



Missouri Department of Natural Resources

Hazardous Waste Program

Hazardous Waste Forum Summary

February 7, 2011

Roaring River/Bennett Springs Conference Rooms

The phone lines were opened at 09:50 a.m.

Meeting Facilitator: Crystal Lovett – Missouri Department of Natural Resources

Leanne Tippett Mosby, Director, Division of Environmental Quality, Missouri Department of Natural Resources, opened the meeting at 10:04 a.m.

Ms. Tippett Mosby began with an introduction to participants and attendees, providing an overview of the expectations of the meeting, noting that this was a time of great opportunities. New Department leadership is in place since the last Forum meeting, with support for these efforts. She also noted that a focus should be to establish priorities on the agenda items.

Mr. David J. Lamb, Director, Hazardous Waste Program, was introduced. He provided the participants and attendees with an overview of his background and experience with the Department. Following his introductory remarks, Mr. Lamb asked all attendees/participants to introduce themselves and their affiliations.

An update on accomplishments was provided, referring to 14 sheets posted on the wall. These pages contained the different issues that were brought out in the previous Forum, noted efforts to date, and any resolutions. He noted that 6 of these items were already marked “complete.”

Ms. Tippett Mosby stated that the Department’s key objectives were to diminish impact on the regulated community without diminishing environmental safety. Participants/attendees were provided general information on the status of current fees, and it was stressed that the Department is currently operating under budget restraints. The Department needs help identifying solutions as well as problems.

Ms. Lovett addressed the group, turning the floor over to Mr. Lamb to address the first agenda item, Hazardous Waste Program Priorities. He noted that there were 4 things he saw as immediate priorities:

- Getting the Forums restarted: as this would help us prioritize future program efforts,
- Fee Extensions: Mr. Lamb gave an overview of expiring fees and their timelines,

- Commission Efforts: the Hazardous Waste Management Commission has directed the Department to revisit the Tanks Risk Based Corrective Action rules package and have draft rule text by December 2011, and
- Maximizing the efficiency of Program operations: priorities for the individual sections were noted as follows:
 - Budget & Planning Section:
 - Looking for grant funding
 - Handling hazardous waste generator non-reporting issues
 - Fee payments and providing earlier notification to fee payers.
 - Permits Section:
 - Implement actions for things negotiated with EPA work with applicants to establish the easiest processes to meet permit goals
 - Promote expedited clean up activities
 - Federal Facilities Section:
 - Long Term Stewardship
 - Tanks:
 - EPA objectives on cleanups
 - Compliance & Enforcement Section:
 - Training with Regional Offices to promote consistency on issues across the state
 - Superfund Section:
 - Oversight of responsible parties within the Cooperative Clean Up program
 - Alternatives to Registry listing, Environmental Covenants
 - Brownfield/Voluntary Cleanup Section:
 - Grow program outreach, assist those trying to enter the program

Attendees/Participants were provided an opportunity to ask questions; none were posed.

Dru Buntin, Deputy Department Director, was introduced to the participants/attendees, and provided them with an overview of the Department's fee status and extension efforts. He noted that the Battery Fee expires at the end of June 2011; that we attempted an extension last year, but that legislative effort had died. He went on to state that without an emergency clause there will be a gap. The generator fees expire at the end of the year. Mr. Buntin advised that the current effort, House Bill 98, proposed a flat extension of the existing fee structure. The Department is in support of the legislative effort, which extends existing fees through 2015. Mr. Buntin addressed the participants/attendees, inquiring if any of the stakeholders present had anything to say on the issue. No questions or statements were posed.

Ms. Lovett referred to the agenda and noted that Department personnel changes had been addressed earlier in Ms. Tippet Mosby's opening remarks.

Ms. Lovett opened the Topics for Discussion and Prioritization agenda item. The first topic, Clean Closure Policy was turned over to Mr. Rich Nussbaum, Chief, Permits Section. Mr. Nussbaum began by noting a handout was provided to participants/attendees. The handout contained information on issues and questions to be addressed by the proposed policy. Those included:

- True vs Risk-based
- Discussion and proposed path forward

Mr. Nussbaum noted that this was just a preliminary list and that the Department was looking for input. He suggested that the Department begin by putting all issues in writing and then provide these to a subgroup, prior to providing to the larger group.

The floor was opened to questions/comments: (paraphrased)
(Q-questions, R-responses, S-statements)

- Q: How to make this live past the next election?
- R: Mr. Nussbaum responded that we would try to look in to how to make this into a rule or guidance.
- S: Although we support development of a work group, clean closure is dependent on the state, and all are doing different things. A strong guidance document is a good start.
- R: We will look at what other states are doing and see what applies here.
- S: Lab testing availability also an issue needing to be addressed. We need to have lab reps involved.
- Q: Will guidance make us go back to cost estimates already in play and force us to readdress?
- R: We are trying to take this all into consideration. We are looking at clarification as a place to start. You could see diminished costs in one area and increases in others.
- S: There needs to be an overreaching principal. We need consistency and predictability over time. We need something we support that we can depend on in our businesses.

Ms. Lovett noted that this would probably be a good candidate for a subgroup. We will look at this when we begin ranking topics.

Ms. Lovett introduced the next agenda item – Federal Rules Issues – turning the floor over to Mr. Tim Eiken, Rule Coordinator, Hazardous Waste Program.

Mr. Eiken provided an overview of current rules and the timeline for their adoption. He noted 13 amendments to state rules that would incorporate by reference the 7 federal rules on the list. He also advised that the Health Profile rule would be discussed later. In addition to the adoption of new federal rules and the amendments to the Health Profile requirements, he noted that the Department is proposing other amendments to existing rules to provide additional clarification on the differences between the state and federal rules in specific subject areas including used oil and universal waste. The intent of the changes is to ensure that state rules are not duplicative and to clarify those portions of existing rules that are currently unclear on what the state requires that is different from what is required by federal rules.

He also noted that the Hazardous Waste Management Commission had approved a Finding of Necessity to proceed with amendments to adopt new federal rules, changes to Health Profile requirements, and clarifications of existing rules at their December 2010 meeting. Specifically, he mentioned that the commissioners had several questions about the federal rule regarding alternate management standards for waste generated in academic laboratories and that the Commission would be very interested in what stakeholders have to say about this rule in particular. He also noted that the Department is trying to keep the process for adopting new federal regulations moving by bringing new federal rules forward on an annual schedule so the state doesn't lag behind.

The floor was opened to questions/comments: (paraphrased)
(Q-questions, R-responses, S-statements)

- S: (Kevin Perry-REGFORM) We appreciate the timeline and the state's efforts to routinely adopt federal rules and we support the schedule. It is suggested that the Department broaden the scope of consideration and the Program is invited to step back and look at some of the comments out there. Take a look at areas where there is disharmony between state and federal efforts, not just because "we were here first." This will require a larger discussion. It is a thorn in the side of those that have to deal with two sets of regulations. Missouri has a reputation on a lot of issues. We question what the issue is on federal rules – they are intended to protect the environment so why does the state have rules that are different from the feds?
- Q: (David Shank – Boeing) We have received additional comments echoing the same, but, we also want the good that goes with having a state program. Do we need a "no stricter, no sooner" clause to make this happen?

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Q: (Dale Brown – DOE KCP Plant) Has there been any look at modeling after the Department of Interior harmonization program?

R: Mr. Lamb responded that we need to know specific regulations that need to be looked at.

Academic Lab Issue:

Q: Colleges and universities have been working for years to get this rule developed. Do the questions raised by the Commission indicate the rule may be delayed?

R: Mr. Lamb suggested that supporters make sure the Commission knows you are in support when the public comment period opens. Let them know of your efforts and support towards the rule and make sure they are aware that you want to make sure this moves forward.

Ms. Lovett introduced the next agenda item – Aerosol Can Management – and the floor was turned over to Mr. Dennis Hansen – Compliance & Enforcement Section - Hazardous Waste Program.

Mr. Hansen began with advising participants/attendees that he believed this issue was raised, based on a misunderstanding. He noted that there were 3 basic management options for managing Aerosol Cans.

1. Small and infrequent quantities: One or two aerosol cans generated on an infrequent basis may be disposed of in a sanitary landfill without puncturing or pretreating.
2. Recycling – if empty, they are exempt from all hazardous waste regulations; if not empty, if they are punctured and drained, there are no permits needed. If contents cannot be used then they are subject to Missouri hazardous waste laws and regulations.
3. Disposal – completely empty cans can be put in landfills; not empty cans must have a determination. If remaining contents are hazardous waste, it must be disposed of per Missouri hazardous waste laws and regulations.

If recycling is chosen and questions arise, please contact us and we will assist.

The floor was opened to questions/comments: (paraphrased)
(Q-questions, R-responses, S-statements)

S: Commercially available disposal options were provided by a participant/attendee and were discussed.

Q: We have members who have received Letters of Warning for these type of machines – so how do we figure out how to do this and keep everyone in compliance?

R: Hansen stated that there were options available. The first was to develop a decision tree to help generators decide a path for management. Another option was to plan an update of the Aerosol Can Fact Sheet, noting different pitfalls and issues that have come up. Including such items as filter changing and who governs this activity.

Ms. Lovett noted that this could be an issue for a subgroup to work on.

Ms. Lovett proceeded to the next agenda item – Container Management Update – and turned the floor over to Ms. Kathy Flippin, Chief, Compliance & Enforcement Section, Hazardous Waste Program.

Ms. Flippin provided participants/attendees with a handout which outlined container management issues brought up in previous forum meetings; issues raised and Department responses and current status. She advised that the U.S. Environmental Protection Agency has relatively new guidance on closed containers. Copies of the guidance were provided to participants/attendees.

Ms. Flippin went on to note that there were areas of the guidance that the Department had questions on. Issues like “how a container is secured.” There are several items in the guidance that remain open to interpretation. She noted that there were different types of containers which also raise specific questions regarding closure. The Department also has questions as to what constitutes “closed down operations” and appropriate enforcement discretion regarding several points of the document. She stated that the Department was open to hearing and working to resolve stakeholder concerns.

The floor was opened to questions/comments: (paraphrased)
(Q-questions, R-responses, S-statements)

S: A statement was made that facilities have received Notice of Violations (NOV) who were in compliance with EPA guidance, but are in violation of state standards.

R: Ms. Flippin responded that NOV’s are typically issued for violations that are identified as serious, or when several safety-related violations are observed. She said that we can look into any specifically identified concerns.

S: The guidance reads “minimize” volatilization, but inspectors use “prevent all” attitude.

- S: There are issues with applying Department of Transportation (DOT) expectations to container storage rather than just for container shipment.
- S: Issues arise with regulated entities with inspector's opinions as to "adequately closed" based on solely on guidance.
- R: Ms. Flippin noted that the program will be working with stakeholders and inspectors on training and specific circumstances regarding the meaning of "closed."

Ms. Lovett asked participants/attendees for any ideas on how they would like to see this go forward. No responses were received at this time.

Ms. Lovett called the meeting adjourned for lunch at 11:50 am, noting the meeting would reconvene at 1:00.

The meeting reconvened at 1:08 pm.

Ms. Lovett opened the forum back up with discussion on "Satellite Accumulation."

The floor was opened to questions/comments: (paraphrased)
(Q-questions, R-responses, S-statements)

- Q: A question was raised as to why there was a limit of 1 year for storing a satellite accumulation drum.
- R: Ms. Flippin responded that it was a standardized timeframe chosen to promote safe storage, but that our worklist indicated we would consider change(s).
- Q: This is not as much about timeframes – 1 year seems an arbitrary time limit. As long as the container passes the DOT status test, why do we restrict the amount of time?
- S: This is not an item that will be forgotten. It is used all the time and is a "trap for the unwary."
- S: This is the only state that restricts to a 1 year timeframe. There is no need for any timeframe.
- R: Mr. Lamb responded that we regulate large and small generators, in addition to the conditionally exempt. We need to ensure that regulations will allow for safe management of all.
- S: This shouldn't be applied categorically to all.

Ms. Lovett noted that this had been discussed with Mr. Roger Walker. Kevin Perry spoke and noted that they renewed their stand that this is unnecessary.

- S: There needs to be benefit for all rules – we see no benefit for this one.
- S: Tiny amounts may be generated in a year’s time (as with some medical waste); then the cost of shipping becomes prohibitive.

Discussion opened on Item # 16 on the Worklist: (Missouri interpretation of 40 CFR.262.34(c)(1))

- S: We hear the state say that “safety” is driving this. Using a smaller container diminishes the chance for spillage. This is counter intuitive. This is also 100% away from federal guidelines – but this seems to be based on the position “we were here first.”
- R: Ms. Flippin responded that our long-term policy and reasoning is that Small Quantity Generators benefited from the option of collecting up to 55 gallons from each waste stream, giving them flexibility while still assuring safety. She noted that EPA has not had concerns regarding the Department’s guidance on the matter. The primary reason for our position was flexibility for small businesses. But, the point was noted.

Ms. Lovett inquired if there was any further discussion on containers.

- S: The labeling process will be an issue. Missouri is different from any surrounding state. We know this issue is being worked on.
- S: “Under the control of the operator” for satellite accumulation is also an issue; Inspectors use “in the line of sight” instead which is problematic and unsafe in certain circumstances. There should be some discretion allowed to the operator.
- R: Ms. Flippin noted that this was something new that would need to be looked in to.
- Q: In the spirit of moving forward, these issues have been out here for a long time and should be understood. How do we move forward on this? Is the Department willing to go with us to address the Commission and get this changed?
- R: Ms. Tippet Mosby responded that we will coordinate with staff before making any immediate commitment. There may be areas where current practices can be changed.
- R: Mr. Lamb noted that the Department needs to explain to stakeholders why we do things in a certain way, but we also need input from all stakeholders on how we can reach our goal in a different way.
- S: Inspectors/Department may need to know how we operate our businesses to see what is practical. One example is that the regulations state “under control,” not in “line of sight.”

Discussion opened on item # 9. (Missouri requirement for generators to package, mark and label during the entire time hazardous waste is accumulated on-site.)

- S: Current Department requirements note that containers should be labeled per DOT until ready for shipment. Different types of cans must be dealt with immediately to meet DOT ready requirements under this standard. This is not practical.
- S: We need processing time – all are labeled, but not DOT labels.
- S: This rule requires the operator to process things immediately.
- R: Ms. Flippin responded with information on Subtitle C requirements; noting quantity limits and marking and labeling requirements.
- S: When the package is full it is not immediately ready to go on the truck. It is not transport ready the entire time it is in storage.
- R: EPA's initial rule contained the requirement; this has since been changed by the EPA. DOT hazard labels protect employees and emergency responders. They need to know what is in the containers. If labeled and marked appropriately there is less chance for hazards in the workplace. These present common-sense, good safety standards.
- S: These standards were initiated in 1978. Government standards were updated in 1992. We have trained personnel handling these items. Missouri needs to come up to speed.

Ms. Lovett noted that this covers different industries and there may be room for change. This will be addressed in future meetings.

Discussion opened on Item # 7: (Design and storage requirements for TSD storage of containers holding ignitable or reactive wastes.)

- S: With regards to recommendations on state regulations – aisle space minimum requirements are an issue. Regulation recommendations are problematic. We have multiple storage areas. We don't need to have 4 foot clearance. They are inspected and do not need to be able to have a forklift driven around them. It is situation-specific. The recommendations are confusing to new inspectors. Recommendations need to be in notes, not in the rule.

Discussion opened on Item # 3: (Containment requirements for storage of waste containers in generator storage areas and transfer stations.)

- S: Ms. Flippin opened by noting the question of “what constitutes good containment?” She outlined methods that can be used to prevent hazardous waste

from being “in contact with accumulated liquids” to meet the regulations. Most people use containment pallets and with grates in the bottom. Department inspectors and enforcement staff have not seen any barriers to meeting these regulations on a general basis.

- S: Mr. Perry responded that they believed this was overly prescriptive and had recommended that this portion be rescinded.

Ms. Lovett introduced the next agenda item “Electronic-Scrap” and turned the floor over to Mr. Dennis Hansen, Compliance & Enforcement Section, Hazardous Waste Program.

Mr. Hansen began by noting that participants had requested that additional items be added to the inventory of items covered. He went on to outline the current items covered by the law and provided the participants/attendees with an overview of the current requirements. He noted that the law did not provide any money to fund the rule and that the Missouri constitution did not allow civil penalties to be used, as they must be turned over to the school fund. These restrictions were statutory and changes would have to be made through changes to the statute.

The floor was opened to questions/comments: (paraphrased)
(Q-questions, R-responses, S-statements)

- S: We want to see other electronic related items included. The list is restrictive. We would like to see “waste” taken out of the terminology. These items need to be open to recycling. This allows manufacturers to meet recycling goals.
- S: Reuse should be number one priority. This should not take away from manufacturers goals. Some of the rule/law as written discusses collection and storage information between recycler and manufacturers.
- R: Mr. Hansen responded that extended reporting timelines would benefit the Department and the manufacturer, but the law does not allow for it.

It was determined that Angela Haas and Dave Overfelt will coordinate and bring information back to the group.

- S: We need examples or suggestions to develop reporting plans.
- R: Mr. Hansen responded that he had looked but had been unable to find any examples out there.

A short break was taken and then introductions were made of Sara Parker Pauley, Department Director; and Davis Minton, Deputy Department Director.

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The next agenda item “Regulatory Inspection/Enforcement Priorities” was introduced and opened for discussion.

- S: Reactive waste recently came up on our radar screen as a homeland security issue. We need the agency to let us know if there are things the Department is beginning to see so we can be pre-notified to be on the lookout for potential issues.
- R: Mark Conner, Public Information Officer, Hazardous Waste Program, discussed the different listserv lists that these items could be posted on.

There was no further discussion on this issue.

The “Other Topics” agenda item was opened for discussion.

The floor was opened to questions/comments: (paraphrased)
(Q-questions, R-responses, S-statements)

- S: “Guidance” can become a problem when it crosses the line into rulemaking and when it has costs and impacts without being vetted prior to being proposed. Something in “guidance” is not required. “Guidance” can also change on a whim. When is it brought back for stakeholder input?
- R: Ms. Flippin responded that she recognized the concern. The Compliance & Enforcement ListServ was developed to help people distinguish between “should do” and “have to do” and to provide clarity. The provision of guidance is not intended to add requirements or cost people money.
- R: Ms. Tippett Mosby responded that there was a need for balance and flexibility. If it is guidance it is not enforceable. If it is in a rule, the possibility exists that it could be restructured. We will keep this as a standing topic for any issues that come up.
- S: It is so hard to balance. We discussed the Health Profile and how it is the exception. It may be amazing how much clout we could have with the legislature. Don’t give up on changing the laws. The EPA got hammered for regulating “guidance.”

A short break was taken at 2:22 pm.

The meeting reconvened at 2:33 pm.

Ms. Lovett provided a summary of issues covered and outcome:

- Clean Closure Policy Subgroup to be formed ;
- Federal Rules – Program to update federal rules on an annual basis;

- Aerosol Can Management – Forum members to provide comments to Dennis Hansen; suggestions for revision to guidance;
- E-scrap – Angela Haas and Dave Overfelt will be coordinating this and presenting it at the next meeting;
- Sharing information on areas of emphasis for Regulatory Inspections – listserv will be updated and available.

A vote was taken for prioritizing the remaining issues from this and the previous Forum meeting. The results were as follows:

- | | | |
|-----|---------|---|
| #1 | 4 votes | (One year time limit on satellite accumulation and accumulation start date on containers in satellite areas.) |
| #3 | 0 votes | (Containment requirements for storage of waste containers in generator storage areas and transfer stations.) |
| #7 | 0 votes | (Design and storage requirements for TSD storage of containers holding ignitable or reactive wastes.) |
| #9 | 6 votes | (Missouri requirement for generators to package, mark and label during the entire time hazardous waste is accumulated on-site.) |
| #16 | 2 votes | (Missouri interpretation of 40 CFR.262.34(c)(1)) |

Ms. Lovett noted that we will work on #9, then #1, then #16. #3 & #7 had no votes, but we will continue to discuss if there is interest.

Ms. Lovett then proceeded to introduce updates on previous Forum topics. She began with an introduction of Ms. Darlene Groner, Permits Section, Hazardous Waste Program, who provided an update on the Health Profile.

- This is currently required at 12 facilities;
- Most are in the permit renewal process;
- Regulations as written are not useful, intent is unclear;
- The Department has written up what we felt the law meant.
- We have proposed 3 options and are currently developing guidance on those options.

The floor was opened to questions/comments: (paraphrased)
(Q-questions, R-responses, S-statements)

Q/S: A question has come up. Can we change the statute? The Feds now have things that weren't in there when the Health Profile first came out. Early on there was a need for guidance so intent on what we intended could be addressed. We need to outline the options and how they were developed.

R: The workgroup will try to get a copy of the draft guidance to the stakeholders within 45 days. A meeting will be held to discuss the guidance if necessary.

A draft rulemaking schedule was handed out that includes the health profile. If all goes as planned the rule will be effective December 30, 2011.

Ms. Lovett then introduced Tim Chibnall, Director's Office, Hazardous Waste Program, for an update on the Department's Risk Based Corrective Action efforts.

- This was first introduced in 2006,
- The Rule was in place in 2009,
- It generally applies to the Brownfield Voluntary Cleanup Program,
 - The EPA has shown concern as to use at other sites.
- We have identified areas where the guidance is vague or not clear enough,
- It is time to put changes in guidance, while also addressing EPA's concerns,
- We do not anticipate planned changes to the guidance resulting in changes to the rule. However, in addressing certain EPA concerns, it is possible that we will have to make changes to the rule imposing new or different requirements. We will be working internally and will meet with the EPA in the future, along with meetings with stakeholder groups.

No further topics for discussion. Ms. Lovett provided a wrap up of the topics discussed and noted that the next meeting was tentatively scheduled for 3 weeks out, on Thursday, March 3, 2011 - from 10:00 am to 3:30 pm.

Any input/suggestions on the Clean Closure Policy should be referred to Mr. Rich Nussbaum, as the point of contact.

The meeting was adjourned.