

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MISSOURI CLEAN WATER COMMISSION

10 CSR 20 7.015

EFFLUENT REGULATIONS PUBLIC HEARING

JANUARY 6, 2010

1 MISSOURI CLEAN WATER COMMISSION

2

3

4

5

6 JANUARY 6, 2010

7

8 IN RE: 10 CSR 20 7.015 EFFLUENT REGULATIONS

9

10

11 PUBLIC HEARING, produced on January 6, 2010,
12 between the hours of eight o'clock in the forenoon
13 and nine o'clock in the afternoon of that day, at the
14 Renaissance St. Louis Grand Hotel, 800 Washington
15 Avenue, St. Louis, Missouri, before Stephanie D.
16 Darr, a Certified Court Reporter and Notary Public
17 within and for Missouri.

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

Hearing Panel Members:

- Mr. Ron Hardecke, Chairperson
- Mr. William Easley, Jr.
- Mr. Samuel Leake
- Mr. Samuel Hunter
- Mr. Scott Totten
- Ms. Jennifer Frazier
- Ms. Malinda Overhoff

Reported By:

Stephanie D. Darr, CCR No. 827
MIDWEST LITIGATION SERVICES
711 North Eleventh Street
St. Louis, Missouri 63101

1 MR. HARDECKE: The Commission will
2 begin the public hearing on Proposed Amendment 10 CSR
3 20-7.015 Effluent Regulations. These rule changes
4 were first published for public comment in the
5 Missouri Register, Volume 34, Number 21 on November
6 2, 2009. The purpose of this public hearing is to
7 provide the department an opportunity to present
8 testimony and to provide an opportunity for the
9 public to provide comments on this proposed rule
10 making. The public hearing is not a forum for debate
11 or resolution of issues. The Commission asks that
12 those commenting limit their testimony to five
13 minutes and not repeat comments that have already
14 been made. The Commission will first hear testimony
15 from the department. Following the department's
16 testimony the Commission will give the public an
17 opportunity to comment. We ask that all individuals
18 present fill out an attendance card so our records
19 are complete. If you wish to present verbal
20 testimony, please indicate that on your attendance
21 card. The Commission is holding this hearing to
22 assist the public in commenting on proposed rule
23 making. The public comment will close on January
24 13th at 5:00 p.m. When you come forward to present
25 testimony, please speak into the microphone and begin

1 by identifying yourself to the court reporter. Will
2 the court reporter swear in those wishing to give
3 testimony.

4 (WHEREIN, those giving testimony were
5 sworn in at this time by court reporter.)

6 MR. TOTTEN: John Rustige will
7 provide an overview of the regulation for the staff.

8 MR. RUSTIGE: Good morning. My name
9 is John Rustige. I'm the chief of the Wastewater
10 Engineering Unit. My address at work is 1101
11 Riverside Drive, Jeff City, Missouri. I'm here this
12 morning to present an amendment to 10 CSR 20-7.015
13 Effluent Regulations. The proposed amendment was
14 published on the 2nd of November in the Missouri
15 Register. There are several things we're trying to
16 accomplish with this amendment. Let me start with
17 the most significant one. EPA informed the
18 department that certain provisions of the rules that
19 allow non-continuous wet weather discharges that were
20 limited to 45 milligrams per liter weekly average for
21 Biological Oxygen Demand (BOD) and Total Suspended
22 Solids, that these provisions in the rule essentially
23 allow treatment to be bypassed, and therefore, they
24 don't meet the federal requirement that all
25 discharges from POTW's receive secondary treatment.

1 So in response to this federal determination, we're
2 proposing to remove these paragraphs that authorize
3 these secondary outfalls, these discharges.

4 Now this is a pretty significant
5 change, especially in terms of expense to these
6 communities that currently have permits that allow
7 this. We have identified 53 POTW's, communities that
8 are affected by this change, and under this amendment
9 again these discharges from outfall two will not be
10 authorized. So for these communities this will
11 really require a range of engineering solutions and
12 some capital projects. Some of the communities we
13 found out sort of rarely discharge from these
14 outfalls. But others discharge really when there is
15 any significant rainfall. So each community will
16 have to study their discharge patterns and their
17 system and address their inflow infiltration issues,
18 consider policies and local ordinances to address I&I
19 entering the system from private owners. The
20 communities may need to evaluate and perhaps
21 construct additional storage at their wastewater
22 treatment plant or perhaps in the collection systems
23 themselves, and they may have to in the end expand some plant
24 capacities or consider some other high rate treatment
25 options. We worked pretty close with the stakeholders

1 on this issue. We've held two meetings of the Wet
2 Weather Workgroup since the amendment was published
3 in November. In addition, we hosted a meeting of the
4 affected communities on December 18th. We just
5 wanted to make sure that they understood what we were
6 proposing and really give them an opportunity to
7 share their thoughts and encourage them to come
8 testify at the hearing or provide comments. The Wet
9 Weather Workgroup is in the process of developing a
10 generic consent agreement to address this issue, and
11 the consent agreement will be entered by the
12 community and the department and it will give POTW's
13 the time to study their systems and implement a
14 bypass elimination plan. So in concept, the agreement
15 would be valid for the term of the permit, a five
16 year period, and for communities that needed even
17 more time it would be -- that consent agreement would
18 be renewable for one additional permit cycle for a
19 sort of five plus five if you will.

20 We are still incorporating comments
21 into that consent agreement, but we're optimistic
22 that we can craft language that is acceptable to all
23 parties, including EPA. The nature of this issue
24 makes it difficult to estimate the cost of this
25 amendment. But we do know it will be quite high. In

1 the fiscal note that we published with the rule, we
2 presented a sort of worst case approach. We worked
3 with the Missouri Public Utility Alliance, and we
4 worked to determine what the current household sewer
5 rates were for those communities and then calculated
6 the impact of raising those sewer rates to two
7 percent of the media household income. This resulted
8 in a worst case annualized cost of \$196 million. I'm
9 sure that others today have some testimony on this
10 issue. EPA was planning to be here. I understand
11 because of the weather they haven't been able to make
12 it. We would ask them to comment both on our
13 proposed solution to this issue and the fact that,
14 you know, we can't process permits with these
15 bypasses. But they will get us written comments we
16 understand.

17 On the next significant change on
18 this rule is to replace fecal coliform with e. coli
19 as the indicator bacteria for permitting purposes.
20 As part of this, we're proposing monitoring for e.
21 coli as well. The proposed monitoring frequency is
22 weekly, with compliance to be determined by averaging
23 the bacteria counts for all of the samples that are
24 collected in a calendar month. Weekly monitoring
25 frequency was proposed because the water quality

1 standards that were developed, they used a
2 statistical methods that relied on five samples
3 collected over a 30 day period and weekly monitoring
4 sort of approaches that frequency and really just fits better
5 with an operator's schedule. The monitoring method for
6 e. coli requires quick incubation of the sample.
7 So samples need to be delivered to the laboratory
8 within six hours. We expect that many dischargers
9 will purchase their own equipment to do their own
10 analysis. Some may work with local labs or
11 neighboring systems. In any case, the department
12 estimates that the monitoring cost will be about \$50
13 per sample, which corresponds to a cost of \$1,500
14 over each recreational season, and we estimate there
15 are about 475 systems out there across the state that
16 are required to disinfect. So running those numbers
17 out it looks like right at about \$700,000 per year in
18 cost of this monitoring for e. coli.

19 Now, on to a couple of less
20 consequential changes to the rule. The first is to
21 incorporate a revision that allows alternate
22 discharge limits for discharges to subsurface waters
23 associated with the Risk-Based Corrective Action
24 Project. The Risk-Based Corrective Action Project program is
25 administered by the Hazardous Waste Program, and what

1 the rule amendment will do is allow discharges so
2 long as there is no unreasonable risk to human health
3 or the environment.

4 Another proposed addition to the rule
5 is to make the rule consistent with EPA's Combined
6 Sewer Overflow Policy, their CSO policy, by
7 incorporating a direct reference to that policy in a
8 new section, Section 10 of the rule. That will give
9 the department the ability to draft permits that
10 conform to that policy and the effluent monitoring
11 commitments and what not that the CSO communities
12 have and are addressing in their long term control
13 plans.

14 Then finally the last thing is there
15 are a number of minor revisions throughout the rule
16 that really just making the rule language more
17 consistent. Parallel construction and those sorts of things.
18 With that, I'd be glad to take any questions.

19 MR. HARDECKE: How many of the
20 affected communities attended the meeting?

21 MR. RUSTIGE: Of the 53 we had I
22 think 16 or 17. But a number of them took the
23 opportunity to get on the phone with me and I was
24 able to explain what was going on to their
25 satisfaction, so they didn't attend. I would

1 estimate that we probably directly spoke to about
2 half of them. A number of the other communities also
3 worked pretty closely with the Missouri Public
4 Utilities Alliance. So they're aware of the
5 situation as well. So I think we got a good chunk of
6 them. Probably not all of them.

7 MR. HARDECKE: Any questions? Thank
8 you.

9 MR. RUSTIGE: Thank you.

10 MR. HARDECKE: Phil.

11 MR. WALSACK: Good morning,
12 Commissioners. My name is Phil Walsack,
13 W-a-l-s-a-c-k, representing the Missouri Public
14 Utility Alliance this morning. As you know, we've
15 been working on this regulation for about a year now.
16 We are in support of DNR's approach to this federally
17 mandated program. MPUA has illustrated through its
18 written documentation that we face significant financial
19 challenges with this regulation. We have already
20 heard from Mr. Rustige that we're looking at \$196
21 million or so of rate increase opportunity for those
22 53 affected communities. We have been imploring the
23 department to go forward with a voluntary compliance
24 approach so that communities will have up to 10 years
25 to get their collection systems in order so that they

1 could reduce the frequency duration and
2 volume of the discharged effluent through outfalls number
3 twos. We believe that this approach is a good
4 approach, a systematic approach, and that's what we
5 need to solve this problem. Communities who were in
6 compliance today who find themselves out of
7 compliance tomorrow with this regulation, it
8 will be difficult for them to handle moving forward
9 if they're being led towards fines and stipulated
10 penalties. We also implore the department to hold
11 those 53 or up to 60 permits that are currently
12 eligible for renewal until we get the voluntary
13 compliance agreement process hammered out through the stakeholder
14 working group process. We are noticing that permits
15 are still moving forward and we're imploring the
16 department to hold on to those permits so we can get
17 the voluntary compliance orders and agreements formalized and
18 set in policy so that we are moving forward uniformly
19 and not on a permit by permit basis. We also ask and
20 request the department look at those permits that
21 were renewed in 2006 and 2007 and 2008 that were not
22 then eligible for this program. We think that the
23 voluntarily compliance program is appropriate for
24 them because they got new permits based on the
25 federal mandate. Those are our two major requests of

1 the department during this process. We also continue
2 to remind the department and the commission that the
3 \$196 million is based on a window of opportunity to
4 increase rates. It's not an engineered cost for any
5 of these communities. It's really the difference
6 between what the rates are now and the two percent of
7 the medium household income. The projects may in
8 fact cost more than that. So the \$196 million only
9 gets you to that two percent, and as of yet, no one
10 from the federal government has said once you hit the
11 two percent of the media household income you are
12 done. You're finished. You don't have to do any
13 more projects work. We're still waiting on EPA to come
14 forward with some suggestion as to how we're going to
15 deal with that when it starts to arise in Missouri's
16 smaller communities.

17 Again, thank you very much for the opportunity to
18 speak during the hearing this morning. Phil Walsack
19 with MPUA. Appreciate it.

20 MR. HARDECKE: Thank you, Phil.
21 Robert.

22 MR. BRUNDAGE: Thank you. Good
23 morning, Commissioners. Robert Brundage with the law
24 firm Newman, Comley & Ruth in Jefferson City. I'm
25 here to testify on behalf of a number of my municipal

1 clients. I want to first just say without repeating
2 anything I echo the support, comments of the Missouri
3 Public Utility Alliance. One other important point
4 I'd like to make out for you today is a process of
5 implementation. The last several meetings of the Wet
6 Weather Stakeholder Group that have been discussing the
7 implementation of this rule when it comes about has really taken
8 on one of the more harsher tones of any stakeholder meetings I've
9 seen. The reason for that is that here we are
10 plowing ahead for this rule and we don't have our
11 game plan in place on how it's going to be
12 implemented quite yet. I will commend the department
13 because they made a lot of progress in the last
14 several months on this issue. But there are other
15 rule makings that are being discussed in other
16 stakeholder groups. As things come before you I
17 would implore the department to have their
18 implementation strategy made known and clearly set
19 forth simultaneously when they come forward with a
20 rule on this matter. So to put the cart before the
21 horse a little bit, the horse is catching up now.
22 But this is a lesson learned for future rule makings.
23 But in conclusion, I fully support the comments of
24 the Missouri Public Utility Alliance. Thank you very
25 much.

1 MR. HARDECKE: Thank you. Okay. The
2 Commission will receive written testimony on the
3 proposed rule changes until 5:00 p.m. January 13,
4 2010. You may submit this written testimony to John
5 Rustige, Missouri Department of Natural Resources,
6 Water Protection Program, P.O. Box 176, Jefferson
7 City, Missouri, prior to that deadline. On behalf of
8 the Commission, I thank everyone who has participated
9 in this process. This hearing is now closed.

10

* * * * *

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NOTARIAL CERTIFICATE

I, Stephanie D. Darr, Certified Court Reporter and a duly commissioned Notary Public within and for the State of Missouri, do hereby certify that the record was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this record was made, 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.

Stephanie D. Darr, CCR

