

Missouri Clean Water Commission Meeting  
Lewis and Clark State Office Building  
LaCharrette/Nightingale Creek Conference Rooms  
1101 Riverside Drive  
Jefferson City, Missouri

January 4, 2018

## **Approval of Minutes**

### **Issue:**

The Missouri Clean Water Commission review the Open Session minutes from the November 21, 2017, Clean Water Commission Public Hearing meeting.

### **Recommended Action:**

The Missouri Clean Water Commission to approve the minutes

### **List of Attachments:**

- Official Public Hearing Transcripts



**DRAFT  
MINUTES OF THE  
MISSOURI CLEAN WATER COMMISSION MEETING  
Lewis and Clark State Office Building  
1101 Riverside Drive  
Jefferson City, Missouri  
November 21, 2017**

**Present Via Telephone**

Ashley McCarty, Chair, Missouri Clean Water Commission  
Ben Hurst, Missouri Clean Water Commission

**Present at Lewis and Clark State Office Building**

Wallis Warren, Vice-Chair, Missouri Clean Water Commission  
John Reece, Missouri Clean Water Commission  
Dennis Wood, Missouri Clean Water Commission  
Chris Wieberg, Director of Staff, Missouri Clean Water Commission  
Tim Duggan, Legal Counsel, Missouri Clean Water Commission  
Susan Borton, Secretary, Missouri Clean Water Commission

Michael Abbott, Department of Natural Resources, Jefferson City, Missouri  
Kurt Boeckmann, Department of Natural Resources, Jefferson City, Missouri  
Robert Brundage, Newman, Comley, and Ruth, Jefferson City, Missouri  
Bill Bryan, City of Springfield, Springfield, Missouri  
Dru Buntin, Department of Natural Resources, Jefferson City, Missouri  
Paul Calamita, Association of Missouri Cleanwater Agencies, Richmond, Virginia  
David Carani, HDR, Columbia, Missouri  
Mollie Carroll, Washington University IEC, St. Louis, Missouri  
Samantha Davis, Missouri Corn Growers Association, Jefferson City, Missouri  
Kirby Dieterman, City of Branson, Branson, Missouri  
Dee Dokken, Missouri Chapter – Sierra Club, Columbia, Missouri  
Ed Galbraith, Department of Natural Resources, Jefferson City, Missouri  
Jodi Gerling, Department of Natural Resources, Jefferson City, Missouri  
Peter Goode, Washington University IEC, St. Louis, Missouri  
Michele Gremminger, City of O'Fallon, O'Fallon, Missouri  
Jennifer Hoggatt, Department of Natural Resources, Jefferson City, Missouri  
John Hoke, Department of Natural Resources, Jefferson City, Missouri

Leslie Holloway, Missouri Farm Bureau, Jefferson City, Missouri  
Jay Hoskins, Missouri Sewer District, St. Louis, Missouri  
Liz Hubertz, Washington University IEC, St. Louis, Missouri  
Ramona Huckstep, Missouri Municipal League, Jefferson City, Missouri  
Rob Hunt, Department of Natural Resources, Jefferson City, Missouri  
Erren Kemper, City of Springfield, Springfield, Missouri  
Emily LeRoy, Missouri Department of Agriculture, Jefferson City, Missouri  
Abby Lynn, WEI, Centralia, Missouri  
Steve Meyer, City of Springfield, Springfield, Missouri  
Rocky Miller, Miller Companies, Osage Beach, Missouri  
Jan Millington, City of Springfield, Springfield, Missouri  
Nick Muenks, Geosyntec Consultants, Jefferson City, Missouri  
Holly Neill, The Nature Conservancy, Springfield, Missouri  
Kevin Perry, REGFORM, Jefferson City, Missouri  
Krishna Poudel, Department of Natural Resources, Jefferson City, Missouri  
Chao Qu, Washington University IEC, St. Louis, Missouri  
David Shanks, Boeing, St. Louis, Missouri  
Zach Shepherd, Pulaski County Sewer, St. Robert, Missouri  
Penny Speake, Missouri Public Utility Alliance, Springfield, Missouri  
Darrick Steen, Missouri Corn Growers/Soybean Association, Jefferson City, Missouri  
Trent Stober, HDR Engineering, Columbia, Missouri  
Steve Taylor, Missouri Agribusiness Association, Jefferson City, Missouri  
Robert Voss, Department of Natural Resources, Jefferson City, Missouri  
Nola Wadley, Pulaski County Sewer, St. Robert, Missouri  
Casey Wasser, Missouri Soybean Association, Jefferson City, Missouri  
Sydney Welter, Washington University IEC, St. Louis, Missouri  
Don Willoh, Department of Natural Resources, Jefferson City, Missouri

## **CALL TO ORDER**

Vice-Chair Warren called the meeting of the Missouri Clean Water Commission (CWC) to order on November 21, 2017, at 9:05 a.m., at the Lewis and Clark State Office Building, 1101 Riverside Drive, Jefferson City, MO.

Vice-Chair Warren introduced the Commissioners, Staff Director, Legal Counsel, and the Commission Secretary.

## **ADMINISTRATIVE MATTERS**

### **Public Hearing on the Water Quality Standards Rulemaking** **Agenda Item 1**

John Hoke, Water Protection Program, provided background and information on the proposed revisions to the Water Quality Standards (WQS) Rulemaking. The Department has made available

for public comment proposed revisions to the WQS at 10 CSR 20-7.031. This hearing provides the Department opportunity to present testimony and to provide both the Department and the public the opportunity to comment on the proposed revisions. Written comments will continue to be accepted through November 28, 2017. All public comments, along with the Department's responses, will become part of the administrative record and will be made available on the Department's website.

The following provided comments regarding the WQS Rulemaking: Rocky Miller, Miller Companies; Leslie Holloway, Missouri Farm Bureau; Jay Hoskins, Missouri Sewer District; Darrick Steen, Missouri Corn Growers/Soybean Association; Dee Dokken, Missouri Chapter – Sierra Club; Chao Qu, Washington University Interdisciplinary Environmental Clinic (IEC); Steve Taylor, Missouri Agribusiness Association; Sydney Welter, Washington University IEC; Mollie Carroll, Washington University IEC; Robert Brundage, Newman, Comley, and Ruth; Trent Stober, HDR Engineering; Paul Calamita, Association of Missouri Cleanwater Agencies; and Kevin Perry, REGFORM. A copy of the Official Public Hearing Transcripts is included. No action was taken by the Commission.

## **PRESENTATIONS**

### **Director's Update** **Agenda Item 2**

Chris Wieberg, Director, Water Protection Program, reported the following to the Commission:

- An update on the November 6, 2017, CWC meeting, and the approval of the Fiscal Year 2018 Clean Water State Revolving Fund Intended Use Plan.
- An update on the Water Protection Forum meeting held on November 8, 2017.

### **Public Comment and Correspondence** **Agenda Item 3**

None

### **Missouri Clean Water Commission Meetings** **Agenda Item 4**

- December 6, 2017, Lewis and Clark State Office Building
- January 10, 2018, Lewis and Clark State Office Building
- April 4, 2018, Lewis and Clark State Office Building
- July 11, 2018, Lewis and Clark State Office Building

**ADJOURNMENT OF MEETING**

**Commissioner Wood moved the Commission adjourn the meeting. Commissioner Reece seconded the motion. The motion passed with a roll call vote.**

**Commissioner Wood:       Yes**  
**Commissioner Hurst:       Yes**  
**Commissioner Reece:       Yes**  
**Vice-Chair Warren:       Yes**  
**Chair McCarty:            Yes**

**Commission adjourned the open meeting at 10:49 a.m.**

Respectfully Submitted,

Chris Wieberg  
Director of Staff

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BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES  
WATER PROTECTION PROGRAM

MISSOURI CLEAN WATER COMMISSION MEETING  
PUBLIC HEARING

November 21, 2017

9:00 a.m.

Lewis and Clark State Office Building  
1101 Riverside Drive  
Jefferson City, Missouri

BEFORE: Ashley McCarty, Chairman (via telephonically)  
Wallis Warren, Vice Chairman  
Dennis Wood, Commissioner  
John Reece, Commissioner  
Ben Hurst, Commissioner (via telephonically)

Reported by:  
Patricia A. Stewart, CCR 401  
Alaris Litigation Services  
Jefferson City, Missouri 65100  
(573) 636-7551

	I N D E X	page
1		
2		
3	JOHN HOKE	5:17
	ROCKY MILLER	11:14
4	LESLIE HOLLOWAY	13:7
	JAY HOSKINS	14:15
5	DARRICK STEEN	16:22
	DEE DOKKEN	22:5
6	CHAO QU	23:13
	STEVE TAYLOR	25:25
7	SYDNEY WELTER	27:9
	MOLLIE CARROLL	31:11
8	ROBERT BRUNDAGE	34:15
	TRENT STOBER	45:7
9	PAUL CALAMITA	50:1
	KEVIN PERRY	54:3
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1 (Start time: 9:00 a.m.)

2 P R O C E E D I N G S

3 VICE-CHAIR WARREN: Good morning. We'd like  
4 to go ahead and get started with the program this  
5 morning. We're glad to see everybody here today.

6 So I'll beg your tolerance and patience.  
7 This is my first time out of the chute, but this should  
8 be an easy one for me this morning since you'll all be  
9 doing most of the work.

10 I'd like to get started with introductions,  
11 and we have some that are calling in today and some  
12 obviously that are physically here.

13 So first we have on line Ashley McCarty who  
14 is Chair from Kirksville. I am Vice-Chair Wallis Warren  
15 from Beaufort. We have John Reece from Lee's Summit;  
16 Dennis Wood, Kimberly City; and Ben Hurst, Kansas City,  
17 calling in.

18 Commissioner Hurst, are you on the line? I  
19 know Commissioner McCarty is, Chair McCarty.

20 COMMISSIONER HURST: I am. Thank you. Good  
21 morning.

22 VICE-CHAIR WARREN: Okay. Thank you.

23 Of course we have to my left Chris Wieberg,  
24 Wieberg, we just call him Chris, Director of Staff for  
25 the Commission. Director of the Water Protection

1 Program Tim Duggan is not yet here but we expect  
2 shortly, and, of course, Susan Borton, the Secretary to  
3 the Commission, Secretary to the program.

4 So to start the meeting we have a public  
5 hearing on proposed revisions to water quality  
6 standards, 10 CSR 20-7.031. The Commission will begin  
7 the public hearing on the proposed revisions to  
8 10 CSR 20-7.031, water quality standards.

9 The purpose of this public hearing is to  
10 provide the Department an opportunity to present  
11 testimony and to provide both the Department and the  
12 public an opportunity to comment on the proposed  
13 amendments to the water quality standards.

14 This public hearing is not a forum for debate  
15 or a resolution of issues. The Commission asks that  
16 those commenting limit their testimony to five minutes  
17 and not repeat comments that others have already made.

18 The Commission will first hear testimony from  
19 the Department. Following the Department's testimony  
20 the Commission will give the public an opportunity to  
21 comment. We ask that all individuals please sign in so  
22 our records are complete. If you wish to present verbal  
23 testimony, please fill out a comment card. When you  
24 come forward to present testimony, please speak into the  
25 microphone and begin by identifying yourself to the

1 court reporter.

2           Following the public hearing today the  
3 Commission will review the testimony presented and make  
4 appropriate modifications to the proposed amendment.  
5 The Commission plans to take final action on the  
6 revisions to 10 CSR 20-7.031 at the December 6, 2017  
7 meeting.

8           The court reporter will now swear in anyone  
9 wishing to testify at this public hearing before the  
10 Clean Water Commission today. Will all those wishing to  
11 comment please stand.

12           (Witnesses sworn.)

13           VICE-CHAIR WARREN: Well, I knew John would  
14 be coming up.

15           We're going to start with our Department's  
16 representative first, John Hoke.

17           MR. HOKE: Thank you, Vice-Chair Warren.  
18 Good morning, Commissioners. My name is John Hoke. I'm  
19 Chief of the Watershed Protection Section with the  
20 Department. I appreciate the opportunity this morning  
21 to present evidence to you pertaining to the current  
22 water quality standards rulemaking.

23           The hearing this morning is regarding a  
24 proposed amendment to 10 CSR 20-7.031, water quality  
25 standards. The proposed amendment was published in the

1 October 16, 2017 Missouri Register and contains a number  
2 of items that are a result of stakeholder discussions  
3 that began in early 2014.

4 The proposed amendment contains items of  
5 interest to the Department, interest to the stakeholders  
6 and the general public. The most significant proponent  
7 of the proposed amendment is the revision of disapproved  
8 lake numeric nutrient criteria that is required as a  
9 result of recent litigation against the United States  
10 Environmental Protection Agency. EPA is obligated to  
11 propose numeric nutrient water quality criteria for  
12 Missouri lakes by December 15, 2017 if the State does  
13 not do so.

14 The Department has developed cost estimates  
15 of the impacts to public and private permittees both  
16 from these proposed nutrient criteria and from criteria  
17 EPA would likely propose -- or promulgate using federal  
18 ecoregional criteria for lakes.

19 The Department estimates its rule would  
20 require upgrades to remove nutrients at approximately  
21 30 public and private wastewater treatment plants that  
22 discharge to approximately 34 impaired lakes.

23 Estimates of statewide costs to implement the  
24 proposed rule range from \$48.7 million to \$83.1 million,  
25 far less than the estimated \$2.4 billion in upgrades the

1 Department estimates a Federal rule could cost Missouri  
2 wastewater systems.

3 The deadlines for numeric nutrient criteria  
4 notwithstanding, the proposed amendment is progress for  
5 Missouri's water quality protection. From Mark Twain  
6 Lake, to Lake of the Ozarks, from Lake Wappapello, to  
7 Table Rock Lake and Lake Taneycomo, the proposed numeric  
8 nutrient criteria will protect Missouri's lakes and  
9 reservoirs using Missouri specific data and methods to  
10 ensure appropriate water quality protection.

11 The Commission recognized in 2011 that  
12 numeric nutrient criteria are an important component of  
13 a healthy Missouri environment which supports and  
14 sustains a healthy economy. 61 percent of Missouri  
15 residents participated in water-based recreational  
16 activities. As a state we are seeing total visitors for  
17 water-based activities increasing by 2.65 per annum and  
18 total visitor expenditures increasing by approximately  
19 5.44 percent per year.

20 These recreational activities generate  
21 \$14.9 billion in consumer spending and support 33,000  
22 direct jobs. Purchases generate \$889 million in State  
23 and local taxes. Where recreational activities are  
24 good, meaning where water clarity is good, the fishery  
25 is thriving and recreational opportunities are robust,

1 local economies can realize a 5 to 10 percent increase  
2 in revenue. Good water quality can support a robust  
3 economy and does. The proposed rule amendment is  
4 necessary to sustain and promote growth in our economy  
5 and our quality of life.

6 Lake nutrient criteria is important but there  
7 are other changes that are proposed in this draft that  
8 are a result of discussions, and I'd like to highlight  
9 those following revisions.

10 There are changes that are required by State  
11 statute. One change amends the definition of waters to  
12 the State to match statutory changes enacted by the  
13 General Assembly and signed by the Governor in 2015.

14 There are changes that are requested by  
15 stakeholders. Mixing zone requirements have been  
16 updated to allow greater latitude for mixing  
17 considerations for permittees. pH criteria have been  
18 clarified as a chronic, four-day condition. Hardness  
19 calculation methods have been changed and clarified in  
20 the water quality standards revisions that we are  
21 proposing.

22 There are other changes responding to EPA  
23 actions, including the numeric nutrient criteria  
24 disapproval. We are incorporating by reference the  
25 Clean Water Commission approved antidegradation

1 implementation procedures which resolves conflicts from  
2 a previous version that we submitted to EPA.

3 Dissolved oxygen criteria previously  
4 disapproved by EPA or that have expired are being  
5 removed from the rule.

6 Variance authorizing provisions have been  
7 updated to reference Federal regulations directly and to  
8 incorporate by reference Missouri's multi-discharger  
9 variance to provide options for an incremental  
10 environmental improvement in the state.

11 There is also the adoption of certain  
12 national criteria developed by EPA but do not include  
13 changes to aluminum, acute cadmium, manganese, ammonia  
14 and bacteria and pathogens, all of which are under  
15 further review.

16 The Department is required to update its  
17 criteria periodically to ensure they conform to the most  
18 recent scientific data regarding the facts of these  
19 pollutants.

20 And with these changes the Department  
21 estimates the changes will create increased or less  
22 stringent requirements for 1,376 facilities and  
23 decreased or more stringent requirements for  
24 477 facilities. The rest of the facilities looked at,  
25 which is approximately 2,900, no change is expected in

1 their permits.

2 There are also some changes that are  
3 administrative or rule clean-up changes that we're  
4 proposing.

5 We're removing an outdated table of losing  
6 streams and replacing it with a geospatial database,  
7 which is a GIS map viewer, which allows us to update  
8 that information more expeditiously and efficiently.

9 We're updating the Missouri Use Designation  
10 Dataset to implement Missouri's use classification  
11 system.

12 In addition we are adding a table that  
13 contains authorized and improved variances under the  
14 water quality standards rule that we're proposing.

15 As I stated earlier, today's public hearing  
16 will allow the Department to hear testimony from  
17 stakeholders and the interested public as required by  
18 State and Federal regulation and statute.

19 The public comment period for the proposed  
20 rule amendment closes at 5:00 p.m. Tuesday,  
21 November 28, 2017. Following the close of public  
22 comment the Department will respond to all comments  
23 received and prepare an Order of Rulemaking for the  
24 Commission's adoption at its December 6, 2017 meeting.

25 I appreciate the opportunity to provide this

1 information in support of the proposed amendment to the  
2 Commission. Thank you.

3 CHAIR-VICE WARREN: Thank you, John.

4 John, I think we had a question for you.

5 COMMISSIONER WOOD: Will that speech that you  
6 just gave be available to us?

7 MR. HOKE: I just handed it to the court  
8 reporter so she can write it out verbatim and it should  
9 be in the record, yes.

10 COMMISSIONER WOOD: Thank you.

11 VICE-CHAIR WARREN: Okay. Next we have some  
12 comments. We'll start with Rocky Miller from  
13 Osage Beach, Missouri.

14 MR. MILLER: I'm Rocky Miller. I'm a  
15 professional engineer. I'm also a wastewater treatment  
16 operator and drinking water operator, and I operate a  
17 wastewater lab and a drinking water lab in the Lake of  
18 the Ozarks area.

19 And for full disclosure I'm also the State  
20 Representative from District 124, which also covers most  
21 of Lake of the Ozarks area. So as you can imagine, this  
22 rule is very interesting to me and very concerning for  
23 me in some points, but also from what we've been able to  
24 see, fairly happy with what we've got going so far.

25 I do appreciate the staff that showed up and

1 kind of held my hand through it. To be quite honest I  
2 read it incorrectly the first time, and I read the  
3 billion figure and about had a real problem, so I  
4 appreciate where we're at right now.

5 I guess the only thing I'd like to say is the  
6 concerns I have as the positions that I have in the  
7 environmental area are be careful on how we write this  
8 because it may not be you-all that are enforcing these  
9 rules.

10 So what I'm concerned about is perhaps not  
11 this board or this staff. I'm concerned about future  
12 staffs, future boards that will be looking at this.

13 I want to be able to test our lakes and make  
14 it so that there is a real good reason before we take an  
15 action.

16 One of the things I've tried to pound home  
17 every chance I get, I am more than happy with something  
18 that improves the environment, something that makes  
19 sense, something that is going to save a life, make  
20 someone more healthy, something that is going to save  
21 aquatic life or some sort of life that we care about.  
22 What I don't like is doing something because someone  
23 else tells us to do it and that bothers me.

24 So what I'd like -- I'd like to keep in mind  
25 is that we can make changes, we can enforce rules, but

1 at the end of the day does it really help us and what's  
2 the cost for that help? Does it outweigh what we're  
3 doing?

4 Thank you.

5 VICE-CHAIR WARREN: Okay. Next we have  
6 Leslie Holloway, Missouri Farm Bureau.

7 MS. HOLLOWAY: Madam Chair, members of the  
8 committee, Leslie Holloway representing Missouri Farm  
9 Bureau.

10 I'm going to make very brief comments, but we  
11 recognize this has been a long and grueling process if  
12 you start back from when the first lake nutrient  
13 criteria were proposed in 2009 and then EPA's action, in  
14 addition to which EPA in the timeframe that we're  
15 talking about also issued a directive to states to start  
16 working on nutrient reduction strategies, which Missouri  
17 did and came out with in 2014.

18 There has been a lot of activity, a lot of  
19 improvement in the way that nutrients are managed over a  
20 long period of time and continued improvement.

21 Having said that we understand that there is  
22 a court order in place. We recognize that the State  
23 needs to act, and we support the decision by the  
24 Department to come forward with the proposal rather than  
25 letting EPA come forward with the proposal.

1           We think that this proposal addresses many of  
2 the concerns that we would have about numeric nutrient  
3 criteria, and so we would urge you to support it. We  
4 would, though, like to remain on record with the  
5 statement that we do not believe that numeric nutrient  
6 criteria are necessary to achieve the goals that --

7           COMMISSIONER REECE: Repeat that, Leslie.

8           MS. HOLLOWAY: We do not believe that numeric  
9 nutrient criteria are necessary to achieve the goals  
10 that need to be achieved for nutrient management.

11           I'd be happy to answer any questions. Thank  
12 you.

13           VICE-CHAIR WARREN: Thank you.

14           Jay Hoskins, MSD.

15           MR. HOSKINS: Good morning, Commissioners.

16           My name is Jay Hoskins. I work for the  
17 Metropolitan St. Louis Sewer District.

18           On November 9, 2017 the Association of Clean  
19 Water Agencies, or AMCA, submitted detailed comments on  
20 the proposed water quality standards rule.

21           MSD supports the comments submitted by AMCA.  
22 We want to join AMCA in commending the Department for  
23 bringing the rulemaking to this point.

24           The proposed revisions address a number of  
25 important updates to the regulation, chief among them

1 being the nutrient criteria for lakes and reservoirs.

2 We strongly support the proposed nutrient  
3 criteria, particularly for allowing a framework that  
4 considers numeric thresholds and bioconfirmation  
5 response variables to assess use attainment, where one-  
6 size-fits-all numeric values do not definitively resolve  
7 use attainment status.

8 Thank you for considering our input, and I  
9 have the text of the same.

10 VICE-CHAIR WARREN: Thank you.

11 COMMISSIONER REECE: I have a question.

12 VICE-CHAIR WARREN: I'm sorry.

13 COMMISSIONER REECE: You said that AMCA and  
14 who submitted comments?

15 MR. HOSKINS: The Association of Missouri  
16 Clean Water Agency submitted comments on November the  
17 9th. Those have been submitted in the public record.

18 COMMISSIONER REECE: And I'd like to ask John  
19 what was done with those comments and were they  
20 incorporated or how were they handled as far as the  
21 rewrite of this document is concerned.

22 MR. HOKE: We received those comments through  
23 our electronic submission. The public comment period is  
24 still open. The draft that we're receiving comments on  
25 is what is on public notice. At the close of public

1 comments we will take all of the comments received,  
2 we'll take the hearing transcripts that our hearing  
3 officer is putting together today and then provide  
4 responses and then change or amend the rule as necessary  
5 to bring it before you in December.

6 COMMISSIONER REECE: So it's a work in  
7 progress?

8 MR. HOKE: It's a work in progress, exactly.

9 So a lot of the comments are very insightful  
10 and helpful. And I think, like Jay indicated, MSD is  
11 supporting AMCA's comments. There are different levels  
12 of details, but what we do as a general rule is look at  
13 all of the comments for and against and do responses for  
14 and against and then make changes at the close of  
15 comment-- after the close of comments to the rule as we  
16 think is appropriate.

17 COMMISSIONER REECE: Thank you, John.

18 MR. HOSKINS: Any questions, Commissioners?

19 VICE-CHAIR WARREN: Thank you.

20 Now we'll go to Darrick Steen, Missouri Corn  
21 and Missouri Soybean Association.

22 MR. STEEN: Good morning, Commissioners.  
23 Thank you for taking the time today to take comment on  
24 this important rulemaking that certainly has the  
25 potential to impact everyone.

1           My name is Darrick Steen. I work on behalf  
2 of the Missouri Corn Growers Association, as well as the  
3 Missouri Soybean Association, serving as their  
4 Environmental Director. These two associations  
5 represent thousands of corn and soybean farmers across  
6 the state.

7           The following comments that I present to you  
8 are on their behalf. We will also provide written  
9 supported comments to the Department at a later date.

10           So I want to first just start by saying that  
11 these comments pertain really only to the nutrient  
12 criteria portion of the rule. We don't present or  
13 provide any -- or have any comments on the remaining  
14 part of the overall rule package.

15           Also I want to just start by saying that over  
16 the last eleven months or so we believe that DNR has  
17 worked hard to -- DNR staff have worked hard to seek a  
18 nutrient criteria rule that is protective of water  
19 quality, while also striving to reduce unnecessary  
20 regulatory burdens. This is important for us because  
21 this is a goal -- a goal that we share as well.

22           We understand and we recognize that the  
23 Department is moving this nutrient regulation forward in  
24 response to a 2016 consent decree. That consent decree  
25 placed a court-ordered deadline for EPA to propose a

1 finalized nutrient water quality criteria for Missouri's  
2 lakes unless the State proposes and finalizes its own  
3 rulemaking adopting such criteria.

4           It's important to note that we believe that  
5 the consent decree does not specify or bind the  
6 Department -- or bind the State as to the substance of  
7 what the criteria must look like or include, for  
8 instance, questions such as what a specific number of  
9 criteria should be, how stringent it is or what  
10 designated uses are to be addressed.

11           As we all know, nutrient regulations are  
12 inherently difficult and costly for the public and the  
13 private sectors to address and implement. In addition,  
14 they will add substantial workload and cost to the  
15 Department itself.

16           Given this we feel strongly that -- and I  
17 also note that we've expressed these thoughts to the  
18 Department previously, that they need only finalize a  
19 nutrient criteria regulation that is focused and narrow,  
20 targeting specifically the task of adequately resolving  
21 the consent decree and protect the water quality.

22           We appreciate the Department's responsiveness  
23 to this position of ours, and we feel that DNR has  
24 strived to do just that in this rule.

25           Additionally we feel strongly that a nutrient

1 regulation that forces additional regulatory burdens on  
2 the backs of Missouri businesses and citizens must be  
3 and should be developed solely by Missourians and not  
4 the Federal government. The regulation should be  
5 practical, it should be realistic and it should use  
6 Missouri specific data and methods and account for  
7 Missouri specific conditions and characteristics to  
8 guide its development.

9 It is imperative that state-specific criteria  
10 be based on State-based water quality data and methods  
11 to ensure that the nature of Missouri's manmade  
12 reservoirs are appropriately respected.

13 This all prevents an inaccurate assessment of  
14 waters as impaired, as well as limits unattended  
15 consequences resulting from overly conservative values  
16 derived from what would otherwise be regional or  
17 national level data and analysis.

18 And again, we appreciate the Department's  
19 attention and responsiveness to stakeholders, and in our  
20 view DNR has strived to use state-specific data and in-  
21 state water quality experts to advise on this rulemaking  
22 wherever possible.

23 So that being all said, we do as  
24 organizations that have farmers that are operating  
25 across the state, particularly in North Missouri, we

1 continue to have concerns that the proposed criteria  
2 present possible scenarios where many lakes,  
3 particularly in North Missouri, are caught in a  
4 perpetual impaired status for nutrients.

5 Northern Missouri is inherently vulnerable to  
6 soil erosion and sedimentation even in its natural state  
7 and natural landscapes. This is a natural hydrological  
8 process, and while we do our best as humans and as  
9 landowners to control it, we need to understand the fact  
10 that we cannot stop it.

11 In fact, many of the lakes and impoundments  
12 in Northern Missouri were constructed in part -- at  
13 least in part to address this natural resource concern  
14 of sedimentation.

15 We believe that in some instances meeting or  
16 maintaining the suitability of water in these lakes to  
17 meet the nutrient criteria proposed could be inherently  
18 challenging, if not impossible, because of a number of  
19 these factors.

20 As a matter of principle we should not expect  
21 impoundments to perform in a way for which they were  
22 never designed or intended to or in ways for which they  
23 realistically cannot.

24 While we are not coming before you today  
25 asking you to make changes to the rule itself, we do

1 believe that these challenges can and should be  
2 addressed by the Department during implementation by  
3 being mindful of this challenge, by employing some  
4 constraint in the decision-making process prior to  
5 impairing such waterbodies, and lastly just by affording  
6 maximum flexibility in any assessment and restoration  
7 process.

8 This concludes my remarks, and I appreciate  
9 the time and the opportunity to provide them to you.

10 VICE-CHAIR WARREN: I just had one brief  
11 question.

12 For clarification, you stated generally that  
13 the decisions -- or the determination is focused and  
14 narrow to only satisfy the consent decree.

15 So it sounds to me as though your position is  
16 one of just wanting to do the minimal requirements with  
17 the nutrient strategy?

18 MR. STEEN: So our position is is we want a  
19 ruling that is adequately protective of water quality  
20 while meeting the obligations or the tasks at hand to  
21 resolve the issues in front of the consent decree. I  
22 think that's clear.

23 VICE-CHAIR WARREN: Okay. Thank you for  
24 that.

25 We will welcome Mr. Duggan to the table. Now

1 we can really start.

2 Thank you.

3 Okay. Next we have Dee Dokken, Missouri  
4 Chapter of the Sierra Club.

5 MS. DOKKEN: All right. I'm from Columbia  
6 and I'm representing the Missouri Chapter of the Sierra  
7 Club.

8 And like the Missouri Coalition for the  
9 Environment, the Sierra Club does not support the  
10 proposed lake nutrient criteria. It won't protect  
11 Missouri's lakes water quality because it doesn't have  
12 nutrient limits for drinking water and recreational  
13 uses, and it relies on a reactionary approach  
14 inconsistent with the requirements of the Clean Water  
15 Act to establish numeric criteria for nutrient  
16 pollutants. That is total nitrogen and total  
17 phosphorus.

18 And this is just my opinion. If this, as  
19 it's been reported, for lakes are an economic boom to  
20 Missouri, generating a billion dollars a year, it makes  
21 sense for the State and the communities to invest more  
22 money to protect and conserve that resource.

23 VICE-CHAIR WARREN: Thank you.

24 Did we have any questions?

25 COMMISSIONER REECE: Yes.

1           You state that it doesn't protect drinking  
2 water, but how many of these lakes are actually used for  
3 drinking water supply? It's my understanding very few,  
4 if any, are used for drinking water supply. Therefore,  
5 when you say it doesn't protect drinking water, I don't  
6 see where that fits into the picture.

7           MS. DOKKEN: I'll let the speakers coming  
8 after me address that more. Okay?

9           VICE-CHAIR WARREN: Thank you.

10           I'm going to apologize in advance.

11           Chao Qu -- sorry about that -- Washington  
12 University.

13           MR. QU: My name is Chao Qu actually but that  
14 was close enough.

15           Good morning, Commissioners. My name is Chao  
16 Qu. I'm a student attorney at the Interdisciplinary  
17 Environmental Clinic of Washington University. Our  
18 clinic represents the Missouri Coalition for the  
19 Environment.

20           We believe the nutrient criteria set by the  
21 proposed rule do not do enough to protect aquatic life  
22 and, therefore, oppose the proposed rule in its current  
23 form.

24           First, the proposed criteria for protection  
25 of aquatic life are not sufficient for protecting all

1 aquatic life found in Missouri waters. The rule focuses  
2 on the effect of nutrients on sport fish. As the MDNR  
3 rationale for Missouri numeric nutrient criteria for  
4 lakes suggests, quote, the health of sport fish  
5 populations can be interpreted as an indicator of  
6 overall ecosystem health and the presence of a wide  
7 variety of aquatic biota, unquote.

8 MCD urges MDNR to consider all forms of  
9 aquatic life, especially the most sensitive species as  
10 these too are at risk of harm from excess nutrient  
11 pollution.

12 Missouri is home to numerous species that are  
13 not sport fish, including small fish and invertebrates.  
14 It is, therefore, critical to consider aquatic life  
15 beyond just sport fish.

16 Second, failure to protect a wide range of  
17 aquatic life puts humans and other organisms at risk.  
18 Not only do excessive nutrients pose a direct risk to  
19 aquatic life but also to other life form in the  
20 ecosystem.

21 Biotoxins move up through trophic levels as  
22 affected organisms are consumed by other organisms,  
23 expanding the impact of cyanobacterial blooms beyond  
24 just those aquatic organisms directly exposed to the  
25 blooms. Animals at any trophic levels, including other

1 fish, birds and mammals, can die or suffer ill effects  
2 by consuming animals exposed to the toxins, such as  
3 impaired feeding, avoidance behavior, physiological  
4 dysfunction, impaired immune function, reduced growth  
5 and reproduction or pathological effects from  
6 accumulation of cyanobacterial toxins.

7 In conclusion, MCE believes that MDNR should  
8 reconsider its proposed nutrient criteria for aquatic  
9 life by considering the most sensitive species and by  
10 considering the potential for toxins to move up the  
11 aquatic food chain.

12 Thank you for the opportunity to provide  
13 these comments.

14 VICE-CHAIR WARREN: I just had a brief  
15 question on the sport fish used as indicators. Does  
16 that take into consideration hatchery fish versus  
17 natural reproducing fish in the waters?

18 MR. QU: I'm not sure as to that question,  
19 but we'll provide the detailed comments in the written  
20 comments.

21 VICE-CHAIR WARREN: Thank you.

22 MR. QU: Thank you.

23 VICE-CHAIR WARREN: Okay. Steve Taylor,  
24 Missouri Agribusiness Association.

25 MR. TAYLOR: Good morning. Steve Taylor with

1 Missouri Agribusiness Association.

2 Following on your directions, I won't repeat  
3 a lot of the comments that have already been stated, but  
4 I will say I appreciate the staff's work for almost a  
5 decade that we've been involved in this.

6 And I would also -- I guess I'll take this  
7 opportunity to maybe make a comment to the last comment.

8 You heard a comment earlier about -- these  
9 are manmade reservoirs. These are not lakes. They are  
10 managed. They're primarily managed for sport fish.

11 Missouri scientists have collected a lot of  
12 data on these reservoirs and have determined what is the  
13 best for these sport fish, and we're talking largemouth  
14 bass and crappie, bluegill.

15 So with that in mind it's our position that  
16 this criteria is protective, if not overly protective,  
17 of these species. And so even with that being the case,  
18 Missouri Agribusiness Association does not oppose this  
19 rulemaking and urges you to go forward with it.

20 I'd be glad to take any questions.

21 Thank you.

22 CHAIR MCCARTY: This is Ashley, Wallace.

23 VICE-CHAIR WARREN: Yes, Ashley. Go ahead.

24 CHAIR MCCARTY: I did not catch the very end  
25 of these comments, whether it was a statement of support

1 or not. Could you repeat that?

2 MR. TAYLOR: Yes. I stated that the Missouri  
3 Agribusiness Association does not oppose as going  
4 forward with this amendment to the rulemaking and urges  
5 the Commission to go forward with the process.

6 CHAIR MCCARTY: Thank you.

7 VICE-CHAIR WARREN: Thank you.

8 Sydney Welter, Wash U.

9 MS. WELTER: Good morning. My name is Sydney  
10 Welter, and I am a student in the Washington University  
11 Interdisciplinary Environmental Clinic. The clinic  
12 represents the Missouri Coalition for the Environment.

13 We are concerned about the failure of the  
14 proposed rule to sufficiently protect human health.  
15 MDNR has not included protections for whole body contact  
16 recreation or drinking water designated uses, which  
17 unacceptably puts Missourians at risk. MDNR has not  
18 been transparent about the removal of the drinking water  
19 criteria and has favored special interest groups over  
20 the general public.

21 As noted, the proposed amendment does not  
22 include protections for whole body contact with water  
23 during recreational activity. However, contact with  
24 toxic algae is harmful to human health. The most common  
25 side effect is skin irritation in the form of

1 dermatitis, blisters and rashes. Contact with more  
2 concentrated cyanobacterial scums can result in  
3 poisoning and long-term illness.

4 It is critical to have protections for  
5 recreational contact because Missouri's recreational  
6 season, April 1st to September 30th, coincides with peak  
7 algae bloom conditions and it's difficult to avoid  
8 cyanotoxins.

9 Skin contact, even through a wetsuit, and  
10 inadvertent swallowing of water, exposed humans to  
11 cyanotoxins and the associated risk of irritation and  
12 poisoning.

13 In a 2016 letter the EPA previously told MDNR  
14 that recreational uses should be protected in the  
15 nutrient rule. We urge MDNR to create whole body  
16 contact standards to protect the health of Missourians.

17 The proposed amendment also does not include  
18 criteria to protect drinking water use. According to  
19 MDNR in its first draft Regulatory Impact Report, quote,  
20 there are at least 42 communities that rely on 60 lakes  
21 as a source for drinking water supply, end quote.

22 The first draft RIR also acknowledges that  
23 nutrient loading in lakes can result in, quote, taste  
24 and odor problems, end quote, in drinking water.

25 Algae blooms can also pose a risk to human

1 health through drinking water by producing cyanotoxins  
2 which can produce many harmful symptoms and even cause  
3 death. According to the World Health Organization,  
4 documented symptoms of ingesting drinking water with  
5 cyanotoxins include abdominal pain, nausea, vomiting,  
6 diarrhea, sore throat, dry cough, headache, blistering  
7 of the mouth, pneumonia, hey fever symptoms, dizziness,  
8 fatigue and skin and eye irritation.

9 Exposure to toxins produced by cyanobacteria  
10 blooms through drinking water has also been associated  
11 with liver diseases and liver, colon and rectum cancers.  
12 Due to this risk to human health MDNR should include  
13 drinking water standards.

14 The EPA previously directed MDNR, quote, to  
15 consider all uses for which Missouri lakes are  
16 designated and to develop criteria that are protected  
17 for all uses for which adequate data and scientific  
18 information exist, end quote. Since many Missourians  
19 use drinking water sourced from lakes the proposed rule  
20 disregards the safety of these people.

21 MDNR states in its Regulatory Impact Report  
22 that drinking water criteria were going to be included  
23 until, quote, discussions with agricultural  
24 representatives resulted in removal of the drinking  
25 water supply from -- drinking supply use from the

1 proposal, end quote.

2           Despite the risk to human health MDNR failed  
3 to set criteria to protect drinking water, deferring to  
4 one special interest at the last minute. We urge MDNR  
5 to include drinking water standards because concerns for  
6 agricultural interests should not come at the cost of  
7 increased risk to the safety of Missourians.

8           In summary, the proposed rule unacceptably  
9 puts the health and safety of Missourians at risk by  
10 failing to establish nutrient standards for recreational  
11 use and drinking water.

12           Thank you for the opportunity to provide  
13 these comments.

14           COMMISSIONER REECE: A question.

15           MS. WELTER: Yes.

16           COMMISSIONER REECE: Where did you get the  
17 information when you stated that drinking water supplies  
18 from a number of lakes? Where does that come from?

19           MS. WELTER: That was from the first draft  
20 Regulatory Impact Report that MDNR created when starting  
21 these proposed amendments. That first draft was  
22 released in July.

23           COMMISSIONER REECE: Thank you.

24           VICE-CHAIR WARREN: Thank you very much.

25           MS. WELTER: Thank you.

1 COMMISSIONER WOOD: Could we ask for a  
2 response to some of these questions or is that for a  
3 later date?

4 VICE-CHAIR WARREN: I think we're just going  
5 to go through the comments and if you have questions at  
6 that time, but I think that those answers will come  
7 after the close of the comments.

8 So we have Mollie Carroll, Wash U.

9 I'm going to assume you all carpooled this  
10 morning.

11 MS. CARROLL: Good morning. My name is  
12 Mollie Carroll, and I'm also a student at the Washington  
13 University Interdisciplinary Environmental Clinic. The  
14 clinic represents the Missouri Coalition for the  
15 Environment.

16 We are concerned about the Missouri  
17 Department of Natural Resources' reliance on narrative  
18 values to make impairment decisions. In particular we  
19 are concerned about the five proposed eutrophication  
20 impact factors. These factors are located in  
21 Section (5) (N)6 of the proposed rule. Not only are the  
22 factors ill defined and subjective but the reactive  
23 nature does not protect Missouri lakes.

24 Here are some of our major issues with the  
25 designated eutrophication factors.

1           The first eutrophication factor is stated in  
2 the proposed rule as eutrophication-related mortality  
3 events for fish or fish kills. Without a clear  
4 definition of what constitutes a fish kill there is no  
5 quantitative threshold for action.

6           Further, DNR is relying on individuals to  
7 report noticeable events, meaning observation is left to  
8 chance and is strictly reactive; therefore, it does not  
9 act to uphold the protection of Missouri's lakes as it  
10 is required in the Clean Water Act.

11           MDNR plans to use excursions from dissolved  
12 oxygen or pH criteria as the second eutrophication  
13 impact factor. The lack of definition for the term  
14 excursion in the proposed rule means that interpretation  
15 can differ.

16           MDNR includes a concrete definition of an  
17 excursion in the 2016 303(d) listing methodology  
18 document. We would hope to see this definition included  
19 in the proposed rule language in order to reduce  
20 subjectivity and create a clear and designated threshold  
21 for action.

22           The third eutrophication impact factor calls  
23 for action when the cyanobacteria level exceeds 100,000  
24 cells per milliliter. This number appears to stem from  
25 the EPA's risk assessment on human health.

1           Since the proposed rule fails to cover both  
2 drinking water and recreation, MDNR should at the very  
3 least derive a unique cyanobacteria count for aquatic  
4 life. Further, we are worried that the threshold of  
5 accumulation does not take into account the erratic  
6 nature of cyanobacteria scums. Cyanobacteria regulate  
7 their depth using gas vesicles that can be disrupted  
8 during weather events, causing rapid accumulation, thus  
9 increasing risk factors.

10           In order to develop comprehensive criteria,  
11 MDNR must include a more well-founded approach to  
12 cyanobacteria scum prevention.

13           The fourth eutrophication impact factor is  
14 proposed as observed shifts in aquatic diversity  
15 attributed to eutrophication. As an indicator of  
16 potential nutrient impairment, this proposed factor is  
17 too subjective and the language lacks clear definition.

18           Finally, MDNR lists the fifth eutrophication  
19 factor as excessive level of mineral turbidity that  
20 consistently limits algal productivity during the period  
21 of May 1st to September 1st. The term excessive is once  
22 again not defined in the rule, and we believe in this  
23 scenario secchi depth would be a much stronger indicator  
24 of excessive turbidity.

25           We also note that the narrative screening

1 value approach lacks the necessary information to create  
2 and implement effluent limits in permits. Without the  
3 numeric criteria, numeric limits cannot be incorporated  
4 into NPDES permits. Permits are necessary to prevent  
5 nitrogen and phosphorus impairment before it occurs.

6 We suggest that Missouri set numeric nutrient  
7 criteria in order to ensure the protection of Missouri's  
8 water quality and avoid costly and potentially harmful  
9 cleanup practices.

10 Thank you for the ability to provide these  
11 comments.

12 VICE-CHAIR WARREN: Thank you, Mollie.

13 I'm not sure I can get this name straight.  
14 Robert Brundage.

15 MR. BRUNDAGE: It's nice to make your  
16 acquaintance.

17 Good morning. My name is Robert Brundage  
18 with the law firm Newman, Comley & Ruth, and I'm here  
19 today to testify on behalf of the Associated Industries  
20 of Missouri.

21 And largely unlike the previous commenters, I  
22 want to talk about the 304(a) criteria that the  
23 Department is proposing to adopt.

24 And just as a bit of a refresher, under  
25 Section 304(a) of the Clean Water Act, EPA does research

1 on different constituents or different pollutant  
2 parameters, and they come up with recommended --  
3 basically it's a recommended water quality standard for  
4 the entire nation, but EPA understands that each state  
5 is different and that they allow and expect oftentimes  
6 for the state to modify that 304(a) criteria to State  
7 specific water quality conditions and the environment  
8 that they have there.

9 In the proposed standards DNR has proposed to  
10 adopt a number of 304(a) criteria for the protection of  
11 aquatic life. However, there is many, many more  
12 proposed changes and adoptions of brand new 304(a)  
13 criteria for human health protection, and I want to talk  
14 about the human health protection part of the rule.

15 I brought a little outline of my comments,  
16 and Associated Industries of Missouri submitted a  
17 comment letter yesterday, and what I'm about to show on  
18 the screen, if I'm successful, or we're successful, is  
19 just an outline of those comments, so you can kind of  
20 follow along with them.

21 She has it on the computer there. She's  
22 having trouble getting it on the screen.

23 (OFF THE RECORD.)

24 MR. BRUNDAGE: All right. I think we're  
25 ready to go.

1           Okay. You guys can see it over there too.

2           COMMISSIONER REECE: Can you make that  
3 bigger?

4           MR. BRUNDAGE: You need to roll it forward.  
5           You'll have to bear with me. My voice is a  
6 little bit under the weather today.

7           One of our comments was that EPA is,  
8 according to their own statement from a 2005 document,  
9 in the process of revising a number of the 304(a)  
10 criteria.

11           So if we were to adopt some of the criteria,  
12 they'd be quickly outdated because EPA has pledged that  
13 they're working on this list -- this long list of  
14 pollutants right here. And I did add them up. I can't  
15 remember what -- there is about 20 of them there  
16 approximately. But we would suggest that, you know,  
17 this is one reason to hold off on adopting those  
18 criteria.

19           The second comment is concerning fish and  
20 water consumption -- assumptions. I want to say that,  
21 you know, typically the Department has a robust  
22 stakeholder participation process, and a large part of  
23 the efforts over the last several years was all focused  
24 on lake nutrient criteria and to some degree mixing zone  
25 rule and hardness and things like that, but there was

1 never really a discussion of the 304(a) criteria and how  
2 they would be interpreted and how they would be  
3 implemented.

4 To some degree I think people like me should  
5 have raised some of these questions earlier, but on the  
6 other hand during recent discussions I think there are a  
7 lot of questions even within the Department of how to  
8 implement these, how to -- you know, when would you put  
9 a stream on the 303(d) list for one of these  
10 impairments? That's not defined. How would the  
11 Department calculate a permit limit? That's not  
12 defined.

13 So there is a lot of questions that remain  
14 unanswered, and some of the things that we didn't really  
15 get an opportunity to discuss is one part of the rule  
16 that is proposed to be changed is a threefold increase  
17 in the assumption of how much fish people eat and how  
18 much water people drink. That was never discussed.

19 EPA has their national recommendation, but,  
20 again, it's for the entire nation, which includes the  
21 coast, where people catch a lot of fish and oysters and  
22 things like that.

23 We know that Midwest has some of the lowest  
24 fish consumption rates in the country, so we didn't  
25 have -- we collectively, the Department and

1 stakeholders, didn't have an opportunity to really  
2 review that.

3 So just to adopt EPA's 304(a) definition of  
4 the fish consumption numbers can be problematic. There  
5 is a further flaw in this is that there is no  
6 description in the rule or the definition of what the  
7 methodology is to even calculate how much fish people  
8 eat or drink. I think there is some EPA documents but  
9 there is no cross-reference to those in the rule.

10 No. 3. In Missouri our definition of a  
11 drinking water supply that must be protected is the  
12 water that is provided to customers after it is treated  
13 through a wastewater treatment plant. So it's after  
14 treatment.

15 The 304(a) criteria assumed and added a huge  
16 level of unwarranted protection is that people are  
17 drinking raw water out of the stream to directly get  
18 those contaminants that may be present. We know that  
19 pretty much --

20 (CELL PHONE SOUNDS; OFF THE RECORD.)

21 MR. BRUNDAGE: So during the process of  
22 adopting these criteria the Department has proposed to  
23 adopt the criteria just as EPA is proposing based on the  
24 raw water instead of trying to recalculate or take into  
25 account what treatment will take out of those

1 pollutants, which is how we, the State of Missouri,  
2 apply and protect our beneficial use for drinking water  
3 supply.

4 No. 4, fiscal note. The fiscal note presumes  
5 that there will be no cost to private entities to comply  
6 with these rules.

7 Now, I went through the list of pollutants,  
8 and I found -- and this is what I added up -- that 47 of  
9 the pollutants are lower, 10 are higher and about 25 or  
10 so remain the same, and I know there was one new one  
11 that wasn't in there. So it's almost a five-to-one  
12 ratio that these are increased -- excuse me -- easily  
13 more stringent permit limits.

14 And I don't really know how the Department  
15 can say there is no fiscal impact if people's permits,  
16 five out of six permits, are basically going to become  
17 more stringent on these criteria. There has got to be  
18 some level of treatment. The Department has treatment  
19 engineers on staff, and what those costs would be were  
20 not assessed in this rule. So it says there is no  
21 fiscal impact, and I would state that that has to be  
22 wrong.

23 One other thing that the Department didn't  
24 do -- and maybe it's difficult to do this, is that if  
25 there are a number of new criteria, the Department

1 doesn't know what permits those would apply to, and  
2 somebody might have a brand new limit in their permit  
3 that they didn't have before and the Department couldn't  
4 really predict that right now, so not only was there the  
5 fiscal note not calculated on additional treatment but  
6 there are other facilities that are -- that would have  
7 to -- have to begin to treat for some of these  
8 contaminants, and that's not accounted for.

9 Fish tissue data. The Department collects  
10 fish tissue data every year; however, they don't collect  
11 it for a very wide variety of pollutants, likely because  
12 of time and money and effort restrictions, but I would  
13 say that's indicative that the Department believes that  
14 many of these 304(a) criteria for human health  
15 protection in fish tissue that people would consume are  
16 really not that important or not that troublesome or  
17 else they'd be testing for those already.

18 One thing that I think that fish tissue data  
19 could show is where is the Department sampling? Are  
20 they just sampling in headwater streams or larger  
21 permitted flowing streams? I don't know the answer to  
22 that.

23 But in regards to Point No. 6, as you recall,  
24 maybe three years or so ago we revised our water quality  
25 standards on what is a classified stream. In the older

1 days we had Class P, P1 and Class C. Class C I think  
2 were those streams that had maybe permanent pools.

3 But when we passed the rule, I vaguely  
4 remember the statistic that our new classification  
5 system that classified the 1 to 100,000 NHD waters, and  
6 they're mapped out in the Missouri Use Designation  
7 Dataset, increased those classified streams fivefold.

8 So if in the olden days the protections for  
9 classified waters applied to permanent flowing streams  
10 or streams of permanent pools and some of the larger  
11 intermittent streams, to think that now this rule is  
12 going apply to five times that, I think we're safe to  
13 assume that these are headwater streams. That only have  
14 ephermeral flow or intermittent flow at best.

15 Now, do those kind of streams host a fishery  
16 that is capable of being fished for seven years? That's  
17 what the human health protections are to protect,  
18 somebody who drinks the water and eat the fish at the  
19 criteria level -- at the polluted level, if you will,  
20 for seven years.

21 And I would submit that these smaller streams  
22 do not have any fish in them of catchable size, or if  
23 there are it's such -- it's so infrequent that I'm not  
24 sure if it makes sense to protect those streams.

25 But our water quality standards presume that

1 all of those streams in the classification are protected  
2 for human health protection, and we know they're not --  
3 the little ones are not drinking water supplies, and  
4 like I just suggested, they're probably not capable of  
5 housing -- supporting a fishery that is capable of  
6 supporting somebody who would want to catch the fish and  
7 eat it for seven years.

8 VICE-CHAIR WARREN: Mr. Brundage, I just  
9 wanted to remind you that we have our comments at five  
10 minutes, and I think some of the attendees here have  
11 stayed within those guidelines. So I'm not sure how  
12 long your presentation is but --

13 MR. BRUNDAGE: I'll bust through the rest of  
14 these then.

15 VICE-CHAIR WARREN: Thanks.

16 MR. BRUNDAGE: Okay. I mentioned before that  
17 on No. 7 there is not really anything on the listing  
18 methodology document that tells the Department or the  
19 regulated community how these streams are going to be  
20 put on the 303(d) list, if at all.

21 Talking about permit limits. We talked about  
22 the new stream classification system. Most of those  
23 waterbodies, many of those -- I don't have a  
24 percentage -- have 7Q10 flow to zero. I don't know if  
25 that means anything to you, but you don't get a mixing

1 zone. So that means that at the end of the pipe you  
2 have to meet the criteria. That may not be too fair.

3 One of my other points was that if the  
4 Department generally agrees that some of the streams  
5 don't really need to be protected for human health  
6 protection, there is no use attainability analysis  
7 protocol that has been developed. So what that would be  
8 nobody knows, and so you could be -- you know, if the  
9 rule passes, your permit could be subject to that and  
10 you couldn't get off necessarily because nobody knows  
11 what the UA protocol would be to remove that beneficial  
12 use from that stream.

13 Two last points.

14 You know, there is so many of these it was  
15 difficult -- it's really impossible to look at all of  
16 these criteria, but arsenic is one that we dug down on  
17 and looked at a little bit.

18 And one of the things about arsenic is one of  
19 the 304(a) criteria is that the current aquatic life  
20 number is 20 and the proposed number for human health  
21 protection is 0.14 for fish consumption.

22 So I think the Department calculated that as  
23 more than a 99 percent reduction in the criteria and  
24 that's troubling.

25 Look at some of the statewide data on

1 reference streams. A relatively cursory look at the  
2 reference streams in Missouri found at least two streams  
3 in Missouri that have more arsenic in them than the  
4 human health number of 0.14 parts per billion.

5 So we would be listing -- if we adopted this,  
6 we would be listing reference streams, the best of the  
7 best streams on the 303(d) list, and I don't think that  
8 would really be the intent of the rule.

9 And then you talk about how do you mold a  
10 criteria to a State-specific situation and aquatic  
11 habitat and the aquatic creatures. The EPA 304(a)  
12 criteria heavily weighed the criteria based upon  
13 oysters, which had a bioaccumulation factor of 31.  
14 Maybe it was 34. Excuse me. And bluegill has a factor  
15 of one. So these criteria are largely skewed for  
16 oysters, which we don't grow oysters here in Missouri.

17 Lastly, the Regulatory Impact Report has two  
18 statutory requirements that the Department look at  
19 alternative methods for achieving the purpose of the  
20 rule, and another factor is, are there less intrusive  
21 methods for proposing the achieved rule?

22 I think my comments today have laid out a  
23 number of things that really weren't considered and  
24 analyzed in the Regulatory Impact Report to try to see  
25 if there is opportunities for this rule to be

1 implemented in an alternative method or a less intrusive  
2 method.

3 That concludes my comments.

4 VICE-CHAIR WARREN: Thank you.

5 Any questions?

6 Trent Stober.

7 MR. STOBER: Good morning. Again, Trent  
8 Stober with HDR Engineering. I've had the good fortune  
9 of representing and collaborating with the Cities of  
10 Springfield and St. Joseph, Missouri over the last  
11 decade on lake nutrient criteria and some of these water  
12 quality standards issues. Literally that's how long  
13 we've been trying to address these important issues for  
14 the State of Missouri.

15 We sincerely appreciate DNR's bold efforts to  
16 move this rulemaking forward. There is a lot of  
17 different components to it, but I just want to focus in  
18 on the lake nutrient criteria, reservoir nutrient  
19 criteria this morning.

20 I really think that it's an important process  
21 that we've worked through to make sure that the State  
22 stays in control of our own programs, and we base  
23 criteria off of information collected here in the state.

24 We have one of the most robust data sets in  
25 terms of nutrients, lake nutrients and the impacts on

1 water quality, including some of the issues that we've  
2 heard about today in terms of cyanobacteria or harmful  
3 argal blooms and so forth.

4 We feel that these new criteria are really an  
5 embetterment from what we -- what we saw EPA disapprove  
6 in 2011. I think this is a much better framework that's  
7 been tailored to Missouri reservoirs based on Missouri  
8 reservoir data and provide a scientifically defensible  
9 structure for protections.

10 And we appreciate the engagement that we've  
11 had from stakeholders that were even here from today  
12 from across the spectrum of viewpoints I believe.

13 We will suggest -- shortly suggest some  
14 revisions to the rule in terms of the nutrient criteria.  
15 I think these will be nonsubstantive in nature but  
16 address some of the -- I guess the confusion, if you  
17 will, about the criteria and the framework of the  
18 criteria.

19 These will be just clarifications with no  
20 real modification to the intent or the implementation of  
21 the criteria.

22 Our viewpoint is that the criteria are not  
23 just specific values within that rule but it's really  
24 the framework that layers on different levels of  
25 protections to make sure that we adequately protect our

1 reservoirs.

2                   And it does include both the causes of  
3 eutrophication. Those would be the nutrients in the  
4 waterbody but then also the response or the level of  
5 algae that are within the waterbodies. So our  
6 suggestions would be to make that more clear and make  
7 sure that everybody is clear that it does include both  
8 the causal and the response variables within the  
9 criteria.

10                   And now, you know, I think from there we need  
11 to move on to implementation of these criteria and make  
12 sure that we have the clarifications and the processes  
13 lined out in the listing methodology document and in  
14 listing decisions to implement those criteria.

15                   There are a lot of details that will be left  
16 to those decisions and make sure we use best  
17 professional judgment to apply protection to those  
18 reservoirs.

19                   So with that we'll be submitting comments  
20 shortly and appreciate again the Commission and the  
21 Department's efforts in these regards.

22                   Thank you.

23                   VICE-CHAIR WARREN: Just a quick question.

24                   You're going to submit some suggested  
25 revisions. I'm assuming that is for this public comment

1 period it will be addressed?

2 MR. STOBBER: Yes. And we would like to  
3 submit those earlier before the last minute, you know,  
4 so that the Department has time to digest those comments  
5 and stakeholders as well within the public comment  
6 period.

7 I'll just again reiterate that these  
8 suggested revisions are nonsubstantive, more  
9 clarifications of the rule and would not change the  
10 intent of the implementation of the regulation.

11 VICE-CHAIR WARREN: And you're using the term  
12 reservoir interchangeably with lake?

13 MR. STOBBER: Yeah. Actually in Missouri the  
14 predominant waterbody, standing waterbody that we have  
15 are reservoirs, manmade bodies of water rather than  
16 lakes. The only lakes -- true lakes that we have,  
17 natural lakes, are oxbow lakes along the big rivers.

18 So really I think that's one of the things we  
19 need to keep in mind are that these are dammed streams  
20 with fisheries that are manipulated many times by man.

21 So the Department of Conservation, you know,  
22 adds fish to the reservoir and it changes the structure  
23 of the fishery significantly potentially.

24 So with that I think that's a -- it provides  
25 more of a logical structure to base these on

1 recreationally important species. Those are the species  
2 we have the most data for in our reservoirs and probably  
3 have the most confidence that we're developing criteria  
4 protective of that whole fishery if we focus in on the  
5 crappie, the bass and so forth that we comprise in our  
6 reservoirs.

7 VICE-CHAIR WARREN: I think most of us would  
8 recognize that we don't live in Minnesota or Michigan  
9 but our reservoirs are still used for the most part in a  
10 similar capacity even though they might be dammed and  
11 human influenced.

12 So I understand what you're saying there, but  
13 I think the entire discussion doesn't necessarily hinge  
14 on whether it's manmade or, you know, a natural  
15 waterbody. But it will be interesting to see what your  
16 revisions are. I'm sure they'll appreciate getting it  
17 sooner than later, because I don't think there's a lot  
18 of time and a half in the budget.

19 MR. STOBER: Yeah, we'll get those in  
20 hopefully so that Mr. Hoke can review those on  
21 Thanksgiving day.

22 MR. HOKE: Football.

23 MR. STOBER: Thank you so much.

24 VICE-CHAIR WARREN: Okay. Thank you, Trent.

25 I have Paul Calamita.

1 MR. CALAMITA: Good morning. And fortunately  
2 it's still morning.

3 My name is Paul Calamita. I'm here as  
4 General Counsel for the Association of Missouri Clean  
5 Water Agencies. We're a statewide group of local  
6 governments in wastewater, drinking water and stormwater  
7 utility business.

8 I think Leslie Holloway's note to the  
9 perspective was important. We're here about primarily  
10 nutrient regulations for lakes and reservoirs but that  
11 is just part of the State's program. I know the prior  
12 Administration Director Parker Pauley was adamant and  
13 enthusiastic that State Ag and Missouri has done more  
14 than most, if not all, other states.

15 On the municipal side we've made a lot of  
16 progress as well. We have voluntarily at our treatment  
17 plants been characterizing our nutrient loadings for  
18 several years now. The President of AMCA is here, Steve  
19 Meyer from Springfield. And Springfield, they've  
20 actually installed nutrient removal technology at one of  
21 their large facilities. So it's something we care  
22 about.

23 AMCA strives as a local government. We  
24 strive for balanced regulation that needs to be  
25 affordable. It also needs to be cost effective and it

1 needs to be protective. Setting appropriate nutrient  
2 criteria for lakes and reservoirs is very challenging  
3 technically and procedurally. Some stakeholders would  
4 suggest you just apply a one-size-fits-all number, and  
5 nothing could be further from appropriate were you to  
6 take that approach.

7 This is hard stuff. The Department rolled up  
8 its sleeves to come up with both nutrient values and  
9 response criteria with a process that Mr. Stober  
10 described.

11 I think Representative Miller's comment was  
12 appropriate that probably a little additional clarity in  
13 the final rule about how that combination of threshold  
14 criteria and the response variable are to be applied  
15 would probably be appropriate. I agree that's not a  
16 substantive change, just trying to make sure it's clear.

17 We think that the draft regulation reflects  
18 compromise in a world where we seem to have very little  
19 compromise. Everybody thinks compromise is great, and  
20 having heard the speakers before me compromise seems to  
21 be painful.

22 We are not thrilled by this rule. There are  
23 certain aspects of it that we would like to see  
24 different. However, at the end of the day we feel the  
25 rule is protective for all uses.

1           You heard some comment about, well, maybe  
2 some uses were taken out. As the statewide public water  
3 systems, we don't think that's the case at all. We  
4 think if you look at the criteria, that they're  
5 protective, if not more protective, for public water  
6 supply with the exception of one group of lakes, one  
7 small group of lakes, and the numbers between aquatic  
8 life and public water supply were not enough for us to  
9 oppose this rule.

10           We think it's necessary and appropriate to  
11 get the rule in place. In particular we are very  
12 concerned that if the state doesn't act promptly, that  
13 the Federal government will act, and we see two  
14 consequences from that, which I would hope all of the  
15 stakeholders would agree we should avoid.

16           The first would be I think we're going to get  
17 one-size-fits-all criteria which are not appropriate for  
18 Missouri waters or any waters.

19           Secondly, and maybe more importantly, if the  
20 EPA has to promulgate Federal criteria, it will be the  
21 first rulemaking they've done under the Trump  
22 administration, and we believe that's going to carry  
23 with it the Trump requirements to offset regulatory  
24 burdens and God forbid withdraw two regulations here in  
25 the state of Missouri for the regulation they're

1 adopting.

2           And we don't think that's appropriate. We  
3 can't think of a single regulation that should be  
4 removed. We may have some differences with certain  
5 aspects of those rules, but no regulation should be  
6 removed. We are not looking to have the burdens of this  
7 regulation offset. Again, we can't think of parts of  
8 the regulatory program that should go away. So we think  
9 it's very, very important that you -- while not perfect  
10 that you proceed with this rule.

11           Finally there are several other nonnutrient  
12 related changes to the rule. We think these are very  
13 necessary as well. A number of them are just plain  
14 wrong. They're just legacy provisions that need to be  
15 corrected. And then there is another group of  
16 provisions that reflect the latest EPA regulations. We  
17 think that's appropriate.

18           AMCA has already submitted comments. I think  
19 you'll be hearing from some of our members. At bottom  
20 we think this is a compromise, and it's not an elegant  
21 compromise. They rarely are. Ask your children.  
22 However, it is a necessary compromise, and we urge the  
23 Commission to adopt these in early December.

24           Thank you very much.

25           VICE-CHAIRMAN WARREN: Thank you, Paul.

1           And we have Kevin Perry.

2           That's saving the best for last.

3           MR. PERRY: Well, that's a kind compliment.  
4 I'll take it with a grain of salt.

5           Good morning, Commissioners. My name is  
6 Kevin Perry. I'm the Assistant Director of RegForm, the  
7 Regulatory Environmental Group for Missouri. We  
8 represent businesses and industry and educational  
9 institutions from around the state, all of whom must  
10 comply with the regulations that are in front of you for  
11 our proposed amendment today.

12           I want to start just by saying we strongly  
13 support the numeric nutrient criteria proposal that is  
14 in front of you and we ask that the Commission adopt it  
15 and move forward in strong support of it.

16           As Mr. Calamita just commented, some of the  
17 outcomes that could come into place by allowing the  
18 Federal government to come in and set those numeric  
19 nutrient criteria for Missouri are unacceptable, so we  
20 hope that you will do that.

21           As John mentioned in his remarks, there are  
22 many other components to this rule. We strongly support  
23 what the Department is proposing regarding the new  
24 hardness calculations and mixing zones. These are  
25 excellent moves forward.

1           There is a sense in which I have this feeling  
2 of deja vu, because the other half of the rule as I call  
3 it are the issues that Mr. Brundage talked about  
4 earlier, the 304(a) adoption. This is a list of  
5 technical standards that US EPA publishes, and then it  
6 asks the states to keep their water quality standards up  
7 to date.

8           The states are not required to adopt the  
9 304(a) list as it is published by US EPA but the states  
10 are asked to make the technical and scientifically  
11 appropriate standards available in their states that fit  
12 their states.

13           And as Mr. Calamita has talked about just a  
14 few moments ago in front of you, often accepting a one-  
15 size-fits-all approach to regulation is not a positive  
16 thing. It's not a positive outcome.

17           And the deja vu all over again is, you know,  
18 Robert was talking about the Missouri -- I don't even  
19 remember what it's called anymore, MUDD. I'll call it  
20 that, the dataset.

21           And we were in this very same position  
22 several years ago where we were on the line with the  
23 US EPA to get a whole bunch of waterbodies in the state  
24 of Missouri under the regulatory authority of the State  
25 of Missouri, and had we not done that we would

1 rightfully have expected US EPA to have come in and  
2 classified those waterbodies for us.

3 At that time the Missouri Department of  
4 Natural Resources, if my memory serves me accurately,  
5 and often it does not, came in and asked this  
6 Commission, you know what, let's punt on the 304(a)  
7 water quality standards. Let's kick that can down the  
8 road and deal with it later because we're in such dire  
9 straights in terms of getting this provision adopted.

10 And oddly I think that's where we find  
11 ourselves today. And if we need to assign guilt, please  
12 sign me up for that. I will fall on my sword.

13 I've been talking to my members about the  
14 304(a) list adoption for over three years, and today as  
15 the rubber hits the road I'm hearing from my members for  
16 the first time. So I'm going to ask -- talk to you a  
17 little bit about what we're hearing.

18 One is -- one thing that I think Robert did a  
19 really nice job of talking about is the human health  
20 protection criteria. And I think if you take a look at  
21 the old rule, that is the rule that is in effect in  
22 Missouri right now, and you compare it to the proposed  
23 rule, which you'll see is this vertical column called  
24 human health protection, and in it contains many, many  
25 provisions that we've never seen before.

1           And there is a particular column head called  
2   organism plus water, which the State of Missouri has  
3   never seen before.

4           And once again, I want to give you the  
5   exception to that is this rule has been out there in the  
6   world unchanged for people to look at for more than  
7   three years. So in that sense we have had plenty of  
8   opportunity to look at it, but now that the rubber is  
9   hitting the road we're digging in.

10           I would agree with Robert there are a lot of  
11   things about that human health protection column that we  
12   don't understand. As we sit down and talk to folks, we  
13   don't really know, were those water quality standards in  
14   the human health protection column calculated based on  
15   an acceptable cancer risk level of ten to the minus five  
16   or ten to the minus six?

17           Were those water quality standards calculated  
18   based on 22 grams of fish consumption per day? Were  
19   they calculated based on 2.4 liters of water consumption  
20   per day? Were they based on whether or not the water  
21   was treated through a water treatment system? Were they  
22   based -- were the fish tissue calculations, did they  
23   take into consideration the fact that most people cook  
24   their fish and, therefore, some of the contaminants in  
25   the fish actually go down after you prepare the food?

1           The issue is we don't know. What we've done  
2 is do sort of an easy thing and that is just accept the  
3 whole table that US EPA has provided for us, and that  
4 most states, including most of the states that surround  
5 us, do not do. They don't accept the table. In fact,  
6 from talking to some of the technical folks that I've  
7 talked to, they're not aware of -- I think many of these  
8 states, dozens of states, they're not aware of a single  
9 one that has done what the Missouri Department of  
10 Natural Resources has proposed that we do.

11           Stakeholders have come before this Commission  
12 over the last several years many times and have said to  
13 you at this very moment we're at the brink of taking a  
14 vote on the rule, gee, we've come up with this new  
15 provision we'd like you to consider, things like  
16 chloride and sulfates were here. Cadmium was here.

17           And every time we've done that with a little  
18 fear and trepidation, what has happened is we decided to  
19 punt. We've decided to kick the can down the road and  
20 deal with it later.

21           I really don't want this Commission and I  
22 really don't want the State of Missouri to kick the can  
23 down the road and deal with it later.

24           So I am going to ask that the Commission  
25 adopt the 304(a) list with one exception. I'm going to

1 ask you to not adopt the human health protection column.  
2 There is so much confusion. There is so much  
3 misunderstanding. There is so much that we don't know  
4 about what we'd be doing to ourselves. If you did not  
5 adopt the human health protection column, the human  
6 health protections that are there right now would  
7 remain. So I'm asking that the Commission and the staff  
8 consider that comment.

9 I'm also asking that the Commission and the  
10 staff not adopt the 22 gram per day fish consumption  
11 level, nor the 2.4 liter water consumption level. We  
12 don't know -- we don't know if that's how much fish is  
13 consumed by Missourians. We don't know if that's how  
14 much water is consumed by Missourians.

15 Let's take the time to find out what are the  
16 true rates of water consumption, fish consumption in the  
17 state of Missouri.

18 Lastly I'd just like to ask, considering the  
19 fact that folks don't always do what I ask, you may  
20 choose to go ahead and move forward and promulgate the  
21 human health protection, but one of the -- one of the  
22 factors that is out there is -- as I read our current  
23 regulations, the waterbodies that are in the MUDD, the  
24 dataset, as I read the regulations that surround that,  
25 the human health protection is presumed to be applied to

1 all of those waterbodies.

2 And as far as I know, by far the vast  
3 majority of the waterbodies in the MUDD are not  
4 classified for drinking water source, for portable water  
5 ingestion. And so we would ask that as a part of this  
6 regulation moving forward that the staff would revise  
7 the recommendation and that the Commission adopt some  
8 way to clarify that that organism plus water column does  
9 not apply to the whole MUDD but only those that have  
10 been used, drinking water supply, portable water source.

11 I believe those are all of my comments for  
12 today. A big ask but I think possibly the right ask.  
13 Let's not -- let's not take on for Missouri what  
14 probably no other state has done without taking a pause,  
15 taking a breath and coming to a better understanding of  
16 what these human health protection numbers, where they  
17 came from, how they arrived at them and do they really  
18 apply here?

19 So those are my comments. Those are the  
20 comments of our members. We appreciate your serious  
21 consideration of these and look forward to working with  
22 the staff and others as we implement over time. I'm  
23 happy to try to answer a question if one appears.

24 VICE-CHAIR WARREN: Well, I'll bring one up.  
25 You said you don't want to accept a table

1 that the EPA has handed down. Most states have not or  
2 don't. Have those states developed their own criteria?

3 MR. PERRY: They do, yes.

4 VICE-CHAIR WARREN: There is a reason then  
5 they're not accepting because they prepared something?

6 MR. PERRY: Sure. For example -- for example  
7 we believe quite possibly that the majority of the  
8 standards in the 304(a) table are calculated based on an  
9 acceptable cancer risk standard of one in 1 million, ten  
10 to the minus six.

11 Many of the states have looked at that and  
12 said it's overly protective, it's perfectly safe, and  
13 EPA allows it and says it's perfectly safe, to make the  
14 same calculations based on the ten to the minus five,  
15 one in 100,000. So that alone drives a strong  
16 difference between us and some of the states around us.

17 VICE-CHAIR WARREN: So instead of ignoring  
18 the human health protection, then something could be  
19 offered in place of that? You're saying, of course,  
20 we're going to use what currently exists, which is old  
21 data, so, you know, it would then be -- we're on a  
22 timeline as far as this is concerned. As opposed to  
23 just discounting that, perhaps that would be something  
24 that should have been addressed.

25 And you made reference to the classification

1 of our waters several years back, and my understanding,  
2 that was a result of some pressure put upon the EPA  
3 through a lawsuit that got our attention to resolve that  
4 or they would step in for -- not enforcement. Is that  
5 not currently the case too? I might be mistaken on  
6 that, but that there is legal action with the EPA for us  
7 not having our nutrient criteria?

8 MR. PERRY: Oh, most definitely, and we  
9 support the adoption of the nutrient criteria proposal  
10 as it is today, yes, definitely, and we like this  
11 proposal and hope that you will adopt it.

12 VICE-CHAIR WARREN: Well, yeah. The point  
13 being that it's not -- we've been given many  
14 opportunities, so it's about looking at what may be  
15 taking leadership and addressing these issues as opposed  
16 to saying let's just remove these and move forward or  
17 use data that is convenient to us.

18 MR. PERRY: I completely agree. I would  
19 recommend that we use leadership, that we sit down and  
20 we go through these assumptions and get some technical  
21 understanding of what is the basis for the calculation,  
22 the cancer risk rate? What is the basis for the  
23 calculation on fish tissue consumption? We don't know  
24 that. What is the basis -- the technical basis for the  
25 water consumption level? What is the basis for -- have

1 we taken into account raw water versus treated water?  
2 Have we taken into account the effects of cooking on the  
3 quantities of chemicals in the fish tissue?

4 CHAIR-VICE WARREN: And I guess what I'm  
5 saying, my limited experience is that when we have  
6 standards that people feel are too stringent, that  
7 incentivizes giving that data as opposed to stepping back  
8 and saying, well, they're relaxed. We'll get around to  
9 it.

10 So moving forward I would rather much error  
11 on the side of safety than not and then have that data  
12 brought forth if we don't have that data at this time.  
13 But that's just my public comments at this time.

14 So thank you.

15 MR. PERRY: And I drink the water too and I  
16 eat the fish too. So as I dig into it -- as I dig into  
17 it and as I look at this, what I have come to understand  
18 is that there are many, many opportunities for people  
19 who have unknowns or uncertainties or fears about the  
20 future, that they add compounding layers of concern and  
21 assumption, and what we like to do is look at and come  
22 to an understanding of what those are.

23 I guess one of our options is we could accept  
24 the fish tissue consumption level of Washington,  
25 multiple times greater than 22 grams per liter -- or

1 22 grams per day, but it just doesn't apply. So why be  
2 overly protective?

3 As one of my members sometimes says to me,  
4 you know, most of us get in our car and drive around  
5 with the seat belt on. If we really wanted to be  
6 protected, we could wear helmets and asbestos gloves and  
7 other things. So let's be appropriately protective.

8 CHAIR-VICE WARREN: Thank you.

9 Any other comments -- questions I should say?

10 Thanks very much.

11 VICE-CHAIR WARREN: So since we are finished  
12 with our public comment period, I just want to ask the  
13 Commissioners, those that are on the call -- and I'm  
14 hoping we still have Chair McCarty and Commissioner  
15 Hurst online. Are you still there?

16 CHAIR MCCARTY: I'm still here.

17 COMMISSIONER HURST: Yeah, I'm still here.

18 VICE-CHAIR WARREN: Okay. And those here, if  
19 you have any other questions or something you would like  
20 to have addressed, we'd certainly like to consider those  
21 at this time.

22 COMMISSIONER REECE: I have a comment.

23 I've heard twelve people --

24 VICE-CHAIR WARREN: Sorry. This is

25 Commissioner Reece.

1 COMMISSIONER REECE: Sorry.

2 I've heard twelve people present testimony  
3 today, and of those twelve I only heard that one  
4 suggested that this document proceed, that the  
5 Commission approve this water quality standards on  
6 December the 6th. That's only 15 days away.

7 Of all of the comments that were presented,  
8 that they were recommending changes to the document or  
9 whether it be more stringent, less stringent. I don't  
10 see how Mr. Hoke is going to be able to review all those  
11 comments and bring to the Commission on December the 6th  
12 a document that most people are going to accept and  
13 agree with. I think this is just a huge undertaking.

14 And personally the question that I would have  
15 of DNR, is there any way that the EPA would allow an  
16 extension of the State's presentation of these water  
17 quality standards to EPA such that we can thoroughly  
18 consider all of the comments that we've heard today?

19 I'm sure there are other comments that have  
20 been sent in that people -- by people that weren't  
21 represented here today, and I just -- I just don't see  
22 this going forward in a timely fashion and where we are  
23 able to address all of the concerns and comments that  
24 were presented.

25 John, if you can do that, you're a miracle

1 man. And I just -- as I say, I'm very skeptical of  
2 going forward with this document on a 15-day time period  
3 from today and have it be representative and agreed to  
4 by all parties concerned.

5 VICE-CHAIR WARREN: Commissioner Wood.

6 COMMISSIONER WOOD: I deeply respect the  
7 gentleman to my right, but in the realities of life, if  
8 we were to delay this again even appropriately 30 days,  
9 60 days, 90 days, we would have the same dilemma. There  
10 would be people bringing suggestions, ideas and changes  
11 to the last minute.

12 I've been a contractor in my life, along with  
13 other things, but, you know, you like to have the house  
14 all done on a particular day, but I'll guarantee you the  
15 date that it was supposed to close and be done -- I'm a  
16 realtor -- that day there will be 90 things that have to  
17 be done that day, and if you delay that closing another  
18 15 days, there will be a thousand things that have to be  
19 done on that final day.

20 So I think it's appropriate for us to march  
21 forward, do the best that we possibly can and put this  
22 behind us.

23 Thank you.

24 VICE-CHAIR WARREN: I think in going along  
25 with that, to my knowledge I think there are several

1 people here that were in support of this going forward.  
2 The cards indicate at least three, and I think the  
3 comments might have indicated more. But I think we do  
4 have a time constraint here that we don't have an option  
5 on, and just having had the privilege of working on  
6 stakeholders groups in the past, there's an inordinate  
7 amount of time and consideration, huge amounts of time  
8 and consideration that is given to this. Now whether or  
9 not it's been equal representation, that is certainly  
10 debatable. You look at the attendees and the  
11 participants.

12 But again, I agree with Commissioner Wood  
13 that this does go on and on. And Mr. Hoke is Superman.  
14 You'll notice that there will be comments, all of these,  
15 and the Q and A, they're all listed, Department's  
16 response listed, Department's response, and we can  
17 address that at the next meeting.

18 So some of these are overlay. Some of these  
19 are issues that were brought up that weren't even part  
20 of the discussion in the stakeholders group, so that's  
21 kind of bringing on a new car to add to the train when  
22 it's already leaving the track, the station.

23 So that being said I appreciate everybody's  
24 input, their work, their consideration, and we're all  
25 eagerly looking forward to the end product here.

1           So unless we have any additional comments, if  
2           somebody did not speak and would like to, you're  
3           certainly welcome to come forward, fill out a card and  
4           we'll be glad to hear you at this time. Otherwise we  
5           will go ahead and close the hearing.

6           COMMISSIONER REECE: A question.

7           VICE-CHAIR WARREN: Yes.

8           COMMISSIONER REECE: John, when does this  
9           document have to be submitted to EPA in its final form,  
10          John Hoke?

11          You're asking for Commission approval on  
12          December the 6th, and then from that point on when does  
13          this have to be submitted?

14          MR. HOKE: Correct. So we're asking for  
15          adoption by the Commission of an Order of Rulemaking  
16          which would take into consideration comments received  
17          and any changes on December 6th. That day is ahead of  
18          the required date the EPA must propose a rule,  
19          December 15.

20          We believe the adoption by the Commission of  
21          the nutrient criteria and other portions of this rule  
22          will send a strong message to EPA and the State, which  
23          is to retain this rule and maintain the State rule for  
24          numeric nutrient criteria.

25          COMMISSIONER REECE: When will this document

1 be reviewed again?

2 MR. HOKE: Right. So after you adopt on  
3 December 6, there are a couple State administrative  
4 procedures that we have to go through.

5 The first would be submitting it to the Joint  
6 Committee on Administrative Rules at the General  
7 Assembly. We would do that as expeditiously as possible  
8 following a Commission adoption, and, you know, the  
9 earliest would probably be December 15. So quick  
10 turnaround at the Commission meeting to get it filed.

11 Once that is done JCAR has their own  
12 administrative process they go through. Our next step  
13 would be to file at the Secretary of State 30 days  
14 later. That will set into motion publication of the  
15 Order of Rulemaking in the Missouri Register, which  
16 would include our response to comments on the proposed  
17 rule, as well as response to comments on the Regulatory  
18 Impact Report, whose public notice closes this Friday,  
19 Black Friday.

20 And then once that is published the rule  
21 would then be published in the Missouri Register and  
22 have an effective date 30 days later. We anticipate our  
23 timeline for something you can hold in your hand and  
24 see, you know, it's established but not yet effective  
25 sometime late February or early March.

1                   COMMISSIONER REECE: So this rule is going to  
2 be submitted to EPA before the State approves it is  
3 basically what you're saying?

4                   MR. HOKE: The EPA is doing the rule  
5 currently in its current state. They'll be able to see  
6 what is published on the Order of Rulemaking, which will  
7 have any changes. I'm not going to speak for their  
8 legal staff, but we need to submit it to them with a  
9 certification by our Attorney General's Office that is  
10 it has gone through our State process correctly, and  
11 that would likely be no sooner than early next year in  
12 the late February timeline before we'd have that  
13 certification from the AGO.

14                   And so that package which would include a  
15 certification, all of our rationale, all of our data,  
16 our final rule as it's been published in the Register,  
17 will go to them for approval and then they will be on a  
18 timeline according to the Federal rule to approve or  
19 disapprove.

20                   COMMISSIONER REECE: Thanks, John.

21                   VICE-CHAIR WARREN: You might miss Christmas  
22 too. Thank you.

23                   Since we don't have any further comments  
24 we'll go ahead and close the session.

25                   The Department will accept comments on the

1 proposed rule amendments until 5:00 p.m. Tuesday,  
2 November 28th, 2017. Written comments on the proposed  
3 rule revisions can be submitted either online at  
4 [dnr.mo.gov/proposed/rules](http://dnr.mo.gov/proposed/rules) or by mail at Department of  
5 Natural Resources Water Protection Program, Post Office  
6 Box 176, Jefferson City, Missouri 65102-0176, Attention:  
7 WQS Coordinator. Contact information and all comments  
8 should include your name, e-mail address and phone  
9 number.

10 On behalf of the Commission I thank everyone  
11 who has participated in this process. This hearing is  
12 now closed.

13 WHEREIN, the hearing concluded at 10:38 a.m.

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CERTIFICATE OF REPORTER

I, Patricia A. Stewart, CCR, a Certified Court Reporter in the State of Missouri, do hereby certify that the testimony taken in the foregoing transcript was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this transcript was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Patricia A. Stewart  
CCR 401

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