

**DRAFT  
MINUTES OF THE  
MISSOURI CLEAN WATER COMMISSION MEETING  
Department of Natural Resources  
Lewis and Clark State Office Building  
LaCharrette/Nightingale Creek  
Jefferson City, MO 65102**

**January 4, 2012**

**Present**

Sam Hunter, Chair, Missouri Clean Water Commission  
Todd Parnell, Vice-Chair, Missouri Clean Water Commission  
William A. Easley, Jr., Missouri Clean Water Commission  
Sam Leake, Missouri Clean Water Commission  
Jan Tupper, Missouri Clean Water Commission  
Dennis Wood, Missouri Clean Water Commission  
Wallis Warren, Missouri Clean Water Commission  
John Madras, Director of Staff, Missouri Clean Water Commission  
Jennifer Frazier, Counsel, Missouri Clean Water Commission  
Malinda Steenbergen, Secretary, Missouri Clean Water Commission

Bob Angelo, Environmental Protection Agency, Kansas City, Kansas  
Bill Arnold, City of Perry, Perry, Missouri  
Melissa Bagley, Environmental Protection Agency, Kansas City, Kansas  
Karen Bataille, Missouri Department of Conservation, Columbia, Missouri  
Dorris Bender, City of Independence, Independence, Missouri  
Joe Blume, Department of Natural Resources, Jefferson City, Missouri  
Michael Bollinger, Ameren, St. Louis, Missouri  
Mark C. Bross, Klingner and Associates, Hannibal, Missouri  
Robert Brundage, Newman, Comley & Ruth P.C., Jefferson City, Missouri  
Mary West-Calcano, Jacobs Engineering, St. Louis, Missouri  
Dennie Carothers, City of Clarence, Clarence, Missouri  
John Carter, Self, Rolla, Missouri  
Lorin Crandall, Missouri Coalition for the Environment, St. Louis, Missouri  
Rebecca Cripe, Department of Natural Resources, Jefferson City, Missouri  
Aimee Davenport, Lathrop & Gage, Jefferson City, Missouri  
John DeLashmit, Environmental Protection Agency, Kansas City, Kansas  
Jeffrey Doss, Northeast Sewer District, Fenton, Missouri  
Keith Forck, Department of Natural Resources, Jefferson City, Missouri  
Tom Frasca, Self, Festus, Missouri  
Mark Fugull, City of Perry, Perry, Missouri  
Ed Galbraith, Barr Engineering, Jefferson City, Missouri  
Carol K. Garey, Department of Natural Resources, Jefferson City, Missouri

Doug Garrett, Department of Natural Resources, Jefferson City, Missouri  
Peter Goode, Washington Univ./Missouri Coalition for the Environment, St. Louis, Missouri  
Ron Hardecke, Owensville, Missouri  
John Hoke, Department of Natural Resources, Jefferson City, Missouri  
Leslie Holloway, Missouri Farm Bureau, Jefferson City, Missouri  
Liz Hubertz, Washington Univ/Missouri Coalition for the Environment, St. Louis, Missouri  
Scott Knight, Northeast Public Sewer District, St. Louis, Missouri  
Ted Koenig, Department of Natural Resources, Jefferson City, Missouri  
Ann Lavaty, Environmental Protection Agency, Kansas City, Kansas  
Barbara Li, Shafer, Kline & Warren, Inc., Columbia, Missouri  
John Lodderhose, Metropolitan St. Louis Sewer District, St. Louis, Missouri  
Stee Loethen, City of St. Thomas, St. Thomas, Missouri  
Randy Lyman, City of Springfield, Springfield, Missouri  
Linda Mebruer, Department of Natural Resources, Jefferson City, Missouri  
Colleen Meredith, Department of Natural Resources, Jefferson City, Missouri  
Steve Meyer, City of Springfield, Springfield, Missouri  
Jan Millington, City of Springfield, Springfield, Missouri  
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri  
Nate Moore, Rose Acre Farms, Missouri  
Byron M. Murray, Department of Natural Resources, Jefferson City, Missouri  
Terry Nelson, Department of Natural Resources, Jefferson City, Missouri  
Traci Newberry, Department of Natural Resources, Jefferson City, Missouri  
Kevin Perry, REGFORM, Jefferson City, Missouri  
John Pozzo, Ameren, St. Louis, Missouri  
Tom Ratermann, Boone County Regional Sewer District, Columbia, Missouri  
Tonya Roth, Department of Natural Resources, Jefferson City, Missouri  
Amanda Sappington, Department of Natural Resources, Jefferson City, Missouri  
Dan Schuette, Flotron & McIntosh, Lohman, Missouri  
Lorisa Smith, Department of Natural Resources, Jefferson City, Missouri  
Thomas Smith, Newman, Comley & Ruth, Jefferson City, Missouri  
Darrick Steen, Department of Natural Resources, Jefferson City, Missouri  
Charlie Stevens, City of Liberty, Liberty, Missouri  
Trent Stober, Geosyntec, Columbia, Missouri  
Kavan L. Stull, EDEC, Joplin, Missouri  
Jeff Theerman, Metropolitan St. Louis Sewer District, St. Louis, Missouri  
Scott Totten, Department of Natural Resources, Jefferson City, Missouri  
Roger Walker, REGFORM, Jefferson City, Missouri  
Phil Walsack, Missouri Public Utility Alliance, Columbia, Missouri  
Sunny Wellesley, Environmental Protection Agency, Kansas City, Kansas  
Julie Westhoff, Kennedy/Jenks Consultants, Mission, Kansas  
Joseph M. Zulovich, University of Missouri Extension, Columbia, Missouri

## CALL TO ORDER

Chair Hunter called the meeting of the Missouri Clean Water Commission to order on January 4, 2012 at 9:10 a.m., at the Department of Natural Resources' Lewis and Clark State Office Building located at 1101 Riverside Drive, Jefferson City, Missouri.

Chair Hunter made introductions of the Commissioners, Staff Director, Legal Counsel, and Commission Secretary.

## ADMINISTRATIVE MATTERS

### **Public Hearing – 10 CSR 20-7.031 Water Quality Standards** **Agenda Item #1**

The Missouri Clean Water Commission held a public hearing for the purpose of receiving oral testimony on proposed amendments to 10 CSR 20-7.031, Water Quality Standards. John Hoke of the Watershed Protection Section presented testimony on behalf of the Department. Sixteen individuals representing agricultural, industrial, and municipal stakeholders, environmental groups and the general public provided oral testimony during the hearing. Testimony received at the hearing included concerns regarding the cost of the proposed rule amendments, the extent to which the rule applied Clean Water Act designations to more Missouri waters, and issues regarding federal water quality criteria being implemented in state regulation. It was noted that written comments would be accepted until 5:00 p.m. on January 18, 2012. The Commission will take final action on the rulemaking at the March 7, 2012 meeting. Presenting testimony were:

Ed Galbraith, Barr Engineering  
Leslie Holloway, Missouri Farm Bureau  
Aimee Davenport, Lathrop & Gage  
Ron Hardecke, Self  
Roger Walker, REGFORM  
Trent Stober, Geosyntec  
Tom Ratermann, Boone County Regional Sewer District  
Lorin Crandall, Missouri Coalition for the Environment  
Phil Walsack, Missouri Public Utility Alliance  
Mary West-Calcano, Jacobs Engineering  
Jeff Theerman, Metropolitan St. Louis Sewer District  
Steve Meyer, City of Springfield  
Robert Brundage, Newman, Comley & Ruth, P.C.  
Liz Hubertz, Washington University/Missouri Coalition for the Environment  
Peter Goode, Washington University/Missouri Coalition for the Environment  
John Carter, Self

A Court Reporter from Midwest Litigation was in attendance and the official hearing transcript is attached.

**Approval of the November 2, 2011 Missouri Clean Water Commission Meeting Minutes**  
**Agenda Item #2**

**Commissioner Leake made a motion to approve the November 2, 2011 meeting minutes as submitted. Commissioner Tupper seconded the motion. The motion passed with a roll call vote:**

**Commissioner Wood: Yes**  
**Commissioner Tupper: Yes**  
**Commissioner Parnell: Yes**  
**Commissioner Warren: Yes**  
**Commissioner Leake: Yes**  
**Chair Hunter: Yes**

**10 CSR 20-6.300 Concentrated Animal Feeding Operations**  
**Agenda Item #3**

Darrick Steen representing the Water Protection Program presented the Order of Rulemaking for the Concentrated Animal Feeding Operation (CAFO) regulation 10 CSR 20-6.300. Mr. Steen provided a short background on the rule and explained changes that had been made to section (3)\*(B)2 of the Order. Mr. Steen provided revised copies of the Order reflecting the changes to the Commission. Mr. Steen noted that the rule would have an effective date of April 30, 2012.

**Commissioner Tupper made a motion to approve the filing of the Order of Rulemaking for 10 CSR 20-6.300, Concentrated Animal Feeding Operation with the revision to section (3)(B)2 as presented by staff. Commissioner Leake seconded the motion. The motion passed with a roll call vote:**

**Commissioner Wood: Yes**  
**Commissioner Tupper: Yes**  
**Commissioner Parnell: Yes**  
**Commissioner Warren: Yes**  
**Commissioner Leake: Yes**  
**Chair Hunter: Yes**

**10 CSR 20-8.300 Manure Storage Design Regulations**

**Agenda Item #4**

Darrick Steen representing the Water Protection Program presented the Order of Rulemaking for the new Manure Storage Design regulation 10 CSR 20-8.300. Mr. Steen noted that this is a new regulation that did not previously exist and provided a short background on the rule. Mr. Steen noted that the rule would have an effective date of April 30, 2012.

**Commissioner Leake made a motion to approve the filing of the Order of Rulemaking for 10 CSR 20-8.300 Manure Storage Design Regulation as presented by staff. Commissioner Tupper seconded the motion. The motion passed with a roll call vote:**

**Commissioner Tupper: Yes**  
**Commissioner Parnell: Yes**  
**Commissioner Warren: Yes**  
**Commissioner Leake: Yes**  
**Commissioner Wood: Yes**  
**Chair Hunter: Yes**

**10 CSR 20-6.010 Construction and Operating Permits**

**Agenda Item #5**

John Rustige, Permits and Engineering Section presented the Order of Rulemaking for the Construction and Operating Permits regulation 10 CSR 20-6.010. Mr. Rustige stated that a recent court decision ruled that pesticides applied into or onto water are not exempt from the National Pollutant Discharge Elimination System (NPDES) permits. Mr. Rustige noted that modifying the exemption allows the Department to issue permits consistent with the court ruling and with the permitting requirements imposed by the Environmental Protection Agency. He noted that as a result of comments received, the Department recommended that the Commission withdraw proposed changes to rule language regarding the discharge of water used to flush potable water distribution systems and fire hydrants as well as language that clarified when a lower preference continuing authority may be available to an applicant for the operation of a new wastewater treatment facility. Mr. Rustige noted that the rule would have an effective date of April 30, 2012.

**Commissioner Leake made a motion to approve the filing of the Order of Rulemaking for 10 CSR 20-6.010 Construction and Operating Permits as presented by staff with the noted changes. Commissioner Tupper seconded the motion. The motion passed with a roll call vote:**

**Commissioner Parnell: Yes**  
**Commissioner Warren: Yes**  
**Commissioner Leake: Yes**  
**Commissioner Wood: Yes**  
**Commissioner Tupper: Yes**  
**Chair Hunter: Yes**

**State Fiscal Year 2012 Clean Water State Revolving Fund Intended Use Plan Amendment**  
**Agenda Item #6**

Doug Garrett, Financial Assistance Center presented the amended State Fiscal Year 2012 Clean Water State Revolving Fund Intended Use Plan. Mr. Garrett noted that the following projects had met the readiness to proceed criteria, as established by the Commission, and were moved to the appropriate funding project funding list.

Boone County Commission, C295685-01, Manchester Heights I.S., move from the Planning List to the Fundable Contingency List with an eligible project cost of \$382,978.

Boone County Regional Sewer District:

- C295375-10, Sunrise Estates Int., move from the Planning List to the Fundable Contingency List with an eligible project cost of \$652,592.
- C295375-11, Spring Park Int., move from the Planning List to the Fundable Contingency List with an eligible project cost of \$417,273.
- C295375-12, Rocky Fork WWTP, move from the Planning List to the Fundable Contingency List with an eligible project cost of \$11,431,926.
- C295375-13, Highway HH WWTP, move from the Planning List to the Fundable Contingency List with an eligible project cost of \$4,901,400.
- C295375-15, Energy Efficiency Upgrades, move from the Planning List to the Fundable Contingency List with an eligible project cost of \$66,671.
- C295375-18, Westwood Meadows, move from the Planning List to the Fundable Contingency List with an eligible project cost of \$386,325.

Lake Ozark, C295646-02, from the planning list to the Fundable Contingency List with an eligible project cost of \$2,722,674.

Rocky Mount Sewer District, C295623-01, from the Planning List to the Disadvantaged Community Reserve with an eligible project cost of \$4,000,000.

Bill Arnold, City of Perry and Mark Bross, Klingner and Associates requested the proposed project for the City of Perry be moved from the Fundable Contingency List to the Fundable List. Scott Knight representing the Northeast Public Sewer District made a request to have the C295684-02 Upper Saline Creek project consolidated with the C295684-03 Saline Creek project. The District requested that the scope of the Saline Creek project be revised to include the Upper Saline Creek project without an increase in the original Saline Creek project cost estimate. Phil Walsack, Missouri Public Utility Alliance noted his support of moving the City of Perry to the Fundable List.

**Commissioner Leake made a motion to approve the proposed changes to the State Fiscal Year 2012 State Revolving Fund Project Lists as presented by staff and to include moving the City of Perry to the Fundable List and the consolidation of the Northeast Public Sewer District Upper Saline Creek project with the Saline Creek project. Commissioner Parnell seconded the motion. The motion passed with a roll call vote:**

**Commissioner Warren: Yes  
Commissioner Leake: Yes  
Commissioner Wood: Yes  
Commissioner Tupper: Yes  
Commissioner Parnell: Yes  
Chair Hunter: Yes**

Phil Walsack, Missouri Public Utility Alliance inquired what the political implications of the State Revolving Fund for 2013 would be if there were budget cuts at the federal level.

## **ENFORCEMENT**

### **Toulon Heights Subdivision, Jefferson County, MO-0089729 – Referral to the Attorney General’s Office**

#### **Agenda Item #7**

Kevin Mohammadi, Compliance and Enforcement Section presented the Toulon Heights Subdivision, Jefferson County, MO-0089729 case and proposed that the Commission refer the case to the Attorney General’s Office contingent upon a 45 day period for the parties involved to reach an agreement.

**Commissioner Leake made a motion to refer this matter to the Attorney General’s Office contingent upon a 45 day period for the parties involved to reach an agreement. If an agreement is not reached within 45 days the case would then be referred for appropriate legal action in order to compel compliance, pursue a civil penalty and/or seek any other appropriate form of relief. Commissioner Tupper seconded the motion. The motion passed with a roll call vote:**

**Commissioner Leake: Yes  
Commissioner Wood: Yes  
Commissioner Tupper: Yes  
Commissioner Parnell: Yes  
Commissioner Warren: Yes  
Chair Hunter: Yes**

**Outstanding Missouri Operating Permit Fees**  
**Agenda Item #8**

Byron Murray, Fiscal Management Section presented the Outstanding Missouri Operating Permit Fees. Mr. Murray recommended referring nine facilities to the Missouri Attorney General’s Office for collection of outstanding fees; four from July 2011 and five from August 2011. The facilities listed for referral were: Red Bird Pre-Mix Company, Current River Gravel & Ready Mix, S & K Meats, Crashsite Parts Sales & Towing, Chula Wastewater Treatment Plant, Cape Fair Mobile Home Park, Crouch Meats, Bernadette Business Forms, and R & R New Parts and Salvage.

**Commissioner Tupper made a motion to refer the nine facilities to the Attorney General’s Office for appropriate legal action in order to collect delinquent permit fees, compel compliance for any other violaton of Missouri Clean Water Law and Clean Water Commission regulations, pursue a civil penalty, and/or see any other appropriate form of relief. Commissioner Leake seconded the motion. The motion passed with a roll call vote:**

<b>Commissioner Wood:</b>	<b>Yes</b>
<b>Commissioner Tupper:</b>	<b>Yes</b>
<b>Commissioner Parnell:</b>	<b>Yes</b>
<b>Commissioner Warren:</b>	<b>Yes</b>
<b>Commissioner Leake:</b>	<b>Yes</b>
<b>Chair Hunter:</b>	<b>Yes</b>

**STAFF UPDATES**

**Permits and Water Quality Review Sheet Update**  
**Agenda Item #9**

Refaat Mefrakis, Permits and Engineering Section presented an update on permit performance. No action taken by the Commission.

**Financial Assistance Center Update**  
**Agenda Item #10**

Doug Garrett, Financial Assistance Center presented the following updates:

- State Revolving Fund (SRF) Refunding - EIERA Series 2011A - SRF Refunding occurred on November 21, 2011. The refunding issue encompassed 15 series of bonds for previously funded drinking water and wastewater SRF projects. Market conditions were very favorable at the time of pricing. The par amount of Clean Water State Revolving Fund (CWSRF) bonds was \$96,350,000. The annual savings for the CWSRF program was \$10,553,300 which will be realized over a 13 year period.

- State Fiscal Year 2013 Intended Use Plan (IUP) - Mr. Garrett noted that staff intend to have a draft document available for public review and comment available by the end of January. He stated that a public hearing at the March Clean Water Commission meeting will be necessary followed by adoption of a final IUP at the May meeting. The Commission was informed that the draft IUP would include information relative to the Governor's Our Missouri Waters Initiative.
- Federal Funding – Mr. Garrett provided information regarding the federal 2012 budget. He stated that based on the federal appropriation, the State Revolving Fund program expects to receive approximately \$38.9 million but noted that the exact Missouri allotment would not be known until the Environmental Protection Agency reviews the budget documents. Mr. Garrett noted that it is the intent of staff to apply for the funds as soon as they become available.

No Action was taken by the Commission.

### **Status of Rulemaking**

#### **Agenda Item #11**

Carol Garey, Water Protection Program presented an update on rulemaking. No action was taken by the Commission.

## **STANDING ITEMS**

### **Legal Report**

Jennifer Frazier, Legal Counsel to the Commission did not have any items to report to the Commission. No action was taken by the Commission.

### **Director's Update**

John Madras, Director, Water Protection Program noted several upcoming meetings of interest to the Commission and those in attendance, including:

- Effluent Regulation Workgroup January 10, 2012
- Fees Stakeholder meeting January 12, 2012
- Affordability Workgroup January 24, 2012
- Water Protection Forum February 6, 2012

- Environmental Protection Agency (EPA) Municipal Planning Workshop in Kansas City February 15, 2012. John DeLashmit of the Environmental Protection Agency added that the contact at EPA for more detailed information for the workshop was Tonya Nicks, telephone number (913) 551-7170.
- There are ongoing efficiency projects, including:
  - ePermitting
  - Compliance Assistance
  - Watershed-based Management

Mr. Madras noted that the Department announced the Our Missouri Waters initiative, with three pilot watersheds. The initiative focuses Department attention on the watersheds across the full range of services we provide. The pilot watersheds are Spring River, Lower Grand and the Big Rivers.

No action was taken by the Commission.

## **PRESENTATIONS**

### **Public Comment and Correspondence**

Ed Galbraith of Barr Engineering addressed the Commission on the desire of several people to comment on response to comment documents on rulemakings and other matters before the Commission at the time the Commission is making a decision.

Dennie Carothers of the City of Clarence spoke to the Commission on the clean water actions the city is taking, including sewer rehabilitation, adding disinfection and other upgrading, and described the significant costs involved for a small city.

Phil Walsack of the Missouri Public Utility Alliance mentioned several matters related to the high costs of clean water improvements, including the bankruptcy of a major metropolitan area (not in Missouri), as well as his concerns that costs estimates on rulemakings appear too low. He stated the Missouri General Assembly may take further action on affordability in 2012.

No action was taken by the Commission.

Commissioner Wood commented that Bill Easley was no longer a Commissioner and commended him for his years of service to the Commission.

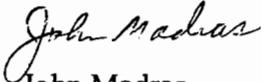
### ADJOURNMENT OF MEETING

**Commissioner Tupper made a motion to adjourn the meeting. Commissioner Leake seconded the motion. The motion passed unanimously with a roll call vote:**

<b>Commissioner Wood:</b>	<b>Yes</b>
<b>Commissioner Tupper:</b>	<b>Yes</b>
<b>Commissioner Parnell:</b>	<b>Yes</b>
<b>Commissioner Warren:</b>	<b>Yes</b>
<b>Commissioner Leake:</b>	<b>Yes</b>
<b>Chair Hunter:</b>	<b>Yes</b>

The meeting adjourned at 2:15 p.m.

Respectfully Submitted,



John Madras  
Director of Staff



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DEPARTMENT OF NATURAL RESOURCES  
MISSOURI CLEAN WATER COMMISSION

IN RE: PUBLIC HEARING  
10 CSR 20-7.031 WATER QUALITY STANDARDS

January 4, 2012

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DEPARTMENT OF NATURAL RESOURCES  
MISSOURI CLEAN WATER COMMISSION

IN RE: PUBLIC HEARING  
10 CSR 20-7.031 WATER QUALITY STANDARDS

January 4, 2012

Department of Natural Resources  
Lewis and Clark State Office Building  
1101 Riverside Drive  
Jefferson City, Missouri

- BEFORE: Samuel Hunter, Chairman  
Todd Parnell, Commissioner  
Wallis Warren, Commissioner  
Samuel Leake, Commissioner  
Jan Tupper, Commissioner  
Dennis Wood, Commissioner  
William Easley, Jr., Commissioner

REPORTED BY:  
KELLENE K. FEDDERSEN, RPR, CSR, CCR  
Missouri CCR No. 838  
Midwest Litigation Services  
3432 West Truman Boulevard, Suite 207  
Jefferson City, MO 65109

1 (WHEREUPON, the hearing began at  
2 9:08 a.m.)

3 COMMISSIONER HUNTER: At this point we'll  
4 start with tab No. 1 in the agenda. This is a proposed  
5 rule 10 CSR 20-7.031, water quality standards.

6 The purpose of this public hearing is to  
7 provide the Department opportunity to present testimony  
8 and to provide both the Department and the public the  
9 opportunity to comment on the proposed amendment.

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

14 The Commission will first hear testimony  
15 from the Department. Following the Department's  
16 testimony, the Commission will give the public an  
17 opportunity to comment.

18 We ask that all individuals present fill  
19 out an attendance card so our records are complete. If  
20 you wish to present verbal testimony, please indicate that  
21 on your attendance card. When you come forward to present  
22 testimony, please speak into the microphone and begin by  
23 identifying yourself to the court reporter.

24 Following the public hearing today, the  
25 Commission will review testimony presented and make

1 appropriate modifications to the proposed rule  
2 10 CSR 20-7.031, water quality standards. The Commission  
3 plans to take final action at the March 7th, 2012 meeting.

4 The court reporter will now swear in anyone  
5 wishing to testify at this public hearing before the Clean  
6 Water Commission today. Will all those wishing to comment  
7 please stand.

8 (Witnesses sworn.)

9 MR. HOKE: Thank you, Chairman Hunter,  
10 Commissioners. Good morning. My name is John Hoke. I'm  
11 the acting chief the Watershed Protection Section within  
12 the Water Protection Program. I'll try to keep my remarks  
13 today brief. There's a lot of folks who want to speak on  
14 this rule, and I want to be sure we get their testimony.

15 The purpose of this rulemaking is to update  
16 Missouri's water quality standards to make them  
17 functionally equivalent to federal standards and to  
18 improve the clarity, specificity and effectiveness of the  
19 rule. Several of the revisions are department priorities  
20 as well as responses to decisions by the U.S.  
21 Environmental Protection Agency and revisions as a result  
22 of petitions that were presented before this Commission.

23 The rulemaking went through a regulatory  
24 impact report which was open for public comment from  
25 June 3rd, 2012 through August 12 -- sorry -- June 3rd,

1 2011 through August 12, 2011. Comments and responses to  
2 the RIR have been posted at the Water Protection Program's  
3 rules and development web page.

4 On December 1st, 2011, the proposed  
5 amendment to 10 CSR 20-7.031 Water Quality Standards was  
6 placed on public notice. Public comment period was from  
7 December 1st, 2011, the date of publication in the  
8 Missouri Register, through January 18, 2012.

9 Just to bring you up to speed and as a  
10 reminder, the water quality standards to be addressed  
11 during this rulemaking include the following:

12 Applying fishable/swimmable use  
13 designations to currently unclassified waters as required  
14 by Section 101(a) of the federal Clean Water Act;

15 Incorporating new federal Section 304(a)  
16 criteria into 10 CSR 20-7.031, Table A. New criteria  
17 additions have resulted in the need for better format and  
18 layout of Table A, so that table has now been revised and  
19 split into three tables, Table A1, A2 and A3;

20 Expanded dissolved oxygen water quality  
21 criteria per federal 304(a) guidance;

22 Revisions to chloride and sulfate water  
23 quality criteria in response to a petition before this  
24 Commission from the Missouri Agri Business Association;

25 Revised phenol water quality criteria in

1 response to another petition before this Commission from  
2 Associated Industries of Missouri.

3                   The rulemaking package includes a response  
4 to the U.S. Environmental Protection Agency regarding  
5 their October 29th, 2009 decision that new or revised  
6 standards are needed on a short segment of the Mississippi  
7 River outside the City of St. Louis.

8                   The rulemaking also includes the addition  
9 of various authorizing provisions to recommend variances  
10 from water quality standards when standards are not  
11 achievable through traditional regulatory approaches.

12                   The rulemaking also contains a number of  
13 reformatting and typographical error corrections that the  
14 department or commenters have led us to make those  
15 revisions.

16                   That concludes my remarks for this hearing.  
17 If you have any questions, I'd be more than happy to  
18 answer them.

19                   COMMISSIONER HUNTER: Thank you, John.

20                   MR. HOKE: Thank you.

21                   COMMISSIONER HUNTER: We have quite a few  
22 people this morning that would like to comment on this  
23 rulemaking, and so in the interest of brevity, we are  
24 going to try to limit each comment to a five-minute  
25 period. At that point then we will need to call another

1 commenter.

2 We're going to start this morning with Amy  
3 Davenport.

4 MS. DAVENPORT: Good morning, Chairman  
5 Hunter, members of the Commission. I'm Amy Davenport with  
6 the law firm of Lathrop & Gage, and on behalf of a group  
7 of numerous regulated stakeholders, I'd like to thank this  
8 Commission and the Department for its hard work and  
9 expertise in moving Missouri's Water Quality Standards  
10 forward.

11 The purpose of my testimony today is to  
12 address the fiscal note associated with this rule, a key  
13 component of this rule, an important one at that.

14 In Missouri, the Department is required to  
15 do a fiscal note when the cost of a rule will exceed \$500  
16 or more for any public or private entity or person.  
17 Missouri law also requires that the Department outline a  
18 detailed cost estimate for the cost of compliance for the  
19 rule and to ensure and attest that that estimate is  
20 reasonably accurate.

21 Recently the Missouri Court of Appeals  
22 emphasized how important this requirement is to make sure  
23 that the fiscal note is accurate and correct by stating  
24 that the Department must perform a comprehensive and  
25 diligent effort, put forth a comprehensive and diligent

1 effort to identify all affected parties and must ensure  
2 that its estimate is reasonable, realistic and makes good  
3 sense.

4                   The fiscal note as written is not complete,  
5 and as you'll hear from a couple of others testifying  
6 subsequent to me, there are costs that have been  
7 overlooked and need to be included in this fiscal note.

8                   We ask that this Commission take that into  
9 consideration and include those costs and acknowledge them  
10 in this fiscal note, and I'd be happy to answer any  
11 questions and appreciate you hearing my testimony this  
12 morning. Thank you.

13                   COMMISSIONER HUNTER: Thank you, Amy. Next  
14 is Phil Walsack.

15                   MR. WALSAK: Good morning. I have not had  
16 the five-minute card flashed before me before, so here we  
17 go. My name is Phil Walsack. I work for the Missouri  
18 Public Utility Alliance in Columbia. We're an association  
19 of 110 municipal governments here representing 1.1 million  
20 ratepayers and taxpayers today.

21                   Thank you for the opportunity to comment on  
22 the fiscal note and the regulatory impact report and the  
23 draft revisions to the Water Quality Standards established  
24 in 10 CSR 20-7.031. The Missouri Public Utility Alliance  
25 would like to thank the Commission in advance for their

1 willingness to hear this message.

2                   For the record, I placed an elephant in the  
3 room. While it's a stuffed animal, it is symbolic of the  
4 real elephant in the room, the cost of environmental  
5 regulations and specifically the cost of the revised rule.  
6 The cost of regulations are increasing and are  
7 increasingly important to the nation and to the state of  
8 Missouri.

9                   Visible evidence of this can be seen on the  
10 national political arena. In the Republican presidential  
11 debate, several of the candidates have spoken about  
12 transforming the EPA, about overregulation of -- on  
13 business ventures and about the regulatory burden placed  
14 on taxpayers and ratepayers.

15                   EPA is feeling the pressure and is only now  
16 beginning to respond. The acting administrator for water,  
17 Nancy Stoner, authored a memo dated October 27th, and  
18 there's an indication that EPA will be integrating storm  
19 water and wastewater planning and costs.

20                   On December 12th of last year, a hearing  
21 much like this one was held at the nation's Capitol on  
22 Capitol Hill, and the hearing was held in the U.S. House  
23 of Representatives chamber. Two speakers from midwest  
24 Missouri municipalities gave presentations, Mayor Reardon  
25 from Kansas City, Kansas and Mayor Suttle from Omaha,

1 Nebraska.

2                   Mayor Suttle of Omaha stated before  
3 Congress that the critical issue on water-related mandates  
4 is that of affordability. He stated that the nation's CSO  
5 overflow programs and projects are now spending 15 percent  
6 more than their current revenue streams allow on CSO  
7 eliminations. For the seven Missouri CSO communities that  
8 ratio is worse at 22 percent and is spending more in  
9 revenue than they are currently bringing in. In Missouri  
10 those communities are St. Louis, Kansas City, Cape  
11 Girardeau, Macon, Moberly, St. Joe and Sedalia.

12                   Mayor Suttle also notes that the great  
13 recession alone does not fully explain the deficit  
14 spending in the growth in long-term debt. He along with  
15 many in the environmental protection community state that  
16 the effects of this practice will be experienced long into  
17 the future.

18                   Mayor Reardon of Kansas City puts it this  
19 way: The consent order being pressed forward by EPA seeks  
20 to put the city's sewer rate at 3.1 percent of the median  
21 household income for the next 25 years. He emphasized  
22 that meeting the combined overflow mandate for his city is  
23 four times higher than that of his annual budget.  
24 Presented in a different light, EPA wants the city to  
25 spend more on its sewer system than it will spend in four

1 years on police and fire, jail, roads and bridges, parks  
2 and recreation and social service programs, all of the  
3 functions of municipal government.

4 Now, I use these previous comments in front  
5 of our elected officials in Washington, D.C. to amplify  
6 Missouri's municipal concerns about the fiscal note in the  
7 RIR presented for the Water Quality Standards before you  
8 today. These comments emanate from written comments  
9 presented in a letter dated August the 12th sent to the  
10 Department as part of a large effort crafted by Mr. Ed  
11 Galbraith of Barr Engineering. We were one of the  
12 signaturees of that letter.

13 In summary, the RIR's fiscal note does not  
14 accurately describe current cost estimates to be borne by  
15 municipal governments when these cities are required to  
16 implement the proposed water body classification system,  
17 the 1 to 100,000 NHD, National Hydrography Dataset map.

18 MPUA noticed the Department that it was not  
19 using recent cost estimates from municipalities whose  
20 wastewater systems will be affected. Communities whose  
21 products are listed on the current state revolving loan  
22 fund list were not included. Wastewater projects listed  
23 on the recently completed 604(b) grant funded wastewater  
24 needs assessment were not included. The most current PER,  
25 preliminary engineering report and facility plan submitted

1 to the states engineering by the engineering firms in this  
2 state were not considered. This is not reasonable nor is  
3 it forthright.

4                   Based on the Department's response to  
5 Mr. Galbraith's cooperatively submitted letter, the  
6 Department gives this response, and now I quote: The RIR  
7 requires the best estimates of the cost and impacts of the  
8 proposed rule. The Department documents estimates of  
9 potential costs of the potential -- of the proposed rule  
10 in the RIR with the realization that actual costs may, in  
11 fact, be higher or lower for any specific individual  
12 facility.

13                   I hereby challenge the Department to  
14 provide an example, one example in which the price of  
15 chlorination and dechlorination facility upgrades for a  
16 facility treating less than 1 million gallons a day meets  
17 the \$16,100 threshold presented in the RIR.

18                   As this Commission knows, MPUA gave a  
19 presentation in the summer entitled The Tale of Ten  
20 Cities. In a cursory review, MPUA presented the fact that  
21 the closest current and actual cost estimate of the  
22 Department was 2.7 times higher and 29.2 times in the  
23 worst case scenario.

24                   COMMISSIONER HUNTER: Thank you, Phil.

25                   MR. WALSAK: In closing, there's an

1 elephant in the room. The elephant in the room is cost.  
2 The elephant should be green for the cost of money. The  
3 current cost of environmental regulations should be viewed  
4 honestly, transparently and with reason. Thank you very  
5 much.

6 COMMISSIONER HUNTER: I thought we were in  
7 Iowa there for a minute.

8 MR. WALSHACK: You're welcome. Would you  
9 like me to take him with me?

10 COMMISSIONER HUNTER: Thank you. Next is  
11 Mary West.

12 MS. WEST: Thank you, Commissioner Hunter  
13 and the remaining Commissioners, for the opportunity to  
14 speak today. My name is Mary West. I'm with Jacobs  
15 Engineering.

16 I'm also here to address the public fiscal  
17 note for the rule. We did comment on this in the  
18 Galbraith letter during the RIR comment period, and we  
19 believe that the Department did not sufficiently give  
20 weight to that comment particularly as it applies to  
21 ammonia limits for small entities, particularly lagoons,  
22 or other entities that discharge to unclassified waters.

23 The portion of the rule that I'm speaking  
24 of is the Section 4, delineation of 1 to 100 K for  
25 beneficial uses, fishable and swimmable.

1                   We believe that a subset of the municipal  
2 permittees that operate lagoon systems will be affected by  
3 this rule change. The lagoon policy used by Missouri's  
4 regulatory agency requires that permittees that discharge  
5 to unclassified waters using the current definition  
6 monitor for ammonia. I have a copy of the lagoon renewal  
7 policy, the copy of the lagoon flow chart for issuing  
8 permits, and the total ammonia nitrogen implementation  
9 criteria, and I actually brought copies for you. I took  
10 lessons from Phil, but I did not bring an elephant.

11                   I would draw your attention on the first  
12 page to the sentence at the bottom of the Galbraith memo  
13 when he was with the Department that points out that all  
14 of the actions in the memo are consistent with existing  
15 permit renewal conditions and include no new  
16 interpretation of existing regulations.

17                   The next part of the copy material that I  
18 would draw your attention to today that applies to my  
19 comments is page 4 of 10 of the ammonia implementation  
20 guidance, the fourth bullet down. For discharges to  
21 unclassified waters and facilities with design flow less  
22 than 22,500 gallons per day, if adequate data are  
23 available for conducting an RPA, the analysis must be  
24 conducted. If adequate data are not available, the permit  
25 should be reissued with a monitoring requirement for total

1 ammonia nitrogen and the RPA performed at renewal. Permit  
2 writers have the discretion to add a reopener clause to  
3 the permit to perform the RPA sooner than renewal provided  
4 adequate data become available.

5                   The next bullet, discharges to classified  
6 waters with limited assimilative capacity have reasonable  
7 potential or cause -- to cause or contribute to an  
8 exceedance of ammonia.

9                   So there is a difference in how the  
10 Department has treated discharges to classified waters  
11 versus unclassified waters. Particularly as it states on  
12 pages 2 -- page 2 and page 3 of that same memo, acute  
13 criteria shall not be exceeded at any time except in those  
14 waters for which the Department has allowed a zone of  
15 initial dilution. There is no zone of initial dilution  
16 for small streams because they're listed as no flow, and  
17 so there is no zone of dilution allowed. Chronic criteria  
18 shall not be exceeded except in water segments for which  
19 the Department has allowed a mixing zone.

20                   Currently I believe the Department's  
21 response to comments said, cost estimates for ammonia  
22 controls were not included in the RIR because current  
23 permitting practice is to protect aquatic life to chronic  
24 toxicity levels regardless of distance to the first  
25 classified receiving stream.

1                   I maintain that when you change all of the  
2 streams to classified, that all streams will have to be  
3 protected to both the acute and the chronic level, and so  
4 there are hundreds of facilities in the state that are  
5 going to have to upgrade to ammonia removal technology.  
6 For lagoons, this is extremely difficult in many cases and  
7 will require upgrades. Those costs are not included in  
8 the public fiscal note anywhere.

9                   Thank you for letting me make comments  
10 today, and I'd be happy to answer any questions.

11                   COMMISSIONER HUNTER: Thank you very much,  
12 Mary. Next is Roger Walker.

13                   MR. WALKER: Good morning, Mr. Chairman,  
14 members of the Commission. I want to talk a little about  
15 the 1 to 100,000 dataset and a little bit on defining  
16 waters of the state.

17                   I am executive director of REGFORM. I'm  
18 also an attorney with Armstrong Teasdale. I teach  
19 environmental law at St. Louis University, and I don't  
20 mention that for puffery. It's just that I do have to pay  
21 attention to some of these issues.

22                   I passed out a short presentation. I'll  
23 stay within the five minutes and just hit the highlights.  
24 I also will be providing additional written testimony by  
25 January 18th.

1                   Slide No. 1, I just wanted to point out  
2 that, you know, these answers on what's protected, what's  
3 waters of the state, they're really straightforward. It  
4 gets complicated at the margins. And I wanted to also  
5 note, as you're well aware, these issues get very  
6 politicized with the state. On a federal level, there's  
7 been legislation introduced on sides, both sides, folks  
8 who want it more protected, make it more clear in the  
9 Clean Water Act, folks who want it less protected, less  
10 restricted. Drawing that line has always been  
11 complicated.

12                   It's also been a bit of a legal maelstrom.  
13 The Supreme Court three times, three cases have tried to  
14 decide what is navigable waters, what are waters of the  
15 states. All that interplays with this.

16                   I have a couple slides just outlining what  
17 Missouri law is on waters of the state. It's pretty  
18 narrow, pretty brief rather. I will say that Missouri  
19 statute does not incorporate, does not include all waters  
20 of the state. It's very clear, it does not. I would get  
21 more detailed, but I only have five minutes.

22                   The Clean Water Act makes it unlawful to  
23 discharge any pollutant without a permit into navigable  
24 waters, and according to the Clean Water Act, navigable  
25 waters are the waters of the United States. So a little

1 bit more about that.

2 Clean Water Act is also a little broader  
3 than just traditional navigable. It includes relatively  
4 permanent bodies of water. The Clean Water Act also  
5 separately defines various point sources. Includes lots  
6 of exceptions.

7 I think what I want to get into is the  
8 slide where it talks about easy, harder and hardest and  
9 just say a few words about that. Like I said, traditional  
10 navigable, waters that have relatively permanent flow,  
11 wetlands adjacent to these permanent flows, that's easy.  
12 It gets harder when you're talking about ditches,  
13 seasonal, things that aren't permanent, waters that are  
14 ephemeral, wetlands that are not adjacent to navigable in  
15 fact can be included in there. That's where it gets  
16 harder.

17 It gets hardest when the gray areas are  
18 what's -- the Supreme Court uses the term significant  
19 nexus, trying to decide whether a water body that's not  
20 one of those traditional, that's not close to a permanent,  
21 whether it's -- whether it's -- there's a significant  
22 nexus to what's traditionally navigable in fact.  
23 So is there a significant nexus, and there's -- the  
24 Supreme Court laid it out pretty detailed. It's by no  
25 means clear.

1                   But I will say that those hardest ones are  
2 a case-by-case basis. They're fact specific. They're  
3 case by case. It is not all waters of the state. Clearly  
4 neither the Supreme Court nor the Clean Water Act nor  
5 Missouri law requires all waters, anything, anywhere  
6 there's a drop of water to be jurisdictional.

7                   The last slide I just wanted to say with  
8 respect to the 1 to 100,000 concept that's proposed, it's  
9 in the ballpark. There's folks I work with, they're not  
10 crazy about it. They think it's too restrictive. I know  
11 there are others who think it's not restrictive enough.

12                   What I want to say is whether you like the  
13 idea or not, it's in my view consistent with Missouri law,  
14 fits within Missouri law, and it's permissible within the  
15 scope of the Clean Water Act, Section 101(a)(2). If you  
16 look at the federal law, if you look at the Supreme Court  
17 decisions, this 1 to 100,000 fits within that framework.

18                   It's not what everyone wants. If you want  
19 all waters all time always protected as jurisdictional  
20 waters, it doesn't do that. If you want waters -- if you  
21 want a reasonable approach where you're protecting those  
22 waters which are the easy ones, it does that. And I think  
23 it protects most of what I would say the harder ones as I  
24 defined them.

25                   And I think when it gets to the hardest,

1 the Supreme Court has always said that that's a  
2 case-by-case determination. I think this approach gets us  
3 in the ballpark to protect many of those without doing a  
4 case-by-case and also allows the state to move forward,  
5 you know, in a reasonable manner to protect waters of the  
6 state as defined by that parameter for beneficial uses,  
7 et cetera.

8                   There's lots of nuances that others will  
9 talk to. My only point here is that, not saying  
10 supportive of the 1 to 100,000. I think there's problems,  
11 there's nuances, but I will say that legally the state is  
12 not required, the Commission is not required to protect  
13 all waters of the state, every single drop. This is in  
14 the ballpark for what the federal courts have said and  
15 what the Clean Water Act requires.

16                   And I'll stop with that. Thanks so much.

17                   COMMISSIONER HUNTER: Thank you, Roger. I  
18 don't even have to call them anymore. They just start up.  
19 Trent.

20                   MR. SOBER: Good morning, Chairman,  
21 Commissioners. My name is Trent Sober. I'm with  
22 GeoSyntec Consultants in Columbia, Missouri. We represent  
23 several clients that will be potentially impacted by this  
24 rule. I have one of those with me, and Chairman, if you  
25 will, I'd like to jointly present with Steve Meyer with

1 the city of Springfield. Can I get a couple more minutes  
2 than the five given that?

3 COMMISSIONER HUNTER: See that lady with  
4 those?

5 MR. SOBER: Please?

6 COMMISSIONER HUNTER: Yes. Steve is on the  
7 list, too, so he can have a couple more minutes.

8 MR. SOBER: Thank you. As you know, water  
9 quality standards are broken up into three pieces in their  
10 framework. You have the assignment of beneficial uses to  
11 various waters, you have the criteria that protect those  
12 beneficial uses, and then you have an anti-degradation  
13 policy. The focus of this whole rule is primarily on  
14 those designation of uses and criteria. I'll break my  
15 testimony up into those different components.

16 Roger discussed the assignment of aquatic  
17 life and recreational beneficial uses to the 1 to 100 K  
18 NHD layer. While that has been vetted substantially  
19 through stakeholder process, there's still some components  
20 of that that apparently go quite beyond where reasonable  
21 assignment of beneficial uses should extend to, and Steve  
22 will present those in just a minute.

23 While there's some pluses to using that  
24 framework in its presentation to the public, the ability  
25 to use it in databases and so forth, it still needs to be

1 recognized that it is relatively -- could be considered an  
2 arbitrary designation of waters. Essentially  
3 cartographers over the last several decades developed  
4 those. In fact, when you look at the whole state, you'll  
5 see different pieces of the state that were probably done  
6 by different cartographers, map makers that have different  
7 densities of streams. So like Roger did say, there's a  
8 site -- specific site by site issue that needs to be dealt  
9 with.

10 I'll hand out a few of the streams that we  
11 reviewed in the city of Springfield, and Steve will  
12 discuss that in just a moment.

13 MR. MEYER: Good morning. My name is Steve  
14 meyer. I'm director of environmental services for  
15 Springfield, Missouri. I wanted to show you how this act  
16 will affect my community and my citizens, and I'll be  
17 very, very brief. I know Trent's boiling over.

18 This action will, in Missouri will increase  
19 the classified streams from 24,600 miles to 183,600 miles.  
20 That's over six times. In Springfield at least 47 of  
21 the -- at least 47 of the streams that have been  
22 classified are either dry streams or engineered channels.  
23 They're not streams at all. And I've got four examples  
24 that I'm passing out to you, and we have plenty more.  
25 Like I said, we have 47.

1                   In my mind, placing these streams on a  
2   classified list will be a significant expense and impact  
3   Springfield, Missouri by now we will have to provide UAAs  
4   for each one of these 47 streams that probably shouldn't  
5   have been on the classified list in the first place  
6   because these streams not navigable. I don't believe this  
7   was the intent of the Clean Water Act to have these kind  
8   of dry depressions classified as waters of the state.

9                   I believe that rather than doing all of  
10  these UAAs, that this money could be better spent  
11  improving appropriately classified streams rather than  
12  inappropriately classified streams. Thank you.

13                  MR. SOBER: As Steve mentioned, we believe  
14  that there's several of these situations that really are  
15  not appropriate for the default assignment of beneficial  
16  uses. One of the pathways through that is the use  
17  attainability analysis procedure process which has been  
18  discussed in front of the Commission several times. With  
19  that, we really do need to push that forward, and I assert  
20  that we really need an expedited process to deal with some  
21  of these waters that are really simple pretty calls in the  
22  whole grand scheme of things.

23                  Another beneficial use assignment issue is  
24  the assignment of human health protection for all waters.  
25  Now, while that sounds like a valiant effort, there's some

1 components of those criteria which are developed to  
2 account for both the drinking water intake as well as the  
3 intake of fish and shell fish from given water bodies.  
4 That's been assigned to the whole -- the whole breadth of  
5 the classified waters, whereas EPA documents and so forth  
6 allow the assignment of that only to drinking water  
7 supplies.

8                   And that brings in a whole set of criteria  
9 which you'll see in the rule as the human health  
10 protection water organism criteria which have some very  
11 stringent criteria. We've done some quick assessments of  
12 those. For example, some of the criteria are dropping  
13 down by a thousandfold in the case of arsenic, which is a  
14 naturally occurring compound.

15                   The assignment of that use and some of  
16 these criteria could cause widespread 303(d) listings,  
17 impairment decisions, resulting TMDLs that puts a burden  
18 on an already strained state government.

19                   Also, some of those criteria are really  
20 derived from inappropriate organisms. For example,  
21 arsenic and manganese are really targeted to protect the  
22 consumption of saltwater oysters, which obviously aren't  
23 appropriate for this state.

24                   In the case of arsenic, which again is a  
25 naturally occurring element within our earth's crust, we

1 evaluated 152 stations to assess the level of arsenic  
2 that's occurring in those, and essentially found that all  
3 those sites would exceed the proposed criteria, which  
4 obviously would result in about 150 unnecessary TMDLs  
5 unless we really think that arsenic is a widespread issue  
6 within the state of Missouri.

7                   No Region 7 state has adopted the same  
8 criteria that we have proposed, which again, as John  
9 alluded to earlier, are the default recommendations from  
10 U.S. EPA. However, there are some flexibilities in using  
11 those. For example, the state of Ohio, which is  
12 considered a great water quality standards framework, only  
13 applies those -- some of these criteria for drinking water  
14 standards in drinking water supplies. State of Washington  
15 has rescinded their arsenic criteria, and EPA is currently  
16 considering reevaluating the appropriateness of those  
17 criteria.

18                   Now, to move on to manganese, we evaluated  
19 again 150 stations. About 40 percent of those violated  
20 manganese, which is really considered a secondary or  
21 aesthetic impact to water bodies, to drinking waters,  
22 primarily with taste and with stains in laundry actually.

23                   We faced this same set of criteria in 2005  
24 and essentially did not assign those criteria based on --  
25 based on this widespread issue of impairments or potential

1 impairments as well as the fact that manganese is not a  
2 toxic actually.

3                   Now to move on to some other criteria.  
4 We've assigned an aluminum criteria for chronic exposure  
5 for freshwater organisms. This criterion is also under  
6 debate nationally. U.S. EPA'S own documents suggest that  
7 the studies that were conducted to support those criteria  
8 on striped bass and on brown trout were done in conditions  
9 that are really not applicable throughout the country, and  
10 the documents also recognize that a lot of water bodies  
11 will naturally violate that criterion.

12                   We did another assessment of about 110  
13 stations that had aluminum data, and essentially all of  
14 those, about I think it was 95 percent exceeded that as  
15 the total amount of aluminum in the water.

16                   This would also be particularly problematic  
17 for dischargers and receiving streams that have advanced  
18 phosphorus removal as aluminum is one of the compounds  
19 that are used to remove phosphorus from wastewater  
20 discharges.

21                   West Virginia also saw some a similar issue  
22 when they adopted those criteria. They had 88 percent of  
23 their waters that violated that criterion. They rescinded  
24 that and only applied it to trout waters, which U.S. EPA  
25 approved. Pennsylvania also has rejected that criteria,

1 and EPA has approved that.

2                   There's also some issues with salinity in  
3 the drinking water supply criteria, and those will be  
4 included in our specific comments. And lastly, my  
5 recommendation with all those criteria are that we do some  
6 additional research into the appropriateness of those  
7 criteria and potentially take those up in the next  
8 upcoming rulemaking.

9                   So I thank you for your indulgence.

10                   COMMISSIONER HUNTER: Thank you, Trent.  
11 Robert Brundage.

12                   MR. BRUNDAGE: Good morning, Chairman,  
13 members of the Commission. My name is Robert Brundage.  
14 I'm with the law firm Newman, Comley & Ruth here in  
15 Jefferson City, and I like Trent and Mary and others who  
16 tried to coordinate our comments here today for sake of  
17 brevity. For example, Trent just testified on some  
18 aspects of the human health protection beneficial use that  
19 I'd like to follow up on briefly.

20                   I'd like to be clear that I do support the  
21 comments of the other people that came here today on  
22 behalf of my clients, including Missouri Agri Business  
23 Association.

24                   As Trent mentioned, human health protection  
25 is one of the beneficial uses in our Water Quality

1 Standards. In these proposed changes to the Water Quality  
2 Standards there is a huge increase in the number of  
3 standards for the human health protection. Just a few  
4 statistics which I think are -- if they're not exactly  
5 accurate, they're pretty doggone close. There is a --  
6 there's a human health beneficial use where they look at  
7 the organism plus drinking water, and for that organism  
8 plus water standard, there's 113 brand-new standards  
9 proposed in this rulemaking. For organism only, there's  
10 30 new, and for some of the existing human health  
11 protections that are in already, there's 75 revisions  
12 where those have been changed.

13                   So it's a tremendous change. There's a lot  
14 of science that is behind these that has not really been  
15 reviewed, and I think we need to take a closer look at  
16 these things.

17                   I want to note that EPA has not disapproved  
18 our Missouri Water Quality Standards because we don't have  
19 these in here. So we're not under any mandate from the  
20 EPA to put these in there. We're not under any statutory  
21 deadline to put these in there.

22                   You know, during the last two years or  
23 more, there's been a lot of meetings on at least what I  
24 call the unclassified stream rule, a lot of what's in --  
25 we have here today, and there's so many changes and so

1 many emphasis.

2                   One of the things that was not emphasized  
3 during the stakeholder meetings, and frankly was not  
4 really discussed to my recollection to any extent, was  
5 these 113 or more changes to the human health protection  
6 in water quality standards.

7                   If you read the Regulatory Impact Report,  
8 there's really nothing in there on all of these changes.  
9 So what is the regulatory impact of including these  
10 changes? We already have for many of these things, for  
11 many of these elements parameters in the standards. We  
12 already have drinking water supply numbers that have been  
13 on the books for a long time. So there are protections  
14 out there for drinking water sources, and presumably  
15 that's what the exact same water bodies of these organism  
16 plus water would cover.

17                   So if the Regulatory Impact Report doesn't  
18 want to talk about it, it's either because we really  
19 didn't have time to analyze it -- when I say we, the State  
20 and the Department. They had enough to do in the first  
21 place -- or it really doesn't have any impact because the  
22 drinking water supply regs already adequately protect. So  
23 that's one inference you can draw from the Regulatory  
24 Impact Report.

25                   I'd also like to note, to my knowledge, the

1 Missouri Department of Health and Senior Services has not  
2 listed any health advisory for any of these except the  
3 only ones that I really recall are mercury or lead. All  
4 of the other 113 brand-new ones I haven't heard the  
5 Department of Health and Senior Services raise concerns  
6 about these. I'm not aware of any reported incident of  
7 any endangerment to human health. So I don't know if  
8 there's any urgent need to adopt all these standards.

9 Trent mentioned a few of the 113. He  
10 mentioned arsenic. He mentioned manganese. For example,  
11 another one for organism plus water we had no standard for  
12 anything is iron. Now there's proposed standard for  
13 organism plus water for iron, and we all know that that's  
14 in vitamins and other things.

15 So what I would suggest is, is that this is  
16 an issue that's worth consideration. I'm not sure if it's  
17 an issue that's worth consideration right now. I know  
18 we're going to have a phase 2 of water quality standard  
19 review changes during the next year. I would like to have  
20 some more emphasis put on this to try to better understand  
21 all these and what potential impacts these would have.

22 As Trent pointed out in his testimony, some  
23 of these were based on EPA 3 or 4A criteria which the  
24 science behind that may have been really specific to some  
25 other part of the country. For example, arsenic he

1 mentioned was based on some science done on saltwater  
2 oysters. We all know that that's not applicable in  
3 Missouri, and how many of the other 113 are applicable to  
4 Missouri or should be?

5                   Just to conclude, I don't think that  
6 there's an urgent need for the EPA to adopt these. I  
7 don't think there's an urgent need for human health  
8 protection to adopt these right now, and I would like the  
9 Commission to not promulgate these at your next meeting  
10 when you vote on these but rather direct the Department to  
11 have some stakeholder time to try to discuss this, because  
12 one thing we do know is that the list of methodology  
13 review list, there's a lot of information you have to look  
14 at on this list of methodology document, frequency and  
15 duration of these that I totally don't understand yet, and  
16 I would like an opportunity to work with the Department to  
17 understand that better.

18                   Thank you very much for your time.

19                   COMMISSIONER HUNTER: Thank you, Robert.  
20 Ed Galbraith.

21                   MR. GALBRAITH: Good morning, Mr. Chairman,  
22 members of the Commission, for the opportunity to testify.  
23 My testimony will be more helpful to you if you would turn  
24 to your packets to page 12. Kind of hard to see over  
25 there, Jane. Speak up if you need to.

1                   I want to draw your attention to the first  
2 column, about two-thirds of the way down, letter D, use  
3 designation data set. Of all the parts of this rule, this  
4 is one of the most important. You can read there, the  
5 Department shall maintain a geospatial data set for  
6 associated list of waters that receive these designations  
7 as described in this rule.

8                   And this is important because this is the  
9 means of transparency for implementing this rule. This is  
10 the data set that will let everyone know for purposes of  
11 permitting, impairment and other things, implementation,  
12 what waters have the presumed uses.

13                   And as Roger described to you before, the  
14 idea of this 100 K data set is not perfect. It doesn't  
15 perfectly capture all of the permanent flow streams, but  
16 it's a good start. We know that waters will have to be  
17 added to this, and we think also that some waters will  
18 probably be subtracted from this because it's not a  
19 perfect definition of -- those -- there's going to need to  
20 be some field work to say a particular segment doesn't  
21 have permanent flow per the rule or does it not.

22                   So what the rule lacks, though, is a  
23 process or a definition of how -- how to go about the  
24 study of a given segment to say, yes, it does or, no, it  
25 does not support permanent flow, permanent rules.

1                   The Department has such a protocol, the  
2 final guidelines for water body classification approved by  
3 the Clean Water Commission, March 2nd, 2005. So we know  
4 there is a process for doing this. What we'd like to see  
5 the rule do is outline or name that process so that the  
6 rules are clear and everybody knows what they have to do  
7 to either -- when investigating a segment to either  
8 increase -- to either increase -- do I get five more  
9 minutes to repeat myself?

10                   COMMISSIONER HUNTER: We'll have to go into  
11 closed session to rule on that.

12                   MR. GALBRAITH: So we would like the rule  
13 to make clear what the process will be for that or name a  
14 protocol or -- as the rule does elsewhere when describing  
15 what kind of process will be used for UAA, for example.

16                   My second comment has to do with dissolved  
17 oxygen. In the draft rule is a table, Table A3. It is on  
18 page -- should be right on page 53, I think, although my  
19 particular copy didn't have it. Hopefully yours does.  
20 That is the new dissolved oxygen criteria adopted from  
21 EPA's criteria.

22                   We feel at this point that maybe it's  
23 better not to go forward with that, but to leave the rule  
24 as is or revert back, if you will, to the current  
25 dissolved oxygen standard. The reason is that, depending

1 on how this gets implemented, it could be advantageous or  
2 disadvantageous to people who have to meet these  
3 standards.

4 We've been working hard with the DNR and  
5 Department of Conservation to develop an implementation  
6 procedure, but we just frankly ran out of time and didn't  
7 get far enough. So rather than work on this, there are  
8 other things that are just as important or more important  
9 to work on. We'll get to a solution of the DO criteria.

10 So I think our suggestion, our comment will  
11 be to not move forward with this proposed change to the DO  
12 criteria, and I think, I believe the program and  
13 Conservation are on board with that as well.

14 So those are my comments. I'd be happy to  
15 answer any questions. Thank you.

16 COMMISSIONER HUNTER: Thank you, Ed. Next  
17 is Ron Hardecke.

18 MR. HARDECKE: Good morning, Mr. Chairman  
19 and Commissioners. My name is Ron Hardecke. I'm a farmer  
20 from Owensville. And thank you for the opportunity to  
21 comment.

22 The main thing I wanted to talk about was  
23 cost, and that's been addressed by many of the speakers  
24 this morning, and it's been brought up many times over the  
25 last year and a half. I want to begin with on page 12

1 where it -- under 2A, it discusses rebuttable presumption  
2 and refers back to Section 101(a)(2) of the Clean Water  
3 Act. And I'm going to read that because sometimes I think  
4 we get led down a path without actually referring to the  
5 law that we're being guided by.

6                   It is in the national goal wherever  
7 attainable to -- wherever attainable, an interim goal of  
8 water quality which provides for the protection and  
9 propagation of fish, shell fish, wildlife -- and wildlife  
10 and provides for recreation in and on the water to be  
11 achieved by July 1st, 1983.

12                   It doesn't state anywhere in there all  
13 waters, and I think that we -- we're taking an awful big  
14 step here to add 84,000 miles of streams, No. 1, to cost  
15 and -- and I know this was brought several times over the  
16 last years, I don't -- last year, I don't think DNR has  
17 the ability to manage, to collect and analyze or record  
18 that data.

19                   That brings me to my next point. On  
20 page 66, in Table H, those 84,000 miles were added in one  
21 line on Table H, and I guess the question is, how is that  
22 data going to be evaluated? Are we going to have one  
23 water body of 84,000 miles? I think that's indicative of  
24 the lack of ability to manage and analyze that data.

25                   I think that there has to be some place

1 between where we are at 26,000 miles of classified streams  
2 currently and the proposed 110,000 miles, and I think we  
3 need to consider that before we just take a broad brush  
4 and add all these classified streams and then put the  
5 burden on the citizens to pay for a UAA to remove them  
6 where obviously there's a lot of dry streams included on  
7 this -- this list.

8                   The fiscal note that DNR prepared about a  
9 year ago, and I didn't go through and add all the numbers  
10 up in the current one, but is \$95 million. There's been a  
11 lot of testimony this morning about the cost, and I don't  
12 think that that begins to address it. Even if it does,  
13 that's a huge burden to impose on the ratepayers of the  
14 citizens of these cities.

15                   That only accounts for a thousand -- I  
16 think it's 1,043 permitted dischargers. So there are a  
17 lot of other imputations that are going to add to that  
18 cost, and in a time when the economy's struggling, we're  
19 trying to find ways to create jobs, I think we need to  
20 evaluate that some more.

21                   The other thing in cost is there's never  
22 been any estimate or provision for the eventual cost of  
23 non-point source pollution that would ultimately come  
24 under this regulation.

25                   I would ask you to reject this proposal and

1 tell DNR to find another scale or another means of adding  
2 water bodies that need to be classified that is  
3 realistically manageable for the Department and fiscally  
4 responsible to impose on the citizens of Missouri. I  
5 would also ask that you ask the Governor and the Attorney  
6 General to push back on the EPA because I think we've all  
7 recognized that there's no end to what EPA will send us if  
8 we take it. And I thank you for the opportunity to  
9 comment.

10 COMMISSIONER HUNTER: Thank you, Ron. Next  
11 is Tom Ratermann.

12 MR. RATERMANN: Good morning. Happy new  
13 year. Thank you. My name is Tom Ratermann, and I'm the  
14 general manager of the Boone County Regional Sewer  
15 District with an office and shop at 1314 North 7th Street  
16 in Columbia, Missouri.

17 I'm here to speak neither in support nor  
18 opposition to the proposed amendment to the Water Quality  
19 Standards. My purpose today is to provide information  
20 regarding the impact of the proposed regulations on the  
21 sewer district.

22 First I'd like to provide a little  
23 information on the sewer district. The sewer district has  
24 about 6,500 customers, so we estimate our service  
25 population to be between 18,000 and 24,000 people. The

1 sewer district owns 38 Missouri Department of Natural  
2 Resources permitted wastewater treatment facilities in  
3 unincorporated Boone County. Additionally, we maintain 76  
4 miles of gravity sewer, 30 miles of force mains and 20  
5 district-owned pump stations. The district employs 11  
6 full-time employees.

7                   In 2006 our rates were \$22 per month for  
8 the typical user using 5,000 gallons of water a month. In  
9 2007 they were \$24.20 a month. Our rate studies  
10 anticipated 4 percent rate increases over 20 years.  
11 Starting the first of this month, we just implemented an  
12 11 percent rate increase.

13                   Our current rates are \$45.70 per month for  
14 that same customer using 5,000 gallons of water. Rates  
15 are between 15.95 per month and 18.50 per month higher for  
16 those customers that use pressure sewer systems such as  
17 neighborhoods with onsite systems connected to public  
18 sewer.

19                   Our rates are proposed to be \$60.55 per  
20 month in 2016 for that same typical customer using 5,000  
21 gallons of water per month.

22                   The 2009 median household income, or MHI,  
23 in Boone County is \$46,439 annually. That's the most  
24 readily available information on MHI, and I really don't  
25 think that figure is representative of the sewer district

1 service areas. Currently sewer district customers spend  
2 about 1.2 percent of MHI on wastewater treatment and  
3 collection, and in 2016 will spend about 1.6 percent of  
4 MHI on wastewater treatment and collection based on  
5 current data.

6 In 2008, Boone County voters approved a  
7 \$21 million revenue bond issue for the sewer district.  
8 This bond issue was predicated upon closing about 20 sewer  
9 district facilities to stay in compliance with expected  
10 disinfection regulations. The sewer district is on  
11 schedule to close 18 facilities by the end of 2013. Since  
12 about 1990, the sewer district has closed about 25  
13 facilities.

14 The proposed regulations in the Water  
15 Quality Standards will require the district to close about  
16 nine more facilities. By the end of 2020, the district  
17 will have 11 permitted facilities. Our rate studies have  
18 not considered the rate impact of closing these additional  
19 nine facilities. Additional expected rate impacts are  
20 ammonia removal, nutrient removal and any requirements of  
21 the collection system.

22 The district's capital planning will need  
23 to anticipate the cost associated with these changes to  
24 the Water Quality Standards and future proposed regulation  
25 changes. Boone County voters may need to consider more

1 bonded indebtedness to meet these regulations. All of  
2 this planning, studying and consideration takes time and  
3 money.

4 We ask that when you consider additional  
5 regulations, you consider the time needed to fully plan  
6 and implement the improvements needed to comply and that  
7 the June 30th, 2020 deadline be removed or left open  
8 ended. Thanks for your time and consideration, and I'd be  
9 glad to answer any questions you might have.

10 COMMISSIONER HUNTER: Thank you, Tom.  
11 Lauren Krandall.

12 MR. KRANDALL: I'd like to co-present with  
13 Liz Hubertz and Peter Goode from the law clinic.

14 COMMISSIONER HUNTER: They're welcome to  
15 come up here with you.

16 MR. KRANDALL: Is there a projector  
17 available to project images? No projector?

18 COMMISSIONER HUNTER: No.

19 MS. HUBERTZ: But it has such pretty maps.

20 MR. KRANDALL: I've got some pretty awesome  
21 maps I made so you guys could actually see what this looks  
22 like. Unfortunately, you won't be able to see those  
23 today, but I'll send them in with our official comments on  
24 the 18th. Thank you.

25 MS. HUBERTZ: Good morning, Commissioners.

1 I'm Liz Hubertz. I'm clinic attorney with Washington  
2 University School of Law representing Missouri Coalition  
3 For the Environment in water quality matters along with  
4 Mr. Krandall and Mr. Goode. We're going to divide this  
5 up, as Lauren already said, into three separate sections.  
6 My remarks are going to be brief.

7                 Several people have suggested that the new  
8 proposal will bring Missouri law into compliance with the  
9 federal Clean Water Act. We don't think it will. It --  
10 this assigns some stricter standards to some of Missouri's  
11 waters of the United States. It doesn't cover all of  
12 them. You're going to hear more about that from  
13 Mr. Krandall and Mr. Goode about what doesn't get covered.

14                 But it also really undoes the rebuttable  
15 reassumption of what's supposed to be covered. The way  
16 the Clean Water Act is written and interpreted by the EPA  
17 is waters covered, waters of the United States, which  
18 again is not all of the waters. It doesn't cover every  
19 drop of water in Missouri, waters of the United States  
20 covered until proven otherwise.

21                 The way this rule is set up now, unless a  
22 water is listed on page 12, included in that short list,  
23 page 12 of your books, it's not covered. It gets no  
24 protections, zero, until it turns purple or green.

25                 The -- that's exact opposite of the way the

1 Clean Water Act was written. We had what we thought was a  
2 good rule. It covered waters of the state. We presented  
3 it to this body in March 2009, and it was withdrawn two  
4 months later and replaced by the 100 K rule which was  
5 developed at some point in the interim. We would ask that  
6 the original rule that we presented back in March of 2009  
7 be restored.

8                   And I do want to say one short thing about  
9 the cost of regulation and about heavy-handed EPA,  
10 whatever. You know, the Clean Water Act was lawfully  
11 passed by -- Missouri was represented in the process. It  
12 was passed by the people of the United States, by the  
13 Senate, by the Congress during the administration of that  
14 wild-eyed environmentalist Richard M. Nixon.

15                   And one of the things about the United  
16 States is you don't get to pick the laws that you don't  
17 like. I don't like paying federal income tax, but I pay  
18 it. And I would suggest that Missouri has essentially  
19 gotten a 40-year pass on complying with many of the  
20 aspects of the Clean Water Act. It's gotten an 11-year  
21 pass since the EPA told Missouri it needed to assign uses  
22 to its unclassified waters.

23                   And I would suggest that it's avoided  
24 paying those costs the people of the United States  
25 legitimately voted to place on the people who are

1 discharging into rivers and streams, and it's time for it  
2 to step up and do what the law requires.

3 MR. KRANDALL: You know, one of the things  
4 about this rule that I find really interesting is I  
5 started cross referencing it with some of the other  
6 projects that I've worked on. I'm doing a watershed plan  
7 for a watershed in southwest St. Louis County. I helped a  
8 family who was experiencing impacts from an upstream  
9 animal feeding operation in Franklin County. I helped  
10 other person who was impacted by five CAFOs that had built  
11 all around his grass-fed cattle operation down in Barton  
12 and Vernon County.

13 And one of the consistent factors that I've  
14 run into time and again is that because the waters that  
15 were impacted were not protected by these criteria, they  
16 could do a civil suit, but there was nothing they could do  
17 under clean water law to protect those waters.

18 Kiefer Creek, we had USGS data for eight  
19 years. From 1996 to 2004 the USGS collected data on  
20 Kiefer Creek on the unclassified segment just downstream  
21 from one of the second largest springs in St. Louis  
22 County. Their bacteria levels were on par with  
23 River Des Pere which has combined sewage output. The  
24 average level was 20,000 colony forming units per hundred  
25 milliliters. The safe level according to whole body

1 contact standards is 126 colony forming units per hundred  
2 milliliters. The levels that made the Lake of the Ozarks  
3 a big deal were about 2,000 colony forming units per  
4 hundred milliliters.

5 Now, why is Kiefer Creek a big deal? Maybe  
6 it's a big deal because right after it leaves where it's  
7 being monitored by the USGS, it flows down through  
8 Castlewood State Park that sees over half a million  
9 visitors a year, including hundreds or thousands of kids  
10 swimming in that creek every day of the summer.

11 Is there a warning sign? Now there is,  
12 thanks to our efforts. Is there a rating system that lets  
13 you know if it's safe that day? No. Is the data made  
14 widely available to the public? No. And was it protected  
15 as a classified water using their criteria? No. We were  
16 finally able to get it on the 303(d) list thanks to some  
17 other monitoring that was done, not the USGS monitoring.

18 Now, the Menkes, they have one of our  
19 illustrious Class 2 CAFOs, same with Darvon down in  
20 southwest Missouri. Menkes are in Franklin County.  
21 They've got a hog operation upstream from them with 2,600  
22 animal units. Doesn't have a permit, although they've  
23 called DNR numerous times to have them come out and look  
24 at it.

25 Now, the flow -- the hog lagoon shows up on

1 the 1987 wetland inventory as a water body, and Menke Lake  
2 does. However, neither of these water bodies, which are a  
3 tributary to Big Burger Creek in Franklin County, has been  
4 protected by any criteria. They wouldn't be protected by  
5 the 100 K. They wouldn't be protected by the high  
6 resolution 24 K. And yet they've experienced numerous  
7 fish kills. They've got enough flow in their basin to  
8 support a six-acre lake. Their kids got leptospirosis.  
9 DNR's come out multiple times. Nothing done.

10 This guy, 2,600 hogs, he's violating the  
11 animal unit limitation of a thousand animal units. Still  
12 no permit. Soil and water conservation district has  
13 repeatedly invested in wetlands between his lagoon and  
14 their lake to try to intercept all those nutrients and  
15 bacteria. It doesn't work. It hasn't worked. It's too  
16 much. He doesn't have a permit, they're not classified,  
17 and there's nothing they can do.

18 So, you know, is it important to extend  
19 these protections? Yes, it is. You can look at almost  
20 every 401 or 404 permit in Missouri in the St. Louis  
21 district at least and see that the vast majority of them  
22 include waters that don't show up on the 1 to 100 K map.

23 So, you know, make sure you guys don't  
24 approve this until you actually look at a map of what this  
25 is and look at southwest Missouri and northwest Missouri

1 and look at that difference in density of streams, and  
2 then maybe you'll come back and you'll suggest that as DNR  
3 moves forward with their watershed initiative, they can  
4 expand the protections to meet the true waters of the U.S.  
5 as they move from HUC 8 to HUC 8 to HUC 8 watershed and  
6 evaluate them and write all the permits at the same time  
7 in a very intelligent watershed response. Thank you.

8 MR. GOODE: Good morning, Commissioners.  
9 My name is Peter Goode. I'm an environmental engineer  
10 with the Interdisciplinary Environmental Clinic at  
11 Washington University. As you already know, we represent  
12 Missouri Coalition For the Environment.

13 My testimony is going to focus on three  
14 types of waters that will not be protected by presumptive  
15 beneficial uses required under the federal Clean Water Act  
16 and state Clean Water Law.

17 The proposed amendment before you today  
18 fails to protect the following waters: First, headwater  
19 and temporary streams that have flow in pools but dry up  
20 during the hottest, driest months of the year; second,  
21 impoundments, also known as lakes and ponds, which are not  
22 represented on the 100 K map; and third, wetlands.

23 All three of these types of waters are  
24 vital to Missouri and require presumptive fishable/  
25 swimmable protections under the Clean Water Act.

1                   Headwater streams are vital parts of the  
2 vast river network in Missouri. By some estimates,  
3 headwaters comprise the vast majority of our waters.  
4 Estimates range from two-thirds to three-quarters of all  
5 waters. They provide important ecological functions by  
6 providing habitat and providing energy and nutrients  
7 downgrade to higher order streams. There's ample evidence  
8 that aquatic life exists and thrives in headwaters beyond  
9 the 100 K map.

10                   The Coalition has commented to this effect  
11 in a letter to the Department regarding the Regulatory  
12 Impact Report for the proposed amendments. The Department  
13 responded that, quote, biological stream survey data  
14 collected by the Department and the Missouri Department of  
15 Conservation indicate that presumed fishable/swimmable  
16 uses cannot be satisfactorily rebutted for these two types  
17 of waters.

18                   Again, as Ms. Hubertz already noted, this  
19 turns the Clean Water Act on its head. It is not the  
20 Department's task to rebut the fishable/swimmable  
21 presumption. It's also not clear that the Department did  
22 an adequate job of looking beyond the 100 K map.

23                   Just using one aquatic species as an  
24 example, crayfish, there are several species of burrowing  
25 crayfish in Missouri. However, most crayfish have the

1 ability to burrow. We came across one study that  
2 documented two species of crayfish burrowing into the  
3 stream bed when both flow and pools had ceased, and this  
4 was in a tributary of the Table Rock Lake watershed.  
5 There was no loss in crayfish density during the dry  
6 period. This is just one example of how a seemingly dry  
7 stream can harbor aquatic life. There are also ample  
8 scientific studies document invertebrates using stream  
9 beds during dry periods.

10                   As also noted, the 100 K map omits many  
11 waters, including impoundments. Impoundments are  
12 typically formed by the damming of flowing, intermittent  
13 and ephemeral waters and range in size from anywhere from  
14 less than a acre to thousands of acres. As such, the  
15 potentially negative effects on both humans and aquatic  
16 life that can result from not providing fishable/swimmable  
17 protections to lakes are of great concern.

18                   In addition to recreational uses,  
19 impoundments also provide habitat for aquatic life. Fish  
20 are often found in impoundments regardless of their size.  
21 Amphibians, including salamanders, frogs and toads, also  
22 inhabit ponds and impoundments for at least a portion of  
23 their life cycle. Missouri is home to 43 amphibian  
24 species, including 26 species and subspecies of frogs and  
25 toads. All Missouri frogs and toads must return to the

1 water to reproduce. This is a fact.

2                   The location, size and permanence of  
3 impoundments are influencing factors where amphibian  
4 habitat is concerned but in no way create a barrier to  
5 their use.

6                   Finally, wetlands are also neglected in the  
7 proposed amendments. Wetlands are identified in the rule  
8 as a defined class, Class W, and a very general procedure  
9 for developing criteria is referenced. However, wetlands  
10 are completely absent from Section 2 of the rule which  
11 applies designated uses. Nor are there any specific  
12 criteria applied to wetlands in the rule.

13                   U.S. EPA has issued guidance on the  
14 protection of wetlands through water quality standards.  
15 This guidance is included as an appendix to U.S. EPA's  
16 water quality standards handbook. The guidance itself was  
17 issued in 1990, so it's not a recent development, but a  
18 requirement that should have been implemented by now.

19                   The intent of the guidance was to ensure  
20 that states, among other things, establish beneficial uses  
21 for wetlands, adopt existing narrative and numeric  
22 criteria for wetlands, adopt narrative biological criteria  
23 for wetlands, and apply anti-degradation policies to  
24 wetlands. Missouri has failed to meet these goals in the  
25 past, and the proposed amendment does nothing to address

1 them now.

2                   There are a multitude of studies that note  
3 the existence of aquatic life in wetlands, so much so that  
4 it rarely needs mentioning. Wetlands are home to fish,  
5 crayfish, salamander, frogs, toads and many other wildlife  
6 species.

7                   Missouri already regulates dredge and fill  
8 activities that affect wetlands through the 401 water  
9 quality certification process. However, the 401 program  
10 does not address other chemical impacts to wetlands or  
11 aquatic life.

12                   Wetlands must be presumed  
13 fishable/swimmable under the rule, and specific criteria  
14 must be applied to comply with the Clean Water Act. We  
15 request that the proposed amendment be modified to include  
16 wetlands under the rebuttable presumption in Section 2A.

17                   The Coalition believes that these concerns  
18 can be addressed for the most part by returning to the  
19 waters of the state rule that we've referenced earlier  
20 that was originally proposed by the Department back in  
21 March of 2010. We have other concerns regarding the  
22 proposed amendment, but for the sake of brevity we'll skip  
23 those today and we will submit those in writing along with  
24 documentation to support our comments today.

25                   Thank you for the opportunity to testify.

1                   COMMISSIONER HUNTER: Thank you all. I  
2 would like to ask that Ms. Hubertz and Mr. Goode, please  
3 fill out cards before you leave and submit them.

4                   MS. HUBERTZ: I'm sorry. I told Lauren to  
5 put us on his card, but we'll fill out separate ones.

6                   COMMISSIONER HUNTER: Thank you very much.  
7 Next is Leslie Holloway.

8                   MS. HOLLOWAY: Good morning. Lucy Holloway  
9 good morning. Leslie Holloway representing Missouri Farm  
10 Bureau. I'd like to specifically address stream  
11 reclassification.

12                   I want to preface my comments by  
13 recognizing the efforts made by department staff to  
14 address the concerns of interested parties in a fair and  
15 open manner through the workgroup process.

16                   Although the Missouri Coalition for the  
17 Environment contends that little if any attention was paid  
18 to stream reclassification before they initiated legal  
19 action, the record proves otherwise. As a participant in  
20 the Department's stakeholder process, I find it especially  
21 aggravating, then, that in its formal legal complaint the  
22 Coalition states, quote, the workgroup came to an  
23 agreement at the conclusion of its October 2009 meeting on  
24 a draft rule that would have extended the  
25 fishable/swimmable standard to all the state's waters.

1 Instead of continuing as planned to develop implementation  
2 policies for this rule, the workgroup was effectively  
3 disbanded by DNR at that point.

4 As a member of the workgroup, I want to  
5 clarify that the workgroup that did not, quote, come to an  
6 agreement. Furthermore, the workgroup was, quote,  
7 effectively disbanded because of the Coalition's legal  
8 action. This background is important to understanding the  
9 position I'm voicing today on behalf of Missouri Farm  
10 Bureau in opposition to the stream reclassification  
11 proposal under consideration.

12 In March 2001, the Missouri Clean Water  
13 Commission's meeting agenda included the item, quote,  
14 Water Quality Standards revision. In the Commission's  
15 briefing materials, the Department noted, due to delays in  
16 EPA processing the review of three previous standards  
17 revisions, this process was not started until EPA's  
18 review was complete.

19 The briefing materials included a copy of  
20 EPA's letter from September 2000 responding to standards  
21 revisions submitted by the Department review in 1994 and  
22 1996, revisions submitted four and six years earlier. In  
23 its letter, EPA conveyed decisions on numerous, quote,  
24 items, a term that covers a wide range of matters of  
25 varying complexity. EPA identified nine items it was,

1 quote, neither approving nor disapproving, nine items that  
2 were approved, four items disapproved, two for which,  
3 quote, a finding of inconsistency by EPA administrator was  
4 requested, 12 for which EPA called on DNR to address  
5 during the 2000 triennial review, and one on which EPA  
6 sought consultation with the U.S. Fish and Wildlife  
7 Service.

8                   The Department pointed out in its response  
9 that, quote, there is a very large number of changes that  
10 may be contemplated and indicated, quote, we plan to  
11 conduct several separate consecutive rulemakings. The  
12 Department also laid out a three-phase schedule for  
13 addressing each item. Protection of unclassified waters  
14 was listed among those assigned to Phase 3.

15                   Also in March of 2001, the Department  
16 notified stakeholders, including Farm Bureau, that  
17 stakeholder meetings were scheduled on more than a dozen  
18 topics addressing items requiring further action in  
19 accordance with EPA's directive.

20                   Dissatisfied with this approach, the  
21 Coalition filed suit against EPA in 2003. The settlement  
22 reached in December 2004 set an impressive timetable for  
23 the time for the Department to act on several of the water  
24 quality standards in question. However, although stream  
25 classification was among the water quality standards the

1 Coalition sued over, it was not addressed in the  
2 settlement.

3                   While court action was underway, the  
4 Department continued working on stream classification. At  
5 the Commission's request, the Department developed the  
6 classification guidelines that were placed on public  
7 notice in early 2004 and adopted in March 2005.

8                   My point is that clearly the record shows  
9 that the Department had taken significant steps toward  
10 addressing the deficiencies raised by EPA relative to  
11 stream classification before the Coalition filed lawsuits  
12 in 2003 and 2010. So now we're here talking about a  
13 proposal being forced through the rulemaking process that  
14 goes beyond what is necessary with potential costs ranging  
15 from astronomical to unknown.

16                   At the time that the workgroup sessions  
17 were discontinued, options were delineating classified  
18 rivers and streams, including the 1 to 100 K and 1 to 24 K  
19 scale national hydrography dataset were under  
20 consideration. The NHD dataset was developed by EPA and  
21 U.S. Geological Survey for the purpose of providing a  
22 comprehensive hydrologic database for the nation.

23                   The 1 to 100 K scale dataset is the best  
24 resolution that is readily available to most users. The  
25 1 to 100 K comes closer than 1 to 24 K to targeting the

1 right streams, but the Department acknowledges that both  
2 include waters that are beyond the stream reaches capable  
3 of supporting certain default uses for classified waters.

4 In court documents filed in 2003, the  
5 Coalition contended that the Department had not properly  
6 classified waters and specified that the goals of the  
7 Clean Water Act, including the fishable/swimmable goal,  
8 apply to navigable waters. The 1 to 100 K proposals goes  
9 way beyond navigable waters. There are other options that  
10 were not considered after the workgroup process was  
11 preempted.

12 The Regulatory Impact Report and fiscal  
13 note underscore the magnitude of the proposal. I'm not  
14 going to go through those numbers. You've already heard  
15 them today. These cost estimates are alarming, but the  
16 lack of actual estimates of costs to other affected  
17 parties is even more so. No where in this proposal is  
18 there an estimate of costs to farmers, ranches and other  
19 rural landowners.

20 In response to Farm Bureau's comments on  
21 the RIR, the Department states that it does not regulate  
22 non-point sources of pollution and will continue to  
23 encourage the voluntary implementation of best management  
24 practices as well as offer cost share funding through  
25 non-point source grants.

1                   Nevertheless, whether non-point source  
2 management remains voluntary or not, the cost of  
3 implementing DMPs in all of the watersheds associated with  
4 classified streams and lakes that would be considered  
5 impaired under the proposed rule is, as the Department  
6 states, difficult to estimate.

7                   What we know is that under the proposed  
8 rule, thousands of miles of very small streams, most of  
9 which are nonnavigable and on private property, will be  
10 subject to far more restrictive water quality standards  
11 than they are now, not because of widespread problems, but  
12 because of legal action.

13                   We also know that regardless of the  
14 Department's intent, the actual implementation of these  
15 regulations may be driven largely by others. How this  
16 translates into permit conditions, watershed management  
17 plans and land use restrictions remains to be seen.

18                   As Ron Hardecke noted, the first entry in  
19 Table H, stream classifications and use designations,  
20 reads, quote, with 84,845 miles statewide representing all  
21 of the newly classified streams. Individual streams are  
22 not identified.

23                   If this proposed rule is adopted, we  
24 strongly urge the Department to ensure that waters within  
25 the new 84,845 mile entry that should not be classified

1 remain unclassified, and those incapable of supporting the  
2 uses for which classified waters are otherwise designated  
3 be identified accordingly before the regulations are  
4 implemented.

5                   In summary, putting into place new  
6 regulations that put significant restrictions on such a  
7 vast area of the state implies that there are rampant and  
8 severe water quality problems statewide. This is not the  
9 case.

10                   These regulations are not necessary, and  
11 they will result in public and private resources not only  
12 being shifted from real water quality issues. That  
13 approach will be extremely costly and ineffective. Thank  
14 you.

15                   COMMISSIONER HUNTER: Thank you, Leslie.  
16 Jeff Theerman.

17                   MR. THEERMAN: Thank you, member of the  
18 Commission. My name is Jeff Theerman, Metropolitan  
19 St. Louis Sewer District. With me is John Loader,  
20 assistant director of engineering. I suspect that I'll be  
21 able to handle everything, but John's here as my lifeline  
22 in case not.

23                   COMMISSIONER HUNTER: The only thing we  
24 will ask John to do is fill a card out.

25                   MR. LOADER: My name's on his.

1                   COMMISSIONER HUNTER: We need a separate  
2 card.

3                   MR. THEERMAN: We're glad to do that. My  
4 comments are about a different topic regarding the rule,  
5 and they'll be brief.

6                   MSD is pleased with the Department's  
7 decision to retain the secondary contact recreation use  
8 and associated E-coli water quality standards on the  
9 Mississippi River for the area between North Riverfront  
10 with Meramec River confluence.

11                   MSD provided extensive information during  
12 the RIR process to address MDNR's data needs and to  
13 provide for more informed decision processes. The  
14 information that we provided included the following:  
15 Additional interviews with federal and local officials  
16 regarding the Mississippi River, further characterization  
17 of the St. Louis area. Assessments, we assessed waterway  
18 and operational modifications to remove existing physical  
19 barriers to whole body contact recreation, evaluated  
20 upstream and downstream characteristics, assessed the cost  
21 and potential water quality benefits of various MSD system  
22 controls, and addressed past agency comments on various  
23 UAA submittals, and they were significant over the past  
24 six years.

25                   MSD appreciates the Department's efforts to

1 make the right decision for this issue and strongly  
2 supports this decision, this decision and the proposed  
3 rule. That concludes my comments. I'll be glad to take  
4 questions if you have any.

5 COMMISSIONER HUNTER: Thank you very much.  
6 Do we have any more any persons in the room that would  
7 like to comment? Do we have a card?

8 MR. CARTER: I have a card. I don't know  
9 if I checked. Please check that for me. Good morning.  
10 My name is John Carter. I'm a private citizen. I retired  
11 at the end of this last year. In my old job I've attended  
12 most of the Clean Water Commission meetings since 1981.  
13 It is something to be amazed by.

14 I'm here mainly to talk about the 1 to  
15 100 K. The classification would bring it up onto the  
16 property we own south of Rolla. I'm very familiar with  
17 the stream for about a mile downstream from our property  
18 line. We've ran cattle on it. I've hunted on it for  
19 close to 30 years. And there are no permanent flow, no  
20 permanent pools on that part of the stream, and I think  
21 there are a lot of streams that are even more likely --  
22 less likely to have permanent pools and permanent flows.

23 Whether there is a presumption that the  
24 Department, the Clean Water Act mandates, I've read the  
25 Clean Water Act, but I'm just an engineer, so I'm not

1 sure. I think the uses should be, the Department or EPA  
2 should have to prove that there are uses and that there is  
3 actually something to be protected.

4 I'd also like to comment on the cost of  
5 some of these regulations. In 1981 when I first started  
6 coming to these Clean Water Commissions, there were some  
7 problems. The waters in streams are cleaner now than they  
8 were back in 1981. The Clean Water Act did a lot of good  
9 things. The Department, EPA has done a lot of good things  
10 by putting in treatment facilities in communities and  
11 mandating that there are treatment standards.

12 We're getting to the point now where we're  
13 going for just because some scientist develops a new  
14 instrument to get parts per billion and parts per  
15 trillion, we go to that limits, and then some other  
16 scientist will come up with a study that shows, well, that  
17 particular compound, that very low level may impact  
18 something.

19 I think we need to step back and look at  
20 what's actually happened out there, be real proud of what  
21 has been accomplished. And again, I thank you for this  
22 opportunity to comment.

23 COMMISSIONER HUNTER: Thank you,  
24 Mr. Carter. Anyone else?

25 The Commission will receive written

1 testimony on the proposed rule 10 CSR 20-7.031 Water  
2 Quality Standards until 5 p.m. on January 18th, 2012. You  
3 may submit this written testimony to Mr. John Hoke,  
4 Missouri Department of Natural Resources, Water Protection  
5 Program, P.O. Box 176, Jefferson City, Missouri 65102,  
6 prior to that deadline.

7                   On behalf of the Commission, I thank  
8 everyone who has participated in this process. This  
9 hearing is now closed.

10                   (WHEREUPON, the hearing concluded at  
11 10:35 p.m.)

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C E R T I F I C A T E

STATE OF MISSOURI            )  
                                  ) ss.  
COUNTY OF COLE            )

I, Kellene K. Feddersen, Certified  
Shorthand Reporter with the firm of Midwest Litigation  
Services, do hereby certify that I was personally present  
at the proceedings had in the above-entitled cause at the  
time and place set forth in the caption sheet thereof;  
that I then and there took down in Stenotype the  
proceedings had; and that the foregoing is a full, true  
and correct transcript of such Stenotype notes so made at  
such time and place.

Given at my office in the City of  
Jefferson, County of Cole, State of Missouri.

\_\_\_\_\_  
Kellene K. Feddersen, RPR, CSR, CCR