

PUBLIC HEARING 11/3/2016

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<p>1 BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES HAZARDOUS WASTE MANAGEMENT COMMISSION</p> <p>2</p> <p>3</p> <p>4 Two Proposed Amendments to 10 CSR 26 - Underground Storage Tank Rulemaking</p> <p>5</p> <p>6 Public Hearing November 3, 2016 9:30 a.m. 1730 East Elm Street Jefferson City, Missouri 65101</p> <p>7</p> <p>8</p> <p>9</p> <p>10 BEFORE (TELEPHONICALLY): Commission Chair - Elizabeth Aull Commission Vice-Chair - James (Jamie) Frakes Commissioner Mark Jordan Commissioner Michael Foresman</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 Reported by: Patricia A. Stewart, CCR 401 Midwest Litigation Services Jefferson City, Missouri 65100 (573) 636-7551</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 (Start time: 9:30 a.m.)</p> <p>2 P R O C E E D I N G S</p> <p>3 COMMISSION CHAIR AULL: I'm going to call the 4 meeting to order.</p> <p>5 And, Madam Secretary, will you please call 6 the role.</p> <p>7 MS. DOBSON: Chairman Aull.</p> <p>8 COMMISSION CHAIR AULL: Present.</p> <p>9 MS. DOBSON: Present by phone.</p> <p>10 Vice-Chairman Frakes.</p> <p>11 VICE-CHAIR FRAKES: Present.</p> <p>12 MS. DOBSON: Present by phone.</p> <p>13 Commissioner Adams.</p> <p>14 Commissioner Adams.</p> <p>15 Absent at this time.</p> <p>16 Commissioner Foresman.</p> <p>17 COMMISSIONER FORESMAN: Present.</p> <p>18 MS. DOBSON: Present by phone.</p> <p>19 Commissioner Jordan.</p> <p>20 COMMISSIONER JORDAN: Present.</p> <p>21 MS. DOBSON: Present by phone.</p> <p>22 COMMISSION CHAIR AULL: Thanks.</p> <p>23 I will now ask Mr. Sturgess to lead the group 24 in the Pledge of Allegiance, please.</p> <p>25 MR. STURGESS: Would you please stand.</p>
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<p>1 AGENDA</p> <p>2 page</p> <p>3</p> <p>4 Call to order 3:3</p> <p>5</p> <p>6 Pledge of Allegiance 4:1</p> <p>7</p> <p>8 Statement by Commission Chair Aull 4:2</p> <p>9 Statement by Ms. Peters 5:18</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 (PLEDGE OF ALLEGIANCE.)</p> <p>2 COMMISSION CHAIR AULL: Thank you all.</p> <p>3 Now on to the meeting.</p> <p>4 I hereby call this public meeting to order.</p> <p>5 A public hearing is not typically a forum for debate of 6 the issues. Rather, the purpose of this hearing is to 7 provide the Department of Natural Resources and the 8 public an opportunity to present testimony on the 9 proposed changes to Chapter 2 of Title 10, Division 26 10 of the Code of State Regulations.</p> <p>11 At the request of the Commission the 12 Department will first present testimony on the proposed 13 amendments and new rules. Following their testimony the 14 public will be given the opportunity to comment on the 15 proposed rulemaking.</p> <p>16 A sign-up sheet is provided at the back of 17 the room for anyone in attendance at the hearing, in 18 addition to comment forms, for those who wish to make 19 any oral comments. Please fill out a comment form if 20 you wish to be heard. This will aid us in recognizing 21 speakers and calling them to testify.</p> <p>22 Additionally, we ask anyone who approaches 23 the Commission to testify to please state their name and 24 affiliation, if any, for the record and provide a 25 business card if available to the court reporter and to</p>

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<p>1 the Commission secretary.</p> <p>2 Written comments will also be accepted at</p> <p>3 this hearing. Please provide them to the Hazardous</p> <p>4 Waste Program's Director, Steve Sturgess.</p> <p>5 Following the conclusion of the hearing</p> <p>6 comments may be submitted by mail to the Director of the</p> <p>7 Hazardous Waste Program, Post Office Box 176,</p> <p>8 Jefferson City, Missouri 65102.</p> <p>9 Comments submitted by mail must be</p> <p>10 post-marked on or before the end of the public comment</p> <p>11 period, on November the 10th, 2016.</p> <p>12 E-mail comments shall be sent to Heather</p> <p>13 Peters and her e-mail address, which is Heather,</p> <p>14 H-e-a-t-h-e-r, dot Peters, P-e-t-e-r-s, at DNR, dot MO,</p> <p>15 dot gov, and must also be received no later than</p> <p>16 November the 10th, 2016.</p> <p>17 Okay. The Chair calls Heather Peters.</p> <p>18 MS. PETERS: Thank you.</p> <p>19 Hopefully today's testimony will be pretty</p> <p>20 brief. I will for the record cover a few of the things</p> <p>21 we covered with the last hearing though as well.</p> <p>22 Today we are discussing some changes to the</p> <p>23 underground storage tank rules. The primary reason for</p> <p>24 these is to satisfy some EPA requirements.</p> <p>25 Back in 2005 the Energy Policy Act went into</p>	<p>1 typo was actually in the announcement of the date and</p> <p>2 time of this hearing. The comment period for these two</p> <p>3 rules close on November 10th.</p> <p>4 And the two rules that we are discussing</p> <p>5 today are the two release detection rules associated</p> <p>6 with field-constructed tanks and airport hydrant fuel</p> <p>7 distribution systems.</p> <p>8 I will briefly mention that in the</p> <p>9 10 CSR 26-2.013, that was the initial proposed rule that</p> <p>10 covered the new requirements for these systems.</p> <p>11 Now, that rule is closed for comment at this</p> <p>12 time. It did close on October 27th. But the reason I</p> <p>13 point this out is because one of the issues in here that</p> <p>14 these sites will have to comply with are the release</p> <p>15 detection requirements.</p> <p>16 According to that proposed rule they would</p> <p>17 have to comply with the release detection requirements</p> <p>18 no later than July 1st of 2020.</p> <p>19 Again, this rule is closed for comments, but</p> <p>20 the reason I pointed this out is that two rules that we</p> <p>21 are discussing today tie specifically to this</p> <p>22 requirement.</p> <p>23 So the two rules that we're discussing are</p> <p>24 10 CSR 26-2.046 and 2.047. It is the release detection</p> <p>25 method for tanks and the release detection for piping</p>
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<p>1 effect, and part of that included underground storage</p> <p>2 tank regulations or requirements for regulation changes.</p> <p>3 EPA promulgated the Federal Rules in July of</p> <p>4 2015, and they became effective in October of last year.</p> <p>5 In addition we have State program approval</p> <p>6 from EPA which gives Missouri the authority to run</p> <p>7 Missouri's program. That State program approval is</p> <p>8 conditional, though, upon us actually implementing the</p> <p>9 new Federal requirements. And we do have a deadline</p> <p>10 that we have to meet, by October 13th of 2018, to submit</p> <p>11 our State program approval, and that renewal must</p> <p>12 include these new updated EPA requirements.</p> <p>13 So briefly I will mention that on</p> <p>14 September 15th, 2016 in the Missouri Register we</p> <p>15 published all of the underground storage tank rule</p> <p>16 changes.</p> <p>17 Twenty-three of those have already had a</p> <p>18 hearing. That was held on October 20th. And the</p> <p>19 comment period for those is now closed.</p> <p>20 Today's hearing, though, what we are</p> <p>21 discussing is specifically two rules. There was a typo</p> <p>22 in the September 15th, 2016 register, so there was a</p> <p>23 correction, and it was reprinted for just these two</p> <p>24 rules on October 3rd of 2016.</p> <p>25 The content of the rules didn't change. The</p>	<p>1 associated with the field-constructed tanks and the</p> <p>2 airport hydrant fuel distribution systems.</p> <p>3 These two rules are directly transferred from</p> <p>4 the EPA rules. We did not make any State specific</p> <p>5 changes in either one of these rules.</p> <p>6 The first rule covers how to monitor these</p> <p>7 tanks for release detection. Field-constructed tanks,</p> <p>8 as you might imagine, are often either concrete tanks or</p> <p>9 they are very large steel-erected tanks, part of which</p> <p>10 can often be aboveground.</p> <p>11 Because of that they don't really fall into</p> <p>12 the normal tank release detection methods that we have</p> <p>13 in underground storage tanks. They are much larger and</p> <p>14 they have a much wider variability based on temperature</p> <p>15 and volume.</p> <p>16 So because of that EPA promulgated rules that</p> <p>17 allowed different leak rates for tank monitoring for</p> <p>18 these tank systems.</p> <p>19 They can do a monthly monitoring at one</p> <p>20 gallon per hour, plus a regular routine tightness test,</p> <p>21 or they can do monthly monitoring at two gallons per</p> <p>22 hour, with a tightness test every two years.</p> <p>23 Now, for a frame of reference, underground</p> <p>24 storage tanks at convenience stores and other regular</p> <p>25 underground storage tanks have to monitor at .2 gallons</p>

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<p>1 per hourly monthly. So this is a pretty significant 2 difference for these tanks. 3 In addition, the sites often have very large 4 volume or large piping systems. As you might imagine in 5 an airport hydrant system, the piping will go all of the 6 way from the underground storage tanks out to each and 7 every single one of your gates. So that can be 40, 50, 8 60 sites and thousands and thousands of gallons of fuel 9 in the piping. 10 Again, it's not really comparable to an 11 underground storage tank that will only have a few feet 12 of piping. 13 So because of that EPA did establish 14 different leak rates for these piping, and the leak rate 15 is segmented based on the volume of line -- or volume of 16 fuel in the piping at the time of the test. 17 And so what you'll find in that rule is 18 different segments and what those leak thresholds are. 19 So what we have before us then are these two 20 rules. As I stated earlier, we have 23 other 21 underground storage tank rules in this chapter that have 22 just recently closed for comment. This rule will close 23 for comment on November 10th. 24 Our anticipation is to bring all of these 25 rules, though, all 25, back together again to the</p>	<p>1 COMMISSION VICE-CHAIR FRAKES: Okay. 2 COMMISSION CHAIR AULL: -- are we going to be 3 on -- 4 COMMISSION VICE-CHAIR FRAKES: Yeah. 5 (Inaudible.) 6 Ms. PETERS: If the question is about the 7 schedule, all of these rules would go before the 8 Commission at the December 15th meeting for a vote from 9 the -- 10 COMMISSION VICE-CHAIR FRAKES: Right. 11 MS. PETERS: -- Commission whether or not 12 we're going to do the final adoption of those rules. So 13 that would be the next Commission action. And that 14 would cover these two rules, as well as the 23 that we 15 covered on October 20th. 16 COMMISSION VICE-CHAIR FRAKES: Okay. Yeah, 17 that's in essence what I was asking, yes. 18 Thank you. 19 COMMISSION CHAIR AULL: Thank you, 20 Commissioner Frakes. 21 Are there any other questions for Ms. Peters? 22 No questions. Then are there any comments 23 from the public, Mr. Sturgess? 24 MR. STURGESS: I have received none. 25 COMMISSION CHAIR AULL: None?</p>
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<p>1 Commission meeting on December 15th of 2016. That would 2 be when we would be asking for the final adoption of the 3 rules, and that would cover all 25, both the original 23 4 and these two rules. 5 Before you on the slide is the schedule of 6 how those would proceed after that, with December 23rd 7 being the date we would have to get the orders of 8 rulemaking to the Joint Commission on Administrative 9 Rules, and if all would go well on that, then 10 January 25th of 2017 would be when we file with the 11 Secretary of State and we'd start moving to actually 12 promulgate these rules. 13 Like I said, I was going to keep it short and 14 sweet, so if we have any other clarifications that we 15 need, please don't hesitate to mention those now, but 16 that is all that we have at this time. 17 COMMISSION CHAIR AULL: Thank you. 18 COMMISSION VICE-CHAIR FRAKES: Okay. Madam 19 Chair, a real quick question again. 20 I heard her mention (inaudible) -- 21 THE COURT REPORTER: I'm sorry. I'm not 22 getting this. 23 MS. DOBSON: Jamie, you're really broken up. 24 COMMISSION CHAIR AULL: You broke up, Jamie. 25 Are you asking --</p>	<p>1 MR. STURGESS: None. 2 COMMISSION CHAIR AULL: Okay. 3 Excuse me? 4 MR. STURGESS: No comments. 5 COMMISSION CHAIR AULL: Okay. Thank you. 6 That's what I thought you said. 7 All right. Then do I have a motion to close 8 the hearing, please? 9 UNIDENTIFIED SPEAKER: So moved. 10 COMMISSION CHAIR AULL: A second. 11 MR. STURGESS: Who made the motion? 12 COMMISSION VICE-CHAIR FRAKES: Was it 13 Commissioner Foresman? 14 COMMISSIONER FORESMAN: Yes. 15 COMMISSION VICE-CHAIR FRAKES: And I'm 16 Commissioner Frakes. I second it. 17 COMMISSION CHAIR AULL: Okay. Thank you. 18 Call the question. All in favor. 19 (Unanimous aye.) 20 COMMISSION CHAIR AULL: Any opposed? 21 (No response.) 22 COMMISSION CHAIR AULL: So be, the meeting is 23 now concluded, and are there -- for the hearing rather. 24 Are there any other items we need to address, 25 Mr. Sturgess?</p>

1 MR. STURGESS: No, there are not.
2 COMMISSION CHAIR AULL: That being so, do I
3 have a motion to call the meeting to -- excuse me. Do I
4 have a motion to close the meeting, please, adjourn the
5 meeting?
6 UNIDENTIFIED SPEAKER: I'll make a motion to
7 adjourn.
8 MR. STURGESS: Who made the motion?
9 UNIDENTIFIED SPEAKER: I'll second.
10 COMMISSION CHAIR AULL: Thank you.
11 All in favor.
12 (Unanimous aye.)
13 MR. STURGESS: For the record could we know
14 who made the motion and the second?
15 COMMISSION CHAIR AULL: Okay.
16 COMMISSION VICE-CHAIR FRAKES: I made the
17 motion, Commissioner Frakes.
18 COMMISSIONER FORESMAN: Foresman seconded.
19 MR. STURGESS: All right. Thank you.
20 MS. DOBSON: The meeting is closed.
21 WHEREIN, the public hearing concluded at
22 9:42 a.m.
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24
25

1 CERTIFICATE OF REPORTER
2
3 I, Patricia A. Stewart, CCR, a Certified
4 Court Reporter in the State of Missouri, do hereby
5 certify that the testimony taken in the foregoing
6 transcript was taken by me to the best of my ability and
7 thereafter reduced to typewriting under my direction;
8 that I am neither counsel for, related to, nor employed
9 by any of the parties to the action in which this
10 transcript was taken, and further that I am not a
11 relative or employee of any attorney or counsel employed
12 by the parties thereto, nor financially or otherwise
13 interested in the outcome of the action.
14
15
16 _____
17 Patricia A. Stewart
18 CCR 401
19
20
21
22
23
24
25

<p style="text-align: center;">A</p> <p>ability 14:6</p> <p>aboveground 8:10</p> <p>Absent 3:15</p> <p>accepted 5:2</p> <p>Act 5:25</p> <p>action 11:13 14:9 14:13</p> <p>Adams 3:13,14</p> <p>addition 4:18 6:5 9:3</p> <p>Additionally 4:22</p> <p>address 5:13 12:24</p> <p>adjourn 13:4,7</p> <p>Administrative 10:8</p> <p>adoption 10:2 11:12</p> <p>affiliation 4:24</p> <p>AGENDA 2:1</p> <p>aid 4:20</p> <p>airport 7:6 8:2 9:5</p> <p>Allegiance 2:6 3:24 4:1</p> <p>allowed 8:17</p> <p>amendments 1:3 4:13</p> <p>announcement 7:1</p> <p>anticipation 9:24</p> <p>approaches 4:22</p> <p>approval 6:5,7 6:11</p> <p>asking 10:2,25 11:17</p> <p>associated 7:5 8:1</p> <p>attendance 4:17</p> <p>attorney 14:11</p> <p>Aull 1:11 2:8 3:3 3:7,8,22 4:2 10:17,24 11:2 11:19,25 12:2,5</p>	<p>12:10,17,20,22 13:2,10,15</p> <p>authority 6:6</p> <p>available 4:25</p> <p>aye 12:19 13:12</p> <p>a.m 1:6 3:1 13:22</p> <hr/> <p style="text-align: center;">B</p> <p>back 4:16 5:25 9:25</p> <p>based 8:14 9:15</p> <p>best 14:6</p> <p>Box 5:7</p> <p>brief 5:20</p> <p>briefly 6:13 7:8</p> <p>bring 9:24</p> <p>broke 10:24</p> <p>broken 10:23</p> <p>business 4:25</p> <hr/> <p style="text-align: center;">C</p> <p>C 3:2</p> <p>call 2:4 3:3,5 4:4 12:18 13:3</p> <p>calling 4:21</p> <p>calls 5:17</p> <p>card 4:25</p> <p>CCR 1:20 14:3 14:18</p> <p>CERTIFICATE 14:1</p> <p>Certified 14:3</p> <p>certify 14:5</p> <p>Chair 1:11 2:8 3:3,8,22 4:2 5:17 10:17,19 10:24 11:2,19 11:25 12:2,5,10 12:17,20,22 13:2,10,15</p> <p>Chairman 3:7</p> <p>change 6:25</p> <p>changes 4:9 5:22 6:2,16 8:5</p> <p>chapter 4:9 9:21</p> <p>City 1:7,21 5:8</p> <p>clarifications 10:14</p>	<p>close 7:3,12 9:22 12:7 13:4</p> <p>closed 6:19 7:11 7:19 9:22 13:20</p> <p>Code 4:10</p> <p>comment 4:14,18 4:19 5:10 6:19 7:2,11 9:22,23</p> <p>comments 4:19 5:2,6,9,12 7:19 11:22 12:4</p> <p>Commission 1:1 1:11,11 2:8 3:3 3:8,22 4:2,11 4:23 5:1 10:1,8 10:17,18,24 11:1,2,4,8,10 11:11,13,16,19 11:25 12:2,5,10 12:12,15,17,20 12:22 13:2,10 13:15,16</p> <p>Commissioner 1:12,12 3:13,14 3:16,17,19,20 11:20 12:13,14 12:16 13:17,18</p> <p>comparable 9:10</p> <p>comply 7:14,17</p> <p>concluded 12:23 13:21</p> <p>conclusion 5:5</p> <p>concrete 8:8</p> <p>conditional 6:8</p> <p>content 6:25</p> <p>convenience 8:24</p> <p>correction 6:23</p> <p>counsel 14:8,11</p> <p>court 4:25 10:21 14:4</p> <p>cover 5:20 10:3 11:14</p> <p>covered 5:21 7:10 11:15</p> <p>covers 8:6</p> <p>CSR 1:3 7:9,24</p> <hr/> <p style="text-align: center;">D</p>	<p>D 3:2</p> <p>date 7:1 10:7</p> <p>deadline 6:9</p> <p>debate 4:5</p> <p>December 10:1,6 11:8</p> <p>Department 1:1 4:7,12</p> <p>detection 7:5,15 7:17,24,25 8:7 8:12</p> <p>difference 9:2</p> <p>different 8:17 9:14,18</p> <p>direction 14:7</p> <p>directly 8:3</p> <p>Director 5:4,6</p> <p>discussing 5:22 6:21 7:4,21,23</p> <p>distribution 7:7 8:2</p> <p>Division 4:9</p> <p>DNR 5:14</p> <p>DOBSON 3:7,9 3:12,18,21 10:23 13:20</p> <p>dot 5:14,14,15</p> <hr/> <p style="text-align: center;">E</p> <p>E 3:2,2</p> <p>earlier 9:20</p> <p>East 1:7</p> <p>effect 6:1</p> <p>effective 6:4</p> <p>either 8:5,8</p> <p>Elizabeth 1:11</p> <p>Elm 1:7</p> <p>employed 14:8 14:11</p> <p>employee 14:11</p> <p>Energy 5:25</p> <p>EPA 5:24 6:3,6 6:12 8:4,16 9:13</p> <p>essence 11:17</p> <p>establish 9:13</p> <p>excuse 12:3 13:3</p> <p>e-mail 5:12,13</p>	<p style="text-align: center;">F</p> <p>fall 8:11</p> <p>favor 12:18 13:11</p> <p>Federal 6:3,9</p> <p>feet 9:11</p> <p>field-construct... 7:6 8:1,7</p> <p>file 10:10</p> <p>fill 4:19</p> <p>final 10:2 11:12</p> <p>financially 14:12</p> <p>find 9:17</p> <p>first 4:12 8:6</p> <p>Following 4:13 5:5</p> <p>foregoing 14:5</p> <p>Foresman 1:12 3:16,17 12:13 12:14 13:18,18</p> <p>form 4:19</p> <p>forms 4:18</p> <p>forum 4:5</p> <p>Frakes 1:11 3:10 3:11 10:18 11:1 11:4,10,16,20 12:12,15,16 13:16,17</p> <p>frame 8:23</p> <p>fuel 7:6 8:2 9:8 9:16</p> <p>further 14:10</p> <hr/> <p style="text-align: center;">G</p> <p>G 3:2</p> <p>gallon 8:20</p> <p>gallons 8:21,25 9:8</p> <p>gates 9:7</p> <p>getting 10:22</p> <p>given 4:14</p> <p>gives 6:6</p> <p>go 9:5 10:9 11:7</p> <p>going 3:3 10:13 11:2,12</p> <p>gov 5:15</p> <p>group 3:23</p>
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