



**APPROVED MINUTES OF THE
MISSOURI CLEAN WATER COMMISSION MEETING
Lewis and Clark State Office Building
1101 Riverside Drive
Jefferson City, Missouri
January 9, 2019**

Present via Telephone

Patricia Thomas, Missouri Clean Water Commission

Present at Lewis and Clark State Office Building

Ashley McCarty, Chair, Missouri Clean Water Commission

John Reece, Missouri Clean Water Commission

Stan Coday, Missouri Clean Water Commission

Allen Rowland, Missouri Clean Water Commission

Chris Wieberg, Director of Staff, Missouri Clean Water Commission

Tim Duggan, Legal Counsel, Missouri Clean Water Commission

Chelsey Distler, Acting Secretary, Missouri Clean Water Commission

Stuart Baker, Missouri Department of Natural Resources, Jefferson City, Missouri

Kurt Boeckmann, Missouri Department of Natural Resources, Jefferson City, Missouri

Joe Boland, Environmental Improvement and Energy Resources Authority, Jefferson City, Missouri

Robert Brundage, Newman, Comley, and Ruth, Jefferson City, Missouri

Ashlen Busick, Citizen, Trenton, Missouri

Kurtis Cooper, MoDNR, Jefferson City, Missouri

Sharon Davenport, Department of Natural Resources, Jefferson City, Missouri

Jane Davis, Missouri Department of Natural Resources, Jefferson City, Missouri

Joan Doerhoff, Department of Natural Resources, Jefferson City, Missouri

Dee Dokken; Osage Group Sierra Club, Columbia, Missouri

Jodi Gerling, Missouri Department of Natural Resources, Jefferson City, Missouri

Amanda Good, HSUS, Jefferson City, Missouri

Jennifer Hernandez, Attorney General's Office, Jefferson City, Missouri

Jeanne Hersee, Citizen, Jamestown, Missouri

John Hoke, Missouri Department of Natural Resources, Jefferson City, Missouri

Leslie Holloway, Missouri Farm Bureau, Jefferson City, Missouri

Ramona Huckstep, Missouri Municipal League, Jefferson City, MO

Hannah Humphrey, Missouri Department of Natural Resources, Jefferson City, Missouri

Steve Jeffrey, OCCC, St. Louis, Missouri

Donald Jones, Citizen, Poplar Bluff, Missouri
Shirley Kidwell, Citizen, Fulton, Missouri
Chris Klenklen, Missouri Department of Agriculture, Jefferson City, Missouri
Nancy Krutesch, Citizen, Jefferson City, Missouri
Paul Martin, OCCC, Clarksburg, Missouri
Brenda Martin, OCCC, Clarksburg, Missouri
Cole Marty, Citizen, Kirksville, Missouri
Jack Meinzenbach, Citizens Climate Lobby, Columbia, Missouri
David P. Nelson, Kansas City Water, Kansas City, Missouri
Randy Norden, MRCRA, Ashland, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
Norb Plassmeyer, Citizen, Jefferson City, Missouri
Sandra Potts, OCCC, Tipton, Missouri
Joel Reschly, Missouri Department of Natural Resources, Jefferson City, Missouri
Libby Reinsch, Citizen, Kirksville, Missouri
Jill Sellenreick, Citizen, Fulton, Missouri
Darrick Steen, Missouri Corn Growers/Soybean Association, Jefferson City, Missouri
Patty Tuttle, OCCC, Clarksburg, Missouri
Charles Tuttle, Citizen, Clarksburg, Missouri
Fred Williams, OCCC, Clarksburg, Missouri
Susan Williams, OCCC, Clarksburg, Missouri

CALL TO ORDER

Chair McCarty called the meeting of the Missouri Clean Water Commission (CWC) to order on January 9, 2019, at 9:04 a.m., at the Lewis and Clark State Office Building, 1101 Riverside Drive, Jefferson City, MO.

Chair McCarty introduced the Commissioners, Staff Director, Legal Counsel, and the Commission Secretary.

Administrative Matters

Election of Missouri Clean Water Commission Vice-Chair **Agenda Item 1**

Commissioner Rowland made a motion to elect Thomas as Vice-Chair. Commissioner Reece seconded the motion. The motion passed with a roll call vote:

Commissioner Coday: Yes
Commissioner Thomas: Yes
Commissioner Reece: Yes
Commissioner Rowland: Yes
Chair McCarty: Yes

Recommended Decision Regarding PVC Management II, Appeal No. CWC 18-0549
Agenda Item 2

Item #1: Disqualification of Chair McCarty

A second amended motion was placed before the Commission by Stephen Jeffrey, attorney for OCCC, to disqualify Chair McCarty from voting on the recommended decision regarding PVC Management II, appeal number CWC 18-0549. Chair McCarty turned over control of the commission to Vice Chair Thomas for this discussion. Chair McCarty also asked to make a statement regarding the motion.

Commissioner Reece made a motion to deny the motion to disqualify Chair McCarty. Commissioner Rowland seconded the motion. The motion passed with a roll call vote:

Commissioner Coday:	Yes
Commissioner Reece:	Yes
Commissioner Rowland:	Yes
Vice Chair Thomas:	Yes
Chair McCarty:	Abstain

Item #2: Presentations regarding the Recommended Decision Regarding PVC Management II, Appeal No. CWC 18-0549

Stephen Jeffrey, attorney for OCCC, provided comments and gave a slide presentation on behalf of his client. In addition, he is asking on behalf of his client that the Commission disapprove the permit, or impose reasonable conditions to require a baseline water quality assessment and a groundwater monitoring program at the site if the permit is approved.

Jennifer Hernandez, Missouri Attorney General's Office, provided comments and asked that the Commission adopt the recommended decision of the Administrative Hearing Commission to sustain the issuance of the permit to PVC Management II, Permit No. MOGS10560.

Commissioner Reece made comments regarding the effects that this Concentrated Animal Feeding Operation (CAFO) may have on the groundwater surrounding properties.

Commissioner Coday moved the Commission go into closed session to discuss legal, confidential, or privileged matters under Section 610.021(1), Revised Statutes of Missouri. Commissioner Rowland seconded the motion. The motion passed with a roll call vote.

Commissioner Reece:	Yes
Commissioner Rowland:	Yes
Commissioner Coday:	Yes
Vice Chair Thomas:	Yes
Chair McCarty:	Yes

Open session reconvened at 10:17 a.m.

Commissioner Coday made a motion to uphold the decision made by the Administrative Hearing Commission. Commissioner Rowland seconded the motion. The motion passed with a roll call vote:

Commissioner Reece: No
Commissioner Rowland: Yes
Commissioner Coday: Yes
Vice-Chair Thomas: Yes
Chair McCarty: Yes

Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan Amendment
Agenda Item 3

Hannah Humphrey, Missouri Department of Natural Resources, Financial Assistance Center, presented an amendment to the Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan.

Commissioner Reece made a motion to approve the amendment as proposed. Commissioner Coday seconded the motion. The motion passed with a roll call vote:

Commissioner Reece: Yes
Commissioner Rowland: Yes
Commissioner Coday: Yes
Vice-Chair Thomas: Absent for vote
Chair McCarty: Yes

Motion to Approve the November 27, 2018, Missouri Clean Water Commission Closed Meeting Minutes
Agenda Item 4

Commissioner Coday made a motion to approve the minutes. Commissioner Reece seconded the motion. The motion was passed with a roll call vote.

Commissioner Rowland: Yes
Commissioner Coday: Yes
Commissioner Reece: Yes
Vice-Chair Thomas: Absent for vote
Chair McCarty: Yes

Application for Award of Attorney's Fees Regarding County Club Homes, LLC, Permit MOG10872
Agenda Item 5

Tim Duggan spoke to the commission and recommended that the issue be tabled to ensure there are no additional appeals before a decision is made.

Commissioner Rowland made a motion to table this issue for a later meeting. Commissioner Reece seconded the motion. The motion was passed with a roll call vote.

Commissioner Rowland: Yes
Commissioner Coday: Yes
Commissioner Reece: Yes
Vice-Chair Thomas: Absent for vote
Chair McCarty: Yes

Presentations

Director's Update **Agenda Item 6**

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

- Approval of U.S. Environmental Protection Agency's (EPA) Numeric Nutrient Criteria proposal
- Notice of triennial review of water quality standards
- Missouri Agricultural & Small Business Authority
- 2018 303d List and 2020 listing methodology
- 2018 Clean Water Permit Fee Annual Invoice Report
- 2018 Issued Permits Report
- FFY18 Compliance Monitoring Strategy Report
- EPA review of the Commission's water quality standards package
- Clean Water Commission hearing that will be held for the East-West Gateway 208

Tier I Management Plan amendment

Public Comment and Correspondence **Agenda Item 7**

Robert Brundage, Newman, Comley, and Ruth, Jefferson City, Missouri, provided comments about the pending EPA approval of water quality standards that the Commission passed. Wanted to point out that new regulations can't be used until they are approved by the EPA, and that the only portion of the package that was approved was lake nutrient criteria. Mr. Brundage has clients who are waiting on permits that want to take advantage of the new regulations once they are approved. He suggested that the Commission contact the EPA and ask for a commitment or timeline as to when this process will be completed.

Nancy Crutch, Citizen, Clarksburg, Missouri, provided comments about the Tipton East CAFO, she lives 0.2 miles away from the CAFO. She is concerned about the negative health impacts the CAFO has on her family and community.

Missouri Clean Water Commission Meetings
Agenda Item 8

- April 29, 2019, Lewis and Clark State Office Building
- July 10, 2019, Lewis and Clark State Office Building
- October 9, 2019, Lewis and Clark State Office Building

ADJOURNMENT OF MEETING

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

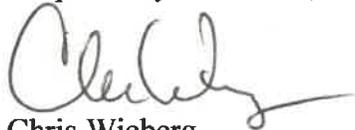
Commissioner Reece: Yes
Commissioner Rowland: Yes
Commissioner Coday: Yes
Vice-Chair Thomas: Absent for vote
Chair McCarty: Yes

Commission adjourned the open meeting at 11:26 a.m.

For more information contact:

Ms. Krista Welschmeyer, Commission Secretary, Missouri Clean Water Commission
Water Protection Program, P.O. Box 176, Jefferson City, MO 65102
Phone: 573-751-6721
Fax: 573-526-1146
E-mail: krista.welschmeyer@dnr.mo.gov

Respectfully Submitted,



Chris Wieberg
Director of Staff

1 BEFORE THE DEPARTMENT OF NATURAL RESOURCES

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MISSOURI CLEAN WATER COMMISSION
PUBLIC HEARING REGARDING PVC MANAGEMENT II

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APPEAL NO. CWC 18-0549

7

AT LEWIS & CLARK STATE OFFICE BUILDING

8

1101 RIVERSIDE DRIVE

JEFFERSON CITY, MISSOURI 65101

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JANUARY 9, 2019

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1 A P P E A R A N C E
2 MS. ASHLEY McCARTY, Chair
MS. PATRICIA THOMAS, Vice Chair
3 MR. ALLEN ROWLAND, Member
MR. CHRIS WIEBERG, Member
4 MR. STAN CODAY, Member
MR. JOHN REECE, Member
5 MS. CHELSEY DISTLER, Acting Commission Secretary
MR. DUGGAR, Legal Counsel

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Court Reporter:
Joann Renee Richardson
Alaris Litigation Services
711 North Eleventh Street
St. Louis, MO 63101
(314) 644-2191
1-800-280-3376

1 MS. McCARTY: Good morning everyone.
2 We will now call this meeting of the Missouri Water
3 Commission to order. First I would like to introduce
4 my commissioners and staff in front of you today. I
5 am Ashley McCarty, Chair from Kirksville, Missouri.
6 To my right is Stan Coday, Commissioner from Seymour
7 area. To his right is Allen Rowland, Commissioner
8 from Dexter.

9 John Reece is at the end of the table from
10 Lee's Summit. Patricia Thomas is joining us by phone
11 today and will be participating. And to my left is
12 Chris Wieberg, director of staff for the Commission
13 and director of the water protection program.

14 Tim Duggan is here as Commission legal
15 counsel from the Attorney General's Office. Chelsey
16 Distler is acting secretary to the Commission and
17 acting secretary to the program and has successfully
18 stayed as acting in those roles.

19 We first have an amended agenda before us
20 this morning, in that our first order of business will
21 be the election of the Missouri Clean Water Commission
22 Vice Chair.

23 For those that don't know, Commissioner Ben
24 Hurst took a new role and with that needed to step
25 away from his citizen service on the Missouri Clean

1 Water Commission. And we have a certificate
2 recognizing his service here on the Clean Water
3 Commission since January 31st of 2018. We appreciate
4 his time.

5 This is certainly a burden to bear at times
6 and a call to public service at others, so I will pass
7 down this recognition of Ben's service on the
8 Commission. And with his departure, we will need to
9 elect a new vice chair before us today. So I will
10 sign this and pass down and, while doing so, would
11 accept any nominations from my fellow commissioners
12 for the service of vice chair.

13 COMMISSIONER ROWLAND: Madam Chairman, I
14 would nominate Pat Thomas.

15 COMMISSIONER REECE: Second.

16 CHAIRMAN McCARTY: Commissioner Thomas
17 has been nominated and second. Is there any other
18 nominations.

19 COMMISSIONER CODAY: Move the nominations
20 cease.

21 CHAIRMAN McCARTY: Commission Coday has
22 moved that nominations cease. Pat, are you willing to
23 serve as Commission vice chair.

24 COMMISSIONER THOMAS: I would be honored.

25 CHAIRMAN McCARTY: Commissioner Thomas

1 said, "Yes, I would be honored." It's a little fuzzy
2 on this end Pat, so I am repeating for the court
3 reporter in attendance this morning.

4 COMMISSIONER THOMAS: Thank you.

5 CHAIRMAN McCARTY: Chelsey, can you call
6 the roll for this vote, please?

7 MS. DISTLER: Commissioner Coday.

8 COMMISSIONER CODAY: Aye.

9 MS. DISTLER: Commissioner Thomas.

10 COMMISSIONER THOMAS: Aye.

11 MS. DISTLER: Commissioner Reece.

12 COMMISSIONER REECE: Aye.

13 MS. DISTLER: Commissioner Rowland.

14 COMMISSIONER ROWLAND: Aye.

15 MS. DISTLER: Chair McCarty.

16 CHAIRMAN McCARTY: Aye. Congratulations,
17 Pat. Thank you for your willingness to serve in a
18 leadership role on the Clean Water Commission. We
19 appreciate it and appreciate your time here with us
20 even despite a busy day.

21 Pat, the next order of business that we
22 will be moving to is our second agenda item, which all
23 it entails is the Administrative Hearing Commission's
24 recommended decision regarding PVC Management II,
25 which is Appeal CWC 18-0549.

1 The first issue that we need to deal with
2 is the second amended motion to disqualify myself,
3 Commissioner McCarty, and I would turn the floor over
4 to you if you feel comfortable doing so via phone.

5 COMMISSIONER THOMAS: Yes, that's fine.

6 CHAIRMAN McCARTY: The sound is coming
7 through better on this side. I think maybe first,
8 Commissioner Thomas, I would like to make a statement
9 on this motion to disqualify, if that suits you.

10 COMMISSIONER THOMAS: Does anyone have
11 any discussion or objection to Commissioner McCarty
12 making her own personal statement on the issue?

13 COMMISSIONER REECE: Madam co-chair, I
14 would like to move that we deny Mr. Jeffrey's motion
15 to disqualify Chair McCarty, in that her service and
16 her knowledge and her understanding of the Commission
17 and its activities more than qualifies her to remain
18 in that position through the process of hearing this
19 permit consideration.

20 COMMISSIONER THOMAS: Thank you. Is
21 there a second to commissioner Reece's motion?

22 COMMISSIONER ROWLAND: I'll second that
23 motion.

24 COMMISSIONER THOMAS: Thank you,
25 Commissioner Rowland. Any discussion? Seeing none,

1 Chelsey would you please call the roll?

2 MS. DISTLER: Commissioner Reece.

3 COMMISSIONER REECE: Aye.

4 MS. DISTLER: Commissioner Rowland?

5 COMMISSIONER ROWLAND: Aye.

6 MS. DISTLER: Commissioner Coday.

7 COMMISSIONER CODAY: Aye.

8 MS. DISTLER: Vice Chair Thomas.

9 COMMISSIONER THOMAS: Aye.

10 MS. DISTLER: Chair McCarty?

11 CHAIRMAN McCARTY: Abstain.

12 COMMISSIONER THOMAS: So is that by a
13 vote of four to zero?

14 CHAIRMAN McCARTY: Yes, with one
15 abstention.

16 Commissioner THOMAS: By a vote of four
17 to zero, the motion on the table passes or the motion
18 before us passes. Chairman McCarty, would you like to
19 take back over the meeting.

20 CHAIRMAN McCARTY: Sure. I would just
21 like to clarify that there are two separate issues
22 that this motion to disqualify really attempts to meld
23 into one and so, to make clear, my role is to ensure
24 that an opportunity exists, an environment exists in
25 counties so that agriculture can grow and thrive.

1 My role is not to advocate for, defend, nor
2 promote any individual operation, farm, nor permittee
3 that would qualify in this case and all others, in
4 that while working in this case in Cooper County to
5 ensure that Cooper County did not enact additional
6 regulations that were burdensome on agriculture, it
7 did not involve my role in advocating for PCV II or
8 any other permittee at that time. And same in the
9 second amended motion, that the support for a county
10 commissioner did not equate to support for this
11 permittee or any other.

12 And in my work role, I work hard to
13 maintain that I have two hats that I wear, one as a
14 citizen, service here on the Clean Water Commission,
15 and another in my work role in Missouri farmers care.
16 I am diligent in ensuring that those things are
17 separate and that I do not advocate for anything or
18 take any stand on anything that would be coming before
19 me on the Clean Water Commission as it has in this
20 case with PVC II. Thank you all.

21 We will now move into -- as we have on
22 previous appeals -- hearing from the parties that are
23 representing both the plaintiff and the defendant. In
24 this case it will be Mr. Jeffrey representing
25 opponents of Cooper County CAFOs and the Attorney

1 General's Office. And so, Mr. Jeffrey, I would with
2 offer you to come forward and make your presentation
3 at this time.

4 MR. JEFFREY: Good morning.

5 CHAIRMAN McCARTY: Good morning.

6 MR. JEFFREY: Good morning, Chairman
7 McCarty and members of the commission. My name is
8 Steve Jeffrey. I represent the petitioners in this
9 case. Anyone who has ever dealt in the world of real
10 estate knows that the three magic words involving real
11 estate are location, location, location.

12 And what I would like to do today is just
13 run you through a very brief PowerPoint presentation
14 which shows why the location of the proposed Tipton
15 East CAFO is an unsuitable location for the operation
16 that they propose.

17 I would like to discuss three topics today.
18 First, the soils at the CAFO site. Secondly, some
19 hydrogeological issues at the CAFO site. And then,
20 finally, the request that my clients would like to
21 make to the Commission. This map -- again, this is
22 going to show excerpts of several actual exhibits that
23 were introduced at the Administrative Hearing
24 Commission and should be contained in the
25 administrative record, which you have in front of you.

1 What this is is an excerpt from Exhibit 7.
2 This is just a general view showing the location of
3 where the CAFO is located. Hopefully you can see that
4 better than this one. Is that pretty visible?
5 There's a white box with red letters "CAFO." That's
6 the site of the proposed facility.

7 And then the red area outlined is the
8 approximate location where all the spreading fields
9 would be located, where waste from the the CAFO would
10 be knifed in, disked in, however the particular
11 operator would do that. And this is located at the
12 very very southern edge of Cooper County.

13 This next document is an excerpt from
14 Exhibit 14, which was the deposition transcript of Tom
15 Aley. Tom Aley, A-L-E-Y, is probably one of most
16 prominent geologists, not only in Missouri, but in the
17 Midwest. He has 40 to 50 years experience dealing
18 specifically with karst and karst related issues
19 throughout Missouri, northwest Arkansas, and the whole
20 general area. His resume' is included within the
21 exhibit. I think there's a separate exhibit with his
22 resume and if the Commission would like additional
23 information on his background, I would encourage you
24 to look at that.

25 But what this document is, is a soils map

1 which Mr. Aley referenced during his deposition. It
2 shows several features. These include these green
3 dots, which are drinking water wells located in the
4 area. And if you look within one and a quarter radius
5 of where the CAFO will be proposed, I believe there
6 are 22 residential wells. And based on information in
7 the administrative record from some people who live
8 within that area, these are relatively shallow wells,
9 all less than four, 500 feet. I believe they were
10 less than 300 feet in some cases.

11 So, anyway, the important takeaway here is,
12 there is no county water. There is no water district.
13 Everyone is dependant upon groundwater for the source
14 of their drinking watering supply. More importantly,
15 most of these people are farmers, so all of their
16 agricultural water supply also comes from wells, so
17 all the water supply is at issue here.

18 What this document does, it's the same as
19 the preceding soils map, but the layer of the map that
20 shows where all the wells are located is peeled back,
21 so what this map shows -- you'd probably have to look
22 at it in more detail -- but it shows the specific
23 soils type throughout this region. If you can focus
24 in on the classification of the soil type where the
25 physical plant of the CAFO would be located and where

1 most of these spreading fields are located, you'll see
2 a certain number, a five digit number.

3 These numbers are prepared not by my
4 clients, they're prepared by the NRCS, an agency of
5 the U.S. Department of Agriculture. These maps are
6 all derived from federal sources. And what I would
7 like to do is hand out a hard copy -- this is an
8 exhibit into the record.

9 If you were to look in the back of that
10 document, there are several fold-out maps and I
11 believe it's sheet number 41, is where this specific
12 site is located. That's where all these soil numbers
13 come from. So specifically the source is the federal
14 government for these soil types.

15 If you look at the relevant numbers that
16 we're talking about, these are what are called
17 "Clafork" soils. C-L-A-F-O-R-K. The numbers are
18 shown here, the 73137, 73138, and 73531. It is the
19 third one, the 73531, that's the one that almost
20 totally envelopes the site of where the proposed
21 Tipton East facility would be located.

22 Exhibit 15 is in the record and that's the
23 document that Mr. Coday is looking at right now,
24 that's the cover of it. And if you look on Page 27 of
25 Exhibit 15, it gives you a description of Clafork

1 soils. At some point in time the NRCS changed the
2 numbering for Clafork soils from the four digits that
3 they use here and they made it a five digit. I assume
4 they digitized that for computer purposes or
5 something.

6 Any way, what this page describes is
7 Clafork soils. This very deep, moderately sloping,
8 somewhat poorly drained soil is on the shoulders and
9 back slopes of ridges in the uplands. It basically
10 describes what that classification of Clafork soil is.

11 And then if you turn to page 27, I think
12 it's the same page further down, according to NRCS,
13 the important properties of that soil are listed and
14 the ones I would like to highlight are the two shown
15 with the red arrows. The seasonal high water table:
16 Perched at a depth of one and a half feet below ground
17 surface. And finally what's call the shrink-swell
18 potential, and it says high.

19 When I first saw that, I had no
20 understanding what shrink-swell potential meant. I
21 thought it was an interesting concept. And in his
22 deposition, Mr. Aley went on to explain all this. It
23 referenced to the NRCS document that you have inspect
24 front you.

25 If you look at Page 150 in the NRCS soils

1 map, it defines shrink-swell as, "The shrinking of
2 soil when dry and the swelling when wet. Shrinking
3 and swelling can damage roads, dams, building
4 foundations and other structures. It can also damage
5 plant roots."

6 On Page 103 of the NRCS soils document it
7 describes shrink-swell potential. It is a potential
8 for volume change in a soil with a loss or gain in
9 moisture. Which means whenever there's any kind of
10 rain event, the soil particles where the sight of the
11 CAFO is located are going to expand, and when the
12 weather dries up they're going to shrink again.

13 Shrink-swell, that's where the terminology comes from.

14 Again, this isn't my client saying this.
15 This is the USDA NRCS saying this. If the
16 shrink-swell potential is rated moderate to very high,
17 shrinking and swelling can cause damage to buildings,
18 roads and other structures. Special design is often
19 needed.

20 If you look further back in the NRCS
21 document on Page 183, there is a table given. I
22 believe this is Table 11. And what this does is, the
23 NRCS has developed different types of tables, like
24 based on different soil types. It gives you
25 characteristics for doing various activities at a

1 location given a given soil type.

2 And here it's in Table 11, as we said, on
3 page 183. The columns are the soil type and then
4 there's a column shallow foundations, buildings
5 without basement, buildings with basements, small
6 commercial buildings, local roads and streets, and
7 lawns and landscaping.

8 So in this table the NRCS is providing to
9 the user information about whether or not soils at a
10 given location with a particular soil classification,
11 what are the attributes of that soil with respect to
12 these various activities.

13 So if you turn to Page 183 and you go down,
14 it lists clafork soils. All three categories of the
15 clafork soils, there's entry for that. The entry I
16 would like to draw the Commission's attention to is
17 under buildings without basements. It says the
18 classification is severe. It's severe because of the
19 shrink-swell potential. The attribute for buildings
20 with basements is severe because of the wetness and
21 swell. And for small commercial buildings it's also
22 categorized as severe for shrink-swell potential.

23 And, again, this isn't a table prepared by
24 my clients. This is a table prepared by the U.S.
25 Department of Agriculture, NRCS. This document is not

1 in the record, but I found this on the internet
2 because it just illustrates a situation where if you
3 had an underground concrete structure, it shows the
4 upward and sideward pressure resulting from this
5 shrink-swell characteristics.

6 Whenever it gets wet and the soils expand,
7 it will exert pressure on the sides and up from the
8 bottom on any concrete structure and it's going to
9 cause that structure to crack. That's why these
10 building foundations were rated as severe.

11 So with regard to the hydrogeological
12 issues -- and, again, this is all reflected in
13 Mr. Aly's deposition at Pages 44 and 45. His
14 transcript is Exhibit 14. Again, it was
15 uncontradicted. There was no other testimony or
16 evidence presented to the AHC to contradict what
17 Mr. Aly's professional opinions were concerning the
18 hydrogeological issues here.

19 He testified that based on his review, this
20 location of where the facility is proposed is
21 underlain by what's called Burlington-Keokuk
22 limestone. And based on his review of those maps,
23 which we looked at a few moments ago, that there are
24 multiple springs in the area and there are multiple
25 shallow residential drinking water wells in the area.

1 Also Exhibit 12, Page 3 -- I'd like to hand
2 this out. This is just a copy of a summary document
3 that Mr. Aly referred to in his deposition and it's
4 attached to the record in Exhibit No. 12, if anyone
5 wanted to refer along -- he indicates that the CAFO
6 was underlain by a karst aquifer that supplies water
7 to numerous springs and provides the only drinking
8 water source for 22 homes within a mile and quarter of
9 the CAFO. He also states no alternative drinking
10 water sources exist or are expected to exist in the
11 foreseeable future.

12 He also states the Tipton East CAFO site is
13 a hydrologically unsuitable site for liquid manure
14 storage in underground pits. As designed the site
15 will not and cannot function as a no-discharge
16 facility. He explained his opinions are based upon
17 the fact of the karst geology, the shallow water
18 table, and the clafork soils with the severe
19 shrink-swell potential for any type of underground
20 structure associated with the building.

21 Again, referring back to NRCS table, if the
22 federal government says -- if I want to build a small
23 house with a small basement and it's going to be very,
24 very difficult for me to do that, how is it going to
25 be for the Tipton East folks to build their massive,

1 you know, underground structures at their production
2 facilities on a much larger scale, on orders of
3 magnitude larger than my small house with a small
4 basement that the Feds say I shouldn't build.

5 Again, on Page 4 of Mr. Aley's summary, he
6 said the factors that contribute to or responsible for
7 leakage from this facility would be, first, an
8 inadequate subsurfacing investigation for a site
9 underlain by a karst aquifer. There's no evidence
10 that investigations appropriate for a site underlain
11 by a karst aquifer were ever conducted by anybody.
12 Subsurface investigations need to extend through the
13 epikarstic zone, approximately the top 30 feet of
14 bedrock.

15 He also indicated that there's no evidence
16 of any assessment of the impacts of irregular bedrock
17 surface, shrink-swell potential of the soils, or low
18 strength of soils on the leakage integrity of the
19 waste pits. And this is on page 4 of Exhibit 12,
20 which you have.

21 He also indicated there's no evidence of
22 any assessment of the risks of the differential
23 subsidence of rock, residuum, and soil overlying
24 solutionally enlarged openings in the bedrock. This
25 is an attribute related to the karst topography.

1 Such subsidence would damage the leakage
2 integrity of the manure storage basins. He also said
3 moderate to high shrink-swell characteristics of the
4 soil and residuum plus low strength of the soils and
5 residuum. These characteristics will result in the
6 fracturing of the concrete manure pits and leakage of
7 liquid manure into the karst groundwater system.

8 And, again, this is just not an opinion
9 he's pulling out of the air. His opinions are based
10 on the NRCS soils document developed and issued by the
11 federal government. Mr. Aley finally concluded,
12 "Given the hydrogeologic setting on top of the
13 limestone units that are routinely karstified,
14 monitoring wells are required. These wells must be
15 designed and located where they will detect
16 unpermitted discharges of wastes to groundwater.

17 So based on that, it appears the reasonable
18 conclusion that could be drawn, is that based on the
19 karst geology at the site, the 22 shallow drinking
20 water wells all located within a mile and a quarter of
21 the site as well as the clafork soils that are present
22 not only at the CAFO site, but throughout most of the
23 area where the spreading fields are located, that it's
24 necessary to require at least a baseline groundwater
25 assessment to determine what are the current

1 conditions in this area. Right now that is an
2 unknown. Secondly, require the installation of a
3 groundwater system around the CAFO in the event the
4 CAFO is allowed to assume operations.

5 We believe that the Commission, in
6 reviewing this, has the legal authority, if the
7 Commission were to be so inclined, to impose
8 reasonable conditions on the issuance of a CAFO
9 permits like this.

10 There is a specific regulation, 10 CSR
11 20-8.300 (13), which deals with groundwater
12 monitoring: An approved groundwater monitoring
13 program may be required around the perimeter of a
14 manure storage site. And, again, whether that could
15 be required is based upon the potential contaminated
16 drinking water aquifer due to soil permeability,
17 bedrock, distance to aquifer, et cetera. That's what
18 the law currently allows the Commission to do.

19 During the AHC hearing there was some
20 testimony from the DNR staff that they thought, well,
21 this regulation really doesn't apply because these
22 people aren't constructing an earthen basin; however,
23 if you read the literal language of this, there's no
24 restriction that says this only applies to a facility
25 if you're building an earthen basin.

1 And also the AHC stated that there is a
2 statute that says the Department can only adopt rules
3 that impose groundwater monitoring requirements on a
4 Class 1A CAFO. And since this is not a class 1A CAFO,
5 you can't enforce this rule on anyone.

6 Well, the issue with that is, first of all,
7 the statute was adopted in 1996 when the CAFOs were
8 first coming into Northwest Missouri and the
9 Department was trying to get a handle on really how to
10 deal with these things. There are probably a handful
11 of us in this room who were involved in this process
12 going back to those days.

13 But at that point the Department initially
14 adopted a rule, but the legislature said, well, you
15 can only have your rules applicable to 1A CAFOs. But
16 in this case, thing reg we just being looked at, the
17 Subsection 13, it wasn't enacted by the Department.
18 It was enacted by the Clean Water Commission. And the
19 Clean Water Commission has its own unique statutory
20 authority to adopt rules and regulations.

21 And this is a copy from the Missouri
22 register for the initial adoption of that Subsection
23 13 back in 2012. It says: By the authority vested in
24 the Clean Water Commission that rule is adopted. It
25 was readopted in 2016 by authority of rule making

1 vested in the Clean Water Commission.

2 So that rule was adopted by the Clean Water
3 Commission, it was not adopted by the Department,
4 therefore that statutory prohibition doesn't apply.
5 Again, conceptually, what difference does it make if
6 you have a class 1A CAFO and class 1B CAFO both
7 located side by side, it's a difference of one animal
8 unit. If they both have the potential to affect all
9 these people who have these shallow drinking water
10 wells, what difference should one animal unit make.
11 It really shouldn't from practical perspective.

12 Months ago during the AHC testimony some
13 folks from the Department said, well, we don't think
14 Subsection 13 should apply because we only deal -- you
15 know, require stuff like this for facilities if you
16 build earthen basin. Well, there's preceding
17 Subsection 6 in the same regulation and it
18 specifically deals with construction of earthen
19 basins. And it again goes on about hydrogeologic
20 evaluations and studies and things such as this.

21 So really there are two separate
22 regulations on the books. One, this one right here
23 specifically deals with facilities who are going to
24 build an earthen basin and impose certain
25 requirements, but then there's subsection 13, on the

1 other hand, which deals with when the Commission can
2 require groundwater monitoring and it has absolutely
3 no reference to earthen basins at all, so it should
4 apply to any facility whereas these requirements only
5 apply to facilities with earthen basins.

6 So it's our view legally the Commission has
7 authority, if you were inclined, to require some type
8 of groundwater investigation and monitoring at this
9 facility in the event it were permitted.

10 Just to get ready to wrap things up here,
11 this is a copy of Statute 644.011. This is the
12 purposes of the Missouri Clean Water law. I want to
13 just stress that the general assembly, when they
14 passed this, said one of thing goals are to conserve
15 the waters of the state and to protect, maintain and
16 improve the quality thereof for public water supplies
17 and for domestic, agricultural, industrial, so on and
18 so forth, legitimate beneficial uses.

19 In this case, if you go back to the map in
20 one of the exhibits, not within a mile and a quarter
21 of the facility are all of the residential drinking
22 water wells, but there's testimony that there was also
23 all these agriculture wells that these folks used to
24 get water to water their animals. These folks -- most
25 of my clients, they're all farmers themselves.

1 They're concerned about their water supply. That's
2 what this appeal is all about, is protecting the
3 groundwater.

4 We believe based on Mr. Aley's testimony
5 about the karst geology, the number of nearby
6 residential drinking water wells, the severe
7 construction limitations of these clafork soils, that
8 it's reasonable for the Commission to either, one,
9 based on all those factors, just disapprove the permit
10 and deny it outright, or, alternatively, if the
11 Commission were so inclined to issue the permit, to
12 impose reasonable conditions to require the baseline
13 groundwater assessment at the facility just so
14 everyone knows before you start up this is what the
15 current conditions are, and then to require the
16 groundwater monitoring system at the CAFO site and the
17 land application fields so in the future, if there is
18 some type of adverse affect and someone's drinking
19 water wells are watering their farm animals, you know,
20 there's some data available to determine where the
21 problem came from.

22 In other words, these are reasonable
23 requirements and they relate to the conservation of
24 the water supply, which are statutory goals and
25 purposes of the clean water law, which you all are

1 designed to implement. So that's my presentation.

2 I'd be glad to answer any questions.

3 CHAIRMAN McCARTY: Commissioners, any
4 questions for Mr. Jeffrey? I have one. So in our AHC
5 recommended decision, Page 11, Counts 1 and 2 were
6 your assertion on failure to investigate potential
7 spring and well contamination and the assessed
8 groundwater monitoring system.

9 So the AHC weighed in pretty clearly in its
10 statement that an administrative agency may not
11 promulgate a regulation broader than the authorizing
12 statute in your assertion about the groundwater
13 monitoring. Can you tell me how that interpretation
14 is incorrect? It looks pretty clear with the
15 reference to 10CSR 20-8.300 Subsection 12 and 13.
16 Walk me through again where you feel our authority
17 exceeds what the law lays out.

18 MR. JEFFREY: Sure. I believe the
19 statute that the Administrative Hearing Commission
20 referenced -- again, there was a slide I had up if you
21 wanted me to bring it back up. But anyway it's
22 Section 640 -- I believe it was 470. I might have the
23 number wrong. But it says the Department can adopt
24 rules dealing with Class 1A CAFOs, but you can only
25 require groundwater monitoring at a Class 1A CAFO. If

1 you look at the literal language in that statute, it
2 says the Department can't do this. The Department
3 can't adopt a rule that requires groundwater
4 monitoring at any site other than a Class 1A CAFO. In
5 this case, the orders of rule making, this particular
6 rule, the Subsection 13 was not adopted by the
7 Department. It was adopted by the Clean Water
8 Commission. The Department of Natural Resources is a
9 unique statutory animal. The Clean Water Commission
10 is a unique statutory animal.

11 If the general assembly wanted to prohibit
12 the Clean Water Commission from requiring any other
13 other than a Class 1A CAFO to do groundwater
14 monitoring, they very easily could have said that when
15 they adopted the statute. They could have included
16 the Commission, but they didn't, so we believe that's
17 what gives you the legal authority to impose a
18 reasonable condition like that.

19 Again, we don't believe we're asking for
20 the moon and the stars here. We're just submitting,
21 because of documented, you know, severe limitations
22 about the soil and the karst topography, karst
23 geology, this is a reasonable thing to do.

24 CHAIRMAN McCARTY: Thank you.

25 COMMISSIONER CODAY: I have a question.

1 I don't want to get into an argument. I believe you
2 cherry pick your facts because if you look at some of
3 the characteristics of this soil, you failed to point
4 out the fact that the permeability of this soil is
5 moderately soil, which means anything on the top of
6 the soil is going to move through that soil slowly, so
7 the idea that this is just going to immediately
8 contaminate the groundwater I question, but that's
9 neither here nor there.

10 MR. JEFFREY: I never suggested that it
11 would immediately contaminate. The document speaks
12 for itself.

13 COMMISSIONER CODAY: As I said, I don't
14 want to argue with you. What I would like to know is,
15 though -- your position is, if we permit this, you
16 would like groundwater monitoring. What would you
17 like -- what's your perfect scenario of that looking
18 like? Do you want -- you mentioned the groundwater
19 monitored at the site, but is that -- would you be
20 happy with water testing at the site only? Do you
21 want wells at residences within this mile and a half
22 that you mentioned, do you want all them tested? What
23 would that look like as far as you're concerned in
24 your perfect scenario?

25 MR. JEFFREY: I think that's a great

1 question. I think if you read the language of
2 Subsection 13, it talks about engaging the Division of
3 Geological Surveying. It used to be DGLS. Missouri
4 Geological Survey, I think, is what they call it now.
5 Engage the folks down in Rolla, have them review
6 conditions and have them come up with the
7 recommendations for what a reasonable and appropriate
8 plan would be.

9 I'm not a hydrologist. I'm not a
10 geologist. I really couldn't tell you one way or the
11 other. I would suggest that this is a reasonable
12 thing to look into and a reasonable way to approach it
13 would be to have the experts within the department
14 down at Rolla engage and develop what they think would
15 be a reasonable approach to dealing with this, to
16 address the issue.

17 CHAIRMAN McCARTY: Other questions at
18 this time for Mr. Jeffrey? Thank you.

19 MR. JEFFREY: Thank you.

20 CHAIRMAN McCARTY: Ms. Hernandez from the
21 Attorney General's Office will be presenting on behalf
22 of the Department, will be presenting the Department's
23 perspective at this time.

24 MS. HERNANDEZ: May it please the
25 Commission. Again, my name is Jennifer Hernandez.

1 I'm an assistant attorney general at the Missouri
2 Attorney General's Office and I, along with Shawna
3 Bligh, represented the Department of Natural Resources
4 before the Administrative Hearing Commission and
5 today, on behalf of DNR, I'm asking that this
6 Commission adopt the recommended decision of the
7 Administrative Hearing Commission to sustain the
8 issuance of the permit to PVC Management. Just so the
9 record is clear, the permit number is MOGS10560.

10 And I guess my first comment today is that
11 Mr. Jeffrey presented a lot of information to the
12 Commission this morning, but none of it is new
13 information in terms of the record. All this
14 information was presented in the evidentiary hearing
15 and as Commissioner McCarty brought up, in terms of
16 the soil and the water monitoring on Page 11, that was
17 not adopted by the Commission.

18 They found the arguments that were
19 presented to them to be not credible and found that,
20 in fact, you can't authorize a regulation that is
21 broader than the statute. So when we're talking about
22 Class 1A monitoring and the permit that was requested
23 is a 1C permit, that is beyond the statutory scope
24 that is allowed under 640.

25 But also I want to mention to you in terms

1 of the conditions that were proposed. I guess, in
2 effect, Mr. Jeffrey is asking the Commission to order
3 monitoring on property that is not under the
4 operational control of the CAFO, so essentially you
5 would be including conditions in this permit on
6 private individuals' property. Some of which may be
7 here, perhaps they're not here.

8 So you would be ordering someone to drill a
9 well and take monitoring actions not being a party to
10 this proceeding, so I think that's outside the scope
11 of this Commission's authority.

12 And something that Ms. Bligh and I really
13 tried to keep the Administrative Hearing Commission
14 focused on is that a lot these arguments that were
15 brought up to you today -- again, the same arguments
16 that were in the evidentiary hearing -- are going
17 towards operational requirements, whereas we try to
18 keep the Commission focused on the permitting
19 requirements and there's clearly a separation when the
20 Department is considering an application for a permit.

21 And if you look at the recommended decision
22 on Pages 8, 9 and 10, it's listing the permit
23 requirements that the Department must consider and the
24 Commission found that the Department presented
25 credible evidence through the application and the

1 testimony presented and the other documents that all
2 the permitting requirements were met and the
3 application was deemed complete and the department
4 issued a lawful permit, so I think it's important to
5 not lose that focus.

6 I think Mr. Jeffrey is asking the
7 Commission to play ball outside the ballpark, if you
8 will; focus on the operational requirements, not the
9 permitting requirements, which were the subject of
10 this appeal, and whether the Department issued a
11 lawful permit in the permitting requirements, not the
12 operation.

13 The permit issued is a no-discharge
14 facility. I think that's important to bring up as
15 well. I think I will end my presentation at that
16 point unless there's any questions. Again, the
17 Department is just recommending that this Commission
18 sustain the Department's action in issuing the permit
19 to PVC.

20 CHAIRMAN McCARTY: Thank you. Any
21 questions for Ms. Hernandez at this time? Thank you.

22 MS. HERNANDEZ: Thank you.

23 CHAIRMAN McCARTY: Mr. Jeffrey, do you
24 have any need for rebuttal, since you went first?

25 MR. JEFFREY: I'll be very brief, just to

1 clarify one point. The document that the AHC issues
2 is only a recommendation. The final decision -- you
3 have total discretion as to how the Commission deals
4 with this. I do want to draw a comparison between the
5 things the Department looks at when they can issue or
6 deny a permit themselves, you know, there's like a
7 checklist of items they look at. And just because the
8 groundwater concerns aren't on the checklist, that may
9 well mean the Department can't consider that to issue
10 a permit or not.

11 However, given the Commission's broad
12 discretion to impose conditions on permits like this,
13 which clearly you have the legal authority to do
14 because you have to make the final decision, it's not
15 like you're acting as an appellate court, reviewing
16 the decision the AHC made. They only gave you a
17 recommendation.

18 So you have total carte blanche discretion
19 based on the facts that if you want to impose some
20 reasonable conditions about groundwater, clearly you
21 have the legal discretion to do that. That has
22 nothing to do with the checklist as it were that the
23 Department is confined to when they make the
24 additional permitting decision or not.

25 The Department doesn't have the discretion

1 to look outside their box, whereas you have the
2 discretion to look at all these issues in determining
3 whether or not to impose conditions or not. I'd be
4 glad to answer any questions.

5 CHAIRMAN McCARTY: Thank you.
6 Commissioners, this is now before us for deliberation
7 and discussion. Any consultation with our counsel as
8 needed?

9 COMMISSIONER REECE: I have a couple
10 comments.

11 CHAIRMAN McCARTY: Sure. Commissioner
12 Reece.

13 COMMISSIONER REECE: Based on my
14 experience, 48 years in engineering, one thing was
15 omitted from the testimony in that there's two types
16 of concrete, concrete that's cracked and concrete
17 that's gonna crack. Mr. Aley pointed out in his
18 testimony that because of the type of soils that we
19 have here, it's very difficult to impact those soils.

20 And if you build a concrete structure or a
21 tank on those soils and due to the nature of the soil,
22 the shrinking and expanding of the soil, those basins
23 are going to contract.

24 Another issue with regard to the monitoring
25 wells. I don't care how many monitoring wells you

1 have around the site, if you land apply manure or this
2 waste to the soil and it permeates the soil and it
3 gets into the groundwater, no matter how many
4 monitoring wells you have, it's too late.

5 You can monitor that water from now on, for
6 eternity, but once the groundwater is polluted, it's
7 polluted, there's nothing -- and you continue to apply
8 this manure to the land, again, as I stated, it's too
9 late.

10 So if, in fact, we do install monitoring
11 wells and the groundwater does become polluted, are we
12 going to shut down this CAFO? Are we going to fine
13 him for pollution of the groundwater? What happens,
14 then, once the groundwater is polluted?

15 So I just think we need to consider these
16 facts and there's more to this than just building a
17 CAFO. And there were, I believe, 22 homes that will
18 be affected by this CAFO. I heard from one of the
19 property owners that they've already had to abandon
20 their home and that they can't live there because of
21 the stench, the odor and so forth, or the potential
22 for odor.

23 So I just think that we need to consider
24 this very seriously and in our deliberations we need
25 to take into account the affect this CAFO will have on

1 the surrounding community.

2 CHAIRMAN McCARTY: Thank you,
3 Commissioner. Any other comments at this time?

4 COMMISSIONER CODAY: Madam Chairman, I
5 move the Clean Water Commission go into closed session
6 to discuss legal, confidential or privileged matters
7 under Section 610.021 RSMo.

8 CHAIRMAN McCARTY: It's been moved to
9 move into closed. Is there a second to that motion?

10 COMMISSIONER ROWLAND: I'll second that
11 motion.

12 CHAIRMAN McCARTY: Commissioner Rowland
13 seconds the motion. Any discussion? Commissioner
14 Thomas, if we step into another room for closed
15 session, can you join us via phone?

16 COMMISSIONER THOMAS: How would I do
17 that?

18 CHAIRMAN McCARTY: You could call one of
19 us or we could call you.

20 COMMISSIONER THOMAS: You can call my
21 cell. Call my cell on speaker, that's fine.

22 CHAIRMAN McCARTY: With that, Chelsey can
23 you call the roll?

24 MS. DISTLER: Commissioner Rowland?

25 COMMISSIONER ROWLAND: Aye.

1 MS. DISTLER: Commissioner Coday?

2 COMMISSIONER CODAY: Aye.

3 MS. DISTLER: Commissioner Reece?

4 COMMISSIONER REECE: Aye.

5 MS. DISTLER: Vice Chair Thomas?

6 COMMISSIONER THOMAS: Aye.

7 MS. DISTLER: Chairman McCarty?

8 CHAIRMAN McCARTY: Aye.

9 (In closed session.)

10 CHAIRMAN McCARTY: We will now be back
11 into open session of the Missouri Clean Water
12 Commission. Thank you guys for your patience. We'll
13 continue our deliberation in consideration of the AHC
14 recommendation on the PCV Management II appeal.
15 Anyone have questions or documents for any of the
16 parties?

17 COMMISSIONER THOMAS: Is this my
18 opportunity to say something?

19 CHAIRMAN McCARTY: This would be a good
20 one, yes.

21 COMMISSIONER THOMAS: I just want to say
22 that I think good points and issues are raised when we
23 listen to the public, but that some of these are
24 legislative issues. They are not issues that we, as
25 the Commission who is set currently, can decide, so

1 thank you.

2 CHAIRMAN McCARTY: Thank you. Anything
3 else?

4 COMMISSIONER CODAY: Madam Chairman, as
5 we deliberate through each of these permits, I think
6 obviously our knowledge, our own knowledge, our fore
7 knowledge makes a difference. I kind of alluded to
8 that with Mr. Jeffrey's. I believe that it's very
9 important that we look at all the facts. The soil
10 type.

11 As a former vocational agriculture
12 instructor, I've taught soils for 30 years. Looking
13 at soils is certainly an important thing and aspect,
14 but, again, I think that needs to be laid aside,
15 because as Commissioner Thomas just alluded to, that
16 really, as far as our purview as the Clean Water
17 Commission, I believe legally that is outside the
18 scope of our commission.

19 And so I believe it's important for us --
20 the last permit hearing that we had, whether we agreed
21 or not, we were very conscious of what the AHC had
22 done, what they had looked at as far as the legality
23 of the permit and what DNR had done.

24 And I realize neighbors of this operation,
25 it's a very emotional issue, but we must lay our

1 emotions aside. And to that end, I'm going to move
2 the Clean Water Commission uphold the AHC's or the
3 Administrative Hearing Commission's recommended
4 decision regarding PCV Management II appeal CWC
5 18-0549.

6 CHAIRMAN McCARTY: A motion has been made
7 to uphold the recommended decision. Is there a second
8 on that motion?

9 COMMISSIONER ROWLAND: I'll second that
10 motion.

11 CHAIRMAN McCARTY: Commissioner Rowland
12 has seconded. Is there any discussion?

13 COMMISSIONER THOMAS: Can someone please
14 restate the motion?

15 CHAIRMAN McCARTY: Yes. Commissioner
16 Cody moved to uphold the Administrative Hearing
17 Commission's recommended decision regarding PVC
18 Management II in this appeal before the Clean Water
19 Commission 18-0549.

20 As we discussed that motion, I would just
21 like to clearly state for the record again this
22 morning that I concur with Commissioner Coday that our
23 consideration, our full consideration is given on
24 these appeals based upon the evidence presented in the
25 appeal record and weight given to the conclusions

1 recommended by the Administrative Hearing Commission.

2 Certainly in my consideration of this, I am
3 fully -- I have nothing to gain on the support nor
4 denial of this permit and am able to be unbiased in my
5 assessment and base my decision solely upon the
6 record. If there's no other comments or discussion,
7 Chelsey can you call the roll, please?

8 MS. DISTLER: Commissioner Coday.

9 COMMISSIONER CODAY: Aye.

10 MS. DISTLER: Commissioner Reece?

11 COMMISSIONER REECE: No.

12 MS. DISTLER: Commissioner Rowland?

13 COMMISSIONER ROWLAND: Aye.

14 MS. DISTLER: Vice Chair Thomas?

15 COMMISSIONER THOMAS: Aye.

16 MS. DISTLER: Chair McCarty?

17 CHAIRMAN McCARTY: Aye. That motion has
18 passed and we have a final decision order to be signed
19 by the Commission here today before we depart.

20 [Hearing concluded.

21

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<p align="center">A</p> <p>A-L-E-Y 10:15 abandon 34:19 able 39:4 absolutely 23:2 Abstain 7:11 abstention 7:15 accept 4:11 account 34:25 acting 2:5 3:16 3:17,18 32:15 action 31:18 40:13,17 actions 30:9 activities 6:17 14:25 15:12 actual 9:22 additional 8:5 10:22 32:24 address 28:16 administrative 5:23 9:23,25 11:7 25:10,19 29:4,7 30:13 38:3,16 39:1 adopt 21:2,20 25:23 26:3 29:6 adopted 21:7,14 21:24 22:2,3 26:6,7,15 29:17 adoption 21:22 adverse 24:18 advocate 8:1,17 advocating 8:7 affect 22:8 24:18 34:25 agency 12:4 25:10 agenda 3:19 5:22 ago 16:23 22:12 agreed 37:20 agricultural 11:16 23:17</p>	<p>agriculture 7:25 8:6 12:5 15:25 23:23 37:11 AHC 16:16 20:19 21:1 22:12 25:4,9 32:1,16 36:13 37:21 AHC's 38:2 air 19:9 Alaris 2:21 Aley 10:15,15 11:1 13:22 19:11 33:17 Aley's 18:5 24:4 Allen 2:3 3:7 allowed 20:4 29:24 allows 20:18 alluded 37:7,15 alternative 17:9 alternatively 24:10 Aly 17:3 Aly's 16:13,17 amended 3:19 6:2 8:9 animal 22:7,10 26:9,10 animals 23:24 24:19 answer 25:2 33:4 anybody 18:11 anyway 11:11 25:21 appeal 1:6 5:25 24:2 31:10 36:14 38:4,18 38:25 appeals 8:22 38:24 appears 19:17 appellate 32:15 applicable</p>	<p>21:15 application 24:17 30:20 30:25 31:3 applies 20:24 apply 20:21 22:4,14 23:4,5 34:1,7 appreciate 4:3 5:19,19 approach 28:12 28:15 appropriate 18:10 28:7 approved 20:12 approximate 10:8 approximately 18:13 aquifer 17:6 18:9,11 20:16 20:17 area 3:7 10:7 10:20 11:4,8 16:24,25 19:23 20:1 argue 27:14 argument 27:1 arguments 29:18 30:14,15 Arkansas 10:19 arrows 13:15 Ashley 2:2 3:5 aside 37:14 38:1 asking 26:19 29:5 30:2 31:6 aspect 37:13 assembly 23:13 26:11 assertion 25:6 25:12 assessed 25:7 assessment 18:16,22 19:25</p>	<p>24:13 39:5 assistant 29:1 associated 17:20 assume 13:3 20:4 attached 17:4 attempts 7:22 attendance 5:3 attention 15:16 attorney 3:15 8:25 28:21 29:1,2 40:11,15 attribute 15:19 18:25 attributes 15:11 authority 20:6 21:20,23,25 23:7 25:16 26:17 30:11 32:13 authorize 29:20 authorizing 25:11 available 24:20 Aye 5:8,10,12,14 5:16 7:3,5,7,9 35:25 36:2,4 36:6,8 39:9 39:13,15,17</p>	<p>19:18 20:15 24:4,9 32:19 33:13 38:24 baseline 19:24 24:12 basement 15:5 17:23 18:4 basements 15:5,17,20 basically 13:9 basin 20:22,25 22:16,24 basins 19:2 22:19 23:3,5 33:22 bear 4:5 bedrock 18:14 18:16,24 20:17 behalf 28:21 29:5 believe 11:5,9 12:11 14:22 20:5 24:4 25:18,22 26:16,19 27:1 34:17 37:8,17 37:19 Ben 3:23 Ben's 4:7 beneficial 23:18 better 6:7 10:4 beyond 29:23 blanche 32:18 Bligh 29:3 30:12 books 22:22 bottom 16:8 box 10:5 33:1 brief 9:13 31:25 bring 25:21 31:14 broad 32:11 broader 25:11 29:21 brought 29:15 30:15</p>
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