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, EIERA, Jefferson City, Missouri
John Bryan, Poultry Federation, Missouri
Mary West-Calcagno, 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**

<u>10 CSR 20-8.120 Design of Gravity Sewers Proposed Order of Rulemaking</u>
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:

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

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-Calcogne, Jacobs Engineering stated they are anticipating the Departments responses to their comments on the water quality standards regulatory impact report.
- Mary West-Calcogne, 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:

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

The meeting adjourned at 11:30 a.m.

Respectfully Submitted,

John Madras

John Madras
Director of Staff

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4 MISSOURI CLEAN WATER COMMISSION

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Department of Natural Resources
7 Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
8 1101 Riverside Drive
Jefferson City, Missouri
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Missouri Clean Water Commission Meeting
11 Public Hearing
10 CSR 20-6.300 Concentrated Animal Feeding Operations
12

November 2, 2011
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1 I N D E X

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Opening statement by Chairman Hunter 4:2
4 Statement by Tony Dohmen 5:17
Statement by Robert Brundage 7:13

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2 MISSOURI CLEAN WATER COMMISSION

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4 Missouri Clean Water Commission Meeting
Public Hearing
5 10 CSR 20-6.300 Concentrated Animal Feeding Operations
Department of Natural Resources
6 Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
7 1101 Riverside Drive
Jefferson City, Missouri
8
November 2, 2011
9

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COMMISSION MEMBERS PRESENT:
11
Samuel Hunter, Chairman
12 Todd Parnell
Samuel Leake
13 Jan Tupper
Wallis Warren
14 Dennis Wood
William Easley, Jr.
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REPORTED BY:
20 Patricia A. Stewart, CCR 401, RMR, RPR
Midwest Litigation Services
21 3432 Truman Boulevard, Suite 207
Jefferson City, Missouri 65109
22 (573) 636-7551

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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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3 CERTIFICATE OF REPORTER
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5 I, Patricia A. Stewart, RMR, RPR, CCR, a
6 Certified Court Reporter in the State of Missouri, do
7 hereby certify that the testimony that appears in the
8 foregoing transcript was taken by me to the best of my
9 ability and thereafter reduced to typewriting by me;
10 that I am neither counsel for, related to, nor employed
11 by any of the parties to the action in which this
12 hearing was taken, and further that I am not a relative
13 or employee of any attorney or counsel employed by the
14 parties thereto, nor financially or otherwise interested
15 in the outcome of the action.
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18 _____
19 Patricia A. Stewart
20 CCR No. 401
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4 MISSOURI CLEAN WATER COMMISSION

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6 Department of Natural Resources
7 Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
8 1101 Riverside Drive
Jefferson City, Missouri
9

10 Missouri Clean Water Commission Meeting
11 Public Hearing
10 CSR 20-8.300 Manure Storage Design Regulations
12 November 2, 2011
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4 Statement by Tony Dohmen 5:13
Statement by Robert Brundage 7:8

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2 MISSOURI CLEAN WATER COMMISSION

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4 Missouri Clean Water Commission Meeting
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5 10 CSR 20-8.300 Manure Storage Design Regulations
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10
COMMISSION MEMBERS PRESENT:
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Samuel Hunter, Chairman
12 Todd Parnell
Samuel Leake
13 Jan Tupper
Wallis Warren
14 Dennis Wood
William Easley, Jr.
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REPORTED BY:
20 Patricia A. Stewart, CCR 401, RMR, RPR
Midwest Litigation Services
21 3432 Truman Boulevard, Suite 207
Jefferson City, Missouri 65109
22 (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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3 CERTIFICATE OF REPORTER
4
5 I, Patricia A. Stewart, RMR, RPR, CCR, a
6 Certified Court Reporter in the State of Missouri, do
7 hereby certify that the testimony that appears in the
8 foregoing transcript was taken by me to the best of my
9 ability and thereafter reduced to typewriting by me;
10 that I am neither counsel for, related to, nor employed
11 by any of the parties to the action in which this
12 hearing was taken, and further that I am not a relative
13 or employee of any attorney or counsel employed by the
14 parties thereto, nor financially or otherwise interested
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10 CSR 20-6.010 Construction and Operating Permits
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4 Missouri Clean Water Commission Meeting
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5 10 CSR 20-6.010 Construction and Operating Permits
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21 3432 Truman Boulevard, Suite 207
Jefferson City, Missouri 65109
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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 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.
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 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. WALSACK: 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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3 CERTIFICATE OF REPORTER
4
5 I, Patricia A. Stewart, RMR, RPR, CCR, a
6 Certified Court Reporter in the State of Missouri, do
7 hereby certify that the testimony that appears in the
8 foregoing transcript was taken by me to the best of my
9 ability and thereafter reduced to typewriting by me;
10 that I am neither counsel for, related to, nor employed
11 by any of the parties to the action in which this
12 hearing was taken, and further that I am not a relative
13 or employee of any attorney or counsel employed by the
14 parties thereto, nor financially or otherwise interested
15 in the outcome of the action.
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18 _____
19 Patricia A. Stewart
20 CCR No. 401
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