvements budgets. The department's operating budget is available online at <http://oa.mo.gov/bp/budreqs2013/DNR/DNR.pdf>.

Each state agency is required to submit its completed budget request to the state budget director annually by October 1. The governor may make changes to these department budget requests and releases the governor's recommended budget in conjunction with the governor's State of the State address in January.

The department's fiscal year 2013 operating budget is in House Bill 6, which had to be truly agreed to and finally passed by May 11, 2012. The governor signed the appropriations bill on June 22, 2012. The process for the fiscal 2014 budget will begin with the department's submission on Oct. 1, 2012.

FY 2013 Department of Natural Resources Truly Agreed and Finally Passed Operating Budget (HB6)* \$593,057,270

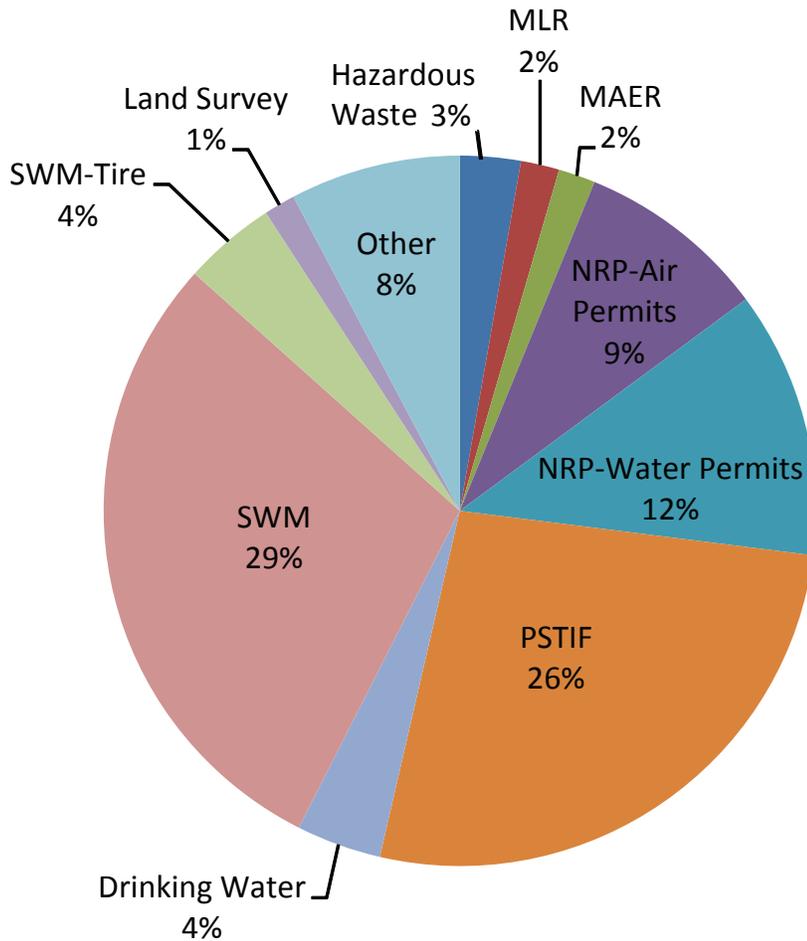


*Does not include appropriated transfers
Oct. 2, 2012

**Missouri Department of Natural Resources - Hazardous Waste Program
Budget and Planning Section**

Budget and Planning

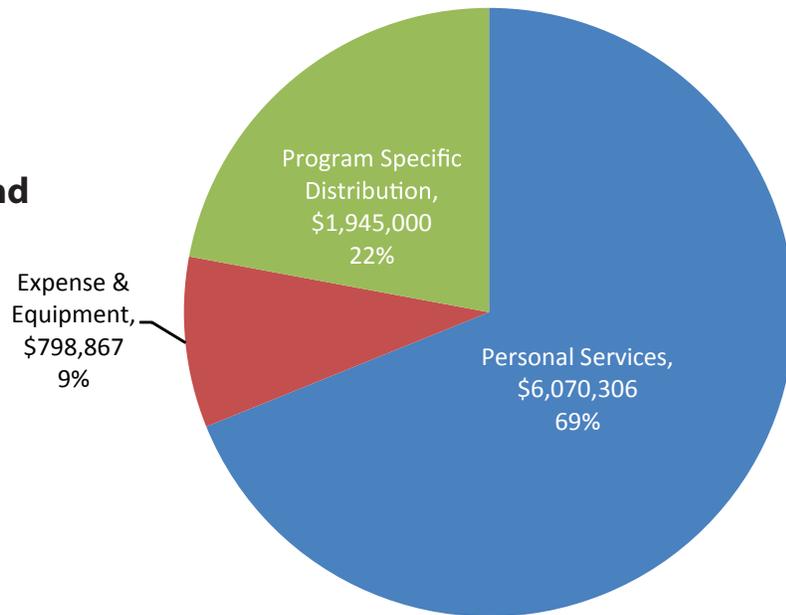
**FY 2013 Truly Agreed and Finally Passed
Environmental Fee Appropriations
\$86,295,260**



Division	Amount
SWM	\$25,170,468
PSTIF	\$22,961,440
NRP-Water Permits	\$10,485,200
NRP-Air Permits	\$7,486,775
Other	\$6,677,332
SWM-Tire	\$3,625,827
Drinking Water	\$3,330,955
Hazardous Waste	\$2,375,084
MLR	\$1,508,554
MAER	\$1,444,543
Land Survey	\$1,229,082

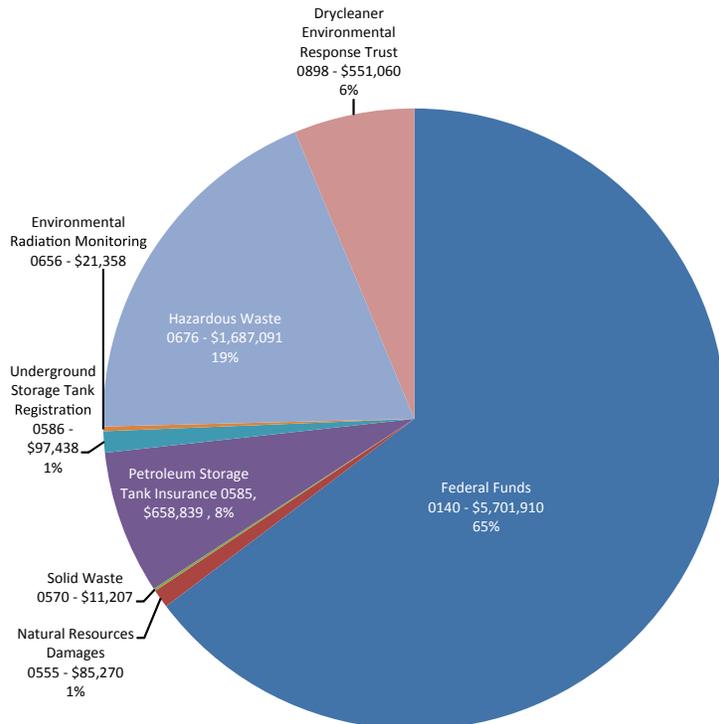
Missouri Department of Natural Resources - Hazardous Waste Program Tanks Section

**Hazardous Waste Program and Petroleum Related Activities
FY2013 Truly Agreed and Finally Passed Operating Budget (HB6)*
TOTAL: \$8,814,173**



*Does not include appropriated transfers Oct. 2, 2012

**Hazardous Waste Program and Petroleum Related Activities
FY2012 Truly Agreed and Finally Passed Operating Budget (HB6)*
TOTAL: \$8,814,173**



Missouri Department of Natural Resources - Hazardous Waste Program

Brownfields/Voluntary Cleanup Section

The Missouri Department of Natural Resources issued certificates of completion for three Brownfields/Voluntary Cleanup Program sites during April to June. Brownfields are real property, the expansion, redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant.

Through the Brownfields/Voluntary Cleanup Program, private parties agree to clean up a contaminated site and are offered some protection from future state and federal enforcement action at the site in the form of a "No Further Action" letter or "Certificate of Completion" from the state.

Bellerive Plaza in St. Louis

The Brownfields/Voluntary Cleanup Program, or BVCP, issued a certificate of completion for the Bellerive Plaza site at 12756 Olive Blvd. in St. Louis. The site was a farmstead from 1904 until 1976 when it was developed for commercial use. The site consists of three multi-tenant retail buildings, anchored by a 68,000 square foot grocery store. Historical operations of concern have been dry cleaners and automotive service and repair. Investigations showed the presence of chlorinated solvents and petroleum hydrocarbons in soil and groundwater.

Preliminary investigations were conducted at the dry cleaners and the automotive service center. None of the contaminants detected at the automotive service center were above the Default Target Levels, or DTLs, the lowest risk-based action levels, but chlorinated solvents were present above the levels in soil near the dry cleaners. Further investigation work consisted of installing groundwater monitoring wells and collecting surface and subsurface soil samples. Chlorinated solvents in excess of the levels were detected in surface soil and groundwater during this investigation. Additional wells were installed to locate the contamination in groundwater. All of the wells were sampled on a quarterly basis to assess groundwater plume stability. After it was determined the plume appeared to be decreasing, a risk assessment was conducted.

No possible asbestos-containing material and lead-based paint were addressed as part of this BVCP project. The department determined the site is safe for its intended use.

The site will continue as multi-tenant retail anchored by a Schnucks grocery store.

Chouteau Crossing in St. Louis

The Brownfields/Voluntary Cleanup Program issued a certificate of completion for the Chouteau Crossing - Lot A site at 2327 Chouteau Ave. in St. Louis. Chouteau Crossing - Lot A is a 1.550 acre parcel of the Chouteau Crossing site with an approximately 20,000 square foot building. The site has been developed since 1929 when the Missouri Boiler and Tank Company established its operations. The company operations included the manufacturing of tanks, pressure vessels and a repair/refabrication service. The site operated in this same capacity through 1995. Since 1995 the site has been used for truck parking and storage for plumbing supplies. Four underground storage tanks, or USTs, were removed prior to the site being enrolled in the program. Two additional tanks were discovered during site construction and removed.



Chouteau Crossing rooftop garden

Investigations showed elevated levels of mercury, arsenic, diesel and oil range hydrocarbons, and polycyclic aromatic hydrocarbons, or PAHs, present in soil at the site. The building also contained asbestos-containing material and lead-based paint .

A risk assessment was conducted following completion of soil and groundwater sampling. None of the contaminants on Lot A are present above unrestricted risk-based target levels. Asbestos-containing material and lead-based paint, were removed from the building, but some paint was left in the building, either enclosed or encapsulated. An operations and maintenance plan that governs inspection and maintenance of the lead-based paint was filed in the chain of title for the property. The department determined the site is safe for its intended use.

The building has been renovated and is on track to receive a Gold Certified Leadership in Energy and Environmental Design, or LEED, rating and is partially occupied by Dynalabs, an analytical laboratory for pharmaceuticals.



Chouteau Crossing roof top garden

U.S. Ink Facility in St. Louis

The Brownfields/Voluntary Cleanup Program issued a certificate of completion for the U.S. Ink Facility (former) site at 1540 Fairview Ave. in St. Louis. This facility was developed in 1961 on previously undeveloped land. The facility manufactured black printing ink until approximately 1972 when the facility converted to color ink production. U.S. Ink took over operations at the facility in 2007. The facility ceased operations in 2009. The majority of the site is covered by buildings or is paved. The office/warehouse building is approximately 16,900 square feet. The production building is approximately 26,200 square feet.

A Phase I and a Phase II environmental site assessment were conducted at the site. The potential areas of concern were:

- Interior mixing/storage tanks and associated trench system in the production building.
- Former interior mixing/drum storage area and associated trenches in northeast corner of the current office/warehouse building.
- Former exterior railcar unloading operations area along northeast side of production building.
- Long industrial use of the site.

The sampling results from the Phase II assessment indicated the only chemicals of concerns above the Missouri Risk-Based Corrective Action default target levels were lead and arsenic in soil samples. When the lead and arsenic levels were compared to background lead and arsenic levels referenced in the Tidball 1984 document, the levels were within typical background concentrations. The department determined the site is safe for its intended use.

Sites in Brownfields/Voluntary Cleanup

	Active	Completed	Total
April	248	645	893
May	251	645	896
June	253	647	900

New Sites Received

April

May

- Station G Apartments, St. Louis
- North Broadway Building, St. Louis
- Flance Center at Murphy Park, St. Louis

June

- North Sarah, St. Louis
- Braymer Rail Yard, Braymer
- Chillicothe Rail Yard, Chillicothe
- Newton Rail Yard, Newtown
- Hardy's Truck & Auto Parts, Springfield

Sites Closed

April

- US Ink Facility (former), St. Louis

May

June

- Bellerive Plaza, St. Louis
- Chouteau Crossing-Lot A, St. Louis

Drycleaning Environmental Response Trust Fund

The department’s Drycleaning Environmental Response Trust, or DERT, Fund provides funding for the investigation, assessment and cleanup of releases of chlorinated solvents from dry cleaning facilities. The two main sources of revenue for the fund are the dry cleaning facility annual registration surcharge and the quarterly solvent surcharge.

Registrations

The registration surcharges are due by April 1 of each calendar year for solvent used during the previous calendar year. The solvent surcharges are due 30 days after each quarterly reporting period.

Calendar Year 2011	Active Dry Cleaning Facilities	Facilities Paid	Facilities in Compliance
Jan. - March 2012	210	99	47.14%
April - June 2012	210	180	85.71%

Calendar Year 2012	Active Solvent Suppliers	Facilities Paid	Suppliers in Compliance
Jan. - March 2011	11	11	100%
April - June 2011	11	11	100%

Cleanup Oversight

Calendar Year 2011	Active	Completed	Total
Jan. - March 2012	24	10	34
April - June 2012	24	10	34

No New Sites Received or Closed

Missouri Department of Natural Resources - Hazardous Waste Program

Brownfields/Voluntary Cleanup Section

Reimbursement Claims

The applicant may submit a reimbursement claim after all work approved in the work plan is complete and the fund project manager has reviewed and approved the final completion report for that work. The fund applicant is liable for the first \$25,000 of corrective action costs incurred.

	Received	Under Review	Paid/Processed
April	1	4	1
May	4	14	8
June	1	6	1

	Received	Under Review	Paid/Processed
April	\$3,875.07	\$82,528.34	\$394.86
May	\$93,554.45	\$347,887.14	\$135,000.00
June	\$23,239.50	\$86,824.13	\$43,566.00

Reimbursement Claims Processed:

American Cleaners	Bridgeton	\$37,264.00
American Cleaners - University City	University City	\$3,281.00
Antioch One Hour Cleaners	Kansas City	\$25,000.00
Busy Bee Laundry	Rolla	\$30,137.00
Fenton Plaza 48	Fenton	\$2,978.00
Grandview Plaza	Grandview	\$25,980.63
Premier Dry Cleaners of KC	Kansas City	\$4,231.45
Tri State Service Co - E. Trafficway Site	Springfield	\$33,699.68
Yorkshire Cleaners	Marlborough	\$22,823.10

Total reimbursements as of June 30, 2012: \$1,885,959.50

DERT Fund Balance as of June 30, 2012: \$1,281,298.75

Inspections and Assistance

Regional Office Hazardous Waste Compliance Efforts

- Conducted 137 hazardous waste generator compliance inspections:
 - 18 at large quantity generators.
 - 89 at small quantity generators.
 - 24 at conditionally exempt small quantity generators.
 - Six at E-waste recycling facilities.
- Conducted five compliance assistance visits at hazardous waste generators.
- Issued 90 letters of warning and four notices of violation requiring actions to correct violations cited during the 137 inspections conducted.
- Received and investigated 66 citizen concerns regarding hazardous waste.

Hazardous Waste Compliance and Enforcement Efforts

- Conducted 14 inspections of commercial hazardous waste treatment/storage/ disposal facilities, one of which resulted in the issuance of a notice of violation.
- Issued three penalty negotiation offer letters.
- Worked with the Attorney General's Office to prepare five settlement agreements.
- Resolved and closed two hazardous waste enforcement cases.
- Received three new enforcement cases and issued six letters of intent to initiate enforcement action.
- Finalized three settlement agreements.
- Referred one company to the Attorney General's Office.

Tanks Compliance and Enforcement Unit

- The Tanks Compliance and Enforcement Unit, or TCEU, staff continues its work to assist owners, operators and contractors with questions about the recently amended underground storage tank regulations. Staff answered many questions about how the regulations are interpreted and applied regarding closure requirements, assessing out-of-use tank systems, for assessments to allow steel tanks to remain in use and reporting of Underground Storage Tank, or UST, system tests and evaluations.
- The Environmental Protection Agency, or EPA recently proposed changes to the federal UST regulations and the department reviewed and prepared comments about these proposed changes.
- The Missouri Legislature passed a bill during the 2011 session for the Petroleum Storage Tank Insurance Fund, or PSTIF, to initiate action for UST operator training. Heather Peters of the TCEU is currently serving as the liaison with PSTIF on this project, working with staff from the Tanks Section and other department staff and management to provide input and support.
- Staff created 12 enforcement records for UST sites that had lapsed financial responsibility coverage.

UST owners or operators subject to financial responsibility requirements must have a financial mechanism to clean up a site if a release occurs, to correct environmental damages and to compensate third parties for injury to their property and themselves. Releases can be costly and financial responsibility is an important component in protecting the health and property of tank owners/operators and neighbors. Staff resolved 75 enforcement cases, including 44 that also had financial responsibility violations. The unit also referred four facilities to the Attorney General's Office to take action for continuing financial responsibility violations.

Polychlorinated Biphenyl Inspector

The polychlorinated Biphenyl, or PCB, inspector conducted 22 compliance inspections at various types of facilities throughout the state. The inspector's reports are forwarded to EPA Region 7, which has authority for taking any necessary enforcement action regarding PCBs according to the Toxic Substances Control Act.

Hazardous Waste Transporter Inspector

The inspector conducted 21 commercial vehicle inspections, during which three vehicles were placed out of service. The inspector also wrote up 10 other Department of Transportation, or DOT, safety violations. As part of the Commercial Vehicle Safety Association's protocol, the department sends the inspection reports to the Missouri State Highway Patrol. The transporter must certify to the patrol the violations were corrected.

The inspector also issued three notices of violation to unlicensed hazardous waste transporters and three notices of violation to generators who hired unlicensed transporters.

The inspector sent two letters to companies that were inactive, unregistered or conditionally exempt small quantity generators that shipped either small or large quantities of hazardous waste. These facilities are required to register as generators with the department.

As of June 30, 2012, there were 237 licensed hazardous waste transporters in Missouri. The number of licensed hazardous waste transporters has slowly increased over the past two years.

Eagle-Picher Technologies LLC - Joplin

Eagle-Picher Technologies LLC is a battery manufacturer and designer in Joplin. Inspectors found the facility failed to adhere to the previously established schedule of compliance in its hazardous waste permit.

As a result of the department's actions, the facility submitted all documents necessary to comply with the schedule of compliance to fulfill the requirements of the permit. The documents submitted help to assure the surface water monitoring program is adequate to minimize contamination of the creek that runs through the property. The site excavation plan serves to identify site contaminants and to prevent employees and industrial workers from accidental exposure to lead, mercury and other hazardous substances. The company also paid a \$200 civil penalty to the Jasper County school fund.

Positronic Industries Inc. - Springfield

Positronic Industries Inc. is an electronics plater located in Springfield. Inspectors found the facility had failed to:

- Accumulate waste at or near the point of generation or under the control of the operator.
- Keep containers of hazardous waste closed while in storage.
- Segregate containers of incompatible hazardous wastes while in storage.
- Take necessary actions to minimize the potential of an emergency at the facility.
- Clearly mark containers of hazardous waste with the words "Hazardous Waste".
 - Package, mark and label containers of hazardous waste according to Department of Transportation requirements during the entire on-site storage period.
- Date containers of hazardous waste with the date they were placed into storage.
- Conduct adequate inspections of the facility.
- Take precautions to prevent accidental reaction of hazardous waste and ensure transporter name, Missouri and Environmental Protection Agency identification numbers are correct on manifests.

As a result of the department's actions, the facility:

- Began new internal policies to separate incompatible wastes.
- Consolidated many of the hazardous waste generating activities into one facility instead of several.
- Developed and implemented a new and much more extensive training program about hazardous waste management for employees.

The penalty was \$8,000, of which \$4,000 is suspended contingent on the facility not committing any repeat or Class I violations for two years following the effective date of the settlement agreement. The remaining penalty of \$4,000 was paid to the Greene County school fund. The facility also agreed to a pollution prevention Missouri Supplemental Environmental Performance Project, which involved installing individual heaters, pumps and solenoids in plating baths to reduce the energy and water resources needed. The estimated cost is \$18,000 and will be completed within the two year time frame of suspended penalties. In general, results of the facility's and the department's actions include protection of the environment and adjoining property and persons, safer working conditions for employees, reduced usage of natural resources and reduced usage of electricity.

Doe Run Buick Resource Recycling LLC - Boss

Doe Run Buick Resource Recycling LLC is a secondary lead smelter and permitted commercial hazardous waste management facility in Boss. During the inspection, the facility was observed to have three violations, but two of those violations were covered by a joint federal/state multi-media/multi-facility consent decree and enforcement agreement and could not be addressed in this action. The remaining violation that could be addressed was Buick failed to comply with the terms of a permit modification by failing to remove all the material from the slag storage area staging bins within 30 days of Feb. 16, 2010, in violation of Section 260.390, Revised Statutes of Missouri, or RSMo.

As a result of the department's actions, the appeal of the permit was resolved and a penalty of \$4,000 was paid to the Iron County school fund. The facility's compliance with the permit conditions protects the environment and the community.

Waste Express Inc. - Kansas City

Waste Express Inc. is a permitted commercial hazardous waste treatment, storage and disposal facility in Kansas City. The inspector found the facility failed to:

- Provide a copy of the waste minimization certification.
- Clearly mark hazardous waste containers.
- Mark containers with accumulation start date.
- Keep the base of the containment area impervious, free of cracks and gaps.
- Ensure waste arrived at its final destination within 10 days of the manifest being signed by the original transporter.
- Provide adequate secondary containment for transfer waste.
- Maintain adequate secondary containment at a waste oil transfer facility.
- Obtain an approved closure plan prior to implementing closure of the tanks.
- Notify the department, in writing, 60 days prior to implementing closure of tanks.

As a result of the department's actions, the facility repaired curbs and floors of containment areas and paid a \$47,500 penalty to the Jackson County school fund. The facility was sold in April and is now owned and operated by Hazmat Inc. In addition to the containment repairs and the penalty, department actions resulted in protection of the environment and the adjoining property/persons and safer working conditions for employees.

MMP Group of Companies Inc. - Kansas City

MMP is a plating facility located in Kansas City. Inspectors found that the facility had failed to:

- Make a hazardous waste determination on solid waste it produces.
- Update notification to reflect generator status change.
- Demonstrate legitimate recycling.
- Have manifests returned within 35 days or submit an exception report.
 - Keep containers of hazardous waste closed while in storage.
 - Mark "Hazardous Waste" on hazardous waste containers.
 - Package, label, mark containers per U.S. Department of Transportation requirements for the entire on-site storage period.
- Mark the start date of accumulation on containers.
- Inspect and maintain the facility weekly.
- Conduct daily inspection of areas subject to spills.
- Keep satellite containers closed.
- Ensure waste is compatible with satellite container.
- Move satellite containers to storage within three days of filling.
- Make sure personnel were trained to respond to emergencies including the use of alarm systems, emergency equipment and contingency plan.
- Prevent employees from working in unsupervised positions until they have completed training.
- Review training annually.
- Have a program director trained in hazardous waste management procedures.
- Keep a personnel training plan on-site.
- Give the job title, job description and name of employee filling each position in the training plan.
- Give a written description of introductory and continuing training that will be given to each position.
- Maintain documentation of training completed by personnel.
- Maintain records of current personnel until facility closure or three years for former employees.

As a result of the department's actions, the facility:

- Fabricated new parts for a hazardous waste hopper to ensure a closed container.
- Developed new storage plans to reduce the possibility of a release of hazardous waste.
- Developed and implemented a new and much more extensive training program about hazardous waste management for employees.

The penalty is \$46,000, of which \$28,000 is suspended contingent the facility does not commit any repeat or Class I violations for two years following the effective date of the settlement agreement. The remaining penalty of \$18,000 shall be paid in four payments of \$4,500 each to the Jackson County school fund. In general, these actions resulted in protection of the environment and adjoining property/ persons as well as safer working conditions for employees.

Green Ribbon Schools

Hazardous Waste Enforcement Unit staff assisted in the development of a hazardous waste evaluation for the Department of Elementary and Secondary Education's Green Ribbon School Program. Staff also reviewed and scored school applications using the evaluation. The Green Ribbon Schools is a U.S. Department of Education initiative designed to recognize schools that save energy, reduce costs, feature environmentally sustainable learning spaces, protect health, foster wellness and offer environmental education to boost academic achievement and community engagement.

Missouri Pesticide Collection Program

This summer through fall, the department's Hazardous Waste Program and Environmental Services Program staff are overseeing the Missouri Pesticide Collection Program. The Missouri Pesticide Collection Program is part of a Supplemental Environmental Project funded by Walmart as the result of a hazardous waste enforcement case. The project was established in a settlement agreement signed in March 2012. The settlement agreement required \$1,050,000 be spent to provide an opportunity for farmers and households in Missouri to properly dispose of their waste pesticides and herbicides.

The collection program is open only to households and farmers and is focused on the rural areas of the state. The program is overseen by the Hazardous Waste Program while the events themselves are conducted by a contractor, The Environmental Company.

Collections were held in Neosho on June 9 and Benton on June 23. These events will continue every two weeks at new locations, until the full project amount is depleted. Currently there are four more events scheduled statewide. The events will be held on Saturdays from 9 a.m. until 4 p.m. Additional collection events may be scheduled if funds remain. Upcoming dates are:

- July 7 – St. Joseph.
- July 21 – Cameron.
- Aug. 4 – Bunceton.
- Aug. 18 – Macon.
- Sept. 8 – Macon.
- Sept. 22 – Warrenton.
- Oct. 6 – Kennett.

For more information or questions about the pesticide collection program, visit the website at: <http://www.dnr.mo.gov/env/hwp/pesticide/> or contact Ricardo Jones at 573-526-3214.

Natural Resource Damages - Groundwater Assessment

Natural Resource Damage Assessment and Restoration, or NRDAR, is the process of determining injuries to natural resources due to hazardous substance releases or discharges of oil and receiving compensation to restore these injured natural resources and their services. The process is based mainly on the legal authorities of the Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA, also known as the "Superfund" law, the Clean Water Act, the Oil Pollution Act and applicable state regulations. State and federal agencies and Indian tribes act as trustees of natural resources on behalf of the public and assess and recover damages resulting from natural resource injuries.

In 1988, the department's Hazardous Waste Program established a Natural Resource Damages, or NRD, program within its Superfund section. In 2010, this program was expanded to include staff from the Hazardous Waste Program's Budget and Planning, Compliance and Enforcement, Federal Facilities, Permits and Superfund sections. Designated permits section staff are tasked with conducting assessments for sites with groundwater injuries.

Who are Missouri's Trustees?

There are state, federal and tribal trustees who hold natural resources in trust for the benefit of the public. CERCLA, the Oil Pollution Act and the National Contingency Plan state the president and the governors of each state designate officials to act as natural resource trustees. In Missouri, the federal trustee is usually the U.S. Department of the Interior, which is represented by the Fish and Wildlife Service. Federal trustees may also include the departments of Defense, Energy, Commerce and Agriculture. The governor designated the director of the Missouri Department of Natural Resources as the state trustee. The Department of Natural Resources and the Missouri Department of Conservation signed a memorandum of agreement in which the Department of Conservation agrees to provide expertise and assistance to the Department of Natural Resources. There are no state or federally recognized American Indian tribes in Missouri.

What are Natural Resources and Natural Resource Services?

Natural resources are defined in CERCLA as "...land, fish, wildlife, biota, air, water, groundwater, drinking water supplies and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States..., any State or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe." Natural resource services may be ecological or human. Ecological services include the physical, chemical and biological functions the natural resource provides, such as a food source or habitat. Human services include uses that provide public value, such as recreational fishing or hiking or as a drinking water source.

Federal trust resources protected by the Department of the Interior include migratory birds, threatened and endangered species and interjurisdictional fish. These listed trust resources, if located in Missouri, are also Missouri trust resources. Missouri is the trustee for all groundwater within the state. Groundwater is often a state only resource with no federal trustees,



Federally Threatened Ozark Cavefish

however, groundwater may be a federal resource if it provides habitat for a federally threatened species such as an Ozark cavefish. The National Contingency Plan requires when the state and federal trusteeship of natural resources overlap, the trustees form a trustee council to help with coordination.

What Represents a Natural Resource Injury?

The Department of the Interior regulations define injury as "...a measurable adverse change, either long - or short-term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from exposure to a discharge of oil or release of a hazardous substance, or exposure to a product of reactions resulting from the discharge of oil or release of a hazardous substance..." Natural resource injury is also measured in the Department of the Interior's regulations. For groundwater, one of the ways the natural resource is considered injured is if the amount of contamination exceeds the maximum contaminant level set by EPA under the Federal Safe Drinking Water Act.



Double Spring

What is the Natural Resource Damage Assessment and Restoration Assessment Process?

The Department of the Interior's regulations outlines the assessment of natural resource damages under CERCLA and includes Type A and Type B assessments. Type A assessments are only used for coastal, marine or Great Lakes environments. The department conducts Type B assessments, which include a pre-assessment screen, an assessment and a post-assessment. The pre-assessment screen determines whether an injury has occurred and if additional action is warranted, for example, if response actions have not or will not restore the natural resources. The assessment determines the extent of natural resource injury and services lost. Fieldwork may be required and may be done at the same time as response actions if not enough data is available. Natural resource service loss is calculated by comparing current services with the baseline, that is, the state of the natural resource before the release. Groundwater services may be determined by calculating the volume of contaminated water, or determining the amount of water that enters the contaminated aquifer yearly, thereby becoming injured.

After determining the extent of injury, the department calculates financial damages to compensate for the loss. Damages may also be sought to compensate for the value of natural resource services lost from the time the injury occurred until restoration takes place, and to cover the department's natural resource damages assessment expenses. The department then presents a natural resource damages claim for compensation to the responsible party.

The post-assessment part of the process includes settlement and restoration. The natural resource damages claim may be settled in court or contested. After an agreement has been reached, according to CERCLA, the funds received must be used to restore, rehabilitate, replace or acquire the equivalent of the injured natural resources and lost natural resource services. Restoration may occur at the same time as remediation at a site, or it may be done after remediation is completed. The goal of restoration is to return the natural resources to baseline conditions. Primary restoration is on-site restoration that restores the injured natural resource. Compensatory restoration takes place when primary on-site restoration is not possible and may include restoring or preserving natural resources with comparable value and services. For example, funds from a natural resource damages settlement may be used to purchase a conservation easement for a property with comparable value and services to the natural resources lost. The conservation easement places restrictions on the property and protects its natural resources.

The Natural Resource Damage Assessment and Restoration Assessment Process in Action

The Newton County Wells Superfund site, or the FAG Bearings site, is a case of a groundwater Natural Resource Damage Assessment and Restoration assessment. The Newton County Wells Superfund Site is located in northern Newton County around the FAG Bearings property in Joplin. FAG Bearings manufactures steel ball bearings and ball bearing assemblies and used trichloroethene, or TCE, as a degreaser in this process from 1972 until 1981. In 1983, after decommissioning the TCE vapor degreaser, the piping for this process was cut, spilling residual TCE and contaminating the Mississippian drinking water aquifer.

The Missouri Department of Health and Senior Services identified the site in 1991, while sampling at a nearby facility. TCE was detected at levels exceeding EPA's maximum contaminant levels in residential wells in the Village of Silver Creek, south of the FAG Bearings property. After additional sampling, it was determined TCE from FAG Bearings also contaminated residential wells in Saginaw Village. Bottled water was provided to residents of both villages and the village of Silver Creek was connected to the Missouri American Water Company system in 1992. Saginaw Village was connected to the city water system in 1994. TCE was detected above the MCL in 62 wells up to two miles south of the FAG Bearings property.

In August 2004, FAG Bearings was notified of potential injuries to groundwater, a natural resource held in trust by the State of Missouri. The natural resource damages assessment was based on injuries caused when the TCE vapor degreaser piping was cut, causing spilled residual TCE to flow into a utility trench and migrate into the Mississippian aquifer, which was used as a public drinking water supply. Because the facility is located in the known habitat for threatened and endangered Ozark cavefish, the U.S. Fish & Wildlife Service, representing the Department of the Interior, was a co-trustee along with the State of Missouri in this case.

Groundwater damages were calculated by using the area's historical water rate per gallon and the average water usage per household in gallons per month, according to data from the Missouri Water American Company in Joplin. This information was used to determine the amount of potable water the wells would have produced if they were not contaminated and how much the public would have paid for this resource. The baseline services were calculated and "credit" was given due to previous unrelated metals contamination in the aquifer. Based on groundwater models, it was estimated groundwater would be injured for 30 years, assuming partial natural attenuation of the plume. The groundwater damage calculations began at the time the injury occurred, which was when the piping was cut in 1983, and ended 30 years from that date. A settlement agreement was reached with FAG Bearings in July 2006 for a cash out value of \$137,362, which was added to a May 2007 consent decree.

Missouri Department of Natural Resources - Hazardous Waste Program Superfund Section

What is a Springfield Plateau Regional Restoration Plan?

This plan describes options for restoring injured natural resources in the Springfield Plateau Ecoregion. The Springfield Plateau lies in the western Ozark Highlands of southwest Missouri. It comprises portions of Cedar, Dade, Jasper, Newton, Lawrence, Greene, Polk, Webster, Christian, Barry, St. Clair, Hickory, Barton, McDonald, Stone and Douglas counties. The primary natural resource injury in this region is from past mining activities in Newton and Jasper counties.

The objective of the plan is to compensate the public, through environmental restoration, for losses of natural resources injured by releases of hazardous substances into the environment. Natural resource funds received must be used to restore, rehabilitate, replace and acquire the equivalent of the injured natural resources.

Restoration Project Evaluation Criteria

Request for proposals will be implemented over time to address various natural resource damages.

Each request for proposal will be tied to the natural resource injury such as aquatic restoration or upland restoration. Request for proposals will be evaluated on criteria outlined in the Springfield Plateau Restoration Plan.

There are two components to the project evaluation process. They are:

1. Acceptability criteria: These criteria evaluate the initial project and whether it is achievable.
2. Project ranking criteria:
 - Location to the injury.
 - Examples of preferred resources and services.
 - Benefits provided.
 - Time required for restoration.
 - No adverse environmental effects.
 - Cost-effectiveness.
 - Evaluation component.
 - Probability of success.



Superfund Section



Historic mining activities in Missouri have led to the potential injuries of the natural resources.



A restored site in Newton County now looks serene and majestic.

Missouri Department of Natural Resources - Hazardous Waste Program Superfund Section

Settlement History

Settlement	Settlement Date	Available Restoration Funds (approx.)
Eagle Picher	2/95	\$200,000
Carver Salvage	2/95	\$3,000
Newton County Wells	5/07	\$100,000
ASARCO—Newton County	12/09	\$7 million
ASARCO—Jasper County	12/09	\$13 million

Plan Finalized

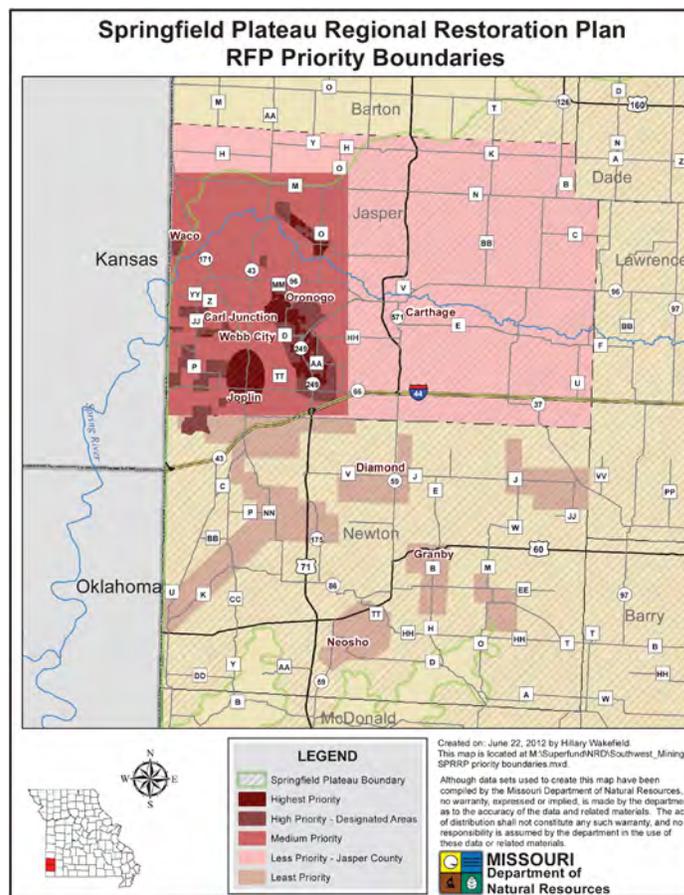
The Springfield Plateau Regional Restoration Plan is final and is published in the *Federal Register*. The document is written by the U.S. Fish and Wildlife Service and the Missouri Department of Natural Resources to guide the process of restoring natural resources injured by the release of hazardous substances.

With the plan finalized, we are now able to advertise the first request for proposals for restoration projects within the Tri-State Mining District.

The first funds to be released are \$235,000 for riparian restoration resulting from Eagle Picher mining and smelting activities around Joplin. Priority will be given to projects to improve or protect riparian habitat that may enhance migratory bird habitat.

Additional Information

The Missouri Department of Natural Resources and the U.S. Fish and Wildlife Service invite the public to review the Springfield Plateau Regional Restoration Plan and Environmental Assessment. The department is asking citizens to contact either of these agencies if they have questions about the natural resource damages process.



Petroleum Storage Tanks Fiscal 2012 Statistics

During fiscal year 2012, the department accomplished the following work related to petroleum storage tanks:

- Properly closed 301 tanks.
- Reviewed 107 closure reports.
- Approved 107 closure notices.
- Conducted 43 closure inspections.
- Conducted six site investigations.
- Responded to 12 emergencies involving petroleum releases.
- Reviewed 1,695 remediation documents.
- Oversaw completion of 143 remediation sites.
- Issued 283 certificates of registration.

A total of 97 new releases were reported during fiscal 2012. Department staff were notified about 68 new installations at tank sites and received 37 new site registrations. Compliance and Enforcement Section staff resolved 67 cases involving violations. At the end of the 2012 fiscal year, there were 226 active enforcement cases. Financial responsibility compliance was at 99.1 percent. This number reflects insurance coverage from both the Petroleum Storage Tank Insurance Fund, or PSTIF, and other private policies and statements. There were 60 state/federal exempt sites. This number does not include temporary closed tanks, which are not required to have financial responsibility. The department currently regulates 3,558 facilities with 9,335 active underground storage tanks.

Tanks Section holds workshop at the Missouri Waste Coalition Conference

The Hazardous Waste Program's Tanks Section held a Tanks Workshop on June 19 as part of the Missouri Waste Coalition Conference in the Lodge of the Four Seasons Hotel at Lake of the Ozarks. This was the fourth annual workshop in conjunction with the Missouri Waste Coalition events. This conference was targeted toward environmental consultants who provide services to tank owners and operators. The workshop provided consultants with information and training regarding monitoring well registration and installation.

The workshop included departmental staff along with private consultants, private laboratories and others. EPA also participated in the conference as an exhibitor and in a support role.

Drinking Water Impact in Gravois Mills

The Hazardous Waste Program's Tanks Section is currently assisting a home owner in Gravois Mills that has benzene at the maximum containment level in the drinking water well. The home is on a property that was formerly a gas station. The gas station performed tank closure and received a No Further Action letter in 2003. Recently the property was purchased and the well was found to contain benzene not detected in 2003.

The department is currently working with Culligan at Lake Ozark to provide the home owner with a carbon filtration system while the well is monitored for a year to evaluate the contamination. With the approval of EPA, the Tanks Section is using federal funding to provide the homeowner with safe drinking water.

Missouri Department of Natural Resources - Hazardous Waste Program
Tanks Section

Petroleum Storage
Tanks Regulation
June 2012

Staff Productivity	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	TOTAL
Documents received for review	189	194	153	168	188	162	205	193	174	179	193	181	2,179
Remediation documents processed	137	159	171	165	144	171	149	124	125	123	111	116	1,695
Closure reports processed	14	8	11	8	8	4	11	6	13	7	13	4	107
Closure notices approved	9	6	2	7	11	10	5	3	13	6	9	19	100
Tank installation notices received	10	5	5	10	3	0	3	5	10	6	8	3	68
New site registrations	3	1	2	0	3	2	1	2	11	7	3	2	37
Facility Data													
Total in use, out of use and closed USTs	40,222	40,236	40,261	40,267	40,299	40,320	40,337	40,350	40,368	40,387	40,400	40,404	
Total permanently closed USTs	30,808	30,839	30,878	30,904	30,925	30,930	30,954	30,961	30,976	31,041	31,043	31,067	
In use and out of use USTs	9,412	9,395	9,395	9,375	9,386	9,388	9,381	9,387	9,390	9,358	9,355	9,335	
Out of use USTs	870	853	834	817	819	821	820	832	838	826	838	833	
Total hazardous substance USTs	395	395	395	395	395	395	396	398	398	398	398	398	
Facilities with in use and out of use USTs	3,578	3,568	3,569	3,566	3,569	3,572	3,570	3,570	3,573	3,565	3,565	3,558	
Facilities with one or more tank in use	3,276	3,264	3,270	3,271	3,272	3,273	3,273	3,273	3,275	3,272	3,266	3,259	

Closures

Underground Storage Tanks	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	TOTAL	All Yrs
Closure Reports Reviewed	14	8	11	8	8	4	11	8	13	7	13	4	107	
Closure Notices Approved	9	6	2	7	11	10	5	3	13	6	9	18	100	
Number of Tanks Closed (Closure NFA)	23	48	57	28	21	15	17	18	7	19	19	28	301	

Cleanup

Underground Storage Tanks	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	TOTAL	All Yrs
UST release files opened this month	2	2	3	1	0	0	3	17	5	10	8	8	58	8,414
UST cleanups completed this month	4	15	21	5	8	8	10	8	11	8	11	12	117	5,514
Ongoing UST cleanups	884	851	834	830	827	818	812	848	881	858	857	800		
Aboveground Storage Tanks														
AST release files opened this month	1	2	1	0	0	2	0	0	0	2	0	1	8	424
AST cleanups completed this month	1	0	6	1	0	1	0	0	0	3	1	0	13	258
Ongoing AST cleanups	188	170	164	163	164	164	164	166	168	168	168	160		
Both UST and AST														
Total release files-both UST & AST	0	0	0	0	0	0	0	0	0	0	0	0	0	74
Cleanups completed-both UST & AST	0	0	0	0	0	1	0	0	0	0	1	0	2	74
Ongoing cleanups-both UST & AST	31	31	31	31	31	30	31	31	31	31	30	30		
Unknown Source														
Total release files-unknown source	2	0	0	2	1	1	3	4	5	4	6	1	28	221
Cleanups completed-unknown source	1	2	1	1	3	0	0	1	0	1	1	0	11	178
Ongoing cleanups-unknown source	110	113	113	115	111	118	126	88	82	85	85	18		
Documents Processed	137	159	171	165	144	171	149	124	125	123	111	116	1,695	
Reopened Remediation Cases	0	0	0	0	1	0	0	0	1	0	0	1	3	100

Effective December 2008 tanks with unknown substance will be included in total figures. Some measures are re-calculated each month for all previous months to reflect items added or edited after the end of the previous reporting period.

Missouri Hazardous Waste Management Commission Meeting

**October 18 2012
Agenda Item # 11**

**Administrative Hearing Commission Appeals
Status Update-Information Only**

Issue:

Routine update to the Commission on legal issues, appeals, etc.

Information:

Information Only

Presented by:

Kara Valentine, Commission Counsel – Missouri Attorney General’s Office

Missouri Hazardous Waste Management Commission Meeting

**October 18, 2012
Agenda Item # 12**

Public Inquiries or Issues

Recommended Action:

Information Only.

Presented by:

David J. Lamb, Director, HWP

Missouri Hazardous Waste Management Commission Meeting

**October 18, 2012
Agenda Item # 13**

Other Business

Recommended Action:

Information Only.

Presented by:

David J. Lamb, Director, HWP

Missouri Hazardous Waste Management Commission Meeting

**October 18, 2012
Agenda Item # 14**

Future Meetings

Information:

Meeting Dates:

Date	Time	Location
Thursday, December 20, 2012	9:45 A.M.	Bennett Spring / Roaring River Room 1730 East Elm Jefferson City, Missouri 65101
Thursday, February 14, 2013	9:45 A.M.	Bennett Spring / Roaring River Room 1730 East Elm Jefferson City, Missouri 65101
Thursday, April 18, 2013	9:45 A.M.	Bennett Spring / Roaring River Room 1730 East Elm Jefferson City, Missouri 65101
Thursday, June 20, 2013	9:45 A.M.	Bennett Spring / Roaring River Room 1730 East Elm Jefferson City, Missouri 65101
Thursday, August 15, 2013	9:45 A.M.	Bennett Spring / Roaring River Room 1730 East Elm Jefferson City, Missouri 65101
Thursday, October 17, 2013	9:45 A.M.	Bennett Spring / Roaring River Room 1730 East Elm Jefferson City, Missouri 65101

Recommended Action:

Information Only.