



Missouri Department of Natural Resources

Hazardous Waste Program

Hazardous Waste Forum Summary

March 3, 2011

Bennett Springs/Roaring River Conference Rooms

(Note: The minutes taken at Hazardous Waste Forum 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 phone lines were opened at 09:59 a.m.

Meeting Facilitator: Crystal Lovett – Missouri Department of Natural Resources

Crystal Lovett opened the meeting at 10:07 a.m.

Introductions were made around the room of all participants.

Mr. David J. Lamb, Director, Hazardous Waste Program (HWP), was introduced. Mr. Lamb began with welcoming everyone and thanking them for their participation in these discussions. He proceeded on with an update on the status of current legislation affecting the Department/Program:

- HB98 – would extend the sunset date on the battery and HW generator fees:
 - The bill has gone to 1st hearing and was voted “do-pass.”
- HB192 – would extend the DERT fund for 10 years and also includes the provisions for the UST Operators training.
 - This bill has had a hearing, but has not gone through Executive Session yet.
- SB135 – the Senate’s version of the bills noted previously, with additions.
 - It has been heard and been voted “do-pass.”

Mr. Tim Eiken, HWP Rules Coordinator, was introduced to the participants; he provided a short update on rule packages the HWP currently has in process. He noted that there were two separate rule packages currently moving through the rulemaking process. The first package consists of 13 amendments to state rules that would incorporate by reference 7 new federal rules and also includes Missouri’s Health Profile rule changes. The second package involves revisions to the technical requirements for operation of Underground Storage Tanks.

In addition to rulemaking, he also noted that the Department had submitted a request for authorization for existing state rules to the U.S. Environmental Protection Agency in October

2010. Once approved, the state will be authorized for most of the Code of Federal Regulations through July 1, 2006.

As stakeholders had expressed interest in differences between state and federal rules, Mr. Eiken then shared information on the status of Missouri in relation to surrounding states with regard to authorization and adoption of federal rules. In recent years, Missouri has moved toward straight adoption of federal rules without additional changes or modifications. Including the two previous rule packages which incorporated federal rules from July 1, 2000 to July 1, 2004 and from July 1, 2004 to July 1, 2006 respectively, the current group of amendments is the 3rd rule adoption package in which Missouri has proposed no changes to the federal rules.

Attendees/Participants were provided an opportunity to ask questions.

Ms. Lovett addressed the participants and introduced Ms. Kathy Flippin, Chief, Compliance & Enforcement Section, HWP.

Ms. Flippin introduced a handout the Department had compiled that noted the most prevalent stakeholder comments surrounding the container Packaging, Marking and Labeling (PM&L) issue, and the Department's responses to these comments. She went on to explain that since the last meeting the Department had received additional comments, had spoken to Occupational Safety and Health Administration (OSHA) officials and representatives from different fire departments, and discussed the issues with EPA, looking for ways to address stakeholder concerns on these subjects. She proceeded with a Powerpoint presentation providing attendees with an overview of the current PM&L regulation: its purpose, history, references, examples of state and federal requirements and a summary of stakeholder and Department concerns.

A discussion began on the wording of the rule and on why the EPA had rescinded their version of the rule.

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

- S: Packaging is determined by shipping mode.
- S: There are questions as to the qualification of the inspectors and staff packaging materials prior to shipment.
- S: Missouri expects far more than surrounding state. Companies have policies and procedures in place. Missouri's rules are too restrictive. It is our business to protect our employees.
- S: Employee safety is governed by OSHA not RCRA.

Ms. Leanne Tippet Mosby, Director, Division of Environmental Quality, directed the discussion back to the presentation noting that these issues would be open for discussion later. At this time we are trying to give background on the current situation and then open the floor to ask what your companies are doing and what options there are available.

Ms. Flippin inquired if the discussion could move on to Satellite Accumulation.

An inquiry was received regarding labeling when a waste stream co-mingles and changes before going to storage. The attendee noted that the DOT description on the label starts with the description of the first product that goes in, but could change several times.

Ms. Crystal Lovett introduced the Department's Director, Sara Parker Pauley at this time. Ms. Parker Pauley gave a brief introduction and thanked the attendees at the meeting for their participation in the Forum process.

Ms. Flippin went on to address Satellite Accumulation. She provided some illustrations in her presentation and discussed Missouri's regulations on satellite accumulation.

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

- S: Inspectors are put in a position to determine compliance on something they are not qualified to do. Participants here have the resources to manage satellite accumulation. Smaller businesses don't have that luxury. If areas are cleaned out, there may be partially used jugs of product. Storage timeframes kick in.
- S: (Emergency Responder): With regards to emergency response, this issue affects less than 1/10 of 1% of those attending today. Those that participate in these types of programs generally have safety procedures in place – it's the rest that we have to worry about. We know you understand the benefits of safety for your employees.
- S: Warnings need to be outside of the total area. Smaller labels are difficult to see in smoky conditions.
- S: Prevention is the key. Don't put incompatibles next to each other.
- S: We do have systems in place. The way the Department wants it done is impractical. This is just now being enforced. Why all of a sudden? Our first line is to protect employees and emergency responders. We take offense that this is being pushed upon us this way.
- S: (Emergency Responder): There are no statewide regulations. We need to know what we are walking in to. Without knowing, we can't make the correct decisions. The right person may not be on the scene after hours, the one that

knows all the specifics. We don't want an "us" vs "them" situation. We need to work together so we all live with the process.

- S: The rule won't solve the problem of people not complying with the rule. Those that don't comply won't comply under any standards. Violators will be violators. This seems to only effect the ones trying to do it right.

A discussion ensued as to why Missouri did not change its PM&L regulations when the feds changed.

- S: If you go by the letter of the law you will need to use two DOT labels. You can't buy DOT labels anymore.

- S: (Ms. Flippin): We adopted the original federal rule. We reference DOT as a standard for packaging, marking and labeling hazardous waste containers because we haven't found any better standard to date. If there is something better available, we are open to it.

- S: The safety hazards still exist under the Department's scenario. They will continue to exist, the rule doesn't change that.

- Q: What does the marking rule accomplish?

- R: The marking is the "language" of pointing to the hazards of the material – makes it visible to employees and others – easily recognizable. If not marked with something specific; who knows what is in the container?

- S: Employees must be trained – the rules are there, they have a purpose. The federal requirement is that DOT labels are only required just prior to transport. Otherwise, this gives us zero processing time – it is not capable of being done.

- S: This is a logistics problem.

- S: We are at the mercy of the inspectors.

- S: The Department's presentation started with a goal – to protect human health and the environment. Every other state adopts the federal rules. They are designed to be protective. Missouri seems to feel superior. We are open to ideas.

- Q: (Ms. Lovett): Are there objections to the federal rule?

- S: Objections; yes. I can see what most rules accomplish but cannot see what this one is attempting to accomplish.

- S: The time to know what is in a building is not when you enter it, it is beforehand. What is the potential danger in the area?

- S: Until we know what we are up against we will let the facility burn if we do not know.

- S: The facility owner/operator is responsible for human health and the environment and the safety of the employees. We have all these regulations in place in the Haz Waste regulations and in the fire codes. This rule doesn't fit for what it is trying to do.

- S: Everyone has a contingency plan. Have the inspectors ask for it; and local emergency response should have access to it.

- R: Only Large Quantity Generators have contingency plans. Contingency plans have no uniform standards.
- S: If you want, write regulations that state what the contents of a contingency plan should include.
- R: If there is no requirement for full labeling, inspectors still need to know what is in a storage area in regard to compatibility, and location of flammables for example. There must be a system in place to manage this. Our concerns are with those who are not participating here. There are untrained people handling hazardous waste. It is a struggle, we don't know if full DOT labels are necessary but we need something.
- Q: Can we get "processing area" regulations?
- S: The information is somewhere – it doesn't need to be on the drum. The world has changed since this law went in to effect. Data, information and records maintenance has changed.
- Q: How do we relate the records to a container?
- R: Each company sets up their own system. We are working towards a performance based system.
- S: If you use some kind of sticker identification system, look at the stickers – if they all match, it's all good.
- S: Industry can get around all this if they want to. It comes down to responsibility.
- S: Staff at a Small Quantity Generator may not know what he has (scenario discussed).
- S: DOT labeling will not bring these types of violators into compliance.
- R: (Kathy Flippin): Technology has given us a lot of opportunities for easy labeling. All in combination cannot substitute for promoting safety. There must be sufficient information about the container that lets someone know the information necessary to deal with issues of onsite handling and disposal.
- S: Again – we need to look at performance based standards. EPA had traditionally been against them. OSHA has embraced them and EPA has been moving in that direction. This is in an option instead of being prescriptive.
- Q: What would work for across the board?
- R: A system in place to know the contents – readily available for emergency response; DOT or facility-developed.
- S: We can't turn to OSHA or Fire regulations because they say it is the Department's responsibility.
- S: I object to having been cited when a label has fallen off of a drum. We have a large area, there are temperature fluctuations – labels fall off. To have received an NOV is ridiculous.

- R: (Kathy Flippin): A NOV was not the appropriate response. The label should have been replaced with the inspector watching. An NOV being issued for only this type of violation is not according to Department policy.
- S: (Emergency Responders): If writing a regulation or policy about availability of information, we want it to state “24 hrs a day.”
- S: We need a processing area, an area we can work without fear of violations; like for lab packs that are waiting on the contractor.
- S: We need a consolidation area for satellite accumulation product.
- R: (Kathy Flippin): I see your point.
- R: (Aaron Schmidt): We are not saying “no” to anything. We are here to collect information to evaluate all aspects of this; and we were not meaning to say that you were not considering the safety of your employees.
- S: (Tom Judge): Large companies can do Performance Based; small mom and pop operations won’t be able to.
- S: Comingling of product is also a concern.

Ms. Lovett called for a short break at 12:00 a.m.

The meeting reconvened at 1:18 p.m.

Ms. Crystal Lovett addressed the group and noted that there were two topics on the agenda under Satellite Accumulation and requested that the discussion focus on these two at this time. The floor was turned over to Ms. Flippin.

Ms. Flippin noted that with the issue of 1 year accumulation limits, there were stakeholder concerns. She went on to state that if there are multiple containers there is more exposure, as there are more containers to contend with. Missouri allows for 55 gallons per waste stream. EPA guidance places a 55-gallon limit on all the waste streams in a satellite accumulation area which small businesses may not find advantageous. We are open for discussion.

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

- S: Under federal regulations, 1 year applies to land disposal regulations. At that point a determination needs to be made.
- S: LDR in 268 is addressed to TSD’s. 90 days, except for 1 year is for TSD’s.
- S: So why do you have 1 year storage? I should have the right container for what is being processed. The 1 year limit is a regulatory nightmare. Different processes generate at different rates. If it is in satellite accumulation it isn’t getting lost and it won’t be leaking without someone knowing it has happened.
- Q: What is wrong with federal harmony?

- R: That takes us back to the 55 gallon total. There is more volume allowed with Missouri regulations.
- S: Can't see where that is less stringent than the federal requirements.
- S: (Kathy Flippin) We had written guidance on satellite accumulation in place in 1994 and interpretations of same prior to that time. Missouri regulations already had the one year limit when the EPA guidance came out with the interpretation of 55-gallons total of all wastestreams in a satellite area. Missouri's interpretation was a business friendly one and based on EPA's original satellite accumulation regulations. I have spoken to EPA directly asking if they had concerns regarding our interpretation. They did not, recognizing our interpretation of the regulation and one year limit as acceptable.
- S: Issues remain with smaller waste streams.
- S: 55 gallons of different waste streams will be less safe than 55 gallon total. As discussed with EPA, if looking at EPA regulations, they characterize it as the minimum requirements. They depend on the states to be more stringent.
- S: How about the 3 day standard on average of 55 gallons?
- S: There are times it is not a good idea to move around smaller containers of certain waste streams before 55 gallons are accumulated.
- S: With Subpart K, academic institutions have unique situations.
- S: One can have smaller quantities in one area, with larger quantities from another area in one place.
- S: High volume areas are in compliance, lower volume areas are often out of compliance right away.
- Q: (Tom Judge): How do we know how much is in a container?
- R: It is our job as a generator to know how much.
- S: Hopefully we have come a long way from the bad old days.
- Q: (Kathy Flippin): What is most problematic:
- Moving a second full small container in 3 days, which is Missouri's interpretation; or
 - Moving a second container that is not full to avoid 55 gallons total, which is EPA's interpretation?
- R: We would have to keep track of two different items then.
- S: We would like to see from EPA if it is okay to accumulate more than 55 gallons.
- S: (David Lamb): Large Quantity Generators prefer federal guidelines, while Small Quantity Generators prefer what we do now.
- S: How about an "or" – Federal regulations or Missouri Regulations.
- R: (David Lamb): That would mean training the inspectors on two systems, and would make our job of determining compliance more difficult.
- Q: (Crystal Lovett): Anyone object to full Federal?

- S: Multiple waste streams off of the same process are typical. I don't know of any industry that would produce waste streams that were not compatible. The rule needs to be specific.
- R: (Leanne Tippet Mosby): The tiered approach is a good point for discussion.
- S: That would be unfair. Small Quantity Generators and small businesses need to have input – we can't speak for them – I am not in that position.
- R: (Kathy Flippin): When we switch back and forth it makes it hard for the inspector and the facility. As of now the inspectors “inspect you how I see you—what status you are on the day of the inspection.” With a tiered approach, we need a mechanism for verifying status.
- S: RCRA 3010 notification declares generator status.
- R: (Kathy Flippin): If all are clear that it is used as a declaration of status.
- S: When there are different set of rules, there can be training obstacles.
- Q: Do we have to go LQG does one and SQG does the other; can we have a choice?
- R: (Leanne Tippet Mosby): That gives some room to think, it is a promising area for consideration.
- S: We need to get the small businesses involved – it provides benefit to them – they need to buy in.
- S: (Leanne Tippet Mosby): It is a challenge to get small business to the table.

A suggestion was made to send a questionnaire/survey out to Listserv recipients an additional stakeholder groups. It was asked that the introduction stress what the gain is for the businesses. Ms. Flippin advised that if everyone was okay with this idea that the Department would put something together and bring back. She inquired if today's participants wanted to come back again to discuss this after the information was returned, to which they responded affirmatively.

The discussion on Satellite Accumulation ended. The next agenda item, Updates on Topics from Previous Forums, was addressed – which included:

- Health Profiles:
 - Darlene Groner noted that the Department had been meeting with the Health Department, a checklist is still needed.
- Clean Closure Policy:
 - Rich Nussbaum provided copies of the outline to participants. He noted responses to the last round of discussion, asked for subgroup volunteers, and went over the information put together by the workgroup.
- E-Scrap:
 - Dennis Hansen brought up the topic of how reuse could be called scrap, so that it could be counted multiple times before being scrapped. This was being discussed within the workgroup at this time.

- Aerosol Cans:
 - Dennis Hansen provided the participants with a handout of a decision tree. Ms. Flippin noted that this item had been added as an agenda item before a clear understanding of the question was determined. How to define an “empty” aerosol can was discussed, noting it was not clearly defined in hazardous waste regulations. Vented and captured contents can constitute a new waste stream. How this was determined is on the decision tree. Mr. Hansen noted that the accompanying fact sheet should address some of these questions.
- Other:
 - It was discussed that lab packs are pervasive. All have protocols, with requirements needing to be site specific.

It was decided to continue to work on the discussion at the next meeting.

The date for the next meeting was set for April 7, 2011 from 10:00 am – 2:00 pm.

The meeting was adjourned.