

Missouri Department of Natural Resources

Hazardous Waste Program

Hazardous Waste Forum Summary

May 19, 2011

Bennett Springs Conference Room

(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 09:52 a.m.

Meeting Facilitator: Crystal Lovett – Missouri Department of Natural Resources

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

Mr. Tim Eiken, Hazardous Waste Program (HWP) Rules Coordinator, was introduced to the participants; he provided a short update on current rule packages the HWP currently has in process. He noted that the current rule packages, which were published for public comment, included the 13 amendments to state rules that would incorporate by reference seven federal rules. Stakeholders have shown special interest in the Academic Lab rule, the Underground Storage Tank rule revisions and those involving Health Profiles. He advised that comments on these rule packages will be accepted through June 23, 2011, with the Public Hearings scheduled during the June 16, 2011, Hazardous Waste Management Commission (HWMC) meeting. He noted that the final decision would be made during the August HWMC meeting. Mr. Eiken advised the audience that any questions on the current proposed rules could be directed to him as the Department was looking for any stakeholder input on these proposed rules. Information as to where the information was posted on the Department's website was provided.

Mr. Eiken responded to a question as to whether "...it includes the definition of Solid Waste;" advising that it did not at this time as federal rule revisions on this subject are not yet proposed.

Mr. David J. Lamb, Director, Hazardous Waste Program, was introduced. Mr. Lamb began with an update on the status of current legislation affecting the Department/Program. He noted that the legislative session had ended, and that we had received "good news" that our fees had passed. He provided a brief overview of the bills the Program had been watching.

- SB135 – this bill contained the Hazardous Waste (HW) fees; the battery fee, the HW generator fees – these were extended to 12/31/2013; the Drycleaning Environmental Response Trust (DERT) was extended to 8/28/2017; and it provided for Underground

Storage Tank Operator training. Mr. Lamb noted that it was a good day for us and that the Department/Program appreciated the support.

- HB89 – provided for water fees and funding for the Water Program, extending their fees until 09/01/2013. He noted that it also contained a number of other miscellaneous provisions that effect the Department, including one regarding the engineering review of documents submitted by Professional Engineers.
- HB464 – moved the responsibility for the Mid West Low Level Radioactive Waste (MWLLRW) Advisory Committee to the Hazardous Waste Management Commission.

Attendees/Participants were provided an opportunity to ask questions.

Ms. Lovett addressed the participants and provided a brief background on the Container Management rule, which was the focus of this forum meeting. She noted that the Department had requested proposals from the participants at the last meeting and had three (3) proposals we would be looking at today (one from the Department, one from the University of Missouri-Columbia (UMC), and one from REGFORM).

She began with the proposal from UMC, whose representative addressed the meeting participants and advised that theirs was not a single proposal; it was a brainstorming effort. The presenter noted that Missouri's interpretation of volume is different than the federal interpretation. The university's problem lies with the impracticality of using a 55 gallon container in an academic laboratory setting. The space is not available and it increases the hazards in the academic setting. The use of smaller containers is more practical in that setting. Also, laboratories have the need to retain small containers on shelving for future characterization and lab packing.

The UMC representative noted that federal interpretation of the regulation allows for 55 gallons total of all waste streams in a satellite accumulation area and Missouri is more lenient by allowing 55 gallons per waste stream. The presenter noted that allowing 55 gallons per waste stream was not of benefit to them, but was of benefit to others. The different concepts included:

1. Do nothing
2. Tiered approach allowing use of either Missouri's current regulation and interpretation or current federal regulation and interpretation
 - This does not decrease safety but it does not encourage it either; it is the most generous concept.
3. Tiered approach with "or"

- Mirrors the federal rule but includes Missouri's one year limit. Could cost less or more, depending on the generator. The cost to the Department would be in changing guidance and training.
4. Adopt the federal requirements
 - Same rules in all states
 - The Department would have to change the Code of State Regulations (CSR)
 5. Adopt the federal requirements, but keep Missouri's one year accumulation standard; no change to the CSR.
 6. Storage time similar to the Lab rule; extends the time to move full containers to hazardous waste storage from 3 days to 30 days. This would be a federal rule change.

Ms. Lovett addressed the participants and a discussion began:

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

Q: Do all the proposals solve the timeline of the trigger?

R: No

Q: Are any of the proposals for going to full federal requirements?

R: The 4th proposal allows for full federal requirements.

S: Tier 3 takes out Missouri's one year condition, the rest is pure federal.

S: If you stay under 55 gal – the time is unlimited.

S: If I could have a choice, my option would be: "Allow 55 gallons of each waste stream; as long as you don't exceed 55 gal of each waste stream and do not exceed one year." This takes care of everyone's issues except for safety issues the Department has.

Safety issues were discussed among the group. A comment was made that they "believe there are waste streams that are better and safer managed under the operator's control, rather than being in a storage area."

Mr. Lamb provided the group an overview of the Department's concept for resolving stakeholder concerns on satellite accumulation regulations and guidance.

- This change would allow multiple containers of the same waste stream to be in satellite accumulation at a total volume of 55 gallons per waste stream;
- Any excess over 55 gallons per waste stream must be removed from the satellite storage area within seventy-two hours, either to storage or shipped offsite;
- Allows more flexibility while still including the one year time limit;

- We would maintain the limit of one year in satellite storage to allow for 55 gallons accumulation per waste stream;
- Generators must be able to demonstrate that all containers of a certain waste stream in satellite accumulation area do not exceed 55 gallons in total volume. (This could be accomplished by a log, computer program or other method.)

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

- S: This concept expects someone who is not trained in hazardous waste to keep this log. Satellite accumulation, under this concept, draws them in to the haz waste zone. It is a good concept, but it has application problems.
- R: Mr. Lamb responded that the operator should have knowledge of what is in the container and the volume. This does not require DOT documentation.
- S: We are just looking for clarification.
- R: The volume of each container and the contents must be known, to be able to determine the total volume in relation to the 55 gal limit.
- S: The Department may not have to change the CSR as it is based on the current interpretation; just change the interpretation.
- Q: How would you require we determine the volume of each waste stream?
- S: Performance based is what we have been talking about. You could use a mark on the container “or” a log. It is when you use “must, shall,” etc, that it becomes unreasonable.
- Q: What other term would be appropriate?
- R: The operator must be able to “demonstrate” compliance for each waste stream.
- S: We don’t believe the regs should only serve the inspector’s needs; this does not serve the generator’s need.

The participants discussed whose responsibility it is to know the volume of each waste stream.

- S: Write the rule to state that the operator must be able to demonstrate what is in the container and what the volume of each waste stream is.
- S/Q: REGFORM came asking for federal harmony. What happened to the option we discussed at the last meeting – a simple “or?” Is that unacceptable to the state?

Ms. Lovett called for a short break at 11:17 am.

The meeting reconvened at 12:38 am.

Mr. David Lamb, HWP Director reconvened the meeting noting that with section D. of the proposed satellite accumulation concept, that changing the language to require generators to

“demonstrate” or something along those lines, that they have not exceeded the 55 gallon total accumulation limit, would probably be acceptable to the Department.

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

- S: There are metering systems available that you can put in a drum that will tell you how much is in the drum.
- S: This would only be needed by generators that have more than one waste stream.
- Q: Would this require a change to the regulation or a change to the guidance?
- R: A regulation change is more transparent, we would prefer a regulation change.

A handout and presentation of concepts was provided by the representative of REGFORM, which noted the following:

- The 1st concept would be to go straight federal.
- The 2nd concept includes the “or,” (federal or state).
- The 3rd concept “recommends” the generator provide hazard identification warning during storage, which allows them to comply referencing several federal requirements.
- The 4th item on their list commented on a concept that had been presented during an earlier HW Forum meeting. This comment noted REGFORM’s preference for maintaining the current distinction between the Small Quantity Generators (SQG) and the Large Quantity Generators (LQG).

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

- S: The Walmart representative noted that emergency responders have never raised the issue of unlabeled containers.
- S: The Home Depot representative noted that there are inconsistencies faced by national retailers to conform when jurisdictional boundaries are crossed, even in the same state.
- S: There are no applicable rules for containers that will never be shipped.

Mr. Lamb addressed the group and noted that the Department may have a proposal that will address this issue. He presented the Department’s proposed changes which included:

- The 1st option, a tiered approach, would have small or large quantity generators declare their status as a PML exempt generator. All generators who declare this exemption would have to comply with LQG requirements as well as maintain a current and accurate log that identifies the contents and hazards of the waste.

- The 2nd option allows “in process” time in the storage area for up to 80 gallons of container volume. The containers would need to be marked “Hazardous Waste – In Process,” including the accumulation start date. This concept would also require a log be maintained to identify the contents of each container in storage and the hazards of the waste. This option should address the situation of having to re-label containers, per DOT requirements, when additional waste is added.

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

- Q: Where does the 80 gallon number come from?
R: Most store in 55 gallon drums and we chose an additional amount of approximately ½ of a 55 gallon drum to allow for movement of additional wastes between containers for a period.
S: The Home Depot noted a problem with the ability to segregate wastes by DOT distinctions.
S: The fundamental issue still remains for the storage of containers that are never shipped off site.
Q: 80 gallons per storage area?
R: Yes.
S: Lab packs still remain an issue.
S: Companies that hire “turn key” transporters that come in and do it all, they are better trained to deal with hazardous waste.
S: Once DOT stickers are on them, the requirements for training are untenable.
S: Straight federal requirements.
Q: Define what it is that we are trying to accomplish.
S: Missouri is the only state creating the issue.
S: (Aaron Schmidt) This is what we are wanting to hear. There has been no decision made yet – everything is still open for discussion.
S: There are no changes needing to be made, just the interpretation.
Q: So the container is the standard, not the waste?
S: Mixing of incompatibles is our main focus.
S: DOT labels do not prevent that from happening.
S: The REGFORM representative noted: “If ‘incompatibles’ are the major concern of DNR, then any generator who has comingling of incompatibles is in violation of a number of other regulations; there is no need for another regulation.”
He advised that he had never seen a time when a generator has been in compliance with federal regulations, but out of compliance with state regulations, where there has been a threat to the environment. The federal regulations provide

protection for that. Missouri is no longer unique, the federal regulations protect us.

S: (Kathy Flippin) noted the survey that had been taken and advised that the majority of respondents stated they did not consider the state requirements overly-burdensome. Containers that are going to be shipped are simply marked and labeled earlier.

S: The only flexibility the state is offering is making us become an LQG and accepting the additional expenses.

Ms. Lovett called for a break in the meeting to allow Department staff to conference at 1:00 pm.

The meeting reconvened at 1:22 pm.

Leanne Tippett Mosby, Division Director, addressed the group upon returning from the break. She noted that the Department's concerns were for smaller operators that were not as sophisticated as today's attendees. She advised that it was ultimately the Hazardous Waste Management Commission's decision. She suggested putting together a comprehensive review of what has transpired and the Department's viewpoint. This would be presented to the Commission in advance of a meeting and ask for their opinion. This will provide an opportunity for all to provide input into what is presented to the Commission.

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

Q: Is the rule as written the way the Department wants?

R: No

Q: Will the Department fight The Home Depot's position to open the rule up for review?

Q: Are you going to recommend that the Commission open up the rule?

Q: Can we add additional options?

R: (Leanne Tippett Mosby) We will be pulling all of this together to present to the Commission. She also noted that a meeting could be called prior to the Commission meeting, that all options and comments could be compiled into one agreed upon document for presentation to the Commission.

Participants discussed among themselves how they would like to compile this information.

- S: (Leanne Tippett Mosby) The Department would not be presenting a recommendation, but will present our information at the same time as all the rest of the participants for the Commission to review and make a determination.
- S: We are reluctant to go strictly federal. We believe this rule, as written, has been protective. The Environmental Protection Agency requires states to make these determinations.
- S: (Leanne Tippett Mosby) We would be trying to get the Commissions recommendations up front, rather than the Department crafting a rule and then working backwards.
- S: (Walmart) We have tried to provide options on PM&L in the past and all have been rejected, except for DOT labels. We do not want to waste the effort to readdress this issue if the decision has already been made.
- S: We need to know what specific information that the Department will need.

Participants discussed among themselves how DOT labeling helps identify incompatibles.

Mr. Tim Eiken, Rules Coordinator, HWP, addressed the group and noted that there was a process in place for rules that you were “thinking about,” but were not ready to propose at this time.

Ms. Tippett Mosby noted that it seems that there are three ways this could proceed at this time, in light of the discussion:

1. The group could compile all the information and present it to the Commission, having them make the decision; or
2. The Department could put together a draft rule and present to the Commission; or
3. At the next meeting the Department would support the The Home Depot’s position to open the rule, and a consensus decision would be put together.

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

The date for the next meeting was set for July 11, 2011 from 10:00 am – 2:00 pm.

The meeting was adjourned at 2:07 pm.