COMMISSIONERS PRESENT IN PERSON

Commissioner Charles (Eddie) Adams
Commissioner Michael Foresman
Commissioner Mark Jordan

The phone line was opened at approximately 9:41 a.m. for Commissioners calling in to today’s meeting.

COMMISSIONERS PRESENT BY PHONE

Commissioner Elizabeth Aull
Commissioner Jamie Frakes
Commissioner Andrew Bracker

1. PLEDGE OF ALLEGIANCE

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

A roll call was taken with Vice-Chairman Adams, Commissioner Aull, Commissioner Foresman, Commissioner Frakes, Commissioner Bracker and Commissioner Jordan acknowledging their participation in today’s meeting.

2. APPROVAL OF MINUTES

Mr. David J. Lamb, Director, HWP advised the Commission that a request had been received from the Petroleum Storage Tank Insurance Fund, for a minor change to the Minutes. Copies of these changes were provided to the Commissioners, along with a red-line strikethrough outlining the suggested changes. Mr. Lamb advised that the suggested change made a more detailed clarification to a portion of Mr. Ken Koon’s presentation on the Tanks Special Projects agenda item and that the Department did not have issue making the change.

Vice-Chairman Adams requested a motion be made to accept the Minutes, with the suggested changes.
• Commissioner Frakes made the motion to approve the General Session minutes from the December 19, 2014, meeting, with the suggested change. Commissioner Foresman seconded the motion.

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

3. **ELECTION OF OFFICERS**

Vice-Chairman Adams advised the Commissioners that, per the Commissioners Operating Policies, it was the appropriate time for the Commission to hold their annual election of officers.

Vice Chairman Adams began with the position of Vice-Chairman and inquired as to whether anyone wished to nominate someone for the position. Commissioner Foresman made the motion to nominate Elizabeth Aull to the position of Vice-Chairman. Commissioner Frakes seconded the motion. No other nominations were received.

  A vote was taken; all participating Commissioners voted “aye,” none were opposed. The motion carried.

Vice-Chairman Adams then inquired as to whether anyone wished to nominate someone for the position of Chairman. Vice-Chairman Aull made the motion to nominate Charles Adams to the position of Chairman. Commissioner Foresman seconded the motion. No other nominations were received.

  A vote was taken; all participating Commissioners voted “aye,” none were opposed. The motion carried.

4. **RULEMAKING UPDATE**

Mr. Tim Eiken, Directors Office, addressed the Commission and began with noting that the “No Stricter Than” rulemaking, which had been under internal review for some time, had recently received approval to proceed. He noted that no comments had been received during the Interagency Review and that the Regulatory Impact Report had been posted on February 20th, and that the comment period would be ending on April 21st. He then advised that two comments had been received to date, one from Boeing and one from REGFORM. He noted that there had been some changes to the rule text to address those requested changes. He noted that the comments regarded satellite accumulation and requested an option for compliance with Missouri’s rule or the federal rule. He noted that those who opted for the Missouri rule must submit notification to that effect and that language was added to address this issue. He advised that the rule package was filed the day before with the Joint Committee on Administrative Rules and was anticipated to be published on May 15th, with the public hearing being held at the June 18th regular meeting of the Hazardous Waste Management Commission.
Mr. Eiken went on to note that the second rulemaking effort being worked on was in regards to the fee proposal, and would be presented to the Commission by Mr. David Lamb in a subsequent agenda item. He stated that, if approved by the Commission, the HWP would proceed with the rulemaking, and provided a tentative schedule for that rule package, contingent upon that approval. He advised the Commissioners that there would be public hearings associated with the next two regularly scheduled HWMC meetings; in June and in August.

Mr. Eiken then noted that the third item he wished to inform the Commission on was the current status of the Underground Storage Tank Operational Rule. He noted that the Department was still waiting on the final verbiage of the federal rule as it was still under review at the federal level and that Missouri would follow with rule language that would parallel that verbiage.

Mr. Eiken went on to state that there were two other federal rules that had moved closer to being published in the Federal Register. He noted that the first one was regarding pharmaceutical waste, and that this one had been of interest to the Department for several years. He advised that the EPA was working on this rule and he believed that it would center on medical facilities. He noted that the second rule regarded hazardous waste generator improvements; and, although the Department was not clear on what it said, it seemed to include some of the same items that our current generator rule proposal included. But, he advised, we would have to wait and see how it was presented when it was released. Mr. Eiken stated that both of these rules were a ways off from being released, as they were still in development and then would have at least a 90 day review by OMB.

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

5. LEGISLATIVE UPDATE

Mr. David J. Lamb, Director, HWP, addressed the Commission and began by thanking Commissioner Adams and Aull for taking on the responsibility of Chair and Vice-Chair. He then noted that in their packets he had provided a list of current legislation that the Department was watching. He advised that some had not moved recently but could pop up at any time. He advised that from that list, only one bill could potentially change the Hazardous Waste Law.

Mr. Lamb went on to provide highlights from some of the bills listed, beginning with HB-6, the Budget. He noted that it contained of $11.16 million dollars in appropriations for the Program, with 134.42 FTE. He stated that it also included appropriations to the Department of $779,118 and 16.2 FTE from the Petroleum Storage Tank Insurance Fund (PSTIF) for operations, along with PSD appropriations of $6.16 million for Natural Resource Damages (NRD). He noted that this was similar to last year’s budget. He did advise that there was one new decision item included in the budget, for the state of Missouri’s Superfund obligation. The amount included in the Governor’s Recommendation for this was $939,176; but, this item was currently a conference item in the legislature.
Mr. Lamb noted that there was one other conference item, which regarded all out of state travel by state employees, and if passed, would transfer funding and authorization for this travel from the individual departments, to the Office of Administration. He noted that the Department was waiting to see how this was resolved.

Mr. Lamb then addressed SB225, regarding the permit appeals process. He noted that the bill would change the Hazardous Waste Law in two places related to appeal procedures, to make it consistent with general language included in Sections 621.250 and 640.013 RSMo. He advised that this would just clarify the existing process currently in place. He noted that this language had been added to SB446, which is more of an Omnibus Bill, and had moved out of the Senate, to the House, the previous day. He noted that this bill contains other issues of interest to the Department regarding oil and gas, waters of the state, and other issues in the news recently.

Mr. Lamb moved on to HB1102, which modifies provisions related to liability for releases from petroleum storage tanks due to storage of incompatible fuels. It stated that owners or operators of tanks may not be denied insurance benefits solely because the claim comes from the release of a regulated petroleum substance deemed incompatible with the petroleum storage tank.

Mr. Lamb then mentioned SCR5, regarding the lead industry, and noted that it contained language that establishes the Missouri Lead Industry Employment, Economic Development and Environmental Remediation Task Force. He noted that it would require the Task Force to consider prompt environmental settlements, develop ways to promote and develop a clean lead industry, provide for clean lead industry legislative proposals, and be cognizant of the economic potential of implementing clean lead industry policies. He noted that this was similar to SCR15 from the 2013 legislative session, and SCR 19 from the 2014 legislative session.

Mr. Lamb finished by noting that the Department was watching HB1134, which would provide that the state pay the state rate on health care benefits for employees who are eligible and choose to retire between March and November of this year, and would cover those costs for five years or until the employee was eligible for Medicare. He advised that the bill would also limit the ability of agencies to fill the positions of those who take advantage of the incentive.

Commissioner Jordan posed a question regarding HB1102, noting that the language insures and allows applications for PSTIF coverage for fuels that spill and are incompatible. He noted that the language would fix the issue from PSTIF’s side but inquired if it would fix it from the Department’s viewpoint. Mr. Lamb discussed the Department’s compatibility requirements, noting that most of the compatibility requirements were based on E85 levels of ethanol, but that other blends would have to be looked at.

No other questions were posed by the Commission. This was provided as information only and required no action on the part of the Commission.
Mr. Lamb advised the Commission that a conference call would be scheduled for June 11th to ask the Commission for approval to initiate the rulemaking process.

6. **HAZARDOUS WASTE PROGRAM FEE PROPOSAL**

Mr. David J. Lamb, Director, HWP, addressed the Commission, advising them that he wished to provide them an update on the current generator fee structure proposal. Mr. Lamb began by noting that at the most recent meeting of the Hazardous Waste Fee Stakeholder Workgroup held on March 13th, participants developed a final recommendation for a change to the fee structure that Department staff will present to the Commission. He noted that following the February stakeholder meeting that the stakeholder recommendation that had been developed at that time, had been posted to the Hazardous Waste Fee Stakeholder Workgroup webpage for review. He advised that the February proposal would establish a tiered registration system for hazardous waste generators, with the registration fee based on the generator’s status. He noted that the proposal was posted on Feb 24th, and that a notice was sent out to stakeholders on our Listserves, requesting responses by March 11th. Mr. Lamb reported that one alternative fee proposal was received from REFORM, and that the Department had received one comment about the need to look at multiple generator fees being assessed to facilities that are nearby.

Mr. Lamb also noted that during the March meeting, the Department had presented the February Tiered Proposal as well as the alternative proposal received. He advised that participants discussed the LQG exemption for nearby facilities and agreed to work on that concept in the rule. Mr. Lamb also advised that the alternative proposal was favored by the group, but some wanted to make additional changes.

Mr. Lamb provided an overview of the tiered registration proposal, noting that currently, all generators pay the same $100 annual registration fee regardless of their status, and that the proposed system would establish a fee of $150 for conditionally-exempt and small quantity generators, and $500 for large quantity generators. Mr. Lamb explained that at the request of stakeholders, this proposal will also include an exemption from paying multiple large quantity generator fees where the facilities under the same ownership are in close proximity to each other and meet other criteria that would allow the department to essentially inspect the facilities as one location.

He advised that in addition to increasing the registration fee for hazardous waste generators, the proposal would also change the structure of the in-state waste fee, as the current rate for the in-state waste fee is $5 per ton, with a minimum fee of $150 (for all generators who generate 30 tons of hazardous waste or less) and a maximum of $52,000. Under this proposal, he noted, the minimum tonnage fee would increase to $200 and would be assessed to the first ton of waste generated, with each additional ton being assessed an additional fee of $6.10, up to the maximum fee amount of $57,000.

He reported that the proposal would also change the current rate of the land disposal fee, as the current fee rate for the land disposal fee is $25 per ton. He noted that under the proposal,
Mr. Lamb noted that the proposed increases to the generator registration fee, the in-state tonnage fee, and the land disposal fee were estimated to generate additional revenue in the amount of $502,165, annually to the Hazardous Waste Fund.

Mr. Lamb advised that during the March meeting some smaller generator concerns included the idea that their fees would go up too much. He noted that other small generators, such as university representatives, thought the fee was reasonable. Comments were made that some thought higher fees may lead to companies with tight budgets making bad decisions in regard to management of wastes. Others thought potential noncompliance should not be a consideration when determining the fee structure. He stated that a tiered minimum fee approach was discussed to try to find a way to lower the cost to smaller generators, but a solution that could satisfy other stakeholders concerns with the structure could not be reached.

Mr. Lamb then reported that larger generators had expressed some concerns as several thought that the $7.00 per ton In-state Fee was too high, and needed to be lowered. Fee payers paying the maximum thought the In-state Fee cap was going up too much. Others thought that cap payers needed to pay a comparable increase. Some thought the Land Disposal Fee was too high, and those paying the Out-of-State Fee did not think any change to that fee was appropriate, due to the small number of facilities that pay the fee, the fact that they pay multiple program fees, and the competitive disadvantage it would create.

Mr. Lamb finished up with a timeline on the fee proposal, noting that at the current April 2015, meeting, the proposed fee structure was being presented to the Hazardous Waste Management Commission. He followed with seeking the Commissions formal approval in the May/June timeframe and holding the public hearing at the August 2015 meeting. Mr. Lamb also advised that the Commission would then be asked for approval to file the orders of rulemaking at their October 2015, meeting.

Mr. Lamb opened the floor for questions from the Commission. Commissioner Foresman inquired as to whether the Out of State Generator Fee only applied to cement kilns? Mr. Lamb responded that it applied to any treatment, storage or disposal facility, which takes waste from out of state. Mr. Lamb noted that there were about 10 facilities that pay this fee. Commissioner Foresman then inquired as to what other states were charging. Mr. Lamb responded that different states have different fee structures and it was difficult to compare in that way. It was noted that the same facilities pay the highest fees for In State Generator Fees also. Commissioner Foresman commented that these facilities run this as a business and receive economic benefit from the receipt of these materials.

Commissioner Jordan asked Mr. Lamb to define “consensus.” Mr. Lamb responded that the Department had worked with those stakeholders who had participated in the process to come to a proposal that balanced concerns. He noted that, in the end, the group was comfortable with the proposal and did not voice any concerns with advancing the proposal to the HWMC.
Commissioner Jordan inquired as to the LQG exemption? Mr. Lamb responded by explaining the purpose of the exception, and the types of facilities it was expected to apply to. He also advised that the exemption would only apply to a very small number of generators.

No other questions were posed by the Commission. This was provided as information for consideration by the Commission, who will vote on the proposal at a subsequent meeting.

7. TANKS BACKLOG PLAN

Mr. Ken Koon, Chief, Tanks Section, addressed the Commission and provided a PowerPoint presentation, noting that in June 2013, after an analysis of data on remediation projects, the Department and the PSTIF initiated discussions on how to accelerate the pace of remediation projects. These discussions culminated in a plan that was signed by both organizations in March 2014, which contained specific strategies and actions. Mr. Koon went on to advise that these strategies included improving processes on stalled cleanups with Responsible Parties (RP’s), providing training, enhancing communication to resolve disagreements, abandoned site identification, and reduction of paperwork.

With regards to improving processes, Mr. Koon noted that they had identified 52 sites that were PSTIF eligible and the deductible had been met where DNR and PSTIF needed to move the RP to action. He advised that the solution proposed was to have one DNR staff dedicated to work on idle sites. He noted that the result was that 30 sites have restarted, 2 sites have received “No Further Action” (NFA) letters, 12 have been classified as abandoned, and that 10 sites are still stalled. Mr. Koon went on to advise that an additional issue noted was that at some of the sites the RP has failed to meet established deadlines. He noted that the solution proposed was to improve follow up when RP fails to respond (new tracking system), and the result of those actions were that DNR reviewed 487 idle sites, they sent out over 500 status letters, they have increased Letters of Warning and Notices of Violation. He also advised that further results include that the number of documents received has increased but document review times have decreased, the number of NFA’s have increased, DNR/PSTIF communication has increased, and site visits and meetings have increased. Mr. Koon further explained that there had been changes to the PSTIF claims rule, which had improved the claim process. These changes were approved by the PSTIF Board in December, were published in February 28, 2015, Code of State Regulations, and had become effective on March 30, 2015.

Mr. Koon went on to note that with regards to training, the Plan clarified and streamlined requirements of Tanks Risk Based Corrective Action (RBCA), as the Consultants need guidance on RBCA and the remediation process. He advised that it also clarified which documents require a professional seal. He noted that DNR and PSTIF had sponsored joint webinars, staff had provided links to other training sources, and had also provided training at the Missouri Waste Control Coalition Conference (MWCC). Mr. Koon stated that he believed these efforts should lead to better work plans, reports, and improved processes, furthering the benefits of their investment in training. These joint training efforts included webinars on ITRC’s LNAPL (Free Product), a joint webinar on Bos 200 equipment, a joint webinar on how to prepare a risk assessment, and a joint webinar on horizontal remediation wells. He
went on to state that staff had presented information on remediation technologies at a MWCC workshop, and that DNR had also informed consultants of several additional trainings in 2014 and 2015.

The next strategy discussed was how to enhance communication for dispute resolution. Mr. Koon noted that many sites sat idle while DNR, PSTIF and the Consultants disagree on the requirements of RBCA. He advised that the plan suggested a tiered dispute resolution process. He noted that with this process there have been five sites resolved and 15 action plans are at the Tanks Section Chief and PSTIF Claims Manager review level; and, that three projects have been elevated to the highest tier with one of those having been resolved.

The next strategy that was discussed was in regards to abandoned sites. He noted that the issue was in identifying these abandoned sites; and once identified, there was a review of those files, a responsible party search, and a determination on the ability to pay, etc. He advised that his has identified 184 abandoned sites, with no identifiable responsible parties. He noted that with regard to cleanup costs for these sites, they were currently looking at possible carryover funds from the EPA, some of the sites were eligible for PSTIF reimbursement, some may be appropriate for property redevelopment for federal Brownfields funding and that some have already been cleaned up by the property owners.

Mr. Koon advised that the final strategy was efforts to reduce paperwork. PSTIF has identified six claims at five projects and negotiations are underway at four of these projects. He noted that additionally, PSTIF has bid multi-stage work on four projects.

Mr. Koon noted that future efforts included continuing to focus on timelines and moving sites forward, continuing to offer trainings to consultants, continuing the dispute resolution process, continuing the increased communication and cooperation efforts, and continuing efforts to seek opportunities to address abandoned sites. He stated that efforts were also anticipated to review 27 PSTIF “pre-existing remedial claims.” (i.e., those sites where a release was confirmed they were insured, the tanks are still in use, and PSTIF benefits will be lost if coverage lapses.)

Commissioner Jordan inquired “Is 27 the whole universe of remedial claims or is that just certain ones you have identified?” Mr. Koon responded “That’s just certain ones we have identified that will lose benefits if they don’t keep current insurance.” Mr. Jordan asked, “So, that is all the remedial claims then?” Mr. Koon responded that as of the week prior, there were 1076 remediation claims, with these 27 being in a special category. Mr. Jordan went on to note that the information covered a lot of work having been done. He advised that he believed that the net difference between those receiving a No Further Action, and the new claims, should be approximately 23; and, after subtracting that from the backlog, that there were “880-something remaining.” He inquired as to whether Mr. Koon believed that this would accelerate the process, making these cleanups attainable within 5 years, or 10 years. Mr. Koon responded that the current RBCA process was lengthy, but that he believed this process would show benefits in the future. He noted that generally it took the first two years to study the movement, and that although he would like the process to be less than five years, he believed it would be approximately 5 years.
No other questions were posed by the Commission. This was provided as information only and required no action on the part of the Commission.

11:18 a.m. Chairman Adams called for a short break.

11:32 a.m. Chairman Adams called the meeting back in session.

8. E-REPORTING UPDATE

Mr. David Green, Budget & Planning Section, addressed the Commission and provided an update on the development of the Department’s E-Reporting system. He advised that he would be providing information on the goals, accessibility, features, and a timeline on when the Department expects to have the system available. Mr. Green provided a PowerPoint presentation, noting that 260.373.1(3)(c) RSMo— the “No Stricter Than” law was the driving force for these changes. He advised that the law requires rules be promulgated to allow large quantity generators reporting electronically to file their reports on an annual rather than quarterly basis, and that said rules are part of the “No Stricter Than” rule package, and were to be in place for the July 1, 2015, to June 30, 2016, reporting year.

He advised that the goals of the new rules were to create a web based system and allow for all generators and facilities utilizing the system to report annually. This would prevent the submittal of incomplete and/or invalid data to the Department, and reduce the amount of time spent completing and processing the reports. He went on to note that the E-Reporting system being built will be accessed through the Department’s Citizen Application Gateway.

Mr. Green stated that the proposed process would provide the ability to create and submit reports in two ways: Direct entry on the web based form, or by importing an Excel file; and that the data from the imported file would go through the same data checks as the direct entry reports.

Mr. Green also noted that using this system will allow generators currently required to file quarterly reports to change to annual reporting, and that the option to file on a quarterly basis is still available. He stated that the reports are “signed” by the use of a secure PIN that has been set up by the user; one who has been designated as a “certifier” in the system, and that a facility may also designate people other than the certifier to be a “preparer” or just a “viewer.”

Mr. Green advised that with regard to the timeline for the new process, the programming was under current development. He noted that Test Scripts for testers were being written, and that testing by volunteer testers outside the Department will begin in mid-May. He also advised that testers were chosen so that each type of report submittal will be tested by an outside tester, and that successful testing will result in the system going live about July 1.

Commissioner Jordan inquired as to the current process of paper forms, and advised if Department staff then had to enter the information into the system when received. Mr. Green replied that they did, but that Excel formatted entries could be transferred in to the system. Commissioner Jordan also inquired as to why small quantity generators could not use this
process. Mr. Green advised that they could, and that they were already reporting on an annual basis.

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

9. TANKS FINANCIAL RESPONSIBILITY

Mr. Michael Martin, Compliance and Enforcement Section, HWP, addressed the Commission and provided an update on the Department’s process for maintaining financial responsibility (FR) at tank sites.

Mr. Martin noted that Missouri law and regulation requires that tank owners and operators 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. And, that recognizing the importance of this, the Hazardous Waste Management Commission approved the usage of an expedited enforcement procedure to address these facilities in August 2008. He also advised that in 2008, of the 3,374 facilities required to have financial responsibility, 184 facilities lacked coverage, which equated to a 95% compliance rate.

Mr. Martin stated that as of the March 17, 2015, reporting cycle, of the 3,225 facilities currently required to provide financial responsibility, only 34 are without verified coverage, equating to a 99% compliance rate. He also noted that as of April 8, 2015, the number of sites that had no verified coverage had dropped to 28, noting that it remained at an average of approximately 30.

He also advised that as of March 17, 2015, five of those sites have been referred to the Attorney General’s Office for legal action, 21 have been issued Notices of Violation and 16 of those 34 have submitted applications to the Petroleum Storage Tank Insurance Fund and are pending approval for coverage.

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

10. QUARTERLY REPORT

Larry Archer, Public Information Officer, DEQ, presented the Commission with highlights from the October through December 2014 Quarterly Report.

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

11. LEGAL UPDATE

Ms. Kara Valentine, Commission Counsel, addressed and noted that it had been fairly quiet on the hazardous waste front. She advised that there was one new administrative appeal that had
been filed with the Administrative Hearing Commission (AHC), filed by Donovan Auto Body. She noted that they had received violations following hazardous waste inspections, but were back in compliance at this time. She noted that penalties had been assessed by the Department for an amount of $22,800, and that the business could pay, appeal or try to resolve. She noted that an appeal had been filed with the AHC and that a recommendation was anticipated on May 11th. She advised that it would then go to the HWMC within 120 days, and that the Commission would then have 60 days to make a decision.

Ms. Valentine then noted that MODOT had settled on a violation of the Clean Water Act for stormwater runoff on two different highways. She noted that the violation was for erosion runoff and that they had been ordered to pay $750,000 to the US Treasury.

Ms. Valentine went on to advise that the Missouri Supreme Court had made a decision on a complaint regarding CAFO. She advised that residents in Boone County had sued Cargill, claiming “loss of use and enjoyment of property”. She noted that in 2011 the Missouri legislature had passed the “right to farm” law, which banned non-economic damaged in this type of suit. She advised that it only allowed for reduce market value which would have to be documented. She advised that the landowners had challenged the law, which was upheld by the Supreme Court.

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

12. PUBLIC INQUIRIES

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

13. OTHER BUSINESS

Mr. David J. Lamb, Director, HWP, addressed the Commission, and advised the Commission that the pesticide collection efforts were ramping up for this year with the first event scheduled for May 30, 2015, in Portageville. He advised that staff were hoping for a good event, to kick-off the year, noting that the University had been a great partner in helping to get the word out about the event.

Mr. Lamb then thanked the Commissioners for getting their Personal Financial Disclosure forms turned in to the Ethics Commission, prior to their May 1 deadline.

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.

14. FUTURE MEETINGS

The next regular meeting of the Hazardous Waste Management Commission will be held on Thursday, June 18, 2015, at the 1730 E. Elm Street Conference Center.
Chairman Adams adjourned the meeting at 1:47 a.m.

Respectfully Submitted,

Debra D. Dobson, Commission Assistant

APPROVED

Charles Adams, Chairman

Date