

GENERAL SESSION
HAZARDOUS WASTE MANAGEMENT COMMISSION
June 19, 2014; 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 Deron Sugg
Commissioner Michael Foresman

The phone line was opened at approximately 9:36 a.m. for Commissioners calling in to today's meeting.

COMMISSIONERS PRESENT BY PHONE

Commissioner Elizabeth Aull

*Commissioner Andrew Bracker: Commissioner Bracker was present on the phone but had to leave the conference call at 10 a.m. for a personal emergency.

**Commissioner Jamie Frakes joined the meeting at 10:37 a.m.

It was noted that there was not a quorum at this time.

Chairman Sugg called the General Session to order at approximately 10:04 a.m.

A roll call was taken with Chairman Sugg, Commissioner Aull and Commissioner Foresman acknowledging their presence at today's meeting.

1. PLEDGE OF ALLEGIANCE

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

2. APPROVAL OF MINUTES

A quorum had not been established; voting on the approval of minutes was delayed until later in the meeting when a quorum was present. **

3. RULEMAKING UPDATE

Mr. David J. Lamb, Director, Hazardous Waste Program, addressed the Commission and noted he would be presenting the update today, in place of Mr. Tim Chibnall, who had been scheduled to make the presentation. Mr. Lamb noted that the main focus of the Program's efforts was still on the "No Stricter Than" rule package. He advised that with the Commission's recent approval of the Finding of Necessity on this rule package, staff has been primarily working on the Regulatory Impact Report (RIR) associated with the rule. He noted that the RIR was currently undergoing management review and was expected to be out for the 60 day public comment soon. He also advised that the Interagency Review would run concurrent with the RIR public comment period and that the draft rule text would be published with the RIR for public review.

Mr. Lamb did advise that there was one significant change that he wanted the Commission to be aware of regarding the "No Stricter Than" rule package. He stated that Chapter 12, which is our fee rules, was being held out of the rule package at this time; as including it in the package would limit the ability to work with stakeholders on the fee structure. He noted that the Department was looking at the potential of holding stakeholder meetings on the fees, this fall. He went on to advise that if it was included in the package that the Department would not be able to do anything to change the fee structure until 2018; but, if it was pulled out, changes could be implemented in 2017. He also noted that any changes needed to the references in Chapter 12 could be made when the rule is opened.

Mr. Lamb went on to advise that the only other rulemaking that was close to being brought before the Commission for consideration was the operational tank rules, which would be covered by Heather Peters in her presentation later in the meeting.

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

4. LEGISLATIVE UPDATE

Mr. David J. Lamb, Director, Hazardous Waste Program, then provided a PowerPoint presentation on recent legislative activity. He noted that this year was a light session for the Hazardous Waste Program (HWP) as there were no major bills like the "No Stricter Than," or permit streamlining proposed this year, and no fees with sunsets to address during this legislative session.

Mr. Lamb advised that there were three bills that had passed that the Department had been following during this session. Those bills included HB2006, SB642 and SB504. He went on note that HB2006, the Appropriations bill, included appropriations for the Departments of Natural Resources, Agriculture and Conservation. He advised that the HWP was included under Section 6.225, within the Division of Environmental Quality, and that the bill was passed by the Legislature and is currently pending the Governor's signature. Mr. Lamb went

on to describe that the HWP receives budget authority under the Hazardous Waste Program Core, which included \$11.1 million and 134.42 FTE; under the Petroleum Related Activities Core, which included \$775,549 and 16.2 FTE; and under the Environmental Damages Core, which included \$6,157,971. He advised that the new budget items affecting the HWP included a core transfer of 2 FTE and related appropriations from other areas of the Department's budget; a new General Revenue decision item of \$22,000 for Superfund Operation and Maintenance obligations; a 1% Cost of Living Adjustment (COLA) for staff, beginning in January 2015; and appropriations for a Department Integrated Data System.

The second bill that Mr. Lamb outlined, SB 642, was the Department Omnibus Bill. He noted that it contained numerous provisions affecting the Department, and that it contained provisions of other bills introduced, such as SB968, SB664, and HB1302, which did not advance. He advised that the final version of the bill was passed by the Legislature in the final days, and that the Governor had until July 14, 2014, to act on the bill.

Mr. Lamb then discussed some of the highlights of the bill. He stated that provisions affecting the Program included an extension to the sunset date of the Radioactive Waste Transport statute; and revisions to the statutory language allowing the Hazardous Waste Management, Mining, Air Conservation, and Clean Water Commissions to make changes to their fee structures. Mr. Lamb advised that the Radioactive Waste Transportation statute sunset date had been extended nine years from August 28, 2015, to August 28, 2024. He noted that Legislative Oversight was scheduled to review this program but that the review would likely be dropped if the bill was signed into law. He then advised, with regards to the hazardous waste fee structure, that minor changes were made to the process established last year by HB28/650 for implementing changes to the fee structure by rule. He noted that this bill affects fees found in Sections 260.380 and 260.475 RSMo (Generator Registration and Renewal, In-state and Out-State Generator, and Land Disposal Fees), and that the language changes clarify that the Department may conduct a comprehensive review and propose changes to the fee structure. He advised that it also clarifies that a 2/3 majority, or 5 of 7 Commissioners must approve the proposed change to move forward with filing the proposed rule; it extends the sunset date one year from August 28, 2023, to August 28, 2024; and, it changes language allowing fee changes to go into effect on the next calendar year, as opposed to the next odd-numbered year.

Mr. Lamb then explained the process to be followed to change the fee structure. He noted that the process included provisions for a comprehensive review that included a stakeholder process; that the Department must submit the fee structure with stakeholder agreement to the Commission; that the Commission must review the proposal at their next meeting, but shall not vote on the proposal until a subsequent meeting; and that if the Commission approves by a 2/3 majority, the Department can proceed to file the proposed rule. With this, Mr. Lamb advised, the order of rulemaking would need to be filed by December 1st of the same year with the Joint Committee on Administrative Rules; and the General Assembly would then have 60 calendar days from the start of the legislative session to disapprove of the rule; and if not disapproved, the fees would go in effect the following January 1st.

The final bill that Mr. Lamb discussed was SB504, which concerned the electronic posting of proposed rules. Mr. Lamb noted that this bill requires agencies to place a “proposed rule” hyperlink on the home page of its official internet website, and that the proposed rule webpage shall include, within one business day of the rules publishing in the state register, a rule summary, full text of the rule, and the fiscal note. The webpage must also have a hyperlink to the rule in the Missouri Register and all material incorporated by reference. He noted that the bill was delivered to Governor on May 30th, but that the status of the bill was unknown at this time.

Mr. Lamb finished his presentation with information on other bills of interest which did not pass, noting that HB 2212 and SB 571 would have repealed the existing e-scrap program and established a program implemented by solid waste management districts; that HB 1946 would have made changes limiting the use of local ordinances to prohibit well construction when otherwise allowed; and that HB 1884 & SB 507 would have established limits on Department Director’s serving in acting capacities and Commission members serving in expired terms.

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

5. DEPARTMENTAL RISK BASED TARGET LEVELS

Mr. David J. Lamb, Director, then provided the Commission with an update on the Department’s efforts towards updating the Departmental risk based target levels (RBTLs). He noted that the HWP previously informed the Commission that, with the assistance of the Missouri Department of Health and Senior Services (DHSS), the HWP would be updating the Risk-Based Target Levels (RBTLs) found in the 2006 Missouri Risk-Based Corrective Action (MRBCA) guidance document.

Mr. Lamb noted that the RBTLs will be updated using the same methodology, equations, and input values (e.g., toxicity factors, exposure factors, etc.) that are used by the Environmental Protection Agency (EPA) to develop their Regional Screening Levels (RSLs). He noted that the updated RBTLs will be the same as the RSLs except that, for carcinogenic chemicals, the updated RBTLs will be calculated to meet a 1 in 100,000 Incremental Excess Lifetime Cancer Risk (IELCR) rather than the 1 in 1,000,000 IELCR used by EPA. The RBTLs for non-carcinogenic chemicals will be equivalent to the corresponding RSLs.

Mr. Lamb noted that the DHSS had provided the Program with a draft version of the RBTLs in December, and that during the course of the Program working through comments and concerns on the draft with the DHSS, the EPA changed many of the exposure factors that were used by the DHSS to develop the RBTLs. He advised that, as a result of these changes, the DHSS had to go back and redo most of their work on this effort, which has caused the project to be delayed. He noted that staff were also working through a number of technical issues with the implementation of the RSLs, and stated that some of the issues were causing the Program to evaluate whether there is a need to do the update as a rulemaking.

Chairman Sugg requested that Mr. Lamb explain further regarding the RBTLs in regard to the IELCR being 1 in 100,000. Mr. Lamb responded that with regards to screening levels to determine if there is a risk, the Department looks at a level a little more lax than the EPA. He noted that this was implemented based upon stakeholder input in 2006. But, he advised, although the screening level to determine exposure may be less, the cleanup levels are not necessarily any less protective.

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

**At 10:37 AM, Commissioner Jamie Frakes joined the meeting by phone.

6. TANKS SECTION UPDATE

Mr. Ken Koon, Chief, Tanks Section, addressed the Commission and provided a PowerPoint presentation regarding current Tanks staff efforts. Mr. Koon provided information on the Tanks cleanup statistics and progress, abandoned release projects, staff efforts to engage stalled cleanups, and staff involvement in training for staff and consultants.

Mr. Koon provided graphs and numbers for remediations added and cleanups completed, by state fiscal year, and for remediation document review times by state fiscal year. Mr. Koon also provided tank cleanup statistics for underground storage tanks (USTs'), noting there were 9,116 active tanks, 31,603 closed tanks, 6,887 confirmed releases, 5,959 cleanups completed and 928 cleanups remaining. With regards to aboveground storage tanks (AST's), Mr. Koon noted that there were 467 confirmed releases, 281 cleanups completed and 186 cleanups remaining.

He went on to note that efforts were being focused to engage on stalled cleanups and that 52 sites were identified that potentially have a Responsible Party or a party willing to proceed. He noted that these sites were all PSTIF eligible, and that most had reached the \$10,000 dollar deductible. He noted that all sites have been reviewed by DNR and that DNR has initiated contact on most of the sites.

Mr. Koon then advised that staff had been or would be participating in several remediation trainings. He discussed recent Department attendance at the ITRC's LNAPL (Free Product) Training in April. He then discussed future training and webinar opportunities that his staff would be involved in, including a webinar on the Bos 200 remediation technology in June/July; the webinar on Risk Assessment Report Writing in July/August; and transmissivity testing training, which will be scheduled at a later date. He also noted that EPA Region 7 has some funding for state joint training that is being reviewed.

Mr. Koon then advised that staff had attended and presented at the 2014 Missouri Waste Control Coalition Conference, providing information on the Hazardous Substance Site Locator, and participating in demonstrations with the GeoSTRAT web based tool and the Bos 200 remediation technology.

He noted that staff also participated in the Enhanced Fluid Recovery Session, in the Evaluation of Groundwater Use in Greene County Session and in the Risk Assessment discussions.

Commissioner Frakes inquired as to whether the Department had a list of companies that had participated in the conference, to which Mr. Koon responded that the MWCC would have the list and he would try to get the commissioners a copy.

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

Chairman Sugg returned to Agenda Item #2: It was noted that a quorum was now present and a vote could be taken on the minutes from the last meeting.

A motion was made by Commissioner Aull to approve the minutes from the June 19, 2014, General Session, which was seconded by Commissioner Foresman.

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

7. ENERGY POLICY ACT UPDATE

Ms. Heather Peters, Compliance and Enforcement Section, provided the Commission with PowerPoint slides and a presentation on the 2005 Energy Policy Act impact on underground storage tanks. She noted that the EPA's 2005 Energy Policy Act included changes to the UST Program and advised that Missouri has already implemented many of these new requirements. She advised that a few outstanding issues remain for the State to address. She noted that the Act's changes required the State to establish new procedures on a variety of components, including delivery prohibition ("red tag"), which the EPA has approved; State reporting, tracking, and public records, which the EPA has approved; UST inspection frequency, which the EPA has approved; Operator training, which has had a contract awarded and we anticipate being on-line in July; and Secondary containment, which will require double-walled systems for new tanks and/or piping installed after July 1, 2017. Ms. Peters also advised that there will be upcoming rule changes, and that we will begin formal rulemaking as soon as the EPA finalizes their rules, which are expected in the Fall 2014. She noted that this rulemaking will include state specific regulatory changes, will incorporate secondary containment requirements and will include Federal regulation changes. She noted that the state's operator training and secondary containment are two of the components that have yet to receive final approval from the EPA. She also advised that a financial responsibility (FR) component could have replaced the secondary containment provision, but the state's proposed FR program was denied by the EPA in January 2013.

Ms. Peters outlined the efforts that have been made towards developing the operator training program and outlined what secondary containment requirements would mean to stakeholders and operators. Ms. Peters also outlined state specific changes to current requirements and how these would be addressed, what difficulties were foreseen, and the outreach efforts that

have been undertaken to ensure stakeholders and operators have the most current information available regarding the required changes.

She noted that in the future, the Hazardous Waste Program may request the Hazardous Waste Management Commission promulgate rules to resolve any final conflicts.

Chairman Sugg inquired as to whether operators were going to have to install new equipment to meet the new requirements or if they already had the equipment in place. Ms. Peters noted that approximately 80 percent of the operations have double walled tanks in place and that the old tanks are being weeded out. She did note that the monitoring requirements will be difficult until a process is developed and in place.

Commissioner Aull complimented the group who had worked on the Tanks rules publication that had been developed in December and inquired if there would be more of these. Ms. Peters indicated more would be done when the federal rules are proposed and decisions have been made about the state requirements that will be included.

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

8. SCHOOL LAB ACTIVITIES

Mr. Tony Pierce, Compliance and Enforcement Section, addressed the Commission and provided a PowerPoint presentation and information on the Department's efforts to assist school labs with proper disposal and other issues. Mr. Pierce reviewed some recent history with schools, resulting from the 2008 School Chemical Cleanout Project. He noted that these efforts were in partnership with the Environmental Services Program (ESP) and the Center for Safe Schools, and that it was Department of Homeland Security Grant funded with 239 schools participated and over \$400,000 spent.

Mr. Pierce noted that there were current activities being conducted with the Hazelwood School District, in conjunction with an Enforcement case with an Administrative Order on Consent (AOC), which is poised to lay a foundation for other school districts needing assistance. He noted that the Hazelwood AOC terms corrected all hazardous waste violations at schools in the district, would require the development of a management plan to help prevent future violations, and would require the district to develop and provide training for its faculty and staff on hazardous waste recognition and management. He advised that Department staff will coordinate with the District so this can be shared with other schools. He noted that a presentation is planned for the August pre-session with a September 5, 2014, completion deadline.

Mr. Pierce also advised that compliance questions at North Callaway High School led to a Compliance Assistance Visit (CAV), and that the CAV will result in an updated building inventory/waste policy. Mr. Pierce went on to advise that other issues with school labs

activities had been noted, including a involved a retired teacher from Park Hills who had hoarded school chemicals at his home. He noted that the efforts made with the Hazelwood project will be shared with the Department of Elementary and Secondary Education (DESE), and that the Department will continue with CAVs at schools requesting assistance. He noted that these were unique solutions to problems and efforts to ensure no future violations.

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

9. LEGAL UPDATE

Ms. Kara Valentine, Commission Counsel, addressed the Commission and advised she had a couple of updates to share with the Commission. She began by providing additional information on school lab activities. She noted that Doe Run was paying for several school lab cleanups in southeast Missouri as part of an old settlement agreement. She advised that the contractors hired by Doe Run had found that janitorial closets were also sources of potential risk and that they had been cleaning those out at the schools at the same time as the labs.

Ms. Valentine advised that the first update was a federal criminal case where a man from Kansas had been sentenced to 30 months in federal prison for defrauding the Petroleum Storage Tank Insurance Fund (PSTIF). She noted that the man, Robert Fine of Fine Environmental, was a contractor who worked out of his home doing environmental cleanups. She stated that he would subcontract the cleanups and when the subcontractors invoiced him for the work, he would alter the invoices and charge the PSTIF an inflated amount. She noted that it had been estimated that he had charged the PSTIF more than 1.3 million dollars in excess billings. She advised that Mr. Fine was individually charged with mail fraud and money laundering; and that he was sentenced to 30 months in prison and was required to pay 1.5 million dollars in restitution, of which most of that fine had been collected. She also advised that she was unsure if any criminal fine had been ordered, as she had been unable to find any further information on the case.

Ms. Valentine then advised that the second update she wished to provide was a recent lawsuit against Tyson Foods. She noted that the Attorney General's Office had announced the lawsuit in regards to a fish kill in the city of Monett, from their sewage treatment plant. She advised that Tyson had released a food supplement called Alimet into the sewer system and it had traveled to the treatment plant. She noted that this product had a very low PH factor and that the result was that all the microbes had died, causing a large increase in the ammonia levels, which killed all the fish for about four miles downstream. She noted that this would generally be a Water Pollution case but that a hazardous waste violation had been added to the equation. This incident occurred in Barry County. She also advised that Tyson had accepted responsibility and had apologized; but, she also advised that there may be further natural resource damages claims from the incident.

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

10. PUBLIC INQUIRIES

Mr. David J. Lamb, Director, Hazardous Waste Program, advised the Commission that he had not received any requests from the public, to address the Commission.

11. OTHER BUSINESS

Mr. David J. Lamb, Director, Hazardous Waste Program, addressed the Commission and advised that he had a few items he wished to bring the Commission's attention. He noted that he had recently sent the Commission a link to the newly released audit report for the Brownfields Tax Credit Program. He noted that although the audit primarily involved the Department of Economic Development, which oversaw the tax credit program, it did involve certain sites in the Brownfield Voluntary Cleanup Program. He also noted that the auditors would be releasing the Hazardous Waste Program Audit soon, and it would also be forwarded out to the Commissioners for review. He advised the Commission that he would be available to answer any questions they may have after they had the opportunity to review the reports.

Mr. Lamb then advised the Commission that the Department was currently undertaking a business process analysis, and as he had discussed during his earlier Legislative Update, this was an initial step towards the new Integrated Data System for the Department. He noted that this process basically was a look at how the Department/Program currently does business, how data is processed, how it is used and how it is stored. He noted that this would help the Department determine which current systems needed to be updated and modernized. Mr. Lamb noted that the state's ITSD program had awarded a contract the Ferguson Consulting, for this review, and that they had been interviewing staff and would be generating a report that should be out by August 22nd. He noted that this information would be shared with the Commission when it was available.

Mr. Lamb then advised that the pesticide collection program had begun again, with the first collection having been held on May 31st, in Perryville, MO. He noted that approximately 30 people had attended the event and that approximately 4,700 pounds had been collected. Mr. Lamb advised that a couple more events had been scheduled; in Washington, MO, on July 26; and in Marshfield, MO, on August 23. He also advised that a fourth event was being considered, to be held in the northeast region of the state, on a yet to be determined date.

Mr. Lamb then discussed vacancies within the Program, noting that the BVCP section chief position was currently a focus to get filled, and that Scott Huckstep had been Acting Chief in the interim until the position was filled. He also noted that Hannah Humphrey, the LTS Unit Chief, had accepted a position at the Division of Environmental Quality as the Community Services Coordinator. Along with this, he advised that there were still four Engineer positions vacant in the Permits Section, and that the Compliance and Enforcement Section also had a

couple of openings. He stated that the Program was continuing to battle turnover and vacancies.

Mr. Lamb advised the Commission that there were a couple of trainings upcoming, which may be of interest to the Commission. He noted that the Brownfields Conference was scheduled for the following week, at the DNR conference center; which allowed cities, realtors and other stakeholders to learn about the brownfields program. He also noted that staff would be attending Vapor Intrusion training July 9-10, as the Program has been able to secure Hartman Geo Science to do the training and had been able to get them to come here, while also arranging for a significant number of Department staff to be able to attend for free.

He then noted that the last item he wished to discuss was the fact that the Hazardous Waste Forum had been originally scheduled to be held following the June Hazardous Waste Management Commission meeting; but, that there was no real pressing business scheduled for discussion so the meeting had been cancelled. He stated that the next meeting would be scheduled for some time in the fall.

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

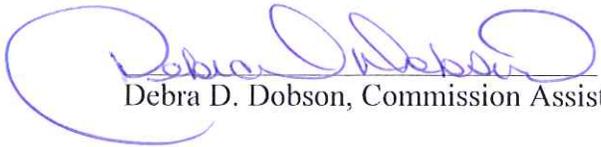
12. FUTURE MEETINGS

It was noted that the next meeting would be held on August 21, 2014.

Chairman Sugg requested a motion to adjourn if no other business needed to be presented to the Commission at this time.

Commissioner Foresman made the motion to adjourn the meeting at 11:35 p.m. The motion was seconded by Commissioner Aull.

Respectfully Submitted,


Debra D. Dobson, Commission Assistant

APPROVED


Deron Sugg, Chairman


Date