

**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**

**November 2, 2011**

**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  
Jessica Blome, Counsel, Missouri Clean Water Commission  
Malinda Steenbergen, Secretary, Missouri Clean Water Commission

Alison Anderson, Department of Natural Resources, Jefferson City, Missouri  
Karen Bataille, Missouri Department of Conservation, Columbia, Missouri  
Nick Bauer, Metropolitan St. Louis Sewer District, St. Louis, Missouri  
Robert Brundage, Newman, Comley & Ruth P.C., Jefferson City, Missouri  
Joe Boland, EI ERA, Jefferson City, Missouri  
John Bryan, Poultry Federation, Missouri  
Mary West-Calcano, Jacobs Engineering, St. Louis, Missouri  
Greg Caldwell, Department of Natural Resources, Jefferson City, Missouri  
Emily Carpenter, Department of Natural Resources, Jefferson City, Missouri  
Doyle Childers, Flotron McIntosh, Jefferson City, Missouri  
Tony Dohmen, Department of Natural Resources, Jefferson City, Missouri  
Frank Dolan, Gredell Engineering Resources, Jefferson City, Missouri  
Joe Engeln, Department of Natural Resources, Jefferson City, Missouri  
Walter Fett, Department of Natural Resources, Jefferson City, Missouri  
Bob Fuerman, Missouri American Water, St. Louis, Missouri  
Doug Garrett, Department of Natural Resources, Jefferson City, Missouri  
Darlene Helmig, Department of Natural Resources, Jefferson City, Missouri  
John Hoehne, University of Missouri, Columbia, Missouri  
John Hoke, Department of Natural Resources, Jefferson City, Missouri  
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri

Nate Moore, Rose Acre Farms, Missouri  
Terry Nelson, Department of Natural Resources, Jefferson City, Missouri  
Traci Newberry, Department of Natural Resources, Jefferson City, Missouri  
Johnny E. O'Dell, Department of Natural Resources, Jefferson City, Missouri  
Rebecca O'Hearn, Department of Conservation, Columbia, Missouri  
Kevin Perry, REGFORM, Jefferson City, Missouri  
Alan Reinkemeyer, Department of Natural Resources, Jefferson City, Missouri  
Tonya Roth, Department of Natural Resources, Jefferson City, Missouri  
Thomas Rothermich, City of St. Louis Water Division, St. Louis, Missouri  
Lorisa Smith, Department of Natural Resources, Jefferson City, Missouri  
Trent Stober, Geosyntec, Columbia, Missouri  
Scott Totten, Department of Natural Resources, Jefferson City, Missouri  
Phil Walsack, Missouri Public Utility Alliance, Columbia, Missouri  
Sunny Wellesley, Environmental Protection Agency, Kansas City, Kansas

### **CALL TO ORDER**

Chair Hunter called the meeting of the Missouri Clean Water Commission to order on November 2, 2011 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 20-6.300 Concentrated Animal Feeding Operations (CAFO)** **Agenda Item #1**

The Commission held a public hearing on 10 CSR 20-6.300 Concentrated Animal Feeding Operations. Tony Dohmen, Permits and Engineering Section presented testimony for the Department proposing regulations to more closely align the Missouri regulations to the federal Environmental Protection Agency CAFO regulations and provide additional clarification to existing state regulations.

Robert Brundage, Newman, Comley & Ruth P.C. also noted a few items for consideration before adopting a final regulation.

The Commission, and the audience were reminded that written comments will be accepted until 5:00 p.m. on November 16, 2011. The Commission will take final action on the rulemaking at the January 4, 2011 meeting.

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

**Public Hearing – 10 CSR 20-8.300 Manure Storage Design Regulations**

**Agenda Item #2**

The Commission held a public hearing on the 10 CSR 20-8.300 Manure Storage Design Regulations. Tony Dohmen, Permits and Engineering Section presented testimony for the Department proposing regulations specifically for the design of manure management systems.

Robert Brundage, Newman, Comley & Ruth P.C. also testified in support of the proposed regulation.

The Commission, and the audience, were reminded that written comments will be accepted until 5:00 p.m. on November 16, 2011. The Commission will take final action at the January 4, 2011 meeting.

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

**Public Hearing – 10 CSR 20-6.010 Construction and Operating Permits**

**Agenda Item #3**

The Commission held a public hearing on 10 CSR 20-6.010 Construction and Operating Permits regulations. John Rustige, Permits and Engineering Section presented testimony for the Department. The rule amendment addresses the pesticide applicator exemption, fire hydrant flushing and continuing authority provision of the rule. Five people presented testimony at the hearing. Those testifying:

Phil Walsack, Missouri Public Utility Alliance  
Mary West-Caleagno, Jacobs Engineering  
Bob Fuerman, Missouri American Water  
Thomas Rothermich, City of St. Louis Water Division  
Kevin Perry, REGFORM  
Robert Brundage, Newman, Comley & Ruth P.C.

The Commission, and the audience, were reminded that written comments will be accepted until 5:00 p.m. on November 16, 2011. The Commission will take final action at the January 4, 2011 meeting.

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

**Approval of the September 7, 2011 Missouri Clean Water Commission Meeting Minutes**

**Agenda Item #4**

Phil Walsack, Missouri Public Utilities Alliance noted a correction on page four, agenda number 4, second paragraph of the draft September 7th minutes. 10 SR 20-7.031 should be 10 CSR 20-7.031.

**Commissioner Tupper made a motion to approve the September 7, 2011 meeting minutes with the above noted correction. Commissioner Leake seconded the motion. The motion passed with a roll call vote:**

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

**10 CSR 20-8.120 Design of Gravity Sewers Proposed Order of Rulemaking**  
**Agenda Item #5**

Emily Carpenter, Financial Assistance Center presented the Proposed Order of Rulemaking for 10 CSR 20-8.120 Design of Gravity Sewers amending this rule. Ms. Carpenter noted that the Department would file the Order of Rulemaking with the Joint Committee on Administrative Rules and the Secretary of State and the Order of Rulemaking would be published in the *Missouri Register* on January 17, 2012. The rule would become effective February 29, 2012.

Nick Bauer, Metropolitan St. Louis Sewer District also presented comments to the Commission.

**Commissioner Easley made a motion to adopt the Order of Rulemaking for 10 CSR 20-8.120 and the Department to file the Order with the Joint Committee on Administrative Rules and the Secretary of State. 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**  
**Commissioner Easley: Yes**  
**Chair Hunter: Yes**

**Finding of Necessity for Proposed Rulemaking for and Proposed Rescission of 10 CSR 20-6.100 General Pretreatment Regulations**  
**Agenda Item #6**

Walter Fett, Permits and Engineering Section presented the Finding of Necessity for Proposed Rulemaking for and Proposed Rescission of 10 CSR 20-6.100 General Pretreatment Regulation. Findings of Necessity were requested, first to rescind the current rule and second to propose a new rule, 10 CSR 20-6.100 General Pretreatment Regulation. Mr Fett noted that this new rule would replace the current rule with the same name and rule number. The new rule adopts the federal General Pretreatment Regulation, 40 CFR 403, with modifications to include the State of Missouri's authority to implement the pretreatment regulations. The federal rule contains certain provisions that reduce the burden on regulated entities and others that are more stringent.

**Commissioner Tupper made a motion to approve the finding of necessity for the proposed new rule, 10 CSR 20-6.100. Commissioner Leake seconded the motion. The motion passed with a roll call vote:**

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

**Small Borrower Loan for Martinsburg**  
**Agenda Item #7**

Doug Garrett, Financial Assistance Center presented the Small Borrower Loan request from the City of Martinsburg in the amount of \$100,000. Mr. Garrett noted that these funds would be used to partially fund the costs of constructing a new lagoon storage pond, a land application system, and replace the wastewater collection system.

**Commissioner Easley made a motion to approve the proposed small borrower loan to the City of Martinsburg. Commissioner Parnell seconded the motion. The motion passed with a roll call vote:**

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

**Overlook Subdivision Wastewater Treatment Facility – Referral to the Attorney General’s Office**  
**Agenda Item #8**

Kevin Mohammadi, Compliance and Enforcement Section presented the Overlook Subdivision Wastewater Treatment Facility to the Commission for referral to the Attorney General’s Office for appropriate legal action in order to compel compliance, pursue a civil penalty, and/or seek any other appropriate form of relief.

**Commissioner Wood made a motion to refer Overlook Subdivision Wastewater Treatment Facility to the Attorney General’s Office for appropriate legal action in order to compel compliance, pursue a civil penalty, and/or seek any other appropriate form of relief. Commissioner Warren seconded the motion. The motion passed with a roll call vote:**

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

**STAFF UPDATES**

**Permits and Water Quality Review Sheet Update**  
**Agenda Item #5**

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

**Status of Rulemaking**  
**Agenda Item #7**

John Madras, Director, Water Protection Program presented an update on rulemaking. Mr. Madras reported 10 CSR 20-7.031 Water Quality Standards rulemaking was filed on October 31, 2011 and rulemaking 10 CSR 20-7.015 Effluent Regulation continues in development and a stakeholder meeting is scheduled for November 8, 2011. No action was taken by the Commission.

## STANDING ITEMS

### Legal Report

Jessica Blome, 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, reported the Department is negotiating four nonpoint source projects which include:

- MU Urban Volume Reduction Efforts in the Hinkson Creek Watershed
- Asher Creek (Greene County)
- Middle and Upper James River Basin Sho-Me Yard, Neighborhoods, Farms and Ranches
- City of Carthage Spring River Nonpoint Source Watershed Management Plan.

In addition Mr. Madras noted the Water Protection Forum would meet December 13, 2011, and the fees workgroup would meet January 12, 2012. No action was taken by the Commission.

## PRESENTATIONS

### Public Comment and Correspondence

- Phil Walsack, Missouri Public Utility Alliance and Mary West-Calcoigne, Jacobs Engineering stated they are anticipating the Departments responses to their comments on the water quality standards regulatory impact report.
- Mary West-Calcoigne, Jacobs Engineering expressed concern the Water Protection forum does not appear to be as effective as it was a few years ago, and suggested the larger group deal with substantive issues with all involved parties, particularly environmental groups that have been absent, and follow up on the concept of tiered aquatic life protection criteria.
- Robert Brundage, Newman, Comley, and Ruth P.C. suggested the Commission rescind the lake water quality standards for nutrient since all of the nutrient standards were adopted as a group and the Environmental Protection Agency cherrypicked only the standard the agency like for approval.
- Trent Stober, Geosyntec spoke on the continuing efforts to develop nutrient standards.

No action was taken by the Commission.

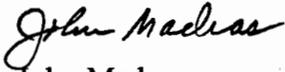
**ADJOURNMENT OF MEETING**

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

<b>Commissioner Leake:</b>	<b>Yes</b>
<b>Commissioner Easley:</b>	<b>Yes</b>
<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>Chair Hunter:</b>	<b>Yes</b>

The meeting adjourned at 11:30 a.m.

Respectfully Submitted,



John Madras  
Director of Staff

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MISSOURI CLEAN WATER COMMISSION

Department of Natural Resources  
Lewis and Clark State Office Building  
LaCharrette/Nightingale Creek Conference Rooms  
1101 Riverside Drive  
Jefferson City, Missouri

Missouri Clean Water Commission Meeting  
Public Hearing  
10 CSR 20-6.300 Concentrated Animal Feeding Operations  
November 2, 2011

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## MISSOURI CLEAN WATER COMMISSION

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Missouri Clean Water Commission Meeting  
Public Hearing

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10 CSR 20-6.300 Concentrated Animal Feeding Operations  
Department of Natural Resources

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

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November 2, 2011

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## COMMISSION MEMBERS PRESENT:

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Samuel Hunter, Chairman

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Todd Parnell

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Samuel Leake

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Jan Tupper

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Wallis Warren

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Dennis Wood

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William Easley, Jr.

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## REPORTED BY:

20

Patricia A. Stewart, CCR 401, RMR, RPR  
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22

Jefferson City, Missouri 65109

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## 1 P R O C E E D I N G S

2 CHAIRMAN HUNTER: The first item on the  
3 agenda this morning is a public hearing on the proposed  
4 amendment to 10 CSR 20-6.300, concentrated animal  
5 feeding operations.

6 The Commission will begin the public hearing  
7 on the proposed amendment to 10 CSR 20-6.300,  
8 concentrated animal feeding operations.

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

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

18 The Commission will first hear testimony from  
19 the Department. Following the Department's testimony  
20 the Commission will give the public an opportunity to  
21 comment.

22 We ask that all individuals present fill out  
23 an attendance card so our records are complete. If you  
24 wish to present verbal testimony, please indicate that  
25 on your attendance card.

1                   When you come forward to present testimony,  
2 please speak into the microphone and begin by  
3 identifying yourself to the court reporter.

4                   Following the public hearing today the  
5 Commission will review testimony presented and make  
6 appropriate modifications to the proposed amendment in  
7 10 CSR 20-6.300, concentrated animal feeding operations.

8                   The Commission plans to take final action at  
9 the January 4th, 2012 meeting.

10                  The court reporter will now swear in anyone  
11 wishing to testify at this public hearing before the  
12 Clean Water Commission today.

13                  Will all those wishing to comment please  
14 stand.

15                  (Witnesses sworn.)

16                  CHAIRMAN HUNTER: First will be Tony Dohmen.

17                  MR. DOHMEN: Thank you, Mr. Chairman, and  
18 members of the Commission.

19                  My name is Tony Dohmen. I'm a member of the  
20 Water Protection Program, Permits and Engineering  
21 Section, and I'm presenting staff testimony on proposed  
22 Rule 10 CSR 20-6.300, concentrated animal feeding  
23 operations.

24                  The Department has proposed revisions to the  
25 CAFO permit regulation located at 10 CSR 20-6.300. This

1 proposed rule has been published for public comment in  
2 the Missouri Register.

3           The Environmental Protection Agency's  
4 National Pollutant Discharge Elimination System CAFO  
5 permit regulation is currently more protective than  
6 Missouri's CAFO regulation. This is a result of the  
7 2008 EPA CAFO rule and subsequent related Federal court  
8 rulings.

9           EPA requires these deficient areas be updated  
10 in Missouri's regulation in order to continue to issue  
11 NPDES permits to CAFOs in Missouri.

12           This proposed rule is the second in a series  
13 of two State rulemakings to address EPA's updated rules.  
14 The first was completed in 2009 and set several new  
15 Federal environmental standards.

16           This new rule focuses on addressing the  
17 administrative aspects of CAFO permitting found in the  
18 EPA rule. In addition, we have attempted to better  
19 clarify existing State CAFO regulations.

20           Program staff facilitated many stakeholder  
21 workgroup meetings in 2008 and 2009 and two workgroup  
22 meetings in 2010 to discuss the EPA rules and seek  
23 public input on the proposed rulemaking. Stakeholders  
24 that attended these meetings included private  
25 individuals and companies currently regulated by the

1 program, commodity and environmental groups, elected  
2 officials and EPA permitting staff.

3 We believe the proposed regulation will allow  
4 Missouri to continue to provide CAFO owners with a  
5 reasonable permitting program, while still meeting our  
6 obligations to EPA and protecting Missouri's waters.

7 This concludes my presentation. I would be  
8 happy to answer any questions you may have.

9 CHAIRMAN HUNTER: Thank you, Tony.

10 MR. DOHMEN: Thank you.

11 CHAIRMAN HUNTER: The next speaker is Robert  
12 Brundage.

13 MR. BRUNDAGE: Good morning members of the  
14 Commission.

15 I made a comment back in the back there that  
16 it's nice to see all seven commissioners here today.  
17 Glad you're here. It's an important job.

18 Again, Robert Brundage with the law firm  
19 Newman, Comley & Ruth at 601 Monroe Street, Suite 301,  
20 here in Jefferson City.

21 I'm here today to provide testimony on behalf  
22 of two clients, one, the Missouri Pork Association, and  
23 the other, the Missouri Agribusiness Association. Both  
24 associations have numerous members who own and operate  
25 animal feeding operations and concentrated animal

1 feeding operations.

2 I've been involved in the stakeholder  
3 process -- well, probably since 1995 on these rules and  
4 more recently on this what we call Phase II rulemaking.

5 As was just mentioned, there was a Phase I of  
6 this rulemaking that went through in 2000, 2008, and  
7 this Phase II rulemaking going on now has been a  
8 culmination to incorporate all of the Federal rule  
9 changes that we've seen over the last five years.

10 I want to commend the Department on the  
11 stakeholder process. It's been a very good process.  
12 The rule has been thoroughly vetted.

13 Some of the comments I'm going to make today  
14 are very brief, and I will submit more comments in  
15 writing by the end of the comment period.

16 I want to say on behalf of our clients  
17 that -- my clients, that we support the framework of  
18 this rule. And this rule is, in fact, more stringent  
19 than the Federal regulations.

20 Under the Federal regulations animal feeding  
21 operations and concentrated animal feeding operations  
22 that do not discharge or do not propose to discharge  
23 would not have to obtain a permit, but under this scheme  
24 here CAFOs have the opportunity and are required to get  
25 a permit from the State.

1                   Now, they have two options. They can get an  
2 NPDES permit or they can get a State version of a permit  
3 that is not an NPDES permit. It's just a State only  
4 permit.

5                   And that aspect of this rulemaking makes  
6 Missouri more stringent than the Federal system, where  
7 many CAFOs who don't discharge or do not propose to  
8 discharge would not have to have a permit.

9                   But the members of our companies -- or  
10 members of our associations believe in a process where  
11 they utilize the nutrients in an appropriate fashion.  
12 They are very used to operating in accordance with  
13 nutrient management plans, which is the core of these  
14 permitting schemes.

15                   They've been operating under permits for  
16 years, and they believe it's the best way to proceed,  
17 even though it's more stringent than the Federal system,  
18 and all we're required to do is meet the Federal bar and  
19 not go above.

20                   But we are supporting this rulemaking here  
21 today in the way it's put together on the permitting  
22 scheme.

23                   Just a few minor comments I want to make on  
24 the neighbor notice provision. The Department has  
25 proposed to change some of the ways the neighbor notice

1 are done in the past. It's been a little bit confusing,  
2 where people who get -- who receive a neighbor notice  
3 that's required by a statutory section that's not in the  
4 Clean Water Law are afforded a public opportunity, an  
5 opportunity to comment on the construction permit.

6           And I would like to see that aligned exactly  
7 with the construction -- with the operating permit  
8 that's placed on public notice when a construction  
9 permit is being processed.

10           It seems that if those were aligned directly,  
11 there would be less confusion on the public and it would  
12 work better.

13           Another comment I have is that right now we  
14 have in the state a general permit for a Class 1C and  
15 Class 1B operations but site-specific permits for  
16 Class 1A operations.

17           And with the way the rules have gone is that  
18 it basically -- as I said before, the core of the permit  
19 is that you have a nutrient management plan and you must  
20 follow the nutrient management plan and you must land  
21 apply nutrients in accordance with that plan.

22           It doesn't matter whether you're the smallest  
23 CAFO or the largest CAFO. Manure or effluent must be  
24 applied in the same exact fashion at the proper  
25 agronomic rates.

1                   So I think through the years we have -- we  
2 really don't have a need anymore to categorize permits  
3 into site specific for the Class 1A operations and  
4 general permits for the other operations, because  
5 they're going to be treating their nutrients and  
6 collecting the records in the exact same fashion.

7                   And I would like to see the rule eliminate  
8 the aspect that requires site-specific permits for  
9 Class 1A operations.

10                   Another part of the rule that I'm not yet  
11 convinced we have to incorporate into our rule is that  
12 once you reach the pertinent number of animal units to  
13 become a Class 1C CAFO, which is the cutoff -- if you're  
14 a Class 1C, you're the smallest Class 1 operation.  
15 Below that you're a Class 2 and then you're unclassified  
16 below that.

17                   The -- where was I going with that?

18                   I lost my train of thought on that. Pardon  
19 me.

20                   Oh. I'm back on track. Sorry.

21                   When you're a permitted CAFO Class 1A, 1B, 1C  
22 and you reach those numbers, and let's say it's a  
23 thousand animal units, and now you have to obtain a CAFO  
24 permit.

25                   If you have 50 head of cattle over here in a

1 lot which is not -- which would be an unclassified CAFO  
2 by itself, all of a sudden you're supposed to wrap those  
3 animals into your permit, and they -- they would be  
4 subject to the same permitting terms as your very large  
5 operation over here with a thousand animal units of  
6 another species of animals, whether, you know, cattle,  
7 hogs or chickens.

8           And I don't know if that really makes any  
9 sense, and I'm not convinced that we need to incorporate  
10 that into our rule, where small operations of a  
11 different type of animal species have to be pulled into  
12 your permitting scheme. So I'd like to see that  
13 modified in this rule.

14           The rest of my comments are relatively minor.  
15 I do not want to take up any more of your time today but  
16 appreciate the opportunity to be here and I'm available  
17 at any time to answer any questions, whether it's today  
18 or later on.

19           So if nothing else, thank you.

20           COMMISSIONER LEAKE: I'd like to ask you, you  
21 talked about the notification of neighbors and the  
22 difference between how different statutes read.

23           How much difference is there?

24           MR. BRUNDAGE: Well, the neighbor notice  
25 provision for our permits, DNR had put a permit on

1 public notice and there's an opportunity to comment.

2           And we want -- and all I'm saying is that  
3 the neighbor notice provision -- and we call it House  
4 Bill 1207, passed in 1996. That's the statutory  
5 provisions we're talking about, and you probably know  
6 about that.

7           COMMISSIONER LEAKE: Yeah, I do.

8           MR. BRUNDAGE: It's just not clear in the  
9 regulations of when that time period starts, and it just  
10 seems to me that it could be more -- it could cleared up  
11 on when the public could comment.

12           Because I've seen in the past where somebody  
13 will comment and then maybe a permit is not written  
14 until five months later and then there's another period  
15 of time, and it seems to me that all of the comments  
16 ought to come in at the same time and be handled  
17 together.

18           COMMISSIONER LEAKE: Does 1206 spell it out  
19 plainly when that period is or not?

20           MR. BRUNDAGE: Um, I think it just says given  
21 an opportunity for 30 days to comment. I can't remember  
22 the exact wording.

23           COMMISSIONER LEAKE: I don't remember the  
24 wording.

25           MR. BRUNDAGE: But I don't know if it says

1 exactly when, but I think we can massage our regulations  
2 to fit into our other permitting scheme in Chapter 644,  
3 which is the Clean Water Commission regulations.

4 COMMISSIONER LEAKE: I understand what you're  
5 saying.

6 CHAIRMAN HUNTER: Robert, when you lost your  
7 train of thought, I did too.

8 Would you please go back now and tell us what  
9 you meant by different species? Is that what you were  
10 talking about?

11 MR. BRUNDAGE: Yeah.

12 I guess if you have a Class 1C hog operation,  
13 you know, you have one or two barns and you just meet a  
14 thousand animal units, like 2,500 hogs, but then you  
15 raise cattle over here on the back part of your farm and  
16 you have a little feed lot with 30 head of cattle in it  
17 and there is no vegetation in your little feed lot, this  
18 permitting scheme requires you to draw those 30 head of  
19 cattle into your CAFO permit and have the same CAFO  
20 permitting terms apply to that little 30-head cattle  
21 feed lot.

22 And under our present system, under our  
23 present permitting scheme, it doesn't require that.  
24 It just looks at whatever animal units trigger a  
25 thousand.

1                   So if you run over a thousand for hogs, then  
2 you have a permit that applies to that part of your  
3 operation, not both.

4                   CHAIRMAN HUNTER: But no permit for the  
5 cattle operation?

6                   MR. BRUNDAGE: Correct.

7                   COMMISSIONER EASLEY: Now, you say in a feed  
8 lot. If they were grazing, would they still be the  
9 same?

10                  MR. BRUNDAGE: I don't think so, because the  
11 definition of a CAFO incorporates an animal feeding  
12 operation, where they were kept for 45 days on an area  
13 that's unvegetated.

14                  So a grazing operation I don't think  
15 would -- I hope it wouldn't -- that's my testimony --  
16 that that part wouldn't be part of the CAFO operation.

17                  COMMISSIONER PARNELL: Robert, this addition  
18 is from the Federal regulations?

19                  MR. BRUNDAGE: Yeah.

20                  COMMISSIONER PARNELL: So in this case you're  
21 wanting it to be less stringent than the Federal  
22 regulations?

23                  MR. BRUNDAGE: Yes.

24                  And when the State is delegated permitting  
25 authority, there's a process that a state goes through

1 to get delegation. Now, we have delegation already.

2 And EPA is going to look at the totality of  
3 your permitting scheme, your permitting statutes and  
4 regulations. And oftentimes things don't exactly match  
5 up to a Federal statute, and EPA will say that's okay.

6 Now, I'm not saying they will do that in this  
7 situation. Hopefully they would. Because I don't know  
8 if it really makes sense to do -- to permit the way that  
9 I mentioned here, the example I provided.

10 CHAIRMAN HUNTER: Thank you.

11 MR. BRUNDAGE: Thank you.

12 CHAIRMAN HUNTER: Any discussion?

13 We don't have any more speakers?

14 MR. MADRAS: No. That's it.

15 COMMISSIONER PARNELL: I do have one thing to  
16 observe.

17 If we are doing this rewrite to be consistent  
18 with Federal regulations, why would you risk the rewrite  
19 not being acceptable by exempting some pieces of it, I  
20 guess would be my question?

21 COMMISSIONER LEAKE: A good question. I was  
22 interested in the notification process.

23 I agree, and I wrote the bill when we  
24 originally did this, but there could probably be a  
25 better method of notification.

1                   CHAIRMAN HUNTER: At this time we will close  
2 this hearing.

3                   The Commission will receive written testimony  
4 on the proposed amendment to 10 CSR 20-6.300,  
5 concentrated animal feeding operations, until 5:00 p.m.  
6 on November 16th, 2011.

7                   You may submit this written testimony to  
8 Ms. Malinda Steenbergen, the Commission Secretary,  
9 Missouri Department of Natural Resources, Water  
10 Protection Program, P. O. Box 176, Jefferson City,  
11 Missouri 65102 prior to that deadline.

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

15                   WHEREIN, the hearing concluded.

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CERTIFICATE OF REPORTER

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

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Patricia A. Stewart

CCR No. 401

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MISSOURI CLEAN WATER COMMISSION

Department of Natural Resources  
Lewis and Clark State Office Building  
LaCharrette/Nightingale Creek Conference Rooms  
1101 Riverside Drive  
Jefferson City, Missouri

Missouri Clean Water Commission Meeting  
Public Hearing  
10 CSR 20-8.300 Manure Storage Design Regulations  
November 2, 2011

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MISSOURI CLEAN WATER COMMISSION

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Missouri Clean Water Commission Meeting  
Public Hearing

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10 CSR 20-8.300 Manure Storage Design Regulations  
Department of Natural Resources

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Lewis and Clark State Office Building  
LaCharrette/Nightingale Creek Conference Rooms

7

1101 Riverside Drive  
Jefferson City, Missouri

8

November 2, 2011

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10

COMMISSION MEMBERS PRESENT:

11

Samuel Hunter, Chairman

12

Todd Parnell

13

Samuel Leake

14

Jan Tupper

15

Wallis Warren

16

Dennis Wood

17

William Easley, Jr.

18

19

20

REPORTED BY:

21

Patricia A. Stewart, CCR 401, RMR, RPR  
Midwest Litigation Services

22

3432 Truman Boulevard, Suite 207

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Jefferson City, Missouri 65109

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(573) 636-7551

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## 1 P R O C E E D I N G S

2 CHAIRMAN HUNTER: The Commission will begin  
3 the public hearing on the proposed Rule 10 CSR 20-8.300,  
4 manure storage design regulations.

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

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

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

18 We ask that all individuals present fill out  
19 an attendance card so our records are complete. If you  
20 wish to present verbal testimony, please indicate that  
21 on your attendance card.

22 When you come forward to present testimony,  
23 please speak into the microphone and begin by  
24 identifying yourself to the court reporter.

25 Following the public hearing today the

1 Commission will review testimony presented and make  
2 appropriate modifications to the proposed  
3 Rule 10 CSR 20-8.300, manure storage design regulations.

4 The Commission plans to take final action at  
5 the January 4th, 2012 meeting.

6 The court reporter will now swear in anyone  
7 wishing to testify at this public hearing before the  
8 Clean Water Commission today.

9 Will all those wishing to comment please  
10 stand.

11 (Witnesses sworn.)

12 CHAIRMAN HUNTER: I call Tony Dohmen.

13 MR. DOHMEN: Thank you, Mr. Chairman, members  
14 of the Commission.

15 My name is Tony Dohmen. I'm a member of  
16 the Water Protection Program, Permits and Engineering  
17 Section. I'm presenting staff testimony on proposed  
18 Rule 10 CSR 20-8.300, manure storage design regulations.

19 This proposed rule has been published for  
20 public comment in the Missouri Register.

21 The manure storage design regulations mainly  
22 incorporate existing design standards into a rule  
23 specifically for concentrated animal feeding operations,  
24 also known as CAFOs.

25 This eliminates the need to pick and choose

1 from the Chapter 8 design guides. The new regulation  
2 will provide clarity and consistency in the design of  
3 CAFOs.

4           These proposed regulations will not apply to  
5 existing manure management systems, only new systems  
6 after the effective date of the rule.

7           There are some new environmental standards  
8 included in this regulation. The main ones include  
9 soils testing to ensure appropriate soil and groundwater  
10 protection at earthen floored poultry houses.

11           Second, a larger minimum storage volume for  
12 manure storage structures and a change that CAFOs must  
13 be protected from the 100-year flood rather than the  
14 25-year flood.

15           All involved stakeholders agreed to having  
16 regulations specific to manure storage structures was  
17 desired.

18           To determine the specifics of what should be  
19 included in such a regulation, Department staff worked  
20 with a team of experts from the University of Missouri  
21 Extension and the Natural Resources Conservation  
22 Service.

23           In addition, staff received input from  
24 stakeholders at two meetings. The proposed rule  
25 provides clarity and environmental protection, while

1 minimizing costs to CAFO owners.

2 That concludes my presentation. I would be  
3 happy to answer any questions you may have.

4 Okay. Thank you very much.

5 CHAIRMAN HUNTER: Thank you, Tony.

6 Do we have any other speakers?

7 Robert.

8 MR. BRUNDAGE: Robert Brundage for Missouri  
9 Agribusiness Association, Missouri Pork Association.

10 I wanted to say that our clients fully  
11 support the way this rule is being restructured.

12 As Tony said before, under our current  
13 regulations, and the way this has been for almost  
14 20 years, is that if you want to design a CAFO, you  
15 couldn't go to one place to try to find out how to  
16 design that.

17 And this has been a long time coming, and  
18 we're really glad this is happening, that now we can go  
19 to one spot instead of trying to dig out what the lagoon  
20 specifications should be out of a city domestic lagoon  
21 regulation. That was kind of comparing apples to  
22 oranges.

23 So this is a good thing that we're putting  
24 this regulation in this form, and it's going to provide  
25 clarity to everybody out there and it's going to help

1 the permitting process.

2 So we support this, and any minor aspects of  
3 the technical part of that will be put in our comments  
4 later.

5 So thank you.

6 CHAIRMAN HUNTER: Thank you, Robert.

7 Any other speakers?

8 The Commission will receive written testimony  
9 on the proposed rule to 10 CSR 20-8.300, manure storage  
10 design regulations, until 5:00 p.m. on November 16th,  
11 2011.

12 You may submit this written testimony to  
13 Ms. Malinda Steenbergen, Commission Secretary, Missouri  
14 Department of Natural Resources, Water Protection  
15 Program, P. O. Box 176, Jefferson City, Missouri 65102  
16 prior to that deadline.

17 On behalf of the Commission I thank everyone  
18 who has participated in this process.

19 This hearing is now closed.

20 WHEREIN, the hearing concluded.

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CERTIFICATE OF REPORTER

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

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Patricia A. Stewart  
CCR No. 401



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MISSOURI CLEAN WATER COMMISSION

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Missouri Clean Water Commission Meeting  
Public Hearing  
10 CSR 20-6.010 Construction and Operating Permits

November 2, 2011

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MISSOURI CLEAN WATER COMMISSION

Missouri Clean Water Commission Meeting  
Public Hearing  
10 CSR 20-6.010 Construction and Operating Permits  
Department of Natural Resources  
Lewis and Clark State Office Building  
LaCharrette/Nightingale Creek Conference Rooms  
1101 Riverside Drive  
Jefferson City, Missouri

November 2, 2011

COMMISSION MEMBERS PRESENT:

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

REPORTED BY:

Patricia A. Stewart, CCR 401, RMR, RPR  
Midwest Litigation Services  
3432 Truman Boulevard, Suite 207  
Jefferson City, Missouri 65109  
(573) 636-7551

## 1 PROCEEDINGS

2 CHAIRMAN HUNTER: The Commission will begin  
3 the public hearing on proposed amendment to  
4 10 CSR 20-6.010, construction and operating permits.

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

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

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15 the Department. Following the Department's testimony  
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19 an attendance card so that our records are complete. If  
20 you wish to present verbal testimony, please indicate  
21 that on your attendance card. When you come forward to  
22 present testimony, please speak into the microphone and  
23 begin by 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 amendment to  
2 10 CSR 20-6.010, construction and operating permits.

3 The Commission plans to take final action at  
4 the January 4th, 2012 meeting.

5 The court reporter will now swear in anyone  
6 wishing to testify at this public hearing before the  
7 Clean Water Commission today.

8 Will all those wishing to comment please  
9 stand.

10 (Witnesses sworn.)

11 MR. RUSTIGE: Good morning, Commissioners.

12 CHAIRMAN HUNTER: Good morning.

13 MR. RUSTIGE: My name is John Rustige. I  
14 work in the Permits and Engineering Section, and I serve  
15 as the Chief of the Wastewater Engineering Unit. My  
16 work address is 1101 Riverside Drive, Jefferson City.

17 I'm here this morning to present an amendment  
18 to 10 CSR 20-6.010, construction and operating permits.

19 There are three primary changes we're  
20 proposing with this rulemaking. The first change is to  
21 add an exemption for fire hydrant flushing and the  
22 flushing of potable water systems.

23 Under the revision those activities will not  
24 need a permit, provided that the water is released to an  
25 unclassified water body and it's dechlorinated if

1 necessary to prevent violations of the Missouri Clean  
2 Water Law.

3           The second change is to remove the permit  
4 exemption for pesticide application. And if you'll  
5 recall, this change to the rule is necessary because of  
6 a ruling made by the U.S. 6th Circuit Court of Appeals  
7 that residuals to chemical and biological pesticides are  
8 to be regulated pollutants under the Clean Water Act,  
9 and as such the court ruled that folks who apply  
10 pesticides in or over water are required to having have  
11 an NPDES permit after October 31st of 2011.

12           So with the exemption removed from the rule,  
13 the State will then be able to issue NPDES permits, so  
14 that pesticide applicators won't be required to obtain  
15 their permits from EPA on this activity.

16           An emergency amendment to make this happen  
17 was filed with the Secretary of State, so that the  
18 October 31st deadline would be met.

19           And I would note that the Department was  
20 able to issue a general permit for this activity on  
21 October -- on October 31st for these pesticide  
22 applicators.

23           The last part of the amendment involves the  
24 continuing authorities section of the rule, and that  
25 amendment is intended to help assure that there's a

1 permanent and accountable person or organization that  
2 will be responsible for operating and maintaining  
3 wastewater facilities, and changes are also being made  
4 to that section to support the concept of  
5 regionalization.

6 Under the change new facilities can utilize a  
7 lower preference continuing authority so long as they,  
8 No. 1, get a waiver from the higher authority declining  
9 an offer to manage the wastewater; two, that the higher  
10 authority collection system is farther than 2,000 feet  
11 from the proposed facility; three, that the option of  
12 connecting would cost more than 120 percent than  
13 construction of a proposed project; four, that the  
14 services -- the service would -- connection would exceed  
15 2 percent of the median household income for that  
16 community; or five, that a connection project would take  
17 longer than two years to complete.

18 So again, under the proposal, if any of those  
19 conditions are satisfied, the applicant would not have  
20 to connect to the higher authority.

21 This proposed amendment was published on  
22 August 15th, and the public comment period will end  
23 close of business two weeks from -- I guess two weeks  
24 from today on November 16th.

25 And with that I'd be glad to take any

1 questions if you have any.

2 CHAIRMAN HUNTER: John, the second part about  
3 pesticide applicators --

4 MR. RUSTIGE: Yes.

5 CHAIRMAN HUNTER: -- how many people -- or  
6 how many applicators did you say would be affected by  
7 this change?

8 MR. RUSTIGE: Well, we don't really know  
9 exactly how many. There are -- in the fiscal note  
10 there's a pretty large number accounted for, but we  
11 expect with the way that the permit was crafted that  
12 they'll be quite a -- quite a bit fewer than -- than it  
13 turns out in the fiscal note that was presented.

14 So I didn't answer your question. Maybe I  
15 can answer that in a comment response and get you a  
16 better answer.

17 CHAIRMAN HUNTER: Well, are we talking tens  
18 or hundreds or thousands?

19 MR. RUSTIGE: Between tens and hundreds we'd  
20 expect.

21 CHAIRMAN HUNTER: And this would require them  
22 to obtain an NPDES permit?

23 MR. RUSTIGE: It would, yes, and there's a  
24 general permit for that, so the process we're looking at  
25 is a simple notification-type process. They would

1 notify us and the permit would be available for them to  
2 operate under.

3 CHAIRMAN HUNTER: Thank you.

4 MR. RUSTIGE: Okay. Thank you.

5 CHAIRMAN HUNTER: Our next speaker, Mary  
6 West.

7 MS. WEST-CALCAGNO: Actually it's  
8 West-Calcagno, Mary West-Calcagno, hyphenated,  
9 C-a-l-c-a-g-n-o. My address is 501 North Broadway,  
10 St. Louis.

11 And my opinions are my own, although they're  
12 shared by some other folks, I believe, in the audience.

13 I'd like to talk to the Commission. Thank  
14 you for letting us comment on this. I will admit to  
15 some failure of oversight. This rule kind of slipped  
16 through me.

17 I thought it was a pesticide rule and then on  
18 further review in the last few days have found out that  
19 it touches other areas of municipal operations that I  
20 had not originally noticed, particularly the exemption  
21 for flushing of fire hydrants and distribution systems,  
22 Section 7 -- Item (1)(B)7, I guess, page -- I don't have  
23 the page out of the Commission packet.

24 It says, water released to an unclassified  
25 water body during the flushing of fire hydrants and

1 publicly owned potable water distribution systems,  
2 provided the flushing is conducted with Best Management  
3 Practices, including a dechlorination process if  
4 necessary.

5           Currently those activities are exempt from  
6 needing a permit.

7           If you read the first part of that paragraph,  
8 it says, water used in constructing and maintaining a  
9 drinking water well and distribution system for public  
10 and private use.

11           So that is already exempted under our own  
12 regulations. So I'm not sure why we would need to  
13 clarify that fire hydrant flushing or distribution  
14 flushing would need to be exempted additionally.

15           Second of all, it lists unclassified water  
16 bodies. As you know, the Commission is currently  
17 considering changing classified water bodies in the  
18 state of Missouri. So I think that this unclassified  
19 section is going to be nearly meaningless.

20           Other parts of the rule discusses waters of  
21 the state. I don't think waters of the state is an  
22 appropriate distinction here. I just think we need to  
23 take this additional section out and leave it the way  
24 that it is.

25           The stormwater permits for small MS4s also

1 exempt hydrant flushing from stormwater regulations  
2 unless it causes a problem with water quality in the  
3 stream. So I don't know why we're doing this in this  
4 rule that was supposed to be a pesticide change.

5           Also, this was not listed in the fiscal note,  
6 and there was no RAR required because it was an  
7 extension of the Federal requirements from the lawsuit,  
8 and I could find no reference to fire hydrant flushing  
9 in any of the information from EPA.

10           The next thing that I would like to talk to  
11 you about is continuing authority. A number of years  
12 ago I sat on a stakeholder group to discuss continuing  
13 authorities. This was back when the Department first  
14 began the first water protection forum and continuing  
15 authorities came up.

16           And I guess I was really surprised to see  
17 this in this rule because that stakeholder group had not  
18 been revised, and by the Department's own documentation  
19 with this rule no stakeholder meetings were conducted to  
20 discuss this.

21           I believe that the language in this rule, the  
22 proposed rule, expands the authority of the Department  
23 to make decisions about who will have to join a higher  
24 continuing authority.

25           Previously the waiver had to come from the

1 regional authorities or 208 authorities in the area.

2 Now that is one condition but it is an or, not an and.

3           So the Department can make decisions about  
4 who has to join a regional authority based on what is  
5 listed here as creating an excessive burden.

6           One of the concerns that I would have as a  
7 former utility director, frequently we would build  
8 infrastructure knowing that a part of our community was  
9 going to grow, that someone would come in with a factory  
10 or something like that and we needed to build pump  
11 stations and sewer lines and waterlines to facilitate  
12 that economic development ahead of that.

13           If someone came in then after that and  
14 decided that, well, it's 120 percent or over 120 percent  
15 more than what I can do for a direct discharge system,  
16 then I'm not going to hook into your system.

17           So it makes it really difficult for planning  
18 for utilities about whether you build now or you don't  
19 and how you get ready for economic development.

20           I also think that the 2,000 feet is probably  
21 an arbitrary number. I don't know where that came from.  
22 Requiring the higher authority to serve an area within  
23 two years I think is probably counter to Federal law for  
24 sewer districts.

25           I think once you're in a sewer district you

1 have to stay in that sewer district, and I know of  
2 cities who have been sued who did not recognize the  
3 authority of the regional sewer district.

4           So you not only lose the infrastructure you  
5 built, you lose all of the revenue that you have  
6 collected, and you still end up treating the wastewater.  
7 So I have some concern over that.

8           The other concern that I would have in the  
9 continuing authority language in No. 6 is that this sets  
10 as a bar to present a median household income as an  
11 excessive burden.

12           That is something that Federal law does not  
13 yet do. It is listed in the draft guidance policy in a  
14 couple of areas. The 120 percent is listed in the  
15 antideg implementation policy.

16           But I hate to see that 2 percent median  
17 household income listed in any rule that's not been  
18 vetted with stakeholders as whether it is or is not an  
19 excessive burden.

20           With all of the new rules and regulations  
21 coming out, I believe that a number of communities will  
22 be approaching that number; however, I think it would be  
23 shortsighted of us to allow parts of a community to not  
24 join in and help pay for that cost of infrastructure,  
25 and I believe that this regulation would allow them to

1 do that.

2 If you have any questions, I would be happy  
3 to answer.

4 COMMISSIONER WARREN: That's a lot of  
5 information, Mary. I was wondering, are you going to  
6 submit a comment to that effect?

7 MS. WEST-CALCAGNO: I will, yes.

8 COMMISSIONER WARREN: Thanks.

9 MS. WEST-CALCAGNO: Thank you.

10 CHAIRMAN HUNTER: Thank you, Mary.

11 Next is Phil Walsack.

12 MR. WALSAK: Good morning. My name is Phil  
13 Walsack, W-a-l-s-a-c-k. I work at Missouri Public  
14 Utility Lines, 1808 I-70 Drive Southwest in Columbia,  
15 Missouri.

16 I have eight points that I'd like to go over  
17 this morning with you regarding the proposed  
18 regulations. I, too, like Mary, believed this was a  
19 pesticide rule, and yet in paragraph 7 we do see some  
20 language that certainly looks like it applies to water  
21 districts.

22 Not just water districts, every water  
23 district in the state, every urban district, every small  
24 rural district, every small city, every rural fire  
25 department, every volunteer fire department, every

1 insurance agent who mandates the opening of a fire  
2 hydrant to check anything they would like, are now  
3 compelled by this rule if deemed necessary to have and  
4 understand the difference between a classified water  
5 body and an unclassified water body and understand what  
6 dechlorination of a chlorinated water system is all  
7 about.

8 I won't go into excruciating detail, but  
9 there are no cost estimates in the fiscal note about  
10 that. There is a capital purchase that will be made  
11 necessary, and we don't discuss that.

12 So there is 772 municipal governments, over  
13 100 people in Missouri that are affected and every  
14 single other public entity and every single private  
15 homeowners association, mobile home park, will be  
16 compelled by this rule to have some sort of  
17 dechlorination process if deemed necessary, and I'd like  
18 to know what those costs are.

19 I was talking to one of my colleagues in the  
20 Bootheel, and he said to me -- and I will exclude some  
21 of his colorful Southeastern language -- when he said,  
22 Phil, it looks like the folks who wrote this rule have  
23 never woken up in a cold January morning at about 5:30  
24 to drive out to a water main break, wind chill factor  
25 about 20 below, and respond to a break, and the first

1 they do is start to close valves and close down fire  
2 hydrants as the water turns into ice across their city  
3 streets.

4           The first thing you do is not reach for a  
5 dechlorination unit, but, in fact, protect public  
6 health, private property, public infrastructure.

7           A water main break that breaks a sewer line  
8 is a problem. A water main break that breaks down curbs  
9 and gutters and utility lines is a problem.

10           And you don't reach for a dechlorination unit  
11 and try to figure out at 5:30 in the morning, where is  
12 my classified or unclassified stream.

13           I don't view this as a place to put this kind  
14 of regulation. This goes with the potable water stuff,  
15 not with the pesticide stuff.

16           I had a hobby and I don't need to tell most  
17 people what it is, but I pulled the Federal Insecticide,  
18 Fungicide and Rodenticide Act and looked at the  
19 agricultural-related enforcement cases from 2008 to  
20 present.

21           Not one of them -- not one of them discusses  
22 potable water systems, spraying the potable water on top  
23 of a water body.

24           That's not what this rule is all about. It's  
25 about pesticides and herbicides and labeling. That's

1 what this rule is about. This is not about the  
2 operation and maintenance of public drinking water  
3 systems.

4 I note that the current design guide -- this  
5 is the one we're using right now -- requires that if you  
6 have dead-ends in the system, you're mandated by DNR on  
7 the one hand, so flush your system. You're mandated to  
8 do that to improve the water quality and to improve the  
9 disinfection residual.

10 Do I then string out a bunch of fire hoses to  
11 try to get to my unclassified water body versus my  
12 classified water body when I'm mandated by one arm of  
13 DNR to do one thing and another to do another? That  
14 doesn't make much sense.

15 I notice that in sanitary sewer overflows,  
16 the first check box in the actions that you completed  
17 after a sanitary sewer overflow is did you flush the  
18 area with water to try and gather up all of the stuff,  
19 okay, get it all in a pile and then vacuum truck it out  
20 of there or scoop it up or rake it up. You use potable  
21 water to kind of place that debris in a pile so that you  
22 can move it later.

23 This is not a place to put Best Management  
24 Practices for water systems, in the pesticide rule,  
25 because I would challenge my members and my water

1 utility operators and my water utility managers to  
2 ask -- to tell me where they're going to look in  
3 regulations for a BMP. They're not going to look in a  
4 pesticide rule for a BMP in a water system. That's an  
5 inappropriate place to put it and that's not where  
6 they're going to look.

7           This kind of feels like a got-you kind of  
8 regulation, where you're working on your potable water  
9 system over here, you're doing the right thing, and all  
10 of a sudden, you know, you had a fire hydrant that you  
11 discharged, and then someone says, oh, by the way,  
12 that's in the pesticide rule.

13           That's not a place we're going to look for  
14 it. If you need to put it in there, let's put it in  
15 there but let's not put it in with pesticides.

16           I think Mary touched on it, and I'm going to  
17 elaborate on it just a bit. We have been working for  
18 two years now, probably longer -- I'm losing my mind on  
19 this one. Ms. Warren can back me up on this -- draft  
20 10 CSR 20-7.031. This talks about colloquially -- call  
21 it the classified waters.

22           When you review this draft document, the  
23 words unclassified and water do not appear together.  
24 There aren't any unclassified waters when we're done.

25           In fact, the U.S. EPA and the environmental

1 advocacy groups have been pressing us to get away from  
2 the words "unclassified water." They don't exist  
3 anymore, and yet we're going to put them back in a  
4 regulation that is going to have a life of about eight  
5 months. When this baby goes final, the words  
6 "unclassified water" disappear.

7           So it's one branch of DNR not knowing that  
8 the other branch of DNR is working on these same  
9 regulations to take the words "unclassified water" out  
10 and yet we're putting them in in a brand new regulation.  
11 That's not good public policy.

12           Finally, in Chapter 6 -- excuse me --  
13 paragraph 6 of the continuing authority piece, this  
14 2 percent of median household income, I'm going to back  
15 Mary up on this one when she talks about 2 percent of  
16 the median household income.

17           I note that the Department of Natural  
18 Resources has an interim affordability guidance or  
19 findings documents, and 2 percent of the median  
20 household income number is in there, and I also note  
21 that the word "interim" precedes every other word.

22           To set standards here that 2 percent of the  
23 median household income is the golden rule, the Federal  
24 government, State governments, municipal governments,  
25 counties, associations of mayors, associations of water

1 districts, associations of sewer districts all over the  
2 United States are engaged in a conversation that  
3 2 percent of the median household income is not the  
4 golden rule by which all of us are going to comply with.  
5 It's not a Federal regulation.

6 And why are we following that if that's not  
7 their regulation? Why are we compelling ourselves to  
8 hold fast to the 2 percent median household income  
9 number. It's not a good use of that value.

10 That concludes my comments for today. Thank  
11 you very much.

12 Do you have any questions of me?

13 I too -- Ms. Wallace is giving me that  
14 look. I too will be responding in writing.

15 COMMISSIONER WARREN: Thank you.

16 MR. WALSACK: Not to read your mind.

17 Any other comments?

18 I can't read Mr. Tupper's mind though.

19 Thank you very much for your time.

20 CHAIRMAN HUNTER: Phil, thank you for telling  
21 us how you really feel.

22 MR. WALSACK: Thank you, Commissioner.

23 CHAIRMAN HUNTER: The next speaker, Bob  
24 Fuerman.

25 MR. FUERMAN: Good morning. My name is Bob

1 Fuerman. I'm with Missouri American Water Company, and  
2 I wanted to comment about the fire hydrant flushing.

3 I reiterate Phil and Mary's comments about  
4 the burden it's going to put on water utilities, and one  
5 thing I would like to point out is that in the rules as  
6 it's written it says publicly owned potable water  
7 distribution systems, and Missouri American is an  
8 investor-owned system. So hopefully I believe they  
9 wanted to say public water systems in the rule, so . . .

10 I don't want to reiterate everything that  
11 Phil and Mary said, but, as I said, I did agree with  
12 them about the burden on our water systems.

13 Thank you. Any questions?

14 CHAIRMAN HUNTER: Thanks.

15 The next speaker, Thomas Rothermich.

16 MR. ROTHERMICH: Good morning. My name is  
17 Thomas Rothermich, R-o-t-h-e-r-m-i-c-h.

18 I'm with the City of St. Louis Water  
19 Division, and, again, I'd like to reiterate the concerns  
20 of operating water utilities in these regulations.

21 It is difficult to comply with a regulation  
22 which deals strictly -- should deal with strictly a  
23 water system operation which is covered or hidden in  
24 other regulations.

25 If you have any other questions. I believe

1 the Water Division will be submitting written comments.

2 Thank you.

3 CHAIRMAN HUNTER: Thank you.

4 The next speaker is Kevin Perry.

5 Kevin, you will need to be sworn in.

6 (Witness sworn.)

7 MR. PERRY: Good morning, Mr. Chairman. Good  
8 morning, Commissioners. Thanks for this opportunity to  
9 talk to you.

10 Just a real quick technical thing. I'm the  
11 Assistant Director of REGFORM. Our address is 238 East  
12 High Street, Jefferson City.

13 I'm going to limit my remarks to the  
14 pesticide part, so I'll make it much simpler. So  
15 everything I have to say is about the pesticide general  
16 permit exemption.

17 We support the language that is there. We  
18 support the way it's written.

19 And I just want to add on this very minor  
20 technicality that we support it based on everything that  
21 we know at this time. So I think I stand among the  
22 ranks of many, including positive State regulatory  
23 agencies and Federal State regulatory agencies, who  
24 really don't want to require NPDES permits for pesticide  
25 general permit applicators.

1           The court ordered this change, and I really  
2 am not sure anybody wants it.

3           That's overshooting. I'm sorry. I am aware  
4 that some people want this.

5           But the regulation that was happening under  
6 FIFRA, as opposed to the Clean Water Act, in most  
7 people's opinion, I believe fairly, it was going along  
8 just fine.

9           I think I'm also among the ranks of many who  
10 are perhaps waiting breathlessly for the United States  
11 House and Congress to maybe change the law on this so  
12 that we might still be able to get out of it.

13           So that's my only comment.

14           I would invite the Commission to be aware of  
15 the fact that -- the possibility for a last-minute  
16 legislation change is still out there and should that  
17 happen, for you-all to stand ready to not take this  
18 exemption out sometime between now and the order of  
19 rulemaking at a subsequent meeting.

20           So that's the entire part of my comment, and  
21 I really appreciate you listening to me.

22           Thank you.

23           CHAIRMAN HUNTER: Thank you, Kevin.

24           Anyone have any questions?

25           Do we have any other speakers?

1           MR. BRUNDAGE: Robert Brundage representing  
2 Missouri Agribusiness Association, or MO-AG.

3           We represent some members who will be  
4 applying pesticides to the water, but as a general rule  
5 all of our members are the -- the agribusiness is out  
6 there in the country who sell crop protection chemicals  
7 and apply those to crop fields.

8           And at first this rule and the way this court  
9 decision was looking like, it was going to require  
10 permits of all those operations. So we do support the  
11 rule being as limited as possible, because we're forced  
12 to by a court decision, as Kevin said, to require  
13 permits of operations that apply pesticides to water.

14           And it's really a shame that we've got to  
15 this point in this country where we have to apply for a  
16 permit just to apply pesticide that already has gone  
17 through detailed scientific study ad nauseum under FIFRA  
18 just to get a license to be able to sell that pesticide  
19 in the United States.

20           It's been studied to death as being safe. On  
21 the label it tells you exactly how you have to apply it  
22 to be safe to not only people and the environment.

23           So to require an NPDES permit of somebody who  
24 by law is already required to comply with the label on  
25 that pesticide is unfortunately gross overregulation and

1 will have a cost on doing business out there that will  
2 be trickled down to all of the people who have to hire  
3 the people who have to do this kind of work.

4           So I echo Kevin's remarks in that this was an  
5 emergency rule, I believe, and now this is the follow-up  
6 part of it.

7           But if Congress changes the law and says  
8 FIFRA provides adequate protections for the environment  
9 and the public, we don't need these permits, I would  
10 hope that the Commission would do an emergency rule to  
11 go back to the way we permitted before, the exemption we  
12 had before for these types of operations.

13           So thank you.

14           CHAIRMAN HUNTER: Thank you, Robert.

15           Any other speakers?

16           COMMISSIONER TUPPER: Sam, I would like to  
17 support the gentleman from Missouri American. There are  
18 several communities in the state that are served by  
19 private water companies, and this language doesn't get  
20 it done. I would agree with that comment.

21           CHAIRMAN HUNTER: Okay. Thank you.

22           The Commission will receive written testimony  
23 on the proposed amendment in 10 CSR 20-6.010,  
24 construction and operating permits, until 5:00 p.m. on  
25 November 16th, 2011.

1                   You may submit this written testimony to  
2 Ms. Malinda Steenbergen, Commission Secretary, Missouri  
3 Department of Natural Resources, Water Protection  
4 Program, P. O. Box 176, Jefferson City, Missouri 65102  
5 prior to that deadline.

6                   On behalf of the Commission I thank everyone  
7 who has participated in this process.

8                   This hearing is now closed.

9                   WHEREIN, the hearing concluded.

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## CERTIFICATE OF REPORTER

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