

GENERAL SESSION
HAZARDOUS WASTE MANAGEMENT COMMISSION
August 20, 2015; 10:00 A.M.
1730 E. Elm Street
Roaring River Conference Room
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 videoed and will be available on the Commission's web page.

COMMISSIONERS PRESENT IN PERSON

Chairman Charles (Eddie) Adams
Vice-Chairman Elizabeth Aull
Commissioner Jamie Frakes
Commissioner Mark Jordan

The phone line was opened at approximately 9:40 a.m. for Commissioners calling in to today's meeting.

COMMISSIONERS PRESENT BY PHONE

Commissioner Michael Foresman
Commissioner Andrew Bracker

1. PLEDGE OF ALLEGIANCE

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

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

2. APPROVAL OF MINUTES

- General Session minutes from the June 11, 2015, meeting:
Vice-Chairman Aull made the motion to approve, seconded by Commissioner Jordan.
A vote was taken; all were in favor, none opposed. Motion carried. Minutes approved.
- General Session minutes from the June 18, 2015, meeting:
Vice-Chairman Aull made the motion to approve, seconded by Commissioner Jordan.
A vote was taken; all were in favor, none opposed. Motion carried. Minutes approved.

3. PUBLIC HEARING – “HAZARDOUS WASTE FEES AND TAXES” RULEMAKING

Chairman Adams began the Public Hearing by reading an opening statement:

“I hereby call this public hearing to order. A public hearing is not typically a forum for debate of the issues. Rather, the purpose of this hearing is to provide the Department of Natural Resources and the public an opportunity to present testimony on the proposed changes to 10 CSR 25-12.010, Hazardous Waste Fees and Taxes.

At the request of the Commission, the Department will first present testimony on the proposed amendments. Following their testimony, the public will be given the opportunity to comment on the proposed rulemaking. A sign-up sheet is provided at the back of the room for anyone in attendance at the hearing, in addition to comment forms for those who wish to make any oral comments. Please fill out a comment form if you wish to be heard. This will aid us in recognizing speakers and calling them to testify. Additionally, we ask anyone who approaches the Commission to testify to please state their name and affiliation, if any, for the record and provide a business card, if available, to the court reporter and to the commission secretary.

Written comments will also be accepted at this hearing. Please provide them to the Hazardous Waste Program’s Director, David Lamb. Following the conclusion of the hearing, comments may be submitted by mail to the Director of the Hazardous Waste Program, P.O. Box 176, Jefferson City, Missouri 65102. Comments submitted by mail must be postmarked on or before the end of the public comment period, on June 25, 2015.”

Mr. Tim Eiken, Director’s Office, was sworn in and gave a PowerPoint presentation providing the Department’s testimony on the proposed rule changes. Following Mr. Eiken’s testimony, Mr. Kevin Perry, of REGFORM, was sworn in and provided testimony/comments on the proposed rule. After determining that there was no one else wishing to provide comments/testimony, Chairman Adams called the Public Hearing closed at 10:30 a.m. A copy of the transcript of the Public Hearing may be found at: <http://dnr.mo.gov/env/hwp/commission/documents/2015-08-20-HWFeesandTaxes-Amendment-Public-Hearing-Transcript.pdf>. A hard copy of the hearing transcript is attached to these minutes.

4. ADOPTION OF ORDERS OF RULEMAKING – “NO STRICTER THAN” RULEMAKING

Mr. Tim Eiken, HWP Director’s Office, addressed the Commission and noted that at the last regular meeting in June, a public hearing was held on the “no Stricter Than” amendments and now this was the second step in the process, the adoption of the final orders of rulemaking. He noted that the nature of the rules that the Commission was being asked to adopt this meeting have been in the works for several years. He stated that the primary purposes for these group of amendments was the implementation of the “No Stricter Than” statute by eliminating requirements in Chapters 3, 4, 5, and 7 that are stricter than federal requirements found in 40 CFR parts 260, 261, 262, 264, 265, 266, 268, and 270.

He also noted a need to make changes to other Chapters that are consistent with changes made as a result of “No Stricter Than” update, in addition to the incorporation by reference of Code of Federal Regulations to July 1, 2013; plus solvent wipes and electronic manifest rules. He noted that current rules incorporate by reference from the July 1, 2010, edition, and will update to the July 1, 2013, edition, with a total of six federal rules to be adopted.

Mr. Eiken advised the Commission he was providing a brief overview of what is an Order of Rulemaking, and what it is exactly that they were being asked to approve at this stage. He noted that there was one order of rulemaking for each proposed amendment so there were a total of 14 orders of rulemaking for which approval was being requested. He noted that the Order of Rulemaking directs the final rule to be published, including any changes made in response to comments. He also noted that each Order includes a summary of comments received on each rule and includes any rule text that was changed from the text of the proposed amendment published on May 15, 2015, so you can see how the rule language changed, if it changed at all, from the text of the proposed amendment. He advised that there had been testimony on proposed rules from Mr. Kevin Perry with REGFORM, and then Mr. David Shanks of Boeing. He noted that we did receive two comments submitted by email and 5 comments submitted by written letter, and provided a list of the comments that were received. He also noted that copies of all the comments had been provided in the Commissioners packets.

Mr. Eiken advised that there were three changes proposed. He noted that one was in response to comments on the use of the Missouri Used Oil Shipment Record [11.279(2)(E)3.A.], the revised Fiscal Note prepared for 10 CSR 25-5.262, and one change was made in response to correct a typo in the text of the proposed rule 5.262(2)(C)3.D. He went on to advise that the first comment relating to used oil shipment records in Missouri was from a transporter of used oil, Safety-Kleen, stating that the Missouri rules require those shipping used oil to use a specific Missouri form. This form describes what's being shipped. He stated that there are also federal regulations that apply to these shipments so essentially the comment asked us to consider making use of the Missouri form optional instead of mandatory, since in their experience they end up having to do both anyway because other states are not accepting them. Mr. Eiken noted that the comments we received stated that the Missouri form is duplicative and not accepted in other states. They stated that transporters have to fill out both forms for shipments into or out of the state. Mr. Eiken advised that the Department's response to the comments was that the Missouri form includes a certification statement and recording of both acceptance and delivery information on that single form - neither are required by federal regulation. But, he noted, a change was made to make use of Missouri form optional.

The second change proposed was regarding the narrative portion of the fiscal note. Comments were received with concerns that the fiscal note infers that the National Fire Protection Association (NFPA) standard requires that labels be affixed to the tank itself and requested changes be made to the text to avoid any confusion. Mr. Eiken stated that the Department's response was to make appropriate changes to the narrative portion of the fiscal note to clarify that labels don't have to be placed on the tank and a revised fiscal note was included with the Order of Rulemaking.

Mr. Eiken then discussed other comments received that did not result in recommended changes by the department, beginning with comments on container labeling. Mr. Eiken advised that comments received stated that Missouri regulations were not needed with regards to container labeling. The commenter stated that the same information on the container contents can be gathered through existing requirements for coordination with local emergency responders. Mr. Eiken advised that documents received from the Acting State Fire Marshal requested the rule be adopted as proposed. The Department's response was that the proposed language was developed as a compromise through a stakeholder process and no change was recommended. He went on to advise that the Acting State Fire Marshal weighed in on this requirement and recommended that the rules be adopted as proposed as they believe that the labels are necessary and provide good information to their staff in the event of situations.

Mr. Eiken then discussed comments received regarding satellite accumulation. He noted that in an early draft of the rules, staff had decided to eliminate the Missouri requirement, which would have left us under the federal regulation for all facilities. He noted that the federal regulations and guidance do not give as much flexibility in terms of quantity of waste that you can accumulate in your satellite accumulation area. He also noted that during the comment period on the regulatory impact report for this rule, the Department had received comments requesting it consider allowing facilities to choose either to follow the federal or previous state requirements, as had been allowed in a few other regulations in this rule package. He noted that we did propose they be allowed to choose one or the other and as long as they notify us of which they're choosing. He advised that we did get some comments, basically asking that generators be allowed both the Missouri option and the federal option, and that we eliminate the notification requirements.

Mr. Eiken advised that in regards to the notification issue, the Department determined that notification is necessary just to eliminate confusion about what system a generator is operating under. Mr. Eiken also discussed the issue that the Missouri option and the federal option on satellite accumulation are based on different assumptions. He noted that the Missouri option allows greater quantities but with the limited amount of time, and the federal option puts a limit on the quantity but it allows an unlimited amount of time; so you have two different systems that are based on limitation on the amount of time and on the quantity of waste being accumulated. He noted that the Department felt like it was incompatible to have both systems in the same facility because it could introduce situations where containers are moved from the Missouri area to the federal area or vice versa so that they could benefit from both Missouri option and the federal option. He noted that generators are allowed to use multiple satellite accumulation areas so it would be difficult for our inspectors to determine compliance and the Department believes that it's simple, clear and safe to just have satellite accumulation limited to one system. Mr. Eiken advised that we didn't necessarily have stakeholder agreement or consensus on the language that we proposed, but we have discussed this with stakeholders, and there was a compromise already from our original position of Federal regulations only. He also noted that in the background on this particular issue is EPA's position on this satellite accumulation regulation, and on what their interpretation of it is. He advised that the Missouri option could be interpreted to be less stringent than the

federal regulation because we do allow greater quantities of hazardous waste even with the time restriction. He noted that in the past they have allowed us to do that because we do have the one-year time limit, and hazardous waste is not going to be stored for a lengthy period of time even though we do allow storage of greater quantities of waste. Because of this they have not raised this issue in the past but we feel if we provide further flexibility this may create an issue.

Mr. Eiken then went on to outline the Solvent Wipes Rule and noted the Department received comments from two industry associations supporting adoption of the rule as proposed. He noted that the comments pointed out that the conditional exclusion for these materials has been in development for thirty years and that the benefits would include increased flexibility and simplicity, a uniform national standard, reduced costs, increased compliance and standards that are appropriate for the risk. He noted that no change was recommended.

Mr. Eiken then advised that this ended the overview of the Department's response to the comments, and that the recommendation was to adopt the 14 orders of rulemaking, including the changes that were recommended in the response to comments. He noted that we are on a tight schedule as far as filing the Orders of Rulemaking as the Orders have to be filed with the Joint Committee on Administrative Rules (JCAR) by August 21st. He advised, once we get the final decision from the Commission today, and the Orders are filed with JCAR, the rest of the dates fall into place from there and these changes will be effective by the end of the year. He noted that this was the Department's recommendation, but that it was really in the Commission's hands at this point as far as the final decision on each of these 14 orders.

Commissioner Jordan asked the Department to go over some alternative language that he had requested be developed that would eliminate the notification requirement and allow both options to be used in the same facility. Mr. Eiken responded by discussing the different options and their requirements. He noted the different markings on the containers that would be required, that would tell inspectors that this container was being operated under the Missouri accumulation limits of 55 gallons per waste stream rather than 55 gallons total.

Commissioner Jordan inquired as to whether the additional language would mitigate the Department's concerns with generators moving wastes around at their facilities. Mr. Eiken responded that it would help, more so than a date, but not enough to change the Department's recommendation. Mr. David J. Lamb also responded that allowing both methods provided too much flexibility and noted that he thought it may raise concerns with the EPA who would need to authorize the rule. Commissioner Jordan asked for clarification how any amendment made today would be handled procedurally related to the EPA's review of the rule. Mr. Lamb then explained how the authorization process would work.

No other questions were posed by the Commission.

Commissioner Jordan made a motion to adopt with modifications. Chairman Adams inquired as to how he wished to specifically word his motion. Commissioner Jordan described the

changes to the text he was proposing. Commissioner Foresman seconded the motion and Chairman Adams called for a roll call vote with four “nays” and 2 “yays”. The motion failed. Vice Chairman Aull made the motion to adopt the 14 amendments as proposed by the Department. Commissioner Jordan seconded the motion. A roll call vote was taken with 6 “yays” and no “nays”. The motion passed and the orders were adopted.

5. RULEMAKING UPDATE

Mr. Tim Eiken, Director’s Office, addressed the Commission to discuss the Program’s rulemaking activities. He began with a discussion of the underground storage tank regulations, which he noted had recently been finalized at the federal level. Mr. Eiken advised that the Department was working on a companion state rule that goes along with the Federal rule, along with schedules and timelines. He noted that he believed the Program was close to having a draft rule ready for a discussion with stakeholders. He also noted that Heather Peters would continue to travel around the state giving presentations on the new regulations.

Mr. Eiken went on to state that the EPA rule text may be on the website already, as there was a webpage set up specific to this rule change. He advised that if it’s not there now it will be soon. Mr. Eiken stated that the Program has been talking with the EPA about some of the questions that had been raised. He also noted that Missouri was on a timeline to implement some of the requirements of the new rule. He went on to advise that later this year the Program would be going around the state talking to stakeholders and getting their input. Mr. Eiken stated that this was going to be another significant rulemaking effort.

Mr. Eiken also noted that with the No Stricter Than (NST) package winding down by the end of the year, it would allow our rules to be opened for additional changes. He stated that the rules are kind of locked in place at this point until the NST process is complete, but that the Program was thinking about the next round of federal updates, and trying to decide which ones to include in the next update. He advised that it’s kind of an ongoing process to update federal rules and statutory changes, so we’re starting to think about that now.

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

6. MISSOURI RISK BASED CORRECTIVE ACTION UPDATE

Mr. Tim Chibnall, HWP Director’s Office, addressed the Commission and advised that he was here today to briefly explain the Department’s plan to revise the Missouri risk-based corrective action (RBCA) guidance and the risk-based target levels (RBTL’s) that are found in that guidance. He noted that some might recall that a briefing had been provided to the Commission about this plan at an earlier meeting, and that he was basically back today to let them know that the plan is underway. Mr. Chibnall clarified up front that this pertains to the Missouri RBCA process used by the voluntary cleanup program and the RBTL’s in that guidance and that it does not pertain to Tanks RBCA. He noted that currently the plan

included three components. He advised that first was to update the RBTL's to reflect current science and that they planned to do this by using EPA's regional screening level methods, equations and input factors, which includes toxicity data and exposure factors. He went on to advise that the second component is to revise the guidance to address issues that have been identified both internally and externally through the use of the guidance for the last ten years and the third component is to conduct a rulemaking to accommodate these changes.

Mr. Chibnall stated that with regards to the first component, the RBTL's have not been updated since they were initially published in 2006 and that since that time EPA has made very significant changes to the models and methods and inputs that they used to develop their regional screening levels and the end result is that the 2006 RBTL's used today do not reflect current science. He noted that we are proposing to shift to using the EPA RSL models and inputs to update our target levels, and that this really is a significant change. He stated that the guidance itself has not been revised since 2006 when it was initially published; however, since that time the Department, the Department of Health and Senior Services, and various external RBCA users have identified multiple issues that we really need to address through a revision of the guidance. In addition, he noted, using the EPA methods to update the RBTL's will necessitate additional changes to the guidance. He also stated that the third component of this plan, a rulemaking, is necessary because the RBTL's and the methods and inputs used to calculate the RBTL's are incorporated by reference into the MRBCA rule. And he noted, in addition, some of the changes to the guidance that will likely result from this effort will result in a need to make corresponding changes to the rule. He stated that the rule structure parallels the guidance so if changes are made to the guidance they'll need to be made to the rule as well.

Mr. Chibnall advised advised that this effort is going to take about two years, the majority of which will be taken up by the rulemaking; and, that we do intend to utilize the assistance of a stakeholder group in this effort and are planning to officially begin the project by conducting a webinar on September 9th. He advised that the purpose of the webinar was to provide interested parties with information about what was being planned and to recruit stakeholders. He advised that it was anticipated that we would need to meet with the stakeholder group at least three times, and noted that the first meeting is planned for November, and the second and third for the early part of 2016. He noted that if we are unable to get through all of the issues we need to get through in those three meetings, it may be necessary to add on from there. Mr. Chibnall advised the Commission that he did anticipate he would be regularly briefing them on the progress with this project as it moves forward. Mr. Chibnall then advised he would be glad to answer any questions, to which there were none.

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

7. FINANCIAL RESPONSIBILITY UPDATE

Mr. Mike Martin, Compliance and Enforcement Section, addressed the Commission and provided an update of the Hazardous Waste Program's (HWP's) progress on sites without a

financial responsibility (FR) mechanism to cleanup releases from underground storage tanks (USTs) utilizing the expedited enforcement procedure. He noted that 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. He stated that the Hazardous Waste Management Commission approved the usage of an expedited enforcement procedure to address these facilities in August 2008; and that at that time, of the 3,374 facilities required to have financial responsibility, 184 facilities lacked coverage, equating to a 95% compliance rate. Mr. Martin went on to explain that as of July 29, 2015, of the 3,211 facilities required to have financial responsibility, 36 are currently without verified coverage. This equates to a 99% compliance rate.

Mr. Martin noted that this expedited enforcement process was a valuable tool, allowing the Compliance and Enforcement Section to keep pace with the tasks and responsibilities of ensuring compliance with FR. And, he advised, utilizing this process, as of July 29, 2015, nine of the sites that could not demonstrate FR were currently at the Attorney General's Office for legal action, 19 have been issued Notices of Violations and 20 of those 36 have applications pending approval with the Petroleum Storage Tank Insurance Fund for coverage.

An opportunity was provided for the Commission to pose any questions they may have had on the information provided. Commissioner Jordan asked Mr. Martin if he could advise if of the 36 or 37 sites without verifiable FR, if most were 30-60 days out of compliance or if he could say how long; or if they were new purchases and the new owners were just trying to get the process figured out? Mr. Martin advised that he did not have a breakdown of the numbers, but the numbers reflect facilities that failed to register and others who had not renewed their policy.

Mr. David J. Lamb, Director, Hazardous Waste Program, addressed the Commission and noted that the Program would provide the Commission with a copy of the most recent report it generates each month, showing the length of time each facility was without FR.

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

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 noted that information had been provided at the previous meeting and that the system had been undergoing testing in the interim. Mr. Green advised that the system had been launched on July 1st, 2015, and had one minor bug that was quickly fixed. He noted that so far there had been 163 different numbers registered to use the system; and that within those registrations there were 195 different individuals registered to be able to access one or more of those ID numbers. And, he advised, since the system had been in place, we are even accepting reports for this current fiscal-year, the reporting period that had just ended, July 1 2014, to June 30 2015. He noted that during that reporting year and date, the Program had received and

approved 96 reports through the system. Mr. Green asked if there were any questions on the information he had provided, to which there were none.

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. QUARTERLY REPORT

Mr. Larry Archer, Public Information office, addressed the Commission and advised that a new Public Information Officer would be starting work with the Hazardous Waste and Solid Waste Programs, and that the Commission would be meeting Ms. Amy Feeler at the next meeting. He went on to outline what information was contained in the current quarterly report and to note the different topics that were covered in this edition. An opportunity was provided for the Commission to ask any questions they may have regarding the publication.

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

Mr. Jack McManus, Office of the Attorney General, addressed the Commission and advised that he was filling in for Ms. Kara Valentine at the meeting today, and noted that he had nothing new to report at this time.

Commissioner Bracker addressed the Commission and advised that he wanted to acknowledge Attorney General Koster's announcements this year of the global settlement with Kerr McGee and its successors in the Tronox litigation, noting that these funds would assist in cleanups in Kansas City, Springfield and across the state.

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. 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.

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

12. OTHER BUSINESS

Mr. David J. Lamb, Director, HWP, addressed the Commission and began with an update of House Bill 92, noting that the bill would amend the hazardous waste law regarding appeals and how those are handled by the Administrative Hearing Commission and the Hazardous

Waste Management Commission. He advised that the bill has been signed by the Governor and that it would go in to effect on August 28th.

Next he discussed a program funding issue related to the EPA's reallocation of the formula used to distribute RCRA funding. He noted that the Department was currently reviewing how the reallocation formula would affect Missouri, and advised that the deficit was running around \$850,000 over a five-year period. Mr. Lamb also advised that DNR did send letters to both EPA headquarters and Region 7, voicing displeasure with the new allocation formula and that so far as a result, Region 7 has agreed to get the states together and have further discussion. He advised that he was hopeful that the Department can work with our fellow states in the region to try to come up with a better allocation formula at the regional level. He also advised that he had spoken with some of the EPA staff at headquarters recently and did know that they had received our letter and planned to respond. He also stated that we will probably end up taking the funding reduction this year but expressed hope that next year they may re-evaluate the process. He noted that he would keep the Commission updated on this issue.

Mr. Lamb then provided an update on the status of the pesticide collection events. He noted that at this point four out of the five events were completed. He advised that events had been held in Portageville, Mount Vernon, Higginsville and Owensville and we have one more event left on September 19 that will be held in Kirksville. He advised that this particular event was going to be held in conjunction with a household hazardous waste event that the city is putting on, hoping that will help drive a few more people to the event. He stated that the events had been fairly successful so far and we're looking at having collected over 42,000 pounds of pesticides from the four events. He noted that compared to last year, the amount collected so far was double what was collected last year and we still have one more event left. Mr. Lamb advised that that staff is pretty happy with how the events are working and think we've been getting a lot better turnout.

Mr. Lamb the provided an update on the Missouri Waste Control Coalition (MWCC) conference that was held in July. He noted that it turned out to be a pretty successful conference for our brownfields program, which held their Brownfields Conference in conjunction with the event. He advised that the Program had provided several sessions at the conference and there was a good turnout. He noted that the Brownfields Conference had been held in the Elm Street conference center the last couple years, but that they had been able to almost triple attendance and get more people involved by joining with the MWCC. He also advised that he thought this would get more communities utilizing our assessment program and entering into the voluntary cleanup program. He noted that the Tanks staff also participated in the conference and focused a lot on free product recovery in their sessions and that the session on the new tank rules also was well attended.

Lastly, Mr. Lamb updated the Commission on two new federal rules that he indicated he expected would be released by the EPA in the next 60 days. He advised that one rule related to changes to the hazardous waste generator regulations and the other related to the management of pharmaceuticals. He noted that before the next Commission meeting he

anticipated hearing something on these rules as they were currently with the Office of Management and Budget, going through review. He noted that both rules would mean changes to the state regulations and would have an impact on the program.

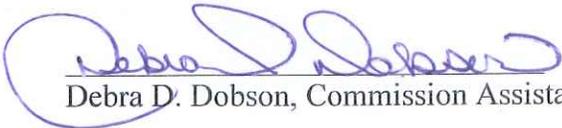
No other questions/comments were posed by the Commission. This was provided as information only and required no action on the part of the Commission.

13. FUTURE MEETINGS

The next regular meeting of the Hazardous Waste Management Commission will be held on Thursday, October 15, 2015, at the 1730 E. Elm Street Conference Center.

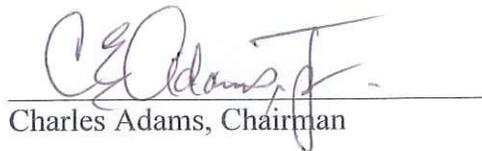
Chairman Adams adjourned the meeting at 11:50 a.m.

Respectfully Submitted,



Debra D. Dobson, Commission Assistant

APPROVED



Charles Adams, Chairman

13 Oct 16
Date