



Missouri Clean Water Commission
P.O. Box 176, Jefferson City, Missouri 65102

Notice of Open Meeting
Missouri Clean Water Commission

People with disabilities requiring special services or accommodations to attend the meeting can make arrangements by calling the Commission secretary at 573-751-1911, the Division's toll-free number at 1-800-361-4827, or by writing two weeks in advance of the meeting to: Department of Natural Resources, Missouri Clean Water Commission Secretary, P.O. Box 176, Jefferson City, MO 65102. Hearing impaired individuals may contact the program through Relay Missouri at 1-800-735-2966.

AGENDA
MISSOURI CLEAN WATER COMMISSION MEETING

Lewis and Clark State Office Building
1101 Riverside Drive
Jefferson City, Missouri
January 9, 2019

OPEN SESSION – Convene 9 a.m.

Call to Order/Introductions

Ashley McCarty, Chair, Missouri Clean Water Commission

Administrative Matters

1. Administrative Hearing Commission's Recommended Decision Regarding PVC Management II, Appeal No. CWC 18-0549

Recommended Action: The Department recommends the Commission address pending motions and hear from the attorneys of the parties and make a decision to issue or deny the permit, based on the appeal.

2. Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan Amendment
Hannah Humphrey, Financial Assistance Center

Recommended Action: The Department recommends the Commission approve the amendment to the Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan as proposed.

3. Approval of the November 27, 2018, Missouri Clean Water Commission Closed Meeting Minutes

Recommended Action: The Department recommends the Commission approve the minutes from the November 27, 2018, closed meeting.

Presentations

4. Director's Update

Chris Wieberg, Director, Water Protection Program

Recommended Action: Information only

5. Public Comment and Correspondence - This standing item provides an opportunity for comments on any issue pertinent to the Commission's role and responsibilities. The Commission encourages any and all interested persons to express their comments and concerns.

General Public

Recommended Action: Information only

6. Missouri Clean Water Commission Meetings

- April 10, 2019, Lewis and Clark State Office Building
- July 10, 2019, Lewis and Clark State Office Building
- October 9, 2019, Lewis and Clark State Office Building

Recommended Action: Information only

Closed Meeting - The Missouri Clean Water Commission may go into closed session at this meeting if such action is approved by a majority vote of the Commission members who constitute a quorum, to discuss legal, confidential or privileged matters under Section 610.021(1), RSMo (Supp. 1995); personnel actions under Section 610.021(3), RSMo (Supp. 1995); personnel records or applications under Section 610.021(13), RSMo (Supp. 1995) or records under Section 610.021(14), RSMo (Supp. 1995) which are otherwise protected from disclosure by law.

Target Adjournment: 3 p.m.

For more information contact:

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Missouri Clean Water Commission Meeting
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Room
1101 Riverside Drive
Jefferson City, Missouri

January 9, 2019

**Administrative Hearing Commission's Recommended Decision Regarding
PVC Management II, LLC ("Tipton East")
Permit Appeal No. 18-0549 CWC**

Issue: This agenda item requests a decision from the Missouri Clean Water Commission regarding appeal No. 18-0549. This appeal is of the concentrated animal feeding operation (CAFO) general permit number MOGS10560.

Background: On July 19, 2018, Petitioner Opponents of Cooper County CAFOs, LLC filed a complaint appealing the Missouri Department of Natural Resources' issuance of the permit. The Administrative Hearing Commission (AHC) held a hearing on September 24, 2018, and issued a recommended decision on November 16, 2018.

The recommended decision from the AHC is attached to this briefing and the appeal transcripts and records were provided to the Commissioners prior to this meeting.

Recommended Action: The Department recommends the Commission hear from the attorneys of all parties and make a decision on the appeal.

Attachments:

- Recommended Decision for 18-0549

Before the
Administrative Hearing Commission
State of Missouri



IN RE PVC MANAGEMENT II, LLC,)
Permit No. MOGS10560) No. 18-0549
)

RECOMMENDED DECISION

The Administrative Hearing Commission (“AHC”) recommends that the Missouri Clean Water Commission (“CWC”) sustain the Department of Natural Resources’ (“Department”) decision to issue PVC Management II, LLC, (“PVC”) a Missouri State Operating Permit (“the Permit”) to operate a concentrated animal feeding operation (“Tipton East CAFO”).

Procedure

On July 19, 2018, Opponents of Cooper County CAFOs, LLC (“OCCC”) filed a complaint appealing the Department’s decision to issue the Permit for the operation of the Tipton East CAFO at Renshaw Drive in Clarksburg, Missouri. On September 24, 2018, we held a hearing. Stephen Jeffery of the Jeffery Law Group, LLC, represented OCCC. Assistant Attorneys General Jennifer Hernandez and Shawna Bligh represented the Department. The matter became ready for our recommended decision on October 29, 2018, the date the last brief was due.

Findings of Fact

1. OCCC is a Missouri limited liability company registered in good standing with the Secretary of State.

2. Members of OCCC and its supporters reside in the vicinity of the Tipton East CAFO and fields where manure generated by the CAFO may be land applied.

3. Susan Williams and her son Fred Williams are members of OCCC who live in the vicinity of the CAFO property.

4. Susan Williams' source of drinking water for her property is a well that is 265 feet deep. She is concerned that her groundwater and drinking water will be contaminated by the Tipton East CAFO operation.

5. Fred Williams' source of drinking water for his property is a well that is 210 feet deep. He also testified that "my primary concern is the contamination of our groundwater." Tr. at 94.

6. There is no public water supply in South Moniteau County Township.

7. Gordon Wray testified on behalf of the Department at the hearing. He has been employed by the Department for three years. In his current position, Wray reviews and writes CAFO permits and other industrial stormwater permits. Wray reviewed the Tipton East CAFO permit application.

8. Wray is familiar with 10 CSR 20-6.300 and 10 CSR 20-8.300.

9. The Department received the permit application for the Tipton East CAFO on January 31, 2018.

10. The permit application indicated that the Tipton East CAFO intends to have 1,080 swine over 55 pounds in a farrowing building; 4,704 swine over 55 pounds in a gestation building; and 1,620 swine over 55 pounds and 324 swine under 55 pounds in the gilt development unit. Based on the total number of animal units the Tipton East CAFO intends to have on the premises, it will be classified as a Class 1C CAFO.

11. The permit application indicates that the Tipton East CAFO will be a no-discharge facility.

12. The Department relies upon the certification of a professional engineer to ensure that a CAFO is designed in accordance with 10 CSR 20-8.300. The Tipton East CAFO permit includes a certification from a licensed professional engineer in the state of Missouri.

13. The Department reviewed the website of the Missouri Secretary of State to ensure that the continuing authority was registered with the State of Missouri.

14. The Tipton East CAFO permit application materials include a Narrative Project Summary. The Narrative Project Summary includes the number of buildings and the number of animals to be housed at the Tipton East CAFO.

15. The Narrative Project Summary includes calculations of the amount of manure that would be generated at the Tipton East CAFO when operating at full capacity.

16. Tipton East CAFO will have at least 180 days of manure storage capacity when operating at full capacity.

17. The Tipton East CAFO permit application materials include a Nutrient Management Plan. The Nutrient Management Plan demonstrates how manure generated at the Tipton East CAFO would be land applied, including soil test information, projected crop types, and yield goals for crop types.

18. The Tipton East CAFO permit application materials include aerial and topographic maps. The aerial and topographic maps included with the permit application materials include the location of the buildings in relation to the 100-year FEMA flood map. No buildings at the Tipton East CAFO are within the 100-year FEMA flood zone.

19. The aerial and topographic maps also show the buffer distances for the Tipton East CAFO from the confinement buildings to occupied residences and the property lines for the facility.

20. The aerial and topographic maps show the setback distances between sensitive features, such as surface waters and residences, as required under 10 CSR 20-8.300.

21. The Tipton East CAFO permit application materials include neighbor notice letters and comments received by the Department. The Department posted a notice of public hearing on the Tipton East CAFO permit application and documentation for at least thirty days.

22. The Department prepared responses to the comments it received on the Tipton East CAFO.

23. The Department ultimately deemed the Tipton East CAFO permit application complete.

24. The Missouri Geological Survey did not conduct any review or make any determination as to the necessity for groundwater monitoring under 10 CSR 20-8.300(12).

25. The Department issued a general Missouri operating permit for the Tipton East CAFO on June 19, 2018.

26. At the hearing held on September 24, 2018, Corinne Bromfield, DVM, testified that she received her DVM in 2010 from the University of Florida, she is employed by the University of Missouri as an extension swine veterinarian, she is licensed to practice veterinary medicine in Missouri, she has published peer-reviewed publications in biomedical research, and she has some professional experience working on large swine farms.

27. Bromfield provided background information on a publication called the Food Animal Residue Avoidance Databank (FARAD), which lists 251 drugs approved for use in swine by the FDA, including antibiotics anthelmintics, supplements, and anti-inflammatories.

28. Animals metabolize veterinary pharmaceuticals through a variety of bodily processes, and typically when drugs are metabolized in the liver, they are excreted in feces. When metabolized in the kidneys, they are excreted in urine.

29. At the hearing, the deposition of Thomas Aley, RG, was accepted into the record over objection. In his deposition, Aley testified concerning his educational background, professional certifications in geology and forestry, peer-reviewed publications, professional presentations, awards, prior testimony concerning surface and groundwater pollution issues, congressional testimony, familiarity with the proposed Tipton East CAFO, and his review of information regarding the Tipton East CAFO.

30. According to the Natural Resource Conservation Service in its "Soil Survey of Cooper County, Missouri," the soils at and near the Tipton East CAFO site are Clafork series soils susceptible to "shrink-swell." The term "shrink-swell" means "The shrinking of the soil when dry and the swelling when wet. Shrinking and swelling can damage roads, foundations, and other structures. It can also damage plant roots." Ex. 15 at 150.

31. The geologic setting at and near the Tipton East CAFO site is Burlington-Keokuk limestone and karst, "a three-dimensional landscape located on and in a soluble rock in which there is appreciable water movement through dissolved-out openings in the bedrock." Ex 14 at 31.

32. Aley testified that in his professional opinion, the Tipton East CAFO has the potential to contaminate a drinking water aquifer.

33. At the hearing, the deposition of Ivan Cooper, PE, was accepted into the record over objection. In his deposition, Cooper testified concerning his 47 years of professional experience in water quality issues. He is a Board-certified environmental engineer and a Missouri licensed professional engineer. He has authored peer-reviewed publications, has made over 100

professional presentations, has given 24 prior depositions in subject matter regarding soil and groundwater contamination and the fate and transport of constituents, and has been certified as an expert witness in four court cases.

34. "Veterinary pharmaceuticals are those pharmaceuticals typically that would be used in -- used for animals, typically in -- in various formats, whether it's for treatment or control or prevention or growth, as applied to typically animals associated with cattle, swine, and fowl." Ex. 5 at 28.

35. "Pharmaceutical residues are those constituents of applied pharmaceuticals that would be excreted by animals. And the variety of pharmaceuticals that would be excreted would depend on how much each animal would uptake. And the residuals would be those either parent or metabolic compounds that would be excreted from the amount that an animal would not use or absorb." Ex. 5 at 28.

36. Cooper also testified that he was familiar with the Tipton East CAFO and he had reviewed information on the Missouri DNR website, the permit application, and the permit.

37. Clean Water Commissioners Ashley McCarty and John Reece both attended the April 18, 2018 public meeting conducted by the Missouri Department of Natural Resources concerning the Tipton East CAFO permit.

Conclusions of Law

We have jurisdiction to conduct the hearing on appeal from a clean water permit and recommend a decision to the CWC under contested case procedure. Section 621.250.¹ In all contested case administrative appeals heard by the AHC pursuant to § 621.250, the burden of proof is on the Department to demonstrate by a preponderance of the evidence the lawfulness of the finding, order, decision or assessment being appealed. Section 640.012.

¹ Statutory references are to RSMo 2016.

Standing

The Department does not challenge OCCC's standing to bring this action. We will briefly address the issue because if a party lacks standing, a tribunal cannot grant the relief requested and the case must be dismissed. *Brunner v. City of Arnold*, 427 S.W.3d 201, 211 (Mo. App., E.D. 2013). "[T]he question of a party's standing can be raised at any time, even *sua sponte* by [the Supreme Court]." *State ex rel. Mathewson v. Bd. of Election Comm'rs.*, 841 S.W.2d 633, 634 (Mo. banc 1992). In *Missouri Coalition for the Environment v. Herrmann*, 142 S.W.3d 700, 702 (Mo. banc 2004), the Supreme Court held: "Section 644.051.6 grants those denied a permit the right to appeal to the commission, and any person with an interest that is or may be adversely affected by a permit decision is permitted to appeal to the commission by 10 CSR 20-6.020(5)(C). Section 644.051.6 does not limit the right of appeal to the commission solely to those denied a permit, and 10 CSR 20-6.020(5)(C) [granting a right of appeal to those "adversely affected"] is not in conflict." OCCC, through the testimony of its members, has demonstrated that it is or may be adversely affected by the Department's decision to issue the permit. We therefore conclude that it has standing to appeal the Director's decision.

Evidentiary Rulings

At the hearing, we took a number of objections with the case. OCCC offered the testimony of Corinne Bromfield regarding veterinary medications over the Department's objection. The Department objected to the fact that Bromfield was not identified as a witness until after 5:00 p.m. on the Friday before the hearing, and the Department had no reasonable opportunity to conduct discovery related to her testimony. We agreed to hear her testimony and rule on the objection with the case. Because Bromfield's testimony consisted primarily of general veterinary knowledge and background information on a list of veterinary pharmaceuticals approved by the FDA, we find that the Department was not significantly

prejudiced, and now overrule the objection. In addition, OCCC offered interrogatories served upon PVC, a non-party to the case. PVC failed to respond. 1 CSR 15-3.420(1) provides that discovery in proceedings before the AHC is governed by the Missouri Supreme Court's Rules of Civil Procedure. Rule 57.01(a) only allows a party to serve interrogatories upon any other party. As PVC was not a party, and the interrogatories were not authorized; therefore, the interrogatories and the non-party's failure to respond are not substantive evidence. We sustain the Department's objection.

Finally, the Department objected to the admission of Aley's deposition testimony regarding soil characteristics and geological formations underlying the permitted facility, and Cooper's deposition testimony regarding the administration of veterinary drugs to animals at the facility and the potential discharge of such pharmaceutical residue in manure or urine. We overruled these objections and admitted the depositions. Our conclusions of law below reflect our finding that these topics are largely irrelevant. Nonetheless, we include certain summary information and opinions in our findings of fact as background for a better understanding of the facility and its operations, and the Petitioners' arguments. All other objections not specifically ruled upon elsewhere are overruled at this time.

Permit Requirements

In 10 CSR 20-6.300(2)(E), the CWC has prescribed the following criteria in connection with an application for a CAFO operating permit:

(E) Operating Permit Applications. This section describes the application process and requirements for CAFO operating permits. A separate application for each operating location must be submitted to the department.

1. The department will not examine the adequacy or efficiency of the structural, mechanical, or electrical components of the waste management systems, only adherence to rules and regulations. The issuance of permits will not include approval of such features.

2. Applications for general operating permits should be submitted at least ninety (90) days prior to the start of operation. Applications for site-specific operating permits shall be submitted at least one hundred eighty (180) days prior to the start of operation. The application shall include at a minimum the following documents:

A. Title page of engineering report or similar document sealed by a professional engineer including name of the operation, date the report was prepared, name and address of firm preparing the report, seal and signature of the engineer, and a statement indicating the project was designed in accordance with 10 CSR 20-8.300;

B. Narrative project summary. This shall describe the existing and any proposed modifications to operating conditions including the number of confinement buildings or areas, the total design capacity in animal units and actual animal numbers for each type of animal, and an explanation of the existing and/or proposed modifications to the waste management system;

C. Include the amount of manure generated annually, storage volume, and days of storage of all manure storage structures, including mortality composters;

D. A recent aerial or topographic map showing the extent of the production area including;

(I) All existing and proposed confinement buildings, open lots, manure storage structures;

(II) Surface waters and areas subject to a one hundred (100) year flood event within or adjacent to the production area; and

(III) Production area setback distances in accordance with 10 CSR 20-8.300(5)(B);

E. Nutrient Management Plan—

(I) NPDES permit – applications shall include the operations' nutrient management plan; or

(II) State no-discharge permit – applications for a new permit shall include the operations' nutrient management plan;

F. Applications for Class I CAFOs shall also include:

(I) An aerial or topographic map that meets the requirement of 10 CSR 20-6.300(3)(C)4.;

(II) Proof of neighbor notice to all parties listed in 10 CSR 20-6.300(3)(C)2.

3. For renewal of NPDES operating permits, a copy of the operations nutrient management plan shall be submitted if it has not previously been submitted.

4. When an application is submitted incomplete or any of the required permit documents are deficient, or if additional information is needed including, but not limited to, engineering design plans, the department will act in one (1) of the following ways:

A. The department may return the entire permit application back to the applicant for re-submittal; or

B. The applicant and/or the applicant's engineer will be notified of the deficiency and will be provided time to address department comments and submit corrections. Processing of the application may be placed on hold until the applicant has corrected identified deficiencies.

5. Applicants who fail to correct deficiencies and/or fail to satisfy all department comments after two (2) certified department comment letters shall have the application returned as incomplete and the permit fee(s) shall be forfeited. The department will grant reasonable time extensions when the applicant requests additional time to respond to department comments, however, such requests must be in writing and must occur within the time frame set by the department.

6. When the department has received all documents and information necessary for a properly completed operating permit application, including appropriate permit fees, the department will, review the application and said documents for compliance with this regulation and 10 CSR 20-8.300 and, if met, act in one (1) of the following ways:

A. For an operation seeking coverage under the state no-discharge general operating permit the department will issue the state no-discharge general operating permit; or

B. For an operation seeking coverage under the NPDES operating permit the department will post for fifteen (15) days on the department's webpage a notice of the pending CAFO NPDES permit. The notice will include an announcement of the opportunity for public review and comment on the CAFO's nutrient management plan and draft NPDES permit. The department will consider all comments before issuing the operating permit.²

The Department presented credible evidence, through the application, the permit and the testimony of its permit writer that it received all the required information, reviewed it, ultimately deemed the application complete, and issued the permit on June 19, 2018. OCCC asserts that the

² Certain other information, such as the identification of a continuing authority or the operation, maintenance, and modernization of the facility (10 CSR 20-6.010(3)(A)), the requirements of a nutrient management plan (10 CSR 20-6.300(3)(G)2A.), and specific design standards (10 CSR 20-8.300) are prescribed elsewhere in the CWC's regulations.

Tipton East CAFO failed to comply with certain other regulatory requirements. We examine these in turn.

Counts I and II – Failure to Investigate
Potential Spring and Well Contamination and the
Necessity for a Groundwater Monitoring System

OCCC alleges that the Department unlawfully issued the Permit because the Department failed to adequately and fully investigate whether a nearby spring and two unclosed wells present a risk to the regional drinking water aquifer. 10 CSR 20-8.300(12) requires the Missouri Geological Survey to determine whether a groundwater monitoring program must be implemented at a CAFO. That section states a determination will be made “by the Missouri Geological Survey on a case-by-case basis and will be based on potential to contaminate a drinking water aquifer due to soil permeability, bedrock, distance to aquifer, etc.” OCCC presented credible evidence that karst (permeable) geology along with an open spring and uncapped wells in the area of the Tipton East CAFO raise the potential to contaminate a drinking water aquifer, and that the “shrink-swell” characteristics of Clafork soils in the area raise the potential for cracking and seepage from the concrete manure storage structures.

While the criteria set forth in the regulation make groundwater monitoring seem prudent and desirable, § 640.710.1, the statute upon which the regulation is based, allows the Department to require monitoring only when, “in the determination of the division of geology and land survey, **class IA concentrated animal feeding operation lagoons are located in hydrologically sensitive areas where the quality of groundwater may be compromised.**” (emphasis added.) An administrative agency may not promulgate a regulation that is broader than the authorizing statute. *See Teague v. Mo. Gaming Comm’n*, 127 S.W.3d 679, 687 (Mo. App. W.D. 2003); *Westwood Country Club v. Director of Revenue*, 6 S.W.3d 885, 887 n.2 (Mo. banc 1999) (“The regulation of course cannot be broader than the statutory language”). PVC

applied for a permit as a Class IC CAFO, and it is beyond the Department's statutory authority to apply 10 CSR 20-8.300(12) to an application in this class. Wray's understanding was consistent with this interpretation: "Typically I believe that the department uses this regulation when it pertains to an earthen basin or lagoon, not a concrete manure storage pit." Tr. at 58. A case-specific determination was therefore unnecessary, and the Department's decision to issue the permit was not unlawful on this basis.

Count III – Failure to Inquire into
Veterinary Pharmaceuticals as a Water Contaminant

OCCC introduced evidence and testimony – over objection – regarding the administration of veterinary drugs, and the potential discharge of pharmaceutical residue in manure and urine, which may leak from the containment structures if they are damaged by the shrink-swell characteristics of the soil, and may enter the waters of the state if they are land-applied. Because of this, OCCC argues that the Department issued a permit to PVC in violation of the law because pharmaceutical residue would be, upon entering the waters of the state, a "water contaminant" as that term is defined in § 644.016(24). Section 644.051.1(1) makes it unlawful to "cause pollution of any waters of the state or to place or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state." In other words, the Department itself, by issuing a permit that allows a "water contaminant" to be spread in the land application fields where it is reasonably certain to reach the waters of the state, has violated the clean water law.

We disagree. The only provision of the permitting laws concerning the evaluation of CAFO waste to be land applied by a CAFO is 10 CSR 20-6.300(3)(G)2.C. This regulation requires that "manure be analyzed a minimum of once annually for nitrogen and phosphorus

content.” Because the permitting process limits the Department’s consideration of manure content to nitrogen and phosphorous, information regarding the use of veterinary pharmaceuticals or their presence in manure is – even if OCCC’s conclusion that pharmaceutical residue is a water contaminant – an operational concern, subject to the Department’s inspection and enforcement mechanisms. It is outside the scope of what the Department may consider in making a permitting decision. We conclude that the Department’s decision to issue the permit was not unlawful on this basis.

Count V³ – CWC Commissioners in
Attendance at the Public Hearing

Section 621.250.3 states, “The final decision of the commission shall be issued within one hundred eighty days of the date the notice of appeal in subsection 2 of this section is filed and shall be based only on the facts and evidence in the hearing record....” In *Friends of Responsible Agriculture v. Department of Natural Resources, et al.*, Case No. 15AC-CC00259 (Cole County Circuit Court 2015)⁴ two members of the CWC were ordered to recuse themselves based on their “gathering ‘facts and evidence’ outside the hearing record” regarding a CAFO permit appeal before the CWC. *Id.* We have found that Commissioners McCarty and Reece were present at an April 18, 2018 public hearing regarding the Tipton East CAFO, and we cite the law above for the Commissioners’ consideration. However, we have no power to superintend another agency’s procedures. *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm’n*, 700 S.W.2d 445, 450 (Mo. banc 1985). We therefore make no recommendation regarding recusal.

³ OCCC announced during the hearing that it would not be going forward with Count IV of its complaint.

⁴ None of the parties appealed the circuit court’s ruling.

Summary

We recommend that the CWC sustain the Department's decision to issue the Permit to the Tipton East CAFO.

SO RECOMMENDED on November 16, 2018.



BRETT W. BERRI
Commissioner

Missouri Clean Water Commission Meeting
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Room
1101 Riverside Drive
Jefferson City, Missouri

January 9, 2019

Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan Revisions

Issue: Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan Revisions.

Background: Financial Assistance Center staff is recommending that the project lists for the Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan be amended as follows:

- The City of Kansas City will be placed on the Large Metropolitan Areas & Districts Fundable List Available Funds for \$80,000,000. The city recently submitted an application for improvements to the Blue River Wastewater Treatment Plant, has met the readiness to proceed criteria and is eligible to be allocated funds.
- The City of Rolla, currently on the Planning List for \$28,830,000, will be moved to the Outstate Missouri Fundable project list since they have recently passed bonds and meet the readiness to proceed criteria.
- The Gravois Arm Sewer District-Phase 5, currently on the Planning List, will be moved to the Outstate Missouri Fundable project list since they have met the readiness to proceed criteria. The Gravois Arm Sewer District-Phase 5, is also requesting an increase of funds from \$2,420,000 to \$3,275,950, due to increased costs in their facility plan.
- The City of Carthage, currently on the Outstate Missouri Fundable project list, is requesting an increase from 4,000,000 to \$4,350,000, due to a scope of work change that includes additional wastewater improvements.
- The City of Miller, currently on the Planning List, is requesting an increase from \$1,464,835 to \$3,268,839, due to a change in scope of work to include wastewater treatment upgrades along with the collection system work originally planned.
- The applicant name is being corrected for two projects on the planning list to accurately reflect the applicant. Boone County RSD (Bolli Road Coll System) is changed to Boone County Commission (Bolli Road Coll System) and Boone County RSD (Phenora North Coll System) is changed to Boone County Commission (Phenora North Coll System).

With these changes the unallocated balance of funds available has decreased from \$162,318,226 to \$48,803,713. This available balance should encourage applicants on the Planning List to continue to progress their projects forward to meet the readiness to proceed criteria during Fiscal Year 2019.

In addition, on October 18, 2018, the Missouri Department of Natural Resources pledged interest from Clean Water and Drinking Water SRF loans, in addition to investing Drinking Water recycled funds, for a bond sale which generated \$24,000,462 in proceeds that will be used as state match for Clean Water State Revolving Fund capitalization grants for three years. An

update to the Sources and Uses of Funds on page 17 in the Intended Use Plan reflects the addition of the bond sale proceeds.

Recommended Action: The Department recommends the Commission approve changes to the Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan as follows:

- Add the City of Kansas City project in the amount of \$80,000,000 to the Large Metropolitan Areas & Districts Fundable List Available Funds project list.
- Move the City of Rolla project in the amount of \$28,830,000 to the Outstate Missouri Fundable project list.
- Move the Gravois Arm Sewer District-Phase 5 project to the Outstate Missouri Fundable project list and increase the amount from \$2,420,000 to \$3,275,950.
- Increase the City of Carthage project on the Outstate Fundable list from \$4,000,000 to \$4,350,000.
- Increase the City of Miller project on the Planning List, from \$1,464,835 to \$3,268,839.
- Change Boone County RSD (Bolli Road Coll System) to Boone County Commission (Bolli Road Coll System) and Boone County RSD (Phenora North Coll System) to Boone County Commission (Phenora North Coll System).

Sources and Uses of Funds Estimated Sources:

- Change “State Match (Bond Sale or Admin Fee Transfer from Fund 0568)*” with amount of \$26,697,000 to “2018A State Match Bond Proceeds*” with amount of \$24,000,462
- Change the amount of Total Estimated Sources from \$630,172,796 to \$627,476,258.

Sources and Uses of Funds Estimated Uses:

- Change Loan Funds Available for FY 19 CW IUP Projects from \$394,450,551 to \$391,754,013 due to change in the 2018A State Match Bond.
- Total Estimated Uses changed from \$630,172,796 to \$627,476,258.

Sources and Uses of Funds Notes:

- Change “* \$8,899,000 in state match is estimated to be needed for the FFY 2018 capitalization grant. A bond sale is expected to provide the state match needed.” to “*2018A bond proceeds to be used as state match for FY2019, FY2020, and FY2021 capitalization grants.”

Suggested Motion Language: I move to approve the proposed changes to the Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan and Priority List as proposed.

Attachments:

- Revised Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan project lists.



MISSOURI DEPARTMENT OF NATURAL RESOURCES

Fiscal Year 2019

(Oct. 1, 2018 – Sept. 30, 2019)

Clean Water State Revolving Fund Intended Use Plan And Priority List

Adopted October 18, 2018

Proposed Amendment January 9, 2018

List of Fiscal Year 2019 Applicants

Note: An explanation of the abbreviations and codes appears at the end of the list.

APPLICANT	APPLICATION DATE	PRIORITY POINTS	SERVICE AREA POP.	LIST LOCATION
Aurora - Phase II*	11/7/2016	105	7,508	Fund
Belle*	3/6/2017	115	1,545	C
Boone County RSD Commission (Bolli Road Coll System)*	11/15/2016	85	37	P
Boone County RSD (Lee Heights)	11/14/2017	135	82	OS
Boone County RSD (Oberlin Valley)	11/14/2017	135	297	OS
Boone County RSD Commission (Phenora North Coll System)*	11/15/2016	90	163	P
Carthage - WWTP Upgrades	2/20/2018	125	14,247	OS
Deer Run Reorganized Common Sewer District*	11/18/2016	90	385	P
Drexel	2/6/2018	85	965	OS
East Lynne*	2/21/2017	95	303	C
Garden City*	2/14/2017	60	1,642	Cont
Gravois Arm Sewer District - Phase 5*	11/16/2016	75	525	P
				OS
Greenfield	9/11/2017	95	1,500	OS
Kansas City	11/1/2018	135	631,000	LM
Labadie Creek Watershed Sewer District of Franklin County	11/14/2017	110	963	OS
LaGrange	11/7/2017	120	86	OS
Lancaster	4/3/2018	95	940	P
Lathrop*	10/25/2016	135	2,086	C
Liberal*	11/14/2016	75	759	P
Meadville*	10/11/2016	95	512	C
Miller	11/16/2017	90	725	P
Missouri Agriculture & Small Business Development*	10/25/2016	N/A	N/A	C
Missouri Public Utility Alliance-Resource Services Corporation	8/13/2018	N/A	N/A	DI
Moberly (Regional Lift Station)	11/15/2017	70	13,974	P
Moberly (Sewer Installation)	11/15/2017	70	13,974	P
Moscow Mills	11/17/2017	110	2,509	OS
MSD Public I/I Reduction Program - Phase 5	3/17/2017	155	1,300,000	C
MSD - Deer Creek Sanitary Relief	11/9/2017	140	30,000	LM
MSD - Deer Creek Tunnel Pump Station	11/9/2017	140	140,000	LM
MSD Public I/I Reduction Program - Phase 6	11/17/2017	175	1,300,000	LM
Northeast Public Sewer District Jefferson County	11/9/2017	140	30,166	OS
Peculiar*	11/17/2016	55	4,608	P
Perryville	10/27/2017	90	8,458	P
Poplar Bluff*	11/10/2016	105	17,023	C
Rolla	4/26/2018	85	20,000	P
				OS
Sunrise Beach*	11/16/2016	75	431	P
Troy*	11/16/2016	105	10,500	C
Urbana	12/26/2017	80	417	Cont
Weston*	11/15/2016	115	1,641	C
Windsor	2/22/2018	100	3,087	OS

An * indicates the project is carried over from last year's IUP.

Abbreviations and Codes

C – Carryover List	Fund – Fundable List
Cont – Contingency List	LM – Large Metropolitan Areas & Districts
CSO – Combined Sewer Overflow	OS - Outstate
DI - Department Initiatives	P – Planning List

**Sources and Uses of Funds
Capitalization Grants and Loan Repayments
(As of Dec. 31, 2017)**

Estimated Sources		
FFY 2017 CW SRF Capitalization Grant (federal portion only)	\$	29,800,582
FFY 2018 CW SRF Capitalization Grant (federal portion only, not yet awarded)	\$	44,495,000
Loan Repayment Fund (Balance in Fund 0602 as of 12/31/17)	\$	215,493,645
Balance of Fund 0649 as of 12/31/17	\$	1,308,678
Projected Savings from Bond Refinancing (1/1/18 - 9/30/20)	\$	8,968,577
Estimated CWSRF portion of Fund 0602 Investment Interest (1/1/18 - 9/30/20)	\$	6,217,075
Estimated CWSRF portion of Fund 0649 Investment Interest (1/1/18 - 9/30/20)	\$	39,700
Reserve Release (1/1/18 - 9/30/20)	\$	130,977,850
Direct Loans - Principal and Interest Repayments (1/1/18 - 9/30/20)	\$	166,174,689
State Match (Bond Sale or Admin Fee Transfer from Fund 0568) *	\$	26,697,000
2018A State Match Bond Proceeds*	\$	24,000,462
Total Estimated Sources		\$ 630,172,796 \$ 627,476,258
Estimated Uses		
Base Program Funds Committed for Direct Loans as of 09/30/17	\$	139,009,921
Base Program Funds Committed for Direct Grants as of 09/30/17	\$	4,214,624
4% Administrative Expenses from FFY 2017 Capitalization Grant	\$	1,469,873
4% Administrative Expenses from FFY 2018 Capitalization Grant	\$	1,779,800
Match Bond Debt Service (A2010 and A2012)		
Remaining Principal Due as of 09/30/17	\$	4,896,000
Interest Due Through 9/30/2018	\$	122,400
Additional Match Bond Debt Service Due through FY 2018 **	\$	167,476
2010B and 2015A Pledge Commitments (10/1/17 - 9/30/20)	\$	21,553,325
Anticipated Direct Loans during FY 2018 (10/1/17 - 9/30/18)	\$	53,158,000
Anticipated Direct Grants during FY 2018 (10/1/17 - 9/30/18)	\$	-
FFY 2016 Capitalization Grant Additional Subsidization-Required	\$	1,225,926
FFY 2016 Capitalization Grant Additional Subsidization-Optional ***		Up to \$2,000,000
FFY 2017 Capitalization Grant Additional Subsidization-Required	\$	3,675,400
FFY 2017 Capitalization Grant Additional Subsidization-Optional ***		Up to \$2,000,000
FFY 2018 Capitalization Grant Additional Subsidization-Required	\$	4,449,500
FFY 2018 Capitalization Grant Additional Subsidization-Optional ***		Up to \$2,000,000
Loan Funds Available for FY 19 CW IUP Projects	\$	394,450,551
	\$	391,754,013
Total Estimated Uses		\$ 630,172,796 \$ 627,476,258

* 2018A bond proceeds to be used as state match for the FY2019, FY2020 and FY2021 capitalization grants.

** Debt Service for the Match Bond Debt Service currently being funded from the Clean Water SRF program rather than state funds.

*** The department will utilize up to this amount. As grant funds are awarded, loan funds will be reduced accordingly. See Appendix 5 for more information.

Loan and Grant Commitments 1/1/18 through 9/30/18	Loan	Grant	Total
Ashland - Funded 3/27/18	6,408,000	-	6,408,000
Center Creek 201 Board - Funded 09/28/18	2,750,000	-	2,750,000
MSD Gravois Trunk Sanitary Storage Facility	44,000,000	-	44,000,000
			-
Total Commitments 1/1/18 - 9/30/18	53,158,000	-	53,158,000

Allocation of Available Loan Funding

It is important to note:

- * The fundable project lists may change significantly between the draft Intended Use Plan placed on public notice and the final version approved by the Clean Water Commission.
- * The inclusion of a project on the fundable list is not a guarantee of funding. Other factors, such as timely progress toward funding, compliance with program requirements and funding availability, may impact project funding.
- * Projects carried over from the 2018 Intended Use Plan retain the points they received under the criteria in effect at the time they initially applied. Carry-over projects in the fiscal year 2019 Intended Use Plan are not eligible to compete in the fiscal year 2020 Intended Use Plan unless reapplication is made by November 15, 2018.

Loan Balance Forward from Fundable Carry-over Project Lists		\$ 303,230,196
		\$ 300,533,658
		\$ 121,292,079
Outstate Missouri (1)	40%	\$ 120,213,463
		\$ 90,969,059
Large Metropolitan Areas and Districts (2)	30%	\$ 90,160,097
		\$ 45,484,529
Combined Sewer Overflow (CSO)	15%	\$ 45,080,049
		\$ 45,484,529
Department Initiatives	15%	\$ 45,080,049

(1) Service area population of less than 75,000.

(2) Service area population of 75,000 or more.

Financial Summary of the Fundable Projects Lists (loan funding only)

	Outstate Missouri	Large Metropolitan Areas & Districts	Combined Sewer Overflow	Department Initiatives	Total
Loan Allocation	\$ 120,213,463	\$ 90,160,097	\$ 45,080,049	\$ 45,080,049	\$ 300,533,658
Total Projects (1)	\$ (79,529,945)	\$ (172,200,000)	\$ -	\$ -	\$ (251,729,945)
Balance Before Transfers	\$ 40,683,518	\$ (82,039,903)	\$ 45,080,049	\$ 45,080,049	\$ 48,803,713
Transfers		\$ 45,080,049	\$ (45,080,049)		
	\$ 8,120,195	\$ 36,959,854		\$ (45,080,049)	
					\$ -
Total Transfers	\$ 8,120,195	\$ 82,039,903	\$ (45,080,049)	\$ (45,080,049)	\$ -
Balance Available (2)	\$ 48,803,713	\$ -	\$ -	\$ -	\$ 48,803,713
Amount Forward to Project Tables (3)	\$ 128,333,658	\$ 172,200,000	\$ -	\$ -	\$ 300,533,658

(1) From the Project Lists on the subsequent pages.

(2) Balance may be shifted to other categories to fund projects that are ready to proceed.

(3) Amount equals the Allocation + Total Transfers.

Fiscal Year 2019 Project Lists

Applicant	Project #	Description/ Needs Category	Priority Points	Service Area Population	Eligible Costs	Loan Amount	Grant Amount	NPDES #	Problem Code	Financing Schedule FY - Quarter
Outstate Missouri Fundable List Available Funds						\$ 211,030,194				
						\$ 128,333,658	\$ 13,273,844			
Northeast Public Sewer District Jefferson County	C295684-05	TP Impr; I	140	30,166	\$ 5,000,000	\$ 5,000,000	\$ -	MO-0128490	5	19-2
Boone County RSD (Oberlin Valley)	C295375-26	Coll, FM, PS; IVB	135	297	\$ 674,741	\$ 674,741	\$ -	MO-0117323	5	19-1
Boone County RSD (Lee Heights)	C295375-28	Coll, FM, PS; IVB	135	82	\$ 629,968	\$ 629,968	\$ -	MO-0102113	5	19-1
Carthage - WWTP Upgrades	C295809-01	TP Impr; I	125	14,247	\$ 4,000,000 \$ 4,350,000	\$ 4,000,000 \$ 4,350,000	\$ - \$ -	MO-0039136	5	19-2
LaGrange	C295830-01	Coll, FM; IVA	120	86	\$ 1,006,667	\$ 1,006,667	\$ -	MO-0041203	1	19-4
Moscow Mills	C295810-01	PS, I; IVA, IVB	110	2,509	\$ 2,592,585	\$ 1,296,293	\$ 1,296,292	MO-0129852 MO-0119709	1	19-1
Labadie Creek Watershed Sewer District of Franklin County	C295727-01	TP, Coll, Exp; II, IVA	110	963	\$ 3,000,000	\$ 3,000,000		Multiple	1	19-1
Windsor	C295512-01	TP Impr, I/I; I, IIIA, IIIB	100	3,087	\$ 5,000,000	\$ 3,000,000	\$ 2,000,000	MO-0047325 MO-0047317	1	19-2
Greenfield	C295831-01	Coll Impr, FM; I	95	1,500	\$ 1,454,350	\$ 727,175	\$ 727,175	Multiple	5	19-1
Perryville	C295832-01	TP, Impr, PS; I, II	90	8,458	\$ 27,509,650	\$ 27,509,650	\$ -	MO-0051144	5	19-4
Drexel	C295803-01	TP, Impr, I/I; I, IIIA, IVB	85	965	\$ 2,067,826	\$ 1,033,913	\$ 1,033,913	MO-0023655 MO-0023663	5	19-1
Rolla	C295836-01	TP, Exp; II	85	20,000	\$ 28,830,000	\$ 28,830,000	\$ -	MO-0047031 MO-0050652	1	19-4
Urbana	C295834-01	TP Impr, Coll, I/I; I, II, IIIB	80	417	\$ 1,667,125	\$ 833,563	\$ 833,562	MO-0095176	5	19-3
Gravois Arm Sewer District - Phase 5 *	C295826-01	IIIB	75	525	\$ 2,420,000 \$ 3,275,950	\$ 2,420,000 \$ 1,637,975	\$ 1,637,975	MO-0134821	5	20-2
Total Outstate Missouri Fundable Projects					\$ 54,602,912 \$ 87,058,862	\$ 48,711,970 \$ 79,529,945	\$ 5,890,942 \$ 7,528,917			
Balance						\$ 162,318,224 \$ 48,803,713	\$ 7,382,902 \$ 5,744,927			

Applicant	Project #	Description/ Needs Category	Priority Points	Service Area Population	Eligible Costs	Loan Amount	Grant Amount	NPDES #	Problem Code	Financing Schedule FY - Quarter
Large Metropolitan Areas & Districts Fundable List Available Funds						\$ 92,200,000				
						\$ 172,200,000				
MSD Public I/I Reduction Program - Phase 6	C295023-41	I/I	175	1,300,000	\$ 41,200,000	\$ 41,200,000	\$ -	Multiple	4, 5	19-4
MSD Deer Creek Sanitary Relief	C295833-01	Coll	140	30,000	\$ 29,000,000	\$ 29,000,000	\$ -	MO-0025151	4, 5	20-1
MSD Deer Creek Tunnel Pump Station	C295833-02	Coll	140	140,000	\$ 22,000,000	\$ 22,000,000	\$ -	MO-0025151	4, 5	20-1
Kansas City	C295840-01	TP; I	135	631,000	\$ 80,000,000	\$ 80,000,000	\$ -	MO-0024911	5	22-3
					\$ 92,200,000	\$ 92,200,000				
Total Large Metropolitan Areas & Districts Fundable Projects					\$ 172,200,000	\$ 172,200,000				
Balance						\$ -				

Combined Sewer Overflow Fundable List Available Funds						\$ -				
Total Combined Sewer Overflow Fundable Projects						\$ -	\$ -			
Balance						\$ -				

Department Initiatives Fundable List Available Funds						\$ 7,382,902				
						\$ 5,744,927				
Missouri Public Utility Alliance - Resource Services Corporation	C295837-01		N/A	N/A	\$ 300,000		\$ 300,000			
Total Department Initiatives Fundable Projects					\$ 300,000	\$ -	\$ 300,000			
Balance						\$ 7,082,902				
						\$ -	\$ 5,444,927			

Applicant	Project #	Description/ Needs Category	Priority Points	Service Area Population	Eligible Costs	Loan Amount	Grant Amount	NPDES #	Problem Code	Financing Schedule FY - Quarter
Fundable Contingency List (Complete Facility Plan Submitted and Approved Debt Instrument)							\$ 7,082,902			
							\$ 5,444,927			
Aurora - Phase II *	C295711-02	I	105	7,508	\$ 1,324,870	\$ 662,435	\$ 662,435	MO-0036757	5	19-2
Total Fundable Contingency Projects							\$ 6,420,467			
					\$ 1,324,870		\$ 4,782,492			

Contingency List (Complete Facility Plan Submitted)							\$ 6,420,467			
							\$ 4,782,492			
Garden City*	C295829-01	TP Impr	60	1,642	\$ 200,000	\$ 100,000	\$ 100,000	MO-0046647	5	20-4
Total Contingency Projects							\$ 6,320,467			
					\$ 200,000		\$ 4,682,492			

Planning List										
<i>Note: Information will be added to the shaded columns when the project moves to the fundable or contingency list.</i>										
Boone County RSD Commission (Boll Road Coll System) *	C295375-25		85	37	\$ 200,000					
Boone County RSD Commission (Phenora North Coll System) *	C295375-24		90	163	\$ 198,090					
Deer Run Reorganized Common Sewer District *	C295815-01		90	385	\$ 1,808,100					
Gravois Arm Sewer District - Phase 5 *	C295826-01		75	525	\$ 2,420,000					
Lancaster	C295804-01		95	940	\$ 2,227,325					
Liberal *	C295827-01		75	759	\$ 1,709,337					
Miller	C295726-02		90	725	\$ 1,464,835					
					\$ 3,268,839					
Moberly (Sewer Installation)	C295648-02		70	13,974	\$ 1,650,000					
Moberly (Regional Lift Station)	C295648-03		70	13,974	\$ 3,000,000					

Applicant	Project #	Description/ Needs Category	Priority Points	Service Area Population	Eligible Costs	Loan Amount	Grant Amount	NPDES #	Problem Code	Financing Schedule FY - Quarter
Peculiar *	C295824-01		55	4,608	\$ 8,129,713					
Rolla	C295836-01		85	20,000	\$ 28,830,000					
Sunrise Beach *	C295540-02		75	431	\$ 3,013,000					
Total Planning List Projects					\$ 54,650,400					
					\$ 54,034,404					

Description Reference List		Problem Codes	Needs Codes
Coll	Collection	1 - NPDES Permit Violation	I Secondary Treatment
CSO	Combined Sewer Overflow	2 - Unpermitted Discharge	II Advanced Treatment
Det	Detention	3 - Water Quality Stds. Violation	IIIA I/I correction
Exp	Expansion	4 - Public Health Problems	IIIB Sewer replacement or rehabilitation
FM	Force Main	5 - Future NPDES Violation Expected	IVA New Collection
Impr	Improvements		IVB New Interceptors
I	Interceptor		V CSO
I/I	Inflow/Infiltration		VIIIB NPS: Animal
NPDES	National Pollution Discharge Elimination System		VIIID NPS: Urban
NPS	Non Point Source		
PS	Pump Station		
Rehab	Rehabilitation		
TP	Treatment Plant		

Notes:

Final eligible costs will be determined as documents are submitted and the project is closer to financing.

Financing schedule shown is for planning purposes only. Final scheduling will be determined as documents are submitted and approvals obtained.

An * indicates the project is carried over from the previous year's IUP.

Carry over projects from the fiscal year 2018 list must reapply to be considered for the fiscal year 2020 list.

Confidential November 27, 2018, Closed Session Minutes provided to the Missouri Clean Water Commissioners for review and approval.

Missouri Clean Water Commission Meeting
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Room
1101 Riverside Drive
Jefferson City, Missouri

January 9, 2019

Director's Update

Issue:

Routine update to the Commission

Recommended Action:

Information only

Missouri Clean Water Commission Meeting
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Room
1101 Riverside Drive
Jefferson City, Missouri

January 9, 2019

Public Comment and Correspondence

Issue:

This standing item provides an opportunity for comments on any issue pertinent to the Commission's role and responsibilities. The Commission encourages any and all interested persons to express their comments and concerns.

General Public

Recommended Action:

Information only

Missouri Clean Water Commission Meeting
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Room
1101 Riverside Drive
Jefferson City, Missouri

January 9, 2019

Future Meeting Dates

Information:

Missouri Clean Water Commission Meeting dates and locations:

April 10, 2019, Lewis and Clark State Office Building
July 10, 2019, Lewis and Clark State Office Building
October 9, 2019, Lewis and Clark State Office Building

Recommended Action:

Information only