

# MISSOURI CLEAN WATER COMMISSION MEETING

**Department of Natural Resources  
East Elm Street Conference Center  
Bennett Springs/Roaring River Conference Rooms  
1730 East Elm Street  
Jefferson City, Missouri**

**March 3, 2010**

## **MINUTES**

### Present

Ron Hardecke, Chair, Missouri Clean Water Commission  
William A. Easley, Jr., Commissioner, Missouri Clean Water Commission  
Sam Hunter, Commissioner, Missouri Clean Water Commission  
Frank Shorney, Commissioner, Missouri Clean Water Commission  
Todd Parnell, Commissioner, Missouri Clean Water Commission (via telephone 8:30 -9:50 a.m.  
and 10:55 – 11:55 a.m.)

Scott B. Totten, Acting Director of Staff, Missouri Clean Water Commission  
Jennifer Frazier, Counsel, Missouri Clean Water Commission  
Malinda Overhoff, Secretary, Missouri Clean Water Commission

Melissa Bagley, Environmental Protection Agency, Kansas City, Kansas  
Brittany Barrientos, Newman, Comley & Ruth P.C., Jefferson City, Missouri  
Karen Bataille, Missouri Department of Conservation, Columbia, Missouri  
Dorris Bender, Independence Water Pollution Control, Independence, Missouri  
Joe Boland, Department of Natural Resources, Jefferson City, Missouri  
Michael Bollinger, Ameren, St. Louis, Missouri  
Robert Brundage, Newman, Comley & Ruth P.C., Jefferson City, Missouri  
Jim Burris, St. Charles County CEQ, Wentzville, Missouri  
John Carter, The Doe Run Company, Viburnum, Missouri  
Lorin R. Crandell, Missouri Coalition for the Environment, St. Louis, Missouri  
Glen Davidson, Allgeier, Martin & Associates, Inc., Joplin, Missouri  
John DeLashmit, Environmental Protection Agency, Kansas City, Kansas  
Carol Garey, Department of Natural Resources, Jefferson City, Missouri  
Steven F. Garrett, City of Webb City, Webb City, Missouri  
Charles Harwood, Department of Natural Resources, Jefferson City, Missouri  
John Hoke, Department of Natural Resources, Jefferson City, Missouri  
Leslie Holloway, Missouri Farm Bureau, Jefferson City, Missouri  
Rebecca Landewe, Environmental Protection Agency, Kansas City, Kansas  
Richard Laux, Department of Natural Resources, Jefferson City, Missouri

John Lodderhose, Metropolitan St. Louis Sewer District, St. Louis, Missouri  
Randy Lyman, City of Springfield, Springfield, Missouri  
Emily Lyon, Department of Natural Resources, Jefferson City, Missouri  
Steve Mahfood, The Nature Conservancy, Hartsburg, Missouri  
Mark Matthews, Environmental Protection Agency, Kansas City, Kansas  
Donna Menown, Department of Natural Resources, Jefferson City, Missouri  
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri  
Rob Morrison, Barr Engineering, Jefferson City, Missouri  
John Reece, Little Blue Valley Sewer District, Independence, Missouri  
John Rustige, Department of Natural Resources, Jefferson City, Missouri  
Lauren Sandweiss, Department of Natural Resources, Jefferson City, Missouri  
Candy Schilling, ERC, Jefferson City, Missouri  
Jeff Shook, Little Blue Valley Sewer District, Independence, Missouri  
Bryon Shaw, Department of Natural Resources, Jefferson City, Missouri  
Darrick Steen, Department of Natural Resources, Jefferson City, Missouri  
Trent Stober, Grosyntec-MEC Water Resources, Columbia, Missouri  
Steve Townley, EI ERA, Jefferson City, Missouri  
Roger Walker, REGFORM, Jefferson City, Missouri  
Phil Walsack, MPUA, Columbia, Missouri  
Sonya Wells, Self, Ozark, Missouri  
John Young, Foth I & E, Jefferson City, Missouri

1                   BEFORE THE CLEAN WATER COMMISSION  
2                   DEPARTMENT OF NATURAL RESOURCES  
3                   STATE OF MISSOURI  
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7                                   MEETING OF:  
8                                   MARCH 3, 2010  
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12                                   CONDUCTED BY:  
13                                  CHAIRMAN RON HARDECKE  
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18       TRANSCRIBED FROM AUDIO BY:  
19       DANIELLE Y. MOSER  
20       MIDWEST LITIGATION SERVICES  
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## 1 PROCEEDINGS

2 CHAIRMAN HARDECKE: Okay. We'll call this meeting to  
3 order. And I'll begin with introductions. I'm Ron  
4 Hardecke the Chairman. I'm from Owensville. To my  
5 far right is Bill Easley from Cassville. Then we  
6 have Frank Shorney from Lees Summit. We have Sam  
7 Hunter from Sikeston and on the phone we have Todd  
8 Parnell from Springfield. To my left we have Scott  
9 Totten, the director of the program-- water program,  
10 Jenny Frazier, our legal counsel and Malinda Overhoff  
11 is secretary to the Commission.

12 And thanks to all of you for coming.

13 And we'll jump right in.

14 First order of business is the minutes. Do we  
15 have any questions or comments on the **minutes from**  
16 **the January 6th, meeting?**

17 (No response.)

18 VICE-CHAIR HUNTER: Mr. Chairman, I move that we  
19 accept the minutes from the January 6th, meeting.

20 COMMISSIONER SHORNEY: Second.

21 CHAIRMAN HARDECKE: Malinda, please, take the vote.

22 MS. MALINDA OVERHOFF: Commissioner Parnell?

23 COMMISSIONER PARNELL: Yes.

24 MS. MALINDA OVERHOFF: Commissioner Hunter?

25 VICE-CHAIR HUNTER: Yes.

1 MS. MALINDA OVERHOFF: Commissioner Easley?

2 COMMISSIONER EASLEY: Yes.

3 MS. MALINDA OVERHOFF: Commissioner Shorney?

4 COMMISSIONER SHORNEY: I abstain.

5 MS. MALINDA OVERHOFF: Chair Hardecke?

6 CHAIRMAN HARDECKE: Yes.

7 Okay. Next we have the minutes from the January  
8 20th, meeting, it was a conf- -- a teleconference  
9 meeting.

10 COMMISSIONER EASLEY: I move that we accept the  
11 minutes.

12 COMMISSIONER SHORNEY: Second.

13 CHAIRMAN HARDECKE: Malinda, please, take the vote.

14 MS. MALINDA OVERHOFF: Commissioner Parnell?

15 COMMISSIONER PARNELL: Yes.

16 MS. MALINDA OVERHOFF: Commissioner Hunter?

17 VICE-CHAIR HUNTER: Yes.

18 MS. MALINDA OVERHOFF: Commissioner Easley?

19 COMMISSIONER EASLEY: Yes.

20 MS. MALINDA OVERHOFF: Commissioner Shorney?

21 COMMISSIONER SHORNEY: I abstain.

22 MS. MALINDA OVERHOFF: Chair Hardecke?

23 CHAIRMAN HARDECKE: Yes.

24 Okay. Next we have Tab No. 3 is the appeal from  
25 the General Land Disturbance Permit Appeal.

1           Robert, I guess, you have a card on this. Have  
2 you got some brief comments?

3           MR. ROBERT BRUNDAGE: What was the Commission's  
4 pleasure this morning on? Procedurally, I'm not sure  
5 where we're at right now.

6           MS. JENNIFER FRAZIER: I guess, well, I can speak to  
7 an introduction. This is a -- a permit appeal by the  
8 Missouri Agribusiness Association, the Missouri Dairy  
9 Association and the Missouri Pork Association of a  
10 permit template. The Commission at the last meeting  
11 heard statements by both sides of the appeal, both  
12 the Petitioners and the Department of Natural  
13 Resources and you took it under consideration at that  
14 meeting. And, now, I think, are -- are ready to move  
15 forward with a decision on the Administrative Hearing  
16 Commission's recommendations.

17           So it's really up to the Commission. I don't  
18 know -- that you've already given both sides an  
19 opportunity to speak on this. So it will be up to  
20 you if you'd like to have further comment.

21           CHAIRMAN HARDECKE: Okay. What we did, we asked  
22 Jenny to research the questions that arose out of the  
23 last meeting and the discussion there. And she sent  
24 us her analysis of the situation and the options that  
25 the Commission has. And so we discussed those in

1 those closed session this morning and made the  
2 decision to accept the Administrative Hearing  
3 Commission's recommendation.

4 And we do have further action that we would like  
5 to take and -- we'll discuss that here in a minute,  
6 but --

7 MS. JENNIFER FRAZIER: I think you -- you left the  
8 formal vote on the Administrative Hearing Commission  
9 for the open session.

10 CHAIRMAN HARDECKE: Right. We'll have a -- a vote  
11 here on that option, so --

12 Does anyone have any comments or you want to  
13 make a motion?

14 COMMISSIONER EASLEY: Are you ready for a motion?

15 CHAIRMAN HARDECKE: As far as I know, yes.

16 COMMISSIONER EASLEY: I move that the Commission  
17 adopt the recommended decision of the Administrative  
18 Hearing Commission on the Missouri Agribusiness  
19 Association, the Missouri Dairy Association, the  
20 Missouri Pork Association Land Disturbance Permit  
21 Appeal No. 07-0330-CWC.

22 COMMISSIONER SHORNEY: Second.

23 COMMISSIONER HUNTER: Second.

24 CHAIRMAN HARDECKE: Malinda, you want to take the  
25 vote, please.

1 MS. MALINDA OVERHOFF: Commissioner Hunter?

2 COMMISSIONER HUNTER: Yes.

3 MS. MALINDA OVERHOFF: Commissioner Easley?

4 COMMISSIONER EASLEY: Yes.

5 MS. MALINDA OVERHOFF: Commissioner Shorney?

6 COMMISSIONER SHORNEY: Yes.

7 MS. MALINDA OVERHOFF: Commissioner Parnell?

8 COMMISSIONER PARNELL: Yes.

9 MS. MALINDA OVERHOFF: Chair Hardecke?

10 CHAIRMAN HARDECKE: Yes.

11 Okay. One of the questions that we asked Jenny  
12 was: If this wasn't the proper venue to resolve this  
13 issue then what are some of the other opportunities  
14 that we would have to resolve that? And as the  
15 result of that discussion, we considered that  
16 rulemaking would be the -- the best option.

17 So we have a motion to that affect.

18 COMMISSIONER SHORNEY: Mr. Chairman, I move the  
19 Commission -- excuse me -- direct Department Staff to  
20 explore rulemaking alternatives to clarify the  
21 agricultural exemption as it pertains to the land  
22 disturbance permit.

23 COMMISSIONER HUNTER: Second.

24 CHAIRMAN HARDECKE: Malinda, please, take the vote on  
25 that.

1 MS. MALINDA OVERHOFF: Commissioner Easley?

2 COMMISSIONER EASLEY: Yes.

3 MS. MALINDA OVERHOFF: Commissioner Shorney?

4 COMMISSIONER SHORNEY: Yes.

5 MS. MALINDA OVERHOFF: Commissioner Parnell?

6 COMMISSIONER PARNELL: Yes.

7 MS. MALINDA OVERHOFF: Commissioner Hunter?

8 COMMISSIONER HUNTER: Yes.

9 MS. MALINDA OVERHOFF: Chair Hardecke?

10 CHAIRMAN HARDECKE: Yes.

11 Okay. Now, we'll move on to **Tab No. 4**. Whose  
12 is this?

13 MR. SCOTT TOTTEN: John -- John Rustige.

14 MR. JOHN RUSTIGE: Morning Commissioners.

15 COMMISSION: Morning -- good morning.

16 MR. JOHN RUSTIGE: I'm here to present the **comments**

17 **and responses for 10 CSR 20-7.015 Effluent**

18 **Regulations**. The Department received comments from  
19 the cities of Carl Junction, Independence, Jeff City,  
20 Joplin, West Plains and Kansas City. Comments were  
21 also provided by the Little Blue Valley Sewer  
22 District, MSD, Unified Government of Wyandotte County  
23 in Kansas City, Kansas, the Missouri Public Utility  
24 Alliance, Mr. Robert Brundage, Geosyntec Consultants  
25 and EPA.

1           One of the primary purposes of the rulemaking is  
2           to replace fecal coliform with E. coli as the  
3           indicator bacteria for permitting purposes. And as  
4           proposed the rule required weekly monitoring for  
5           E. coli with compliance to be determined by calculating  
6           the geometric mean of all the samples collected  
7           within each calendar month.

8           And EPA commented that federal regulations and,  
9           specifically, 40 CFR 122.45(d) that -- that  
10          regulation required all permit effluent limitations  
11          for continuous discharges from POTWs that that be  
12          stated as average weekly and average monthly and then  
13          for non-POTWs max daily and average monthly.

14          And Geosyntec also provided comments on this  
15          issue. And they noted that in 40 CFR 122.44(d)(1) --  
16          (d)L -- (d)(1)(7) -- I'm sorry -- that that requires  
17          states to develop effluent limitations that are  
18          derived from and comply with the applicable Water  
19          Quality Standards, which in the case of E. coli the  
20          Water Quality Standard is based on a geometric mean  
21          over the entire recreation season. And Geosyntec,  
22          also, supported this position by referring to a  
23          November 15th, 2006, EPA memo which emphasized that  
24          the central requirement for water quality based  
25          effluent limits is that they implement the applicable

1 Water Quality Standards.

2 Support for that monthly geometric mean as  
3 proposed was also provided by the cities of  
4 Independence, Jeff City, Kansas City, Missouri, the  
5 Little Blue Valley Sewer District, MSD and the  
6 Unified Government of Wyandotte County in  
7 Kansas City, Kansas.

8 Then in further consultation with EPA they  
9 indicated that they would object to any permits  
10 unless they were written as average weekly for POTWs  
11 and max daily for non-POTWs. So in response to those  
12 comments on this issue a sentence was added to the  
13 rule stating that the Department is not precluded  
14 from developing and including in permits appropriate  
15 maximum daily and average weekly effluent limits for  
16 E. coli.

17 EPA has not issued any direct guidance on how to  
18 express these seasonal limits on a daily or weekly  
19 basis. But the Department intends to work with EPA  
20 as that method is developed and in fact we understand  
21 that EPA plans to issue a contract to figure this  
22 issue out.

23 So in response to the rule what we've done is  
24 added a sentence that allows that to happen as that  
25 information becomes available.

1           The Department also received comments noting  
2           that the weekly monitoring frequency for E. coli  
3           potentially conflicts with a different requirement in  
4           the rule that requires one sample be analyzed for  
5           each 50,000 gallons per day of effluent or fraction  
6           thereof. And currently wastewater treatment plants  
7           then that exceed one and a half million gallons per  
8           day collect more than 30 samples per year and the  
9           comment was that that frequency should be maintained.

10           So in response to this the language was added to  
11           require weekly sampling as a minimum for E. coli so  
12           that the very large plants who collect more samples  
13           within be required to collect more -- more frequently  
14           than weekly perhaps.

15           As -- also, as proposed the rule allowed E. coli  
16           limits to be developed using a first order decay  
17           equation that would account for E. coli die-off from  
18           the time the effluent leaves the facility until it  
19           reaches the first segment that's classified for whole  
20           -- whole body contact. And EPA commented that during  
21           dry weather conditions where's there little or no  
22           flow and a very long time travel that would  
23           essentially allow a very high E. coli limit to be  
24           established.

25           And then in situations where there is some flow

1 in the receiving stream not during dry conditions  
2 that the limits wouldn't be protective of those uses  
3 down stream.

4 So in response to that concern language in the  
5 rule was modified to reflect concept that a  
6 valid time of travel study would have to be done in  
7 order to use that decay equation. And the Department  
8 intends to work to develop a technical guidance for  
9 determining how time travel is to be done in order to  
10 use that equation.

11 And then the last comment we received about  
12 E. coli was also from EPA and they noted that  
13 Subparagraph 8(a)(4)(c) it -- it addresses discharges  
14 that are located within two miles of a segment  
15 classified for whole body contact, but it's silent  
16 about discharges that are located farther than two  
17 miles away. And EPA commented that the  
18 discharge limits must be protective of all classified  
19 uses in all downstream water bodies.

20 No changes were made to the rule as a result of  
21 that comment. In cases where discharges are known to  
22 interfere with these uses permit writers place  
23 appropriate effluent limits into permits and the  
24 language as proposed doesn't prevent the Department  
25 from doing this.

1           The other primary purpose of the rule amendment  
2           was to eliminate a provision that allowed for  
3           intermittent wet weather discharges from primary  
4           clarifiers, Outfall 2. The rule amendment does not  
5           require that these discharge structures be eliminated  
6           it just will no longer authorize discharges from  
7           those structures. And in fact the structures do need  
8           to be maintained just so that the physical integrity  
9           of the clarifiers aren't in danger during overflow  
10          conditions.

11          EPA notified the Department that these  
12          discharges are consider bypasses and they'll object  
13          to any permits issued that authorize a discharge --  
14          any discharge that does not receive secondary  
15          treatment. The cities of Carl Junction, Joplin, West  
16          Plains all provided comments opposing the removal of  
17          this provision. The communities stated that the  
18          removal of these permitted discharges will not  
19          provide any measurable environmental benefit  
20          particularly in light of the fact that those  
21          discharges incur infrequently and they only occur  
22          when the inflow to the plant is likely to be dilute  
23          and when the magnitude of the flow in the receiving  
24          streams is likely to be high.

25          No -- no changes were made to the rule in

1 response to that comment. However, the Department  
2 does recognize that it will take considerable time  
3 and effort and considerable expenditures for these  
4 communities to eliminate these discharges. And to  
5 allow for that necessary time the Department has been  
6 working closely with the wet weather stakeholder  
7 group in working to develop a compliance agreement  
8 that'll be made available to the estimated 53  
9 communities that are affected by this rule change.

10 Several drafts of this compliance agreement have  
11 been shared with the group. And we've incorporated a  
12 number of comments and we're in the process of  
13 finalizing this agreement. And I think it would be  
14 important to sort of share with you sort of the scope  
15 of the agreement and what --- what it entails.

16 It's a voluntary agreement. And the content  
17 of the agreement will not be negotiable. In other  
18 words, it'll be same agreement for all the  
19 communities. And the signatories of the agreement  
20 will be the Department and the affected POTW. And  
21 within one year of signing the agreement the  
22 agreement requires the POTW to submit a bypass  
23 elimination plan, which is just a plan that lays out  
24 all the steps that POTW will have to go through. The  
25 -- the bypass elimination plan will be unique to each

1 -- each community. Many communities may be able to  
2 address most of their bypass issues here with just a  
3 more rigorous I & I program. Some may need to expand  
4 storage. Some may even need to expand treatment  
5 capacity.

6       Once the bypass elimination plan is submitted to  
7 the Department the POTW is expected to work the plan  
8 and then to make progress to reduce the frequency and  
9 the-- magnitude of these bypasses. The agreement  
10 requires the POTW to make annual reports on the  
11 progress they have made and it also requires them to  
12 report each time the outfall's activated.

13       The term of the agreement will be five years,  
14 which coincides with the term of an operating permit.  
15 The agreement contains a provision for an extension  
16 to a second permit term provided that adequate  
17 progress is being made.

18       So the goal will be to eliminate these bypasses  
19 within five years or if a second term's needed ten  
20 years. And then in return for signing the agreement  
21 and working the plan the Department will not initiate  
22 enforcement action if the POTW discharges through  
23 Outfall 2.

24       The Missouri Public Utility Alliance and all of  
25 the individual affected communities that we've spoken

1 to have all supported this concept of a compliance  
2 agreement; Mr. Brundage testified in support of the  
3 compliance agreement concept. And all of the  
4 stakeholders recognize that it was really important  
5 to make sure that EPA supports the concept and will  
6 respect the agreement. So we have shared early  
7 drafts and incorporated most of their suggested  
8 changes in the agreement and we do have their  
9 support on this concept.

10 The Missouri Public Utility Alliance provided  
11 other testimony on the -- and comments on the rule  
12 concerning the fiscal impact of elimination of  
13 Outfall 2. They noted that the cost estimates  
14 weren't based on individual engineering studies for  
15 each of these communities but they were instead based  
16 on raising sewer rates from where they are now up to  
17 2 percent of median household income. And this was  
18 based on the assumption that the expenditures above 2  
19 percent would be considered a financial hardship.

20 And the Alliance commented that EPA has not  
21 established 2 percent as a hard upper bound.  
22 No changes were made to the rule or the fiscal note,  
23 however, in response to these comments. The -- the  
24 Alliance did provide sewer rates for us; population  
25 and income statistics that really form the basis for

1 -- for the fiscal note. The 2 percent figure was  
2 chosen based on EPA guidance. And that guidance  
3 noted that the cost that exceeds 2 percent  
4 represented an un- -- may represent an unreasonable  
5 financial burden. The guidance also specifies that  
6 other tests of affordability could be considered as  
7 well such as the ability of the community to obtain  
8 financing, the level of the current community debt,  
9 among other things.

10 Again, the 2 percent approach was the best we  
11 could come up with without considering  
12 individual engineering estimates. So, again, no  
13 changes were made to the rule or the fiscal note as a  
14 result of those comments.

15 EPA also commented on the pH range in the rule,  
16 which currently states six to nine standard pH units.  
17 And they commented that that isn't consistent with  
18 the Water Quality Standards, which give a range of  
19 6.5 to 9.0. Specifying the pH range with only one  
20 significant digit could lead to confusion.

21 For instance, someone may consider a pH of 5.7  
22 to be in compliance because it rounds to six. So to  
23 be consistent with Water Quality Standards with that  
24 rule 10 CSR 20-7.031 all of the pH ranges in the rule  
25 were changed to 6.5 to 9.0. And where there were

1 references to a minimum pH of 6.0 this was a change  
2 to 6.5. Again, this was to be consistent with the  
3 Water Quality Standards rule.

4 Now, on to Section 10 of the rule which is a new  
5 section, that incorporates EPA's CSO policy by  
6 reference. I wanted to make sure that I mention that  
7 MSD provided comments in support of that addition.

8 EPA made three other general comments about the  
9 regulation. First, they commented that the  
10 regulation doesn't mention the federal secondary  
11 treatment removal requirements. Second, that there  
12 are certain provisions of the rule that aren't  
13 consistent with the federal bypass provisions and,  
14 third, that the provisions in the rule that address  
15 discharges of suspended solids from drinking water  
16 treatment plants must comply with all applicable  
17 Water Quality Standards. And in each of these cases  
18 the Department intends to consider these comments in  
19 future rule revisions. We'll do nothing with this  
20 rule at this time.

21 And, lastly, I just mention there are a few  
22 other minor wording changes that were made such as  
23 abbreviate -- abbreviating E. coli using a lowercase  
24 "e" and correcting the title of one of the  
25 references. And with that the Department recommends

1 that the Commission adopt the amendment with the  
2 revisions.

3 I'll take any questions.

4 CHAIRMAN HARDECKE: Any questions?

5 VICE-CHAIR HUNTER: John is there -- at this point in  
6 time, is there any plan to receive individual  
7 engineering estimates from these communities?

8 MR. JOHN RUSTIGE: Well, part of their bypass  
9 elimination plan is an explanation of the costs  
10 that'll be involved. And if you'd like that's  
11 something we can bring back to the Commission as  
12 those come in to explain what the -- what these costs  
13 will be. We could certainly do that.

14 VICE-CHAIR HUNTER: I think that would be a good  
15 idea.

16 MR. JOHN RUSTIGE: The costs are really hard to -- to  
17 nail down. Some communities it may not cost as much.  
18 Others this may be 2 percent and more.

19 VICE-CHAIR HUNTER: Right.

20 MR. JOHN RUSTIGE: So it just depends on the  
21 condition of the community and -- and the situation  
22 at hand, so --

23 COMMISSIONER EASLEY: The three communities that you  
24 cited there Carl Junction, Joplin and West Plains; do  
25 you have cost estimates on those?

1 MR. JOHN RUSTIGE: Do not. Do not have specific cost  
2 estimates. Again, what we did with the -- the fiscal  
3 note was we looked at what their current sewer rates  
4 were and -- and compared that against what it would  
5 be if they had to raise them to 2 percent. And that  
6 was the -- that was the cost estimate we used.

7 VICE-CHAIR HUNTER: And that's really not comparing  
8 apples and apples in all communities.

9 MR. JOHN RUSTIGE: It isn't. Some have lower rates  
10 and it -- you know, it's -- it's just an  
11 assumption that a worst case scenario is -- is the  
12 way we -- we figured those fiscal costs.

13 COMMISSIONER SHORNEY: And on the compliance  
14 agreement five year implementation plan versus ten  
15 years; what are some of the reasons it could go to  
16 ten years?

17 MR. JOHN RUSTIGE: Well, you know, some -- we think  
18 some communities may -- we've talked to a couple that  
19 have -- rarely discharge from this outfall. And they  
20 may not even need to enter the compliance agreement.  
21 And then some may just need to do some I & I work and  
22 get it fixed and be done with it. And others may  
23 take up to ten years.

24 There was some question about whether we should  
25 extend it for a third term and, I think, the decision

1 was made not to do that for a couple reasons, one, is  
2 that we think a ten year term is -- is a good goal to  
3 set, ten years to get this done, it's a good time  
4 frame. It matches with the terms of the  
5 operating permit.

6 And the other reason is that truly from an  
7 environmental standpoint we might not want to  
8 dedicate all these resources to this issue. There's  
9 other issues coming down the pipe, ammonia issues or  
10 nutrient issues that some of these facilities will  
11 have to deal with. And those probably have higher  
12 priority than -- than this.

13 So to go longer didn't make sense especially  
14 with the unknowns in the future. So that was the  
15 decision to go with a maximum of ten year period.

16 CHAIRMAN HARDECKE: Any other questions?

17 (No response.)

18 CHAIRMAN HARDECKE: Okay. Thank you.

19 We have some cards here, Trent Stober.

20 MR. TRENT STOBER: Good morning, Commission. My  
21 name's Trent Stober with Geosyntec Consultants. We  
22 provided comments on behalf of several clients  
23 primarily municipal clients with respect to the  
24 effluent regulations.

25 The main thing I would -- would bring up at this

1 point were -- are the -- the comments that I thought  
2 John did a good job of summarizing with respect to  
3 the E. coli effluent limitations and the use of an  
4 average monthly limit versus average weekly limits or  
5 maximum daily limits.

6 In the -- I guess, the comments that were made -  
7 - personally I haven't had a chance to review, yet,  
8 from U.S. EPA. As -- as John alluded to the  
9 underlying assumption with developing NPDES permit  
10 limits is to comply with Water Quality Standards.  
11 There's technology based and -- and water quality  
12 based effluent limitations but there's not a  
13 technology based limitation for -- for bacteria in  
14 particular so that relies then on control with  
15 respect to water quality criteria.

16 In -- within the criteria documents, EPA  
17 criteria documents and epidemiological studies and so  
18 forth there's not a shorter duration criteria that's  
19 suggested for use in -- in evaluating water quality  
20 criteria attainment. There's provisions for single  
21 sample maximums or daily maximum levels for beach  
22 closures, but not necessarily for consideration with  
23 Water Quality Standards attainment. So that's the  
24 background on why we -- we don't have those shorter  
25 duration criteria within our State effluent

1 regulations. Our effluent regulations rely on a  
2 recreational season geometric mean of E. coli.

3 So during the -- the development of the -  
4 - the effluent regulations that was the focus for  
5 attainment as that recreational season geometric mean  
6 we built into -- into that process of what I consider  
7 as a conservative assumption that -- that sets the  
8 average monthly limit or monthly geometric mean limit  
9 set to that recreational season geometric mean.

10 So in that -- the recreational season goes from  
11 April through October and we've kind of  
12 condensed that criteria to apply to just that average  
13 monthly condition. So we've already built in to some  
14 degree a safety factor with respect to meeting the  
15 state's approved water quality criterion.

16 And -- and with that -- you know, if -- if the  
17 state goes down the path of -- of setting average  
18 weekly limits that should be the basis for  
19 consideration of setting those water quality --  
20 again, what would need to be water quality based  
21 effluent limits. Again, to derive an average weekly  
22 limit that would be protective of that recreational  
23 season geometric mean. And that's the underlying  
24 difficulty in coming up with such a -- such a limit.  
25 And through that regulation development process, I

1 believe, the -- this issue was really not brought up  
2 -- up until this public comment period. So  
3 it's put the state to some degree in a difficult  
4 situation in which there's various aspects of this  
5 regulation that, I think, a majority of the  
6 stakeholders are definitely in favor of, but we're  
7 set at a last minute here to try to -- try to set a  
8 regulation that has potentially far reaching  
9 applications.

10       And to some degree may not, as I think some  
11 other folks are going to mention or in comments, may  
12 not have been appropriately evaluated during the  
13 Regulatory Impact Report.

14       With that and our comments, too, I don't want to  
15 pick around on other states within the region and --  
16 and other states in the U.S. but there have been  
17 several permits that we've found in other states  
18 within both Region 7 and outside of Region 7 that do  
19 not include that level of -- of effluent limitations.  
20 So that's, I think, again, something that should be  
21 taken into account.

22       And, lastly, I would suggest that this issue  
23 might -- you now, be a -- will likely get addressed  
24 in the not so different -- distance future. EPA's in  
25 the process right now under a Consent Decree to

1 develop new bacteria criteria. So really this  
2 E. coli criteria by most view points is probably going  
3 to pass just like fecal coliform passed to E. coli;  
4 will likely shift from E. coli to different indicator  
5 organisms.

6 EPA is scheduled to -- to make a recommendation  
7 for a national water quality criteria with respect to  
8 bacteria at the end of 2012. So at that point and  
9 then the implementation of those criteria they'll  
10 likely -- this issue will likely be addressed. So  
11 it's, I guess, in -- in our estimation its -- it's  
12 again a challenging situation to -- to try to make  
13 the right decision in this point.

14 I know there's several other -- my clients had  
15 planned to give testimony, but with that I'd ask for  
16 any questions and -- or otherwise defer to -- to  
17 their suggestions.

18 CHAIRMAN HARDECKE: If it's just from E. coli to some  
19 other bacteria; what would that possibly be or --

20 MR. TRENT STOBBER: The --

21 CHAIRMAN HARDECKE: -- would that provide some -- how  
22 would that affect you, I guess?

23 MR. TRENT STOBBER: Well, and that's -- that's quite  
24 frankly a real -- a real challenge right now as you -  
25 - as you're well aware there's a lot of

1 municipalities putting a lot of resources into  
2 complying with the regulations that were adopted in  
3 2005. And, again, the most likely -- this is  
4 probably a little more in the technical realm, but  
5 the most likely indicator is enterococci, which is a  
6 different fecal indicator organism.

7 And there's few that have been evaluating that  
8 potential change in 2012. So, you know, some of our  
9 clients have already started to evaluate that and --  
10 and look at that -- the impact that that could have  
11 in their disinfection system so that we at least try  
12 to use a crystal ball to - to evaluate what  
13 those potential regulatory changes are going to look  
14 like, but it -- it could cause an issue in many -- in  
15 many states that have both of those criteria,  
16 enterococci becomes the most limiting criteria as  
17 opposed to E. coli. I don't know if that addresses  
18 your question. Things are changing quite a bit right  
19 now.

20 CHAIRMAN HARDECKE: Addressed both just in different  
21 intensities or --

22 MR. TRENT STOBBER: Yeah. That would be a good way of  
23 looking at it. Enterococci is usually a more --  
24 potentially is an organism that's harder to kill than  
25 E. coli. So it might req- --

1 CHAIRMAN HARDECKE: Disinfection will kill it just at  
2 a higher rate?

3 MR. TRENT STOBBER: A higher rate, but it poses a  
4 challenge with some of the technologies that that  
5 rate is established on the front end. Disinfect such  
6 as chlorine you can increase a dose but something  
7 like ultraviolet light you -- you get sort of locked  
8 in on what intensity you're at.

9 CHAIRMAN HARDECKE: Okay. Thank you.

10 John Lodderhose.

11 MR. JOHN LODDERHOSE: Good morning. I'm John  
12 Lodderhose. I'm the assistant director of  
13 engineering with the Metropolitan St. Louis Sewer  
14 District. And I wanted to comment on the same issue  
15 that Trent has brought up here and that's the major  
16 change in the effluent regulations where we're going  
17 from a monthly geometric mean to possibly a weekly  
18 average or a daily max. This is a big deal for  
19 people that operate and design and build disinfection  
20 facilities for wastewater treatment plants.

21 And as we went through the stakeholder process  
22 and the rule development process there really was no  
23 indication of this. We were really led to believe  
24 that we're only going to have this monthly geometric  
25 mean to -- to comply with and that's what we're

1 currently designing our disinfection facilities to.  
2 And we believe this is a big enough change that, at  
3 this point, the geometric mean is protective of the  
4 Water Quality Standard because standards recreational  
5 season as Trent mentioned.

6 Other states are currently allowing the use of  
7 only monthly geometric mean. So what I would propose  
8 is -- the one other issue I wanted to mention, too,  
9 is John Rustige noted that they did review EPA's  
10 comments and then our comments and Trent's comments  
11 and there does appear to be a conflict in some  
12 portions of the federal regulations on this. So what  
13 I would recommend until that issue is resolved is go  
14 ahead and withdraw that sentence that was added  
15 today. Go back to the original proposal without the  
16 sentence in the effluent regulations and form a  
17 stakeholder group, get a legal opinion whether or not  
18 we need these weekly or daily max limits. And  
19 hopefully by then we might have more guidance by --  
20 from EPA on the new bacteria criteria as Trent  
21 mentioned they're working on developing right now.

22 So I just feel this is too big of a change to  
23 make it last minute without additional information.  
24 Thank you.

25 I'll be glad to answer any questions.

1 COMMISSIONER SHORNEY: So how'd you say we proceed  
2 from here, John?

3 MR. JOHN LODDERHOSE: My recommendation would be to  
4 direct Staff to go back to the original proposed rule  
5 without this sentence that was added in your packets  
6 today that would allow Staff to develop weekly  
7 averages or daily maximum limitations for E. coli.  
8 Just strike that sentence that was added at last  
9 minute and direct Staff to work on this with --  
10 through stakeholder process, through a legal opinion  
11 and see if it can get resolved for a future  
12 rulemaking process.

13 CHAIRMAN HARDECKE: John can you tell us where that  
14 sentence is?

15 MR. JOHN LODDERHOSE: John Rustige probably could.

16 MR. JOHN RUSTIGE: Yeah. It's in several sections  
17 and I have to look over someone's shoulder perhaps  
18 because I don't have it.

19 COMMISSIONER EASLEY: Was it 269?

20 COMMISSIONER PARNELL: Mr. Chairman?

21 CHAIRMAN HARDECKE: Yes.

22 COMMISSIONER PARNELL: This is Todd. And I apologize  
23 I may have to leave this meeting for the next hour or  
24 hour and a half and I will try to call back in before  
25 lunch.

1 CHAIRMAN HARDECKE: Okay. Thank you.

2 COMMISSIONER PARNELL: Thank you.

3 MR. JOHN RUSTIGE: Page 269.

4 CHAIRMAN HARDECKE: Okay.

5 MR. JOHN RUSTIGE: Paragraph D. It's a sentence that  
6 starts this shall not preclude ...

7 But it's not only in that location it's -- that  
8 same sentence is in a few other locations.

9 VICE-CHAIR HUNTER: And repeat again your objection  
10 to this.

11 MR. JOHN LODDERHOSE: It's a pretty significant  
12 change to what the effluent regulations are going to  
13 require. Meeting --

14 VICE-CHAIR HUNTER: Are going to require in the  
15 future --

16 MR. JOHN LODDERHOSE: Yeah. That would be --

17 VICE-CHAIR HUNTER: -- when this is developed?

18 MR. JOHN LODDERHOSE: -- that would be required with  
19 this last minute change. You're basically going from  
20 a monthly limit to a much tighter weekly -- or a  
21 daily limit.

22 COMMISSIONER SHORNEY: And you say several other  
23 states are being accommodated in this area?

24 MR. JOHN LODDERHOS: Yeah. Currently we did --

25 Trent's staff did a review and we understand that the

1 state of Kansas and Nebraska both at EPA Region 7  
2 currently have permits without weekly or daily max  
3 limits. Wisconsin, Pennsylvania and Texas; so  
4 there's -- there's a handful of states out there.

5 CHAIRMAN HARDECKE: Okay. Other questions?

6 VICE-CHAIR HUNTER: We do have some comments from EPA

7 MR. JOHN LODDERHOSE: Okay. Thank you.

8 CHAIRMAN HARDECKE: Phil Walsack.

9 MR. PHIL WALSACK: Morning, Commissioners, Phil  
10 Walsack, with Missouri Public Utility Alliance. The  
11 question -- the sentence in question and I'll read it  
12 in full says: This shall not preclude the Department  
13 from developing and including in permits effluent  
14 limitations for E. coli stated as maximum daily and  
15 average monthly for all discharges other than PW --  
16 POTWs and average weekly and average monthly for  
17 POTWs.

18 I represent POP -- POTWs. Municipal governments  
19 in Missouri have not had a chance to adapt and adopt  
20 this style of regulatory approach in their treatment  
21 plants. This would suggest that between the last  
22 meeting and this meeting that there are significant  
23 changes that will affect municipal governments; the  
24 way the treatment plants are operated, built and  
25 designed. A permit that is let last year may not be

1 able to comply next year if this sentence is  
2 included.

3 This gives the Department a lot of latitude.  
4 Okay? It says shall not preclude that means we're in  
5 charge, we can do what we want and municipals you  
6 don't really know where we're coming from right now  
7 because we're not really going to tell you. And  
8 that's exactly what municipal utilities don't want.

9 They want clear, concise guidelines about where  
10 they're going, about what they have to meet. And I  
11 have been accused of saying, and I will freely admit  
12 that, what happens when municipal governments don't  
13 know what they're doing, they charge, okay, they  
14 blitz, they don't understand, they attack.

15 That's what they do and that's what I'm trying  
16 to prevent here. I want municipals to be obeying the  
17 law and heading down the right path, but I can't do  
18 that when the rules are changing at the last minute.

19 Are there any questions?

20 CHAIRMAN HARDECKE: So if -- if we're going to move  
21 to dai- -- maximum daily or weekly we need to have  
22 time to prepare?

23 MR. PHIL WALSACK: Absolutely.

24 CHAIRMAN HARDECKE: And -- and be clear about that,  
25 don't just wake up and have that added.

1 MR. PHIL WALSACK: And you know I want to talk about  
2 money because I always want to talk about money  
3 'cause that's what drives municipal governments.  
4 There are dollars included in that sentence. How  
5 many? I don't know.

6 I don't know how much that's going to cost, yet,  
7 'cause I didn't know it was coming until last week.  
8 Okay? I need to know and tell municipals you need to  
9 ramp up, ramp up rates, ramp up revenue 'cause this  
10 is coming at you and you're going to need to prepare  
11 for it fiscally. And right now I can't tell you how  
12 much that's going to be and I'd like to be able to  
13 tell you.

14 CHAIRMAN HARDECKE: So it really wouldn't be fair to  
15 make a decision like this without knowing the -- the  
16 economic impact to communities?

17 MR. PHIL WALSACK: That is my position. Correct.

18 CHAIRMAN HARDECKE: Okay.

19 VICE-CHAIR HUNTER: Well, Phil, do you feel like --  
20 is part of the reason for your objection the fact  
21 that you anticipate they'll be a change coming down  
22 from EPA in the next two years that they're going to  
23 have then shift to another method -- or another  
24 marker organism or whatever?

25 MR. PHIL WALSACK: I push that comment off to my

1 brighter colleagues like Mr. Stober and like Mr.  
2 Lodderhose.

3 What I'm trying to say is irregardless (sic) of  
4 what species we're going to be looking at, we need to  
5 know whether it's going to be weekly, daily or  
6 monthly. That's where the money is tied up, is how  
7 many times am I sampling?

8 Right now, I don't know. I don't know until I  
9 get my permit how many times I'm going to be required  
10 to sample because the Department can choose at its  
11 will how often. And I can't build a plant when I  
12 don't know how often they're going to be required to  
13 sample and hit effluent numbers whether they're going  
14 to be weekly or monthly.

15 That has a lot to do with how treatment plants  
16 are built and operated. And I'd like to know where  
17 we're going today, so that I can build something  
18 that's going to last 20 years or so for the  
19 ratepayers in Missouri. And that's my problem with  
20 this sentence. It doesn't give us a direction. It  
21 makes it very cloudy.

22 Thank you.

23 CHAIRMAN HARDECKE: Thank you.

24 John Reece.

25 MR. JOHN REECE: Morning, Commission, I'm John Reece,

1 executive director of the Little Blue Valley Sewer  
2 District. I -- I agree with what has been already  
3 stated by my distinguished colleagues, Mr. Stober,  
4 Mr. Lodderhose and Mr. Walsack.

5 But there's other issues with this rule that, I  
6 think, need to be addressed. For instance, open  
7 statements within the rules with regard to monitoring  
8 frequencies. It says the monitoring frequency and  
9 sample type stated in Paragraph 8(c)(3) of this rule  
10 are minimum requirements, but then it goes on to  
11 state the permit writer shall establish monitoring  
12 frequencies and sampling types to fulfill the site-  
13 specific informational needs of the Department.

14 Open-ended statements like this do not belong in  
15 rules. If there are minimum requirements then those  
16 requirements should be so indicated and stated and  
17 not left open-ended to the permit writer who's  
18 preparing that permit. I just think there's -- also,  
19 this -- these amended rules as -- as John Rustige had  
20 indicated many of the comments that were -- that he  
21 received have been incorporated into these -- into  
22 this rule. These new -- these new amended rules have  
23 not been public noticed and therefore additional  
24 comments, I'm sure, would be -- would be forthcoming.  
25 If -- if and when these -- this new rule, changed

1 rule would be public noticed.

2 And so, I think, with that in mind, I think,  
3 what Mr. Lodderhose suggested is an excellent  
4 recommendation that --

5 (Tape One, Side A concluded.)

6 MR. JOHN REECE: -- Stober indicated. So, I think,  
7 that I would like to recommend that the Commission  
8 withhold adopting these rules until a lot of these  
9 questions and answers can be addressed.

10 Thank you.

11 CHAIRMAN HARDECKE: Questions?

12 (No response.)

13 MR. JOHN REECE: Thank you.

14 CHAIRMAN HARDECKE: EPA, do you have comments? Now,  
15 he's got a big stack.

16 VICE-CHAIR HUNTER: Um-huh.

17 MR. MARK MATTHEWS: Mr. Chairman and Commissioners.  
18 My name's Mark Matthews. I'm with EPA in Kansas  
19 City. One of my jobs at EPA is the Missouri Permits  
20 Coordinator for the NPDES Program. So my job is to  
21 make sure that permits issued in Missouri comply with  
22 the -- the Clean Water Act and federal regulations.

23 I'd like to speak about some of the specific  
24 issues you've heard, but I'd like to take a step back  
25 for a moment and look at the general issue of -- of

1 bacteria. The reason we limit bacteria in permits is  
2 a -- it's a human health issue. It's not an aquatic  
3 life danger so to speak for the most part it's  
4 because we're worried about humans that are  
5 recreating in these water bodies and get exposed to  
6 high levels of pathogens.

7 And, of course, swimming one time in a highly  
8 contaminated water can cause illness, sickness,  
9 potentially death. So we're looking at very short-  
10 term exposures with E. coli is the point I want to  
11 make. Someone can go swimming today and get sick and  
12 it doesn't really matter what the monthly average is  
13 for that water body or the -- or over the whole rec  
14 season; it's what is it today, while I'm swimming  
15 there.

16 So the reason we're focusing on shorter time  
17 frames is because we are looking at human health  
18 impacts. The federal regulations do require and --  
19 and we can read it if you like that for continuous  
20 dischargers, POTWs that all limits be expressed as  
21 monthly averages and weekly averages for POTWs. And  
22 daily averages for non-POTWs. So that's a federal  
23 requirement. So EPA will have to object to permits  
24 that are issued that do not meet those federal  
25 requirements.

1 CHAIRMAN HARDECKE: Could you restate that, again --

2 MR. MARK MATTHEWS: Yes, sir.

3 CHAIRMAN HARDECKE: -- what's the monthly and weekly,  
4 daily compliances?

5 MR. MARK MATTHEWS: And -- and let me give you the  
6 citation so you can read it yourself. It's -- its 40  
7 CFR 122.45(d) and for POTWs all permit limits have to  
8 be expressed as monthly averages and weekly averages.

9 So -- and the reason this is kind of coming to a  
10 head is because prior to this Missouri had been using  
11 fecal coliform as the indicator organisms. And those  
12 were all expressed as monthly averages and daily  
13 averages, which we consider to be more stringent than  
14 the weekly so we do -- we did not object to those  
15 permits.

16 So current -- so up to this point people are --  
17 do have daily limits on their bacteria. Okay? And  
18 for chlorinated units that use disinfection either  
19 you're -- you're pretty much killing everything or  
20 your not. If you're disinfecting and doing it right  
21 you're killing all the bacteria so it doesn't really  
22 -- you're basically putting out zero.

23 For UV units this might make a little bit of  
24 difference. I forgot which -- do you have any  
25 questions at this point, I guess?

1 (No response.)

2 MR. MARK MATTHEWS: So the main point is, we are  
3 looking at short-term exposures. That's why we need  
4 these shorter term limits. The federal regulations  
5 do require these weekly limits for POTWs and -- and  
6 we'll be compelled to object to permits that do not  
7 contain those limits in them and that'll just kind of  
8 gum up the whole process as far as objections and  
9 appeals and what not.

10 So -- so we would support including this  
11 language. We would like to see it even stronger that  
12 -- that POTWs will have weekly limits so that it's  
13 clear to everybody. Not that they may get limits,  
14 but that would be our position.

15 COMMISSIONER SHORNEY: Can you address the variations  
16 in other states?

17 MR. MARK MATTHEWS: I -- well, I'm the Missouri  
18 permits coordinator. I understand that Kansas has  
19 recently also switched to E. coli and some of those -  
20 - because of their standards they do not have daily  
21 limits. Part of the reason, which was mentioned  
22 earlier, is that EPA has not come up with a good  
23 method for deriving these weekly limits.

24 I am working with headquarters people. I was on  
25 the phone yesterday. And she had some contractors,

1 some statisticians that are going develop the method  
2 for driving these weekly limits. So when we object  
3 to permits we need to be able to tell the state,  
4 well, this is what you should put in your permits and  
5 at this point we don't have a real good method for  
6 doing that. I'd rather have a nice solid, scientific  
7 foundation for saying this is what your limit should  
8 be based on your standard.

9 CHAIRMAN HARDECKE: Well, until we have that how can  
10 we expect communities to go blindly into not knowing  
11 what these parameters are?

12 MR. MARK MATTHEWS: Good point.

13 This would -- this would not take into effect I  
14 understand for a few months and if everything goes  
15 smoothly I'm hoping to have some numbers out of  
16 headquarters within a month or two time frame, so,  
17 hopefully.

18 CHAIRMAN HARDECKE: I guess, in reality you're asking  
19 us to accept an open-ended statement hoping it'll  
20 turn out all right?

21 MR. MARK MATTHEWS: Yeah. I see what you're saying.

22 CHAIRMAN HARDECKE: I think for the economic impact  
23 that we're asking communities to subject themselves  
24 to here we have to be -- we have to consider that --  
25 that fact.

1 COMMISSIONER EASLEY: But are you saying that within  
2 two months you will be able to give us directives?

3 MR. MARK MATTHEWS: I hope, sir, to be able to do  
4 that. I cannot guarantee that because I'm going to  
5 have to be waiting for people that aren't under my  
6 control to -- to do -- to develop this method for  
7 deriving the weekly limits.

8 COMMISSIONER EASLEY: Should we not wait until we  
9 receive those directives?

10 CHAIRMAN HARDECKE: Seems prudent to me.

11 VICE-CHAIR HUNTER: Let's review -

12 COMMISSIONER EASLEY: Pardon?

13 CHAIRMAN HARDECKE: It seems prudent to me.

14 COMMISSIONER EASLEY: And we have another meeting set  
15 up for two -- two months from, now, in May and ask  
16 you to come at that time with those directives or --

17 MR. MARK MATTHEWS: Yes. I'd be glad to bring those  
18 to the next meeting if I have them at that time. But  
19 we -- I mean, we do feel like the regulations are  
20 clear and I just, you know, want you not be surprised  
21 if there are attempts to -- to issue permits with --  
22 that only have monthly averages and that EPA will be  
23 objecting to those, so --

24 CHAIRMAN HARDECKE: Okay. I think we have another  
25 comment.

1 MR. JOHN DeLASHMIT: I'm coming to Mark's rescue a  
2 little on something. Good morning, Commissioners.  
3 My name's John DeLashmit. I'm chief of the water  
4 quality management branch at EPA Region 7.

5 I wanted to say something 'cause I heard Trent  
6 say something earlier that I -- I think, that it was  
7 a little incorrect. I've had occasion recently to  
8 review EPA's 1986 guidance on bacteria multiple  
9 times. Specifically, the guidelines or the single  
10 sample maximum number, I think, it's 230 colony  
11 forming units per 100 milliliters that, I think, you  
12 guys use at Lake of the Ozarks. And when Trent said  
13 there's nothing there that aligns through the 126  
14 geometric mean there's an explicit statement in that  
15 guidance that says, the 230 number is specifically  
16 calculated to support compliance with the 126  
17 geometric mean. So we do have a useable number for  
18 single sample maximum or as a guideline, as you use it  
19 that does line up with that 126.

20 And I just wanted to -- to let you know that.  
21 That there is a number that you could use for a daily  
22 number for example, and other than that I'm -- that's  
23 something with expertise in permitting so I'll take  
24 off before I say something stupid unless you have a  
25 question.

1 Thank you.

2 CHAIRMAN HARDECKE: Any questions?

3 (No response.)

4 CHAIRMAN HARDECKE: John. We may get you back you  
5 never know --

6 MR. JOHN RUSTIGE: I just want to take an opportunity  
7 to respond to a couple of these.

8 CHAIRMAN HARDECKE: Okay.

9 MR. JOHN RUSTIGE: One thing I wanted to note is that  
10 a few folks have mentioned that stakeholders really  
11 hadn't had an opportunity to look at this particular  
12 change. And I don't think that's unusual with  
13 rulemaking. You go through a comment process and we  
14 receive comments during that period and then the next  
15 step is to respond to those and so that's what we're  
16 doing today. Sometimes the changes that result from  
17 those comments happen to be ones that other people  
18 hadn't maybe considered. So that's just natural part  
19 of the rulemaking process.

20 One thing I did want to point out is; what are  
21 the ramifications of having a permitting system, if  
22 you will, that doesn't allow us to write permits  
23 because they'll all be objected to? And essentially  
24 that would put the permitting system on hold to get a  
25 full regulation through from start to finish is a --

1 is, you know, more than a year. So we wouldn't want  
2 to see those permits put on hold for that long.

3 And so that's part of the reason why we crafted  
4 the language the way we did. Is it's intended to  
5 give some discretion to allow us to use a weekly  
6 average or a daily max once that is developed. And -  
7 - and so that's -- that's why we chose that sort of  
8 discretionary language because we didn't have a  
9 definitive -- definitive language to go to for those  
10 particular numbers.

11 The other -- the other thing I'd mention is on  
12 the cost side of this. What's at question here is  
13 what the limit is not how frequent the monitoring is.  
14 The monitoring frequency and the cost associated with  
15 those -- with that monitoring frequency is not in  
16 question here. It -- what's in question is what is  
17 that limit you're going to meet, now. Admittedly  
18 certain systems may be designed to meet those  
19 particular limits and if they're changed or different  
20 that may lead to costs associated with changes for  
21 those systems, so I just wanted to make that clear.

22 And then I did want to give Refaat an  
23 opportunity if he had anything to add.

24 Thank you.

25 MR. REFAAT MEFRAKIS: This is Refaat Mefrakis with

1 permits and engineering. If we have to postpone the  
2 decision on this rule we will really have to start  
3 all over. We will have to withdraw this rule and  
4 start back to square one and that's something that  
5 really we don't want to do.

6 At the same time, if we -- if we strike out the  
7 sentence out; what does that mean? Are we able to  
8 include limits, weekly limits in case we have an  
9 objection or are we just going to sit on this permit  
10 for a couple years until we come back and go through  
11 a rulemaking process and have these permits on hold  
12 for years while public health will be in jeopardy?

13 So I really recommend that you don't strike this  
14 sentence out and -- but what would commit is that  
15 would work with the stakeholders, EPA and POTWs to  
16 come up with -- come up with a limit that is  
17 acceptable to everybody and present that to the  
18 Commission before we start putting those in the -- in  
19 the permit and so my recommendation is direct us to -  
20 - to work with the stakeholders. So if there's a  
21 fear that we're going to just go ahead and start  
22 putting limits without anybody's knowledge we can  
23 commit that we will work closely with them and come  
24 up with a document that we can present to the  
25 Commission in lieu of striking out that we still need

1 the authority to be able to include those weekly  
2 limits in the permit as far as the -- what the limit  
3 is, what will work with EPA and the stakeholders to  
4 do that, so I would strongly suggest that you don't  
5 strike that language out, so --

6 VICE-CHAIR HUNTER: You're suggesting that we accept  
7 the change in the rule as presented today, but  
8 withhold what until we get the limits which will be  
9 added later?

10 MR. REFAAT MEFRAKIS: Yeah. In the next two months  
11 here we will be working with EPA to come -- come up  
12 with limits and hold stakeholder workgroup meeting to  
13 reach an agreement what the limits will be. And we  
14 would present that to the Commission at the next --  
15 either the next Commission meeting or the following  
16 Commission meeting. We just don't want to go through  
17 a process where we have to start all over and go  
18 through a two-year process and -- while endangering  
19 public health.

20 COMMISSIONER SHORNEY: And what's the ramifications  
21 of just delaying decision on this until our next  
22 meeting?

23 MR. REFAAT MEFRAKIS: The ramifications, we will have  
24 to withdraw the rule.

25 COMMISSIONER SHORNEY: Why is that?

1 MR. REFAAT MEFRAKIS: The rulemaking process, there's  
2 a time -- time frame when the rulemaking process  
3 starts and when it ends and we have to file this with  
4 State of Secretary by next week. If we don't,  
5 then we -- the rule says we have to withdraw it and  
6 we start all over.

7 COMMISSIONER SHORNEY: So you'll lose how -- two  
8 years worth of effort?

9 MR. REFAAT MEFRAKIS: Well, we'll have to start --  
10 yeah. Whatever rulemaking process takes, yeah. But  
11 it's up to 18 to two years, I guess. We'll have to  
12 start the RIR process and, so --

13 CHAIRMAN HARDECKE: Did we not go through a work --  
14 stakeholder workgroup process in this development of  
15 this?

16 MR. REFAAT MEFRAKIS: We did, in the past. And --

17 CHAIRMAN HARDECKE: But EPA did not have their  
18 numbers available until after the fact in this  
19 process.

20 MR. REFAAT MEFRAKIS: Correct. This has been brought  
21 up to our attention more recently after the  
22 workgroup, right.

23 CHAIRMAN HARDECKE: I still don't think it's fair to  
24 ask the citizens of Missouri to sign a blank check  
25 with EPA -- you know, they were a part of the

1 process, but they haven't come up with their end of  
2 the bargain, so --

3 MR. REFAAT MEFRAKIS: Well, we're making -- we want  
4 to note our concern and ramification and endangering  
5 public health, but it's finally -- it's your decision  
6 and so we -- we proceed and -- and we said well,  
7 we'll work with the stakeholders and come up with a  
8 reasonable approach to that.

9 CHAIRMAN HARDECKE: I guess your statement  
10 endangering public health; we're not going to roll  
11 back anything that we currently have, right?

12 MR. REFAAT MEFRAKIS: Well, once you -- you strike  
13 out the statement they will be issuing permits for  
14 weekly limits in which case EPA will object to those  
15 and the permits will be put on hold. And so we won't  
16 be requiring disinfection.

17 CHAIRMAN HARDECKE: But, I mean, they would not be --  
18 the public health would not be compromised any more  
19 than it is today during that period of waiting for  
20 EPA to come up with their -- their guidelines.

21 MR. REFAAT MEFRAKIS: We have facilities right now  
22 that are not disinfecting that are required to  
23 disinfect. And where we would be requiring them to -  
24 - to disinfect and if we can't issue a permit then  
25 we're not going to be disinfecting.

1 CHAIRMAN HARDECKE: Do any of the people that  
2 spoke before wish to have follow-up with comments?

3 MR. JOHN LODDERHOSE: I can't speak for all the other  
4 stakeholders, but, I think, if the Commission would  
5 direct Staff to convene a stakeholder process, get  
6 some proposed numbers from EPA, have a legal review  
7 to see if it's actually required to have these weekly  
8 or daily maximum limits and then come back with a  
9 proposed implementation plan to the Commission which  
10 should be approved by you guys. I think that would  
11 give us the safe guards or the blank check concerns  
12 that we have right now.

13 CHAIRMAN HARDECKE: But if it's already in the -- in  
14 the rule then how will you go back on it?

15 Jenny, maybe that's something you can help us  
16 with.

17 MS. JENNIFER FRAZIER: I'm not sure I understand the  
18 question.

19 CHAIRMAN HARDECKE: Well, what the concern is, is  
20 that if this sentence and some other sentences are  
21 left in then the communities don't know the cost.

22 MS. JENNIFER FRAZIER: Right.

23 CHAIRMAN HARDECKE: And so we're -- we're taking the  
24 -- or our option here, at this point, is to direct  
25 the Department and stakeholder group to evaluate this

1 once EPA comes up with their numbers. Well, if it's  
2 already in the permit this way; will our further  
3 action do anything to change this? Can we --

4 MS. JENNIFER FRAZIER: Well, I think, that's the  
5 point of having the language be broad enough to cover  
6 future decisions based upon EPA's direction. So, I  
7 think, I'm hearing you say -- excuse me -- that you  
8 would agree to this broader language that allows some  
9 flexibility as long as certain things happen --

10 CHAIRMAN HARDECKE: Right.

11 MS. JENNIFER FRAZIER: -- such as a stakeholder and  
12 coming back to the Commission.

13 MR. JOHN LODDERHOSE: If the Commission directs the  
14 Staff to present a proposal to the Commission, which  
15 must be approved before they implement it. We at  
16 least have a voice in it.

17 CHAIRMAN HARDECKE: Okay. Thanks. We'll hear from  
18 the other -- let's -- okay, Robert.

19 MR. ROBERT BRUNDAGE: I know exactly what he was  
20 thinking. Mr. Chairman, hi, Robert Brundage with the  
21 law firm Newman, Comley & Ruth with -- here in  
22 Jefferson City. And I represent a number of  
23 municipals and other treatment plants that discharge  
24 E. coli.

25 And just as a matter of law on the -- what the

1 Administrative Procedure Act requires on rulemaking  
2 is that whenever you propose a rule and then you make  
3 a change and the final order of rulemaking anybody  
4 who wanted to comment on that rule must have been  
5 able to contemplate that that was a possible change  
6 when the final order of rulemaking was entered.

7 So I would suggest this is a pretty far-fetched  
8 thing for anybody to contemplate that this type of  
9 sentence would be in it -- added at the last minute.  
10 So that's what the law says on the procedures of  
11 rulemaking.

12 There are other rulemaking laws that apply. The  
13 Regulatory Impact Report law and the fiscal note on  
14 all these regulations and I don't think the  
15 Department can correct me if I'm wrong 'cause I  
16 haven't studied it that much, but I don't think this  
17 made it into the final fiscal note and it certainly  
18 couldn't have been in the Regulatory Impact Report  
19 that's been out there for a long period of time.

20 So there's some other flaws in the process. A  
21 few other fellows might have another suggestion on  
22 how to maybe proceed here today.

23 CHAIRMAN HARDECKE: Let me ask John a question.  
24 Didn't you state that you didn't have time to get the  
25 costs of this evaluated?

1 MR. JOHN RUSTIGE: Well, the cost of the monitoring  
2 was considered. But the cost of -- of disinfecting  
3 to meet the standard was considered in previous  
4 rulemakings when the standard was set.

5 CHAIRMAN HARDECKE: Okay. But the -- the stricter  
6 monitoring limits would change the --

7 MR. JOHN RUSTIGE: No. This is not a stricter  
8 monitoring limit. This is an -- this is an -- a  
9 concentration limit of colonies in the -- in the --  
10 in the discharge to be protective of the Water  
11 Quality Standard and -- and when the Water Quality  
12 Standard rule was brought to the Commission the cost  
13 of disinfecting was -- I wasn't here at the time, but  
14 I'm sure it was discussed at considerable length  
15 about how much that would cost for these communities  
16 to disinfect.

17 Now, if those systems are different then what  
18 was contemplated when that rule was brought up that  
19 hasn't been considered, but -- but the costs of  
20 disinfecting in general was considered when -- when  
21 that Water Quality Standard was set.

22 CHAIRMAN HARDECKE: I would agree with that. But  
23 what, I think, I heard here was that if you're taking  
24 the disinfection to a lower limit whether it be --  
25 well, if you go to weekly or daily it would have to

1 maybe crank it down a little but could cost more.

2 MR. JOHN RUSTIGE: It -- that is -- there's  
3 potentially a cost there, I agree. It's been  
4 suggested to me that some of the stakeholders may  
5 suggest to table this, at this point, while we maybe  
6 craft a little bit of language that might be more  
7 acceptable to them in -- in place of this sentence  
8 and I'd be open to that. I'd be -- if you'd like to  
9 do that.

10 Otherwise, again, I just recommend that it --  
11 you would adopt it as we -- as we've crafted the  
12 language.

13 CHAIRMAN HARDECKE: Okay. We'll give them another  
14 chance.

15 MR. JOHN RUSTIGE: Sure.

16 MR. TRENT STOBBER: Sure. I think -- I think John  
17 brought up a good point that if these -- if these  
18 limits are based off of attainment of a Water Quality  
19 Standards then it -- you know, then it could be  
20 considered appropriate. And so if -- maybe there's  
21 some alternative language to -- to clarify that, that  
22 we might be able to come up with and I -- I would  
23 suggest -- I mean, as we've -- all the stakeholders  
24 here have worked for a long time on this regulation  
25 and there's a lot of things that get cleaned up that

1 -- you know, that -- that are useful. So I'd hate to  
2 see this whole thing start all over for another two  
3 years of -- of that.

4 And so anyway so I would -- I would recommend  
5 that maybe this gets tabled for later in the  
6 Commission meeting, give us time to work with John  
7 and EPA if they want and try to come back with  
8 something that -- that is -- that you'd feel more  
9 comfortable approving.

10 COMMISSIONER EASLEY: Later today, is that what  
11 you're saying?

12 MR. TRENT STOBER: Um-huh.

13 COMMISSIONER EASLEY: I have no problem with that.

14 COMMISSIONER SHORNEY: I don't either.

15 MR. TRENT STOBER: And we won't keep you here to  
16 seven o'clock or anything like that, I swear.

17 CHAIRMAN HARDECKE: Phil, did you have something else  
18 to add?

19 MR. PHIL WALSACK: This is transparency in action,  
20 isn't it? We're negotiating a fairly significant  
21 piece of regulation right here in front of you. If  
22 we did healthcare this way we could solve a lot.  
23 This has evolved. We are evolving. And back to Mr.  
24 Rustige's point this is an evolution. We're not in  
25 the same place as last year as we are today. And I'm

1 not sure whether we can pull this together in an hour  
2 during lunch, but comments like this have big  
3 implications to municipal governments in Missouri. A  
4 comment placed, essentially placed, into this  
5 regulation by EPA. At the ninth hour, we've been  
6 talking about this for a year. And we're here at the  
7 ninth hour presenting you language that is different  
8 today than it was three months ago. That doesn't  
9 give municipals in Missouri much comfort, okay, to  
10 use a Department of Natural of Resource word,  
11 comfort. That doesn't sit well with them. They like  
12 to talk about it. We have, I have, as their  
13 representative been talking about this subject for a  
14 year. And here it is negotiating some pretty big  
15 stuff today. That makes me nervous. Okay?

16 And I understand the Department's point of view  
17 that they need to put out permits. They need to get  
18 permits out the door because that's another milestone  
19 that the federal government is looking at them. And  
20 I'm saying I'm sorry. I'm sorry that permits can't  
21 get out the door, but we need permits to be right not  
22 fast. They need to be right.

23 Thank you.

24 CHAIRMAN HARDECKE: Okay. Do we want to let them try  
25 to come up with some acceptable language and take

1 this up after lunch? Put this on hold so to get your  
2 -- get your heads together.

3 MR. JOHN RUSTIGE: I would suggest that folks take a few  
4 minutes as time permits to -- to think about it and  
5 then we can meet at lunch and mull over it some more.

6 Thank you.

7 MS. JENNIFER FRAZIER: Excuse me, Commissioner. You  
8 might want to entertain a motion to table just for  
9 procedurally.

10 CHAIRMAN HARDECKE: Okay.

11 VICE-CHAIR HUNTER: Mr. Chairman, I move that we  
12 table this motion until after lunch.

13 CHAIRMAN HARDECKE: Okay.

14 COMMISSIONER SHORNEY: Second.

15 CHAIRMAN HARDECKE: Malinda, take the vote, please.

16 MS. MALINDA OVERHOFF: Commissioner Easley?

17 COMMISSIONER EASLEY: Yes.

18 MS. MALINDA OVERHOFF: Commissioner Shorney?

19 COMMISSIONER SHORNEY: Yes.

20 MS. MALINDA OVERHOFF: Commissioner Hunter?

21 VICE-CHAIR HUNTER: Yes.

22 MS. MALINDA OVERHOFF: Chair Hardecke?

23 CHAIRMAN HARDECKE: Yes.

24 Okay. Thank you.

25 And we'll move on to Tab No. 5, Emily.

1 MS. EMILY LYON: Good morning, Commissioners. My  
2 name is Emily Lyon and I will be presenting the  
3 finding of **necessity for Chapter 8 Rule 110,**  
4 **Engineering Reports, Plans and Specifications.**

5 The finding of necessity doesn't commit the  
6 Commission to any outcome on the rulemaking. It's  
7 just a legal requirement that we have. This rule has  
8 not been revised since the late '70s. We used a  
9 nationally recognized and accepted standard as the  
10 basis of this amended rule. It's commonly known as  
11 the 10-State Standards, which is a committee formed  
12 of other states and providences of Canada. And  
13 Missouri is a party of that committee.

14 Most of the changes that we've made are  
15 administrative in nature. The main change is the  
16 recommendation of including an engineering report or a  
17 facility plan with the construction permit  
18 application. And we've changed that to a mandatory  
19 requirement. But the content to be included in these  
20 engineering reports and facility plans are pretty  
21 clearly defined and concise and hopefully will limit  
22 misinterpretations.

23 With any change or learning curve to this  
24 requirement there will be initial costs due to  
25 additional work hours by consultants and Department

1 Staff to make sure that these rules are being followed  
2 correctly.

3 But we think that after a couple of years that  
4 these costs will become zero, nothing, because of  
5 improved efficiencies in the reports and the review  
6 time by the Department Staff. And we're currently  
7 developing these costs in the fiscal notes.

8 We currently do not have any stakeholder  
9 meetings scheduled. But I'd be happy to add anyone  
10 to the e-mail list to receive updates on Chapter 8. And  
11 on the clean form -- Clean Water Forum Chapter 8  
12 webpage you can view past notes and agendas and  
13 there's a link to the 10-State Standards for  
14 reference if you want to go online and view that.

15 I'd like to request that the Commission find the  
16 amendment to the rule necessary. And do you have any  
17 questions?

18 CHAIRMAN HARDECKE: Okay. Something that I thought  
19 of, DNR's currently in a pretty serious financial  
20 condition and will any of the changes that you -- you  
21 referred to increased in costs a little bit --

22 MS. EMILY LYON: Um-huh.

23 CHAIRMAN HARDECKE: -- but is there anyway you can  
24 improve efficiencies in this process to reduce  
25 overall costs and help DNR's economic plight?

1 MS. EMILY LYON: Definitely. That -- that's what our  
2 goal is. And with this changing rule we won't --  
3 we'll absorb the costs. But we're estimating it to  
4 be conservative. So no additional Staff will be  
5 hired to review these reports. And eventually we  
6 believe that it'll create reduced time in reviewing  
7 construction permit applications.

8 CHAIRMAN HARDECKE: Well, I'd encourage you to keep  
9 that in mind as you go through this is 'cause I don't  
10 think these economic things are going to get fixed  
11 overnight.

12 MS. EMILY LYON: Right.

13 CHAIRMAN HARDECKE: And if they do why you improved  
14 efficiency will still be beneficial to everybody.

15 Other questions?

16 COMMISSIONER SHORNEY: I'm just curious. The 10-  
17 State Standard is the guide for the Chapter 8,  
18 basically?

19 MS. EMILY LYON: Basically. We used it as the basis.  
20 We changed a little bit of the wording here and there  
21 to suit Missouri specifically, but that's what we  
22 used.

23 CHAIRMAN HARDECKE: Other questions?

24 (No response.)

25 MS. EMILY LYON: Thank you.

1 CHAIRMAN HARDECKE: Want to make a motion?

2 VICE-CHAIR HUNTER: Sure.

3 Mr. Chairman, the Commission agrees to and signs  
4 the Findings of Necessity today for 10 CSR 20-8.110.

5 COMMISSIONER SHORNEY: Second.

6 CHAIRMAN HARDECKE: Malinda, take the vote, please.

7 MS. MALINDA OVERHOFF: Commissioner Shorney?

8 COMMISSIONER SHORNEY: Yes.

9 MS. MALINDA OVERHOFF: Commissioner Hunter?

10 VICE-CHAIR HUNTER: Yes.

11 MS. MALINDA OVERHOFF: Commissioner Easley?

12 COMMISSIONER EASLEY: Yes.

13 MS. MALINDA OVERHOFF: Chair Hardecke?

14 CHAIRMAN HARDECKE: Yes.

15 Well, we're to Tab No. 6. Who's going to talk  
16 about this one?

17 MR. SCOTT TOTTON: Darrick.

18 CHAIRMAN HARDECKE: Darrick.

19 MR. DARRICK STEEN: Morning -- Good morning,  
20 Chairman, members of the Commission. First off, I'd  
21 like to let you know that, I believe, you have an  
22 updated blue packet and so -- the folks in the --  
23 behind me that do not have that packet may not have  
24 the updated briefing paper. In fact, I don't have  
25 the updated briefing paper. So bear with me here.

1           Just as Ms. Lyon's indicated in her -- in her  
2 part this is also a Findings of Necessity request for  
3 the -- an amendment to 10 CSR 20-6.300, Concentrated  
4 Animal Feeding Operations. If you remember, I  
5 believe, back in the November 2009 Commission meeting  
6 I spoke in front of you about changes that were  
7 upcoming with regard to this particular rule.

8           Just to kind of give you a brief summary,  
9 update, if you will, on this. In 2008, EPA  
10 promulgated a new Concentrated Animal Feeding  
11 Operations final rule. Basically, it was a rule that  
12 made revisions to an earlier rule. And those  
13 revisions are -- are not consistent currently with  
14 the State standards as it relates to CAFOs. So this  
15 particular amendment certainly its primary purpose is  
16 to address those changes and those inconsistencies  
17 between the State and the federal rule.

18           Again, this is just a request for Findings of  
19 Necessity, again, like Em- -- Ms. Lyons indicated this is just  
20 a legal requirement at this point and the remainder  
21 of the rulemaking process will -- will be ongoing  
22 after this approval is granted. The primary  
23 revisions to the rule and, I believe, you have the  
24 rulemaking report in your blue packet, but the  
25 primary revisions to this rule are -- will be to

1 update definitions that are applicable to federal and  
2 State rule standards. It'll be to implement or  
3 update the effluent limitation guidelines for CAFOS  
4 in particular the -- EPA's new source performance  
5 standards for swine, poultry and veal operations.

6 It's to update EPA's new criteria as it relates  
7 to discharge- -- as it relates duty to apply  
8 provisions for NPDES permits. Their new provision  
9 states that only CAFOs that discharge or propose  
10 discharge are obligated to get an NPDES permit. And  
11 probably another significant change will be that we  
12 will be revising or implementing EPA's changes to  
13 their NPDES issuance, permit issuance process.

14 They've stipulated that NPDES permits for CAFOs  
15 must go -- undergo a public review process, which  
16 includes part of their Nutrient Management Plan.  
17 That -- that will be a significant change to our  
18 current issuance process.

19 Those changes haven't been developed in any type  
20 of a draft final rule at this point. I don't have a  
21 rule, if you will, to share with you. That will be  
22 ongoing after the -- after the approval is granted.  
23 And I suspect that -- that certainly we will have an  
24 additional meeting or two, stakeholder meeting or two  
25 during this process.

1           So with that I request approval of the motion  
2           that hopefully is indicated on your briefing paper.

3           CHAIRMAN HARDECKE: I have a question.

4           There have been a lot of questions raised about  
5           the CAFOs going from the general permit to the NPDES  
6           permit, going from \$150 permit to \$3,500 permit. I  
7           heard there were some consideration of a new general  
8           permit to more address some smaller operations; is  
9           that something that would be for this?

10          MR. DARRICK STEEN: Basically, what's -- what's  
11          occurred is that with EPA's change perhaps only  
12          certain facilities will be obligated or will be --  
13          will be required to get an NPDES permit. For those  
14          facilities that do not opt for the NPDES permit we  
15          will have a State permit available. And that permit  
16          is, at this point, proposed as the general permit and  
17          will be very similar to what -- what they've had in  
18          the past.

19          For those facilities that -- that need an NPDES  
20          permit at this time, the proposal is that those be  
21          site-specific only. And you're right the current fee  
22          and the State law is \$3,500 per year for that permit.  
23          And the reason why, the primary reason why, the  
24          Department feels like the site-specific permit is  
25          necessary for these NPDES permits is because of this

1 public not- -- this new public notice process that  
2 EPA's mandated for their permits. And that's not --  
3 that's not a component or it's not the current  
4 process for implementing general permits in Missouri.  
5 And so it sort of sets a totally different issuance  
6 path for us, so along with a number of other  
7 changes that really are making it more  
8 difficult and more time consuming for us to  
9 process permits.

10 CHAIRMAN HARDECKE: But that could -- can be done  
11 through this same rulemaking?

12 MR. DARRICK STEEN: Yeah. This -- this will all --  
13 this will all be addressed --

14 CHAIRMAN HARDECKE: Or does the general -- another  
15 general permit have to be done separately?

16 MR. DARRICK STEEN: Perhaps, I'm not following you.  
17 There will be -- yes, there will absolutely will be a  
18 general permit proposed for the facilities that --  
19 that opt out, if you will, or choose not to have an  
20 NPDES permit.

21 So that's all I have.

22 CHAIRMAN HARDECKE: Motion? Oh, sorry. We got some  
23 cards here, Leslie Holloway.

24 MS. LESLIE HOLLOWAY: Good morning, Leslie Holloway,  
25 with Missouri Farm Bureau. Some of my comments are

1 really more, I guess, in the way of kind of  
2 background and observations as a member of the CAFO  
3 workgroup and these proceedings that you're hearing  
4 about this morning. You kind of have a convergence  
5 in many cases of several different workgroups that  
6 have been meeting over a period of months and in some  
7 cases years, even. And, I think, in this case you  
8 would see a convergence between both the CAFO  
9 workgroup and the permit fees workgroup that has been  
10 talking about some of the issues that Commissioner  
11 Hardecke has already raised here this morning.

12 But relative to the background that you have on  
13 this finding of necessity I just want to make you  
14 aware that our organization does support retaining  
15 the delegated authority. That was one of the  
16 comments in the -- in the background that to the  
17 Department's knowledge that stakeholders are  
18 supporting the retention of DNR's delegated authority  
19 to administer the program. And we do support DNR  
20 retaining that authority.

21 There have been a couple of pieces of  
22 correspondence with some of the permit holders, the  
23 CAFO permit holders and in December and in January  
24 the Department had sent letters to those who are  
25 holding permits to try to keep them up to date on

1 what's happening with these pending changes and their  
2 requirement to get new permits. There are meetings  
3 underway, now, public meetings that both the  
4 Department and the University Extension personnel are  
5 conducting to try to help answer questions for those  
6 people who are looking at changes in their permits.

7 There has also been an indication in the  
8 correspondence that went out in December to these  
9 permit holders that there would be a renewal  
10 application mailed to them in May of this year. And  
11 so there is some what of a fast track in trying to  
12 get all of this rulemaking in place in order to have  
13 those permits available in time.

14 Relative to the -- the cost savings issue I  
15 would like to also make the Commission aware that  
16 there have been some things discussed with members of  
17 the workgroup and Department Staff about some options  
18 or some things that need to be considered in terms of  
19 cost savings. Permit by rule was one thing that was  
20 discussed at one point. Not having to issue certain  
21 permits, not necessarily -- well, obviously, not the  
22 NPDES permits those would be required, but there are  
23 other permits perhaps that might not have to be  
24 issued for other water quality programs.

25 Inspections, would there be a possibility of

1 savings by reducing the numbers of inspections that  
2 are -- that are conducted and what prompts an  
3 inspection to be conducted. Investigations of  
4 complaints, there are a lot of complaints that are  
5 found to be not necessarily founded on good  
6 information and, yet, those generate investigations.  
7 And these may be another way to try to save -- see  
8 some cost savings.

9 Finally, in terms of permit review there are  
10 those cases where a permit comes in and maybe it's  
11 not quite right and the Staff tries to help correct  
12 it and does an extensive review, sends it back, asks  
13 for changes and that can happen -- to my  
14 understanding can happen more than once, but that is  
15 very time consuming. And so it may be that in some  
16 cases the Department may need to just reject a  
17 permit, send it back and have the application  
18 resubmitted without spending, you know, as much time  
19 as they have maybe in some cases reviewing permits.

20 The last thing that I'd like to just make  
21 available to the record is for our organization we  
22 set policy that determines our positions, our members  
23 who come to our annual meeting in December vote on  
24 various policies and we have, up until this year, had  
25 a policy that said we opposed increases in permit

1 fees for animal feeding operations.

2           However, this year after having gone through  
3 several of the meetings relative to the -- the permit  
4 fees and -- and the CAFO workgroup our policy was  
5 changed. And members adopted policy saying that  
6 before any increase would be implemented that there  
7 be things considered like cutting program costs,  
8 redirecting funds from programs that are not required  
9 either by federal or State statute and redirecting  
10 those funds; finding other sources of funding for the  
11 -- the functions of those programs from within the  
12 Department or even from outside the Department.

13           Our policy also, now, specifies that we believe  
14 that general revenue funding is very appropriate for  
15 this program and there should still be a component  
16 from general revenue to help fund this program. And  
17 finally, the delegated authority that also was put  
18 into our policy this year.

19           And with that, I'd be happy to answer questions  
20 or --

21 CHAIRMAN HARDECKE: Any questions?

22 (No response.)

23 CHAIRMAN HARDECKE: Thank you.

24 MS. LESLIE HOLLOWAY: Thank you.

25 CHAIRMAN HARDECKE: Robert.

1 MR. ROBERT BRUNDAGE: Good morning, Mr. Chairman,  
2 members of the Commission. Robert Brundage with  
3 Newman, Comley & Ruth and I represent the Missouri  
4 Pork Association, the Missouri Agribusiness  
5 Association. I'm here to discuss this matter. I  
6 was going to ask Darrick; when was the last order  
7 of rulemaking on Phase I rulemaking? Was it --

8 MR. DARRICK STEEN: When was the order?

9 MR. ROBERT BRUNDAGE: Was it a year and three months  
10 ago?

11 MR. DARRICK STEEN: I think it was January '09.

12 MR. ROBERT BRUNDAGE: Yeah. So approximately 14  
13 months ago was when you last did an order of  
14 rulemaking on CAFO regulations and the Department  
15 termed that -- that rulemaking the Phase I  
16 rulemaking. What Darrick is talking about today is  
17 the Phase II rulemaking and the Department made  
18 representations to my organizations that I represent  
19 that they would proceed with all do speed with Phase  
20 II rulemaking. And, unfortunately, here it is 14  
21 months later and we're just now kind of, I guess,  
22 with this necessity finding proceeding.

23 I want to for the record and you'll hear me talk  
24 about the necessity finding on your next tab, but it  
25 may be a bit premature to make this but I'm not going

1 to object to it because my organizations have been in  
2 favor of this Phase II rulemaking all along. So we  
3 want the Department --

4 (Tape One, Side B concluded.)

5 MR. ROBERT BRUNDAGE: -- with regards to your  
6 statements about the -- the permit fees for basically  
7 eliminating general permits for CAFOs for NPDES  
8 permits and -- which would force all CAFOs into a  
9 category of \$3,500 per year which is -- when you go  
10 from 50 to \$3,500 is an astronomical fee increase  
11 that our members simply cannot withstand and we will  
12 strenuously oppose that fee increase in the  
13 Legislature in the fee bill that'll come forward.

14 But I -- I do want to tell Darrick and the  
15 Department and the Commission that other states still  
16 have general permits under this new EPA system. It's  
17 still possible. It's maybe just -- comes down to  
18 semantics on what you're going to call it, you know,  
19 we used to have in your Clean Water Commission  
20 regulations a public notice requirement four, and I'm  
21 going to guess at this, about four different  
22 categories of general permits. CAFOs was one of  
23 them, I think, quarries was one of them and I can't  
24 remember -- I think, there was a few others. And, I  
25 believe, that was taken out of the regulations a few

1 years ago because we already require in a different  
2 statute in House Bill 1207 we refer to it as a  
3 neighbor notice provision so that's kind of a quasi  
4 public notice.

5 So these general permits in the past -- in the  
6 past have had public notice. They were still called  
7 general permits then. I know things have changed to  
8 some degree with Nutrient Management Plans, but I  
9 would hope the Department would reconsider their  
10 position on whether or not these are general permits.  
11 And revisit this issue of what an appropriate fee is  
12 for these permits.

13 But the permit fee is really not going to be  
14 handled in this regulation. This is just the CAFO  
15 regulations in 6.300 in your regulations. The permit  
16 fees are set by statute, which is going to be before  
17 the Legislature, actually, tomorrow morning, I think,  
18 there's a hearing on it -- on the water permit fee  
19 bill in the House.

20 So just in conclusion I, my organizations  
21 support proceeding with this Phase II CAFO rulemaking  
22 with all do speed.

23 Thank you.

24 CHAIRMAN HARDECKE: Thank you.

25 Any questions or do you want to make a motion?

1 COMMISSIONER EASLEY: Commission agrees to and signs  
2 the finding of necessity, today, for 10 CSR 20-6.300

3 COMMISSIONER SHORNEY: Second.

4 CHAIRMAN HARDECKE: Malinda, take the vote, please.

5 MS. MALINDA OVERHOFF: Commissioner Hunter?

6 VICE-CHAIR HUNTER: Yes.

7 MS. MALINDA OVERHOFF: Commissioner Easley?

8 COMMISSIONER EASLEY: Yes.

9 MS. MALINDA OVERHOFF: Commissioner Shorney?

10 COMMISSIONER SHORNEY: Yes.

11 MS. MALINDA OVERHOFF: Chair Hardecke?

12 CHAIRMAN HARDECKE: Yes.

13 Before we move on we'll take a five to ten minute  
14 break.

15 (Break in proceeding.)

16 COMMISSIONER EASLEY: Okay. We've done Tab No. 6,  
17 haven't we?

18 COMMISSIONER SHORNEY: Six is done.

19 COMMISSIONER EASLEY: Seven is more of the same.

20 VICE-CHAIR HUNTER: We're on 7?

21 COMMISSION: Yeah.

22 CHAIRMAN HARDECKE: Todd, you still there?

23 COMMISSIONER PARNELL: Sure.

24 CHAIRMAN HARDECKE: Okay. We'll get started again.

25 We're on **Tab No. 7**

1 COMMISSIONER PARNELL: Okay. Thank you.

2 I'm going to have leave at lunch again, but  
3 I'll hang on till then.

4 CHAIRMAN HARDECKE: Okay. Thank you.

5 COMMISSIONER EASLEY: You can't eat until we do.

6 CHAIRMAN HARDECKE: Okay. All right.

7 MR. JOHN HOKE: Thank you, Mr. Chairman, members of  
8 the Commission good morning. My name is John Hoke.  
9 I'm a unit chief in the water quality monitoring and  
10 assessment section. And I'm the third of three  
11 findings of necessity that the program is putting  
12 before you today. Mine has to deal with the **Water**  
13 **Quality Standards and amendments that the Department**  
14 **feel are necessary to 10 CSR 20-7.031.**

15 The finding of necessity is the first step in  
16 our process to keep on track for the Water Quality  
17 Standards triennial review, which is required of the  
18 state as a delegated authority under the federal  
19 Clean Water Act. This sets into motion our three-  
20 year cycle to revise the Water Quality  
21 Standards on schedule.

22 If you recall the last Water Quality Standards  
23 rule became affective October 2009. This triennial  
24 review of the Water Quality Standards for this  
25 amendment would become affective December 2012.

1           The purpose of the rulemaking is to update  
2 Missouri's Water Quality Standards to make them  
3 functionally equivalent to federal standards and to  
4 improve the clarity, specificity and effectiveness of  
5 the rule. And there are several revisions that are  
6 program development priorities of both the EPA and  
7 the Department. And you'll find those rulemaking  
8 reports and some of those in your blue packet, but  
9 for your benefit and with your permission I'd like to  
10 step through what I think are some of the highlighted  
11 issues that we're going to address with this  
12 rulemaking.

13           The first is application of fishable, swimmable,  
14 designated uses to all waters of the state. In a  
15 September 8th, 2000, letter to the Department the EPA  
16 requested that Missouri expand its classification  
17 system to all waters of the state to satisfy the  
18 rebuttable presumption of fishable, swimmable on all  
19 waters as required by Section 101(a) of the federal  
20 Clean Water Act.

21           Since that time the Department has convened a  
22 workgroup that has had various forums throughout the  
23 years. It's now called the Water Classification  
24 Workgroup. But since that time the Department has  
25 not acted on this request and rule. More recently in

1 December of last year the Washington University  
2 Interdisciplinary Environmental Clinic on behalf of  
3 the Missouri Coalition for the Environment filed a  
4 request with EPA Region 7 that the Agency take  
5 official action on this deficiency in Missouri's  
6 Water Quality Standards or else the Coalition would  
7 be quote, compelled to take further action.

8         So rather than risk federal promulgation of a  
9 default fishable, swimmable use the Department  
10 intends on addressing the fishable, swimmable  
11 deficiency with this rulemaking. The action will  
12 affectively apply protection of aquatic life, human  
13 health protection to fish consumption, whole body  
14 contact recreation, secondary contact recreation and  
15 livestock and wildlife protection uses to all waters  
16 of the state.

17         There will be those waters that have had UAAs  
18 that perhaps have removed one or more of those uses.  
19 Those waters would appear in rule in Table H. All  
20 other waters would receive these default uses.  
21 Because of the significant stakeholder interest on  
22 the issue the Department intends to reconvene the  
23 Water Classification Workgroup upon approval of the  
24 finding in order to move forward with developing and  
25 constructing implementation plans that will be needed

1 to successfully implement this rule. Part of  
2 that -- those discussions will likely include Use  
3 Attainability Analysis for protection of aquatic life  
4 uses as well as whole body contact uses.

5 A draft rule has been created and revised  
6 through a previous iteration of the workgroup and  
7 that draft rule will serve as the basis for the  
8 implementation procedures that we'll be discussing  
9 during the next 12 months that have been allotted for  
10 the discussion of -- of that particular item.

11 I can take questions individually on each of  
12 these items or I can go through them all and if you  
13 have questions at the end.

14 The second -- the second item of the rulemaking  
15 is EPA's decision on the Mississippi River. In an  
16 October 29, 2009, decision the EPA informed the  
17 Department that new or revised Water Quality  
18 Standards for whole body contact recreation are  
19 needed to satisfy the requirements of the Clean Water  
20 Act on a 28.6 mile segment of the Mississippi River  
21 that potentially runs through downtown St. Louis.  
22 And it flows from North Riverfront Park to the  
23 confluents of the Meramec River. To address this  
24 decision the Department has requested the  
25 administrative record for the decision from EPA as

1 well as all available data and information from the  
2 St. Louis Metropolitan Sewer District so that Staff  
3 have all readily available information with which to  
4 address this -- this deficiency.

5 Staff have received and req- -- have received  
6 the requested information from both the EPA and MSD  
7 and have added that data and information to the  
8 rulemaking administrative record. The Department  
9 intends to review all that data and information and  
10 provide EPA a recommendation on whether new or  
11 revised standards are needed for that segment of the  
12 Mississippi River as part of this rulemaking. If the  
13 Department is unable to do this we feel during this  
14 rulemaking EPA will promulgate whole body contact for  
15 the Department.

16 The next series of -- of topics deal with  
17 revising criteria in the Water Quality Standards as  
18 part of the triennial review the Department looks at  
19 existing federal criteria that they have -- they have  
20 come up with recommendations for and adopt those  
21 criteria into the Water Quality Standards. So the  
22 next couple of topics deal with those.

23 The first is revised sulfite -- sulfite --  
24 sulfate and chloride criteria -- sorry -- the  
25 Department would like to revise the current chloride

1 and sulfate criteria found in the rule using newly  
2 established research and toxicity data to do so. The  
3 revision would follow methods and an approach used by  
4 the state of Iowa, which is in Region 7, to revise  
5 its water quality criteria for chloride and sulfate.

6 The criteria are hardness dependent. They're  
7 less stringent than what's currently in rule, but the  
8 toxicity data and the data used to develop it with  
9 EPA Region 7 being a close partner, I believe, merit  
10 -- merit the revision and Iowa DNR has submitted  
11 these revisions to EPA for approval, but I'm not  
12 quite sure if they have received approval, yet. But  
13 having EPA Region 7 on board with the science we're  
14 optimistic that that revision would be successful.

15 Later on in the agenda you'll hear from Ms.  
16 Brittany Barrientos from Newman, Comely & Ruth, PC,  
17 regarding a petition they've filed on behalf of  
18 Missouri Agribusiness Association requesting the  
19 Commission consider revising the chloride and sulfate  
20 criteria. Let me just mention the Department agrees  
21 that sufficient new data exists to -- to make this  
22 revision and the state would like to do so. And  
23 believe that these revisions would satisfy that  
24 petition that will become before the Commission in  
25 the next tab.

1           In addition with this rulemaking the Department  
2 wishes to continue its efforts on nutrient criteria.  
3 In the previous rulemaking on nutrient criteria for  
4 lakes there are number of water bodies such as oxbow  
5 and other flood plain lakes that did not receive  
6 numeric criteria for -- for nutrients and this --  
7 this next rulemaking we'd like to fill in that gap on  
8 that -- on that -- for those particular waters with  
9 this rulemaking the Department also intends to provide a  
10 recommendation on numeric nutrient criteria  
11 for streams and rivers. It's the evolution of the --  
12 of the nutrient criteria derivation process.

13           The timing for these new criteria is ripe due  
14 to the emergence of issues such as gulf hypoxia,  
15 potential impairments of large river systems such as  
16 the Mississippi and the resolution of a recent  
17 lawsuit in Florida by the EPA where EPA was sued to  
18 promulgate nutrient criteria for that state.

19           As would be expected there's significant  
20 stakeholder interest in this particular aspect to the  
21 criteria revisions and the Department intends to work  
22 with stakeholders over the next 12 to 18  
23 months to ensure widespread support for the criteria  
24 and to come up with implementation procedures to  
25 ensure that the criteria are properly implemented.

1           Some final criteria revisions the -- the  
2 Department would like to look into is improve how the  
3 criteria are currently written in rule as well adding  
4 additional criteria with some more specific  
5 descriptions on how magnitude, duration and frequency  
6 are applied to those criteria.

7           Two examples, would be to include additional  
8 dissolved oxygen criteria based on EPA guidance in  
9 the rule giving the Department more flexibility on  
10 assessments and setting -- and setting effluent  
11 limitations for facilities based on a broader range  
12 of EPA approved dissolved oxygen criteria, as well  
13 as, establishing a single sample maximum criteria for  
14 bacteria.

15           The Department also plans on recommending copper  
16 site-specific criteria for two southeast Missouri  
17 streams as a request from a facility to have  
18 site-specific criteria for copper based on some  
19 studies that they've conducted and the Department  
20 has reviewed.

21           In addition, to the aforementioned revisions the  
22 Department also intends on revisiting those  
23 recreational UAAs, Use Attainability Analysis for  
24 whole body contact that were not included in the  
25 rulemaking for the 2009 triennial review.

1 There are about 300 or so water bodies that still  
2 have UAAs where the data has been collected, but the  
3 Department has not reviewed those UAAs and there's  
4 probable -- likelihood on some of those where the use  
5 would be removed. So the Department wants to take  
6 this next triennial review to look at those new UAAs  
7 and make a determination on whether whole body  
8 contact exist for those waters.

9 In addition, the Department wants to look at a  
10 proposed drinking water supply UAA to remove that  
11 drinking water supply use where drinking water supply  
12 use is no longer or have never existed for a  
13 particular water body. This is a UAA effort that's  
14 in response to a Commission directive from other  
15 years ago, I believe, it was Chairman Hermann and  
16 Commissioner Perry that -- that wanted the Department  
17 to look into this. So we're entertaining on looking  
18 at this -- that -- for this particular triennial  
19 review.

20 And, lastly, as with any triennial review there  
21 are the miscellaneous corrections in addition to text  
22 to help clarify different very -- various parts of  
23 the rule. So I realize it's a lot of information and  
24 it's an ambitious schedule, but the finding, today,  
25 will give the Department direction to proceed and

1 keep this triennial review on a three-year cycle,  
2 which historically the Department has not been good  
3 at. We believe there's sufficient time in the  
4 schedule to convene work -- stakeholder workgroups to  
5 come up with reasonable implementation plans for it  
6 and still meet our schedule.

7 So with that I'll answer any questions you might  
8 have.

9 CHAIRMAN HARDECKE: Okay. On your giving protection  
10 to fishable, swimmable to all waters; is there a  
11 different UAA criteria to be applied to them or is  
12 the same UAA criteria applied to them?

13 MR. JOHN HOKE: The whole body contact recreation  
14 criteria would apply to those as well. An individual  
15 organization could go out and do a Use Attainability  
16 Analysis using the existing protocol to rebut that  
17 presumption after that -- that use is applied in  
18 rule. The aquatic life use -- Use Attainability  
19 Analysis, that's something that has not yet been  
20 developed. We're looking forward to working with  
21 stakeholders and EPA to come up with a reasonable  
22 path forward on conducting those Aquatic Life Use  
23 Attainability Analysis is they're needed. So I  
24 envision a guidance document similar to the one for -  
25 - for whole body contact for those aquatic life uses.

1 CHAIRMAN HARDECKE: But even if the UAAs that -- I  
2 mean, the ones in the current criteria involves depth  
3 measurements so a large percentage of these  
4 unclassified streams are not going to meet those  
5 depth criteria, but we're going to go and put them on  
6 until somebody goes out there and spends the money to  
7 measure --

8 MR. JOHN HOKE: Correct.

9 CHAIRMAN HARDECKE: -- is that right?

10 MR. JOHN HOKE: The rebuttable presumption is -- is  
11 that that use does exist until some demonstration is  
12 made to remove the use. An individual UAA would be  
13 one way to do that. There have been discussions in  
14 the workgroup on doing a -- sort of a categorical UAA  
15 where we look at watershed size and other watershed  
16 attributes to perhaps remove the use from a number of  
17 smaller streams especially in the higher, higher  
18 headwaters of streams where you're not going to have  
19 the depth and so your point's well taken.

20 We need to gauge EPA's interest in whether or  
21 not they'll -- they'll accept that approach and then  
22 we would structure the -- the procedure for  
23 establishing that sort of categorical UAA around what  
24 they -- they would find acceptable.

25 CHAIRMAN HARDECKE: Who's going to pay for all this?

1 MR. JOHN HOKE: The rulemaking- -- I mean, --

2 CHAIRMAN HARDECKE: I thought we had some fiscal  
3 concerns.

4 MR. JOHN HOKE: We do have some fiscal concerns.  
5 Individual UAAs, as I understand it, will be done by  
6 permittees. The Department is willing, I think, if -  
7 - if it's acceptable to EPA investigate the  
8 categorical UAA. If the Department fails to, during  
9 this triennial review, apply that use to -- to waters  
10 of the state it's very likely that the Missouri  
11 Coalition for Environment will sue EPA and EPA will  
12 federally promulgate it for the state.

13 CHAIRMAN HARDECKE: Then will they pay for it?

14 MR. JOHN HOKE: You'll have to -- that's John  
15 DeLashmit's category so you'll have to -- you'll have  
16 to talk to him about that.

17 MR. JOHN DeLASHMIT: I'm tapped out, Ron.

18 CHAIRMAN HARDECKE: Get your checkbook out, John.

19 MR. JOHN HOKE: He's tapped out.

20 COMMISSIONER EASLEY: Get some stimulus money.

21 CHAIRMAN HARDECKE: Any other questions?

22 COMMISSIONER SHORNEY: Did I understand that  
23 fishable, swimmable designation is the state going to  
24 go out and do the measurements or is it -- is it --  
25 or are they going to be fishable and swimmable and

1 you have to prove otherwise; is that the way it is?

2 MR. JOHN HOKE: That's -- that's premise set in the  
3 Clean Water Act that the -- the assumption -- the  
4 rebuttable presumption means that those uses are  
5 there until you demonstrate that they're not.

6 So fiscally the Department's not in a position  
7 to go out and do individual UAAs anymore that would  
8 fall on a particular entity or permittee to do that.  
9 But like I say we would investigate the feasibility  
10 of a categorical UAA if that's the direction the  
11 workgroup wants us to take.

12 COMMISSIONER SHORNEY: What would cause one to -- one  
13 to prove that they're not?

14 MR. JOHN HOKE: The -- the categorical UAA?

15 COMMISSIONER SHORNEY: To prove that they're not  
16 fishable and swimmable.

17 MR. JOHN HOKE: They would have to -- one would have  
18 to go out using the existing protocol and take depth  
19 measurements over the water body to determine  
20 if it was deep enough. It was the meter maximum or  
21 half meter average.

22 COMMISSIONER SHORNEY: I know what would be the  
23 impetus for doing that? What would cause that to  
24 happen- -- someone to do that?

25 MR. JOHN HOKE: Well, currently there are a number of

1 facilities that lie on what are, currently  
2 unclassified streams meaning they do not have these -  
3 - these uses designated to them. They're only  
4 covered by the general criteria in our rule. So the  
5 Regulatory Impact Report would -- would look out how  
6 many facilities would potentially be affected by this  
7 rule. And we've done some quick numbers and it's --  
8 and it's considerable, a couple thousand, I think.

9 But a permitted facility would then have to make  
10 a decision whether or not they wanted to install  
11 disinfection to meet the new bacteria requirements or  
12 conduct a UAA if they think that there's a reasonable  
13 chance that their receiving stream would not meet the  
14 -- the depth criteria.

15 COMMISSIONER SHORNEY: How many streams are there? I  
16 think I remember there's 20 or 30,000 is that -- are  
17 there that many?

18 MR. JOHN HOKE: Currently in rule based on some  
19 studies at the Department and Missouri Department of  
20 Conservation did back in the 70s and 80s there are  
21 approximately 26,000 classified miles of stream in  
22 this state.

23 COMMISSIONER SHORNEY: Miles?

24 MR. JOHN HOKE: Twenty-six thousand classified miles.  
25 Expanding the rebuttable presumption to all waters of

1 the state will capture more than 180,000 miles of  
2 stream so we're almost talking, you know, a four or  
3 five full increase in the protection of waters of the  
4 state.

5 So it's a significant number of miles, which  
6 then catches a significant number of facilities. That's  
7 part of the Regulatory Impact Report for this rule we  
8 would investigate what facilities, how many, what  
9 type and come up with a cost for disinfection  
10 for those new facilities as part of the RIR process.

11 CHAIRMAN HARDECKE: Other questions?

12 (No response.)

13 CHAIRMAN HARDECKE: Okay. Thank you.

14 MR. JOHN HOKE: Okay.

15 CHAIRMAN HARDECKE: Leslie Holloway.

16 MS. LESLIE HOLLOWAY: Thank you.

17 We have been involved with the workgroup that's  
18 been looking at the classification and also with the  
19 nutrient criteria workgroup and, I think, both of  
20 those items are touched on by this finding of  
21 necessity for the rulemaking, but we have concerns  
22 about the direction that this whole proceeding might  
23 be heading.

24 And, first of all, the -- the references to  
25 fishable and swimmable and I'm a broken record on

1 this, but, you know, there is the phrase wherever  
2 attainable in the actual EPA standards. And it seems  
3 to us to be very important to keep emphasizing that  
4 and you've already asked the questions about how will  
5 that be determined 'cause there will be a number of  
6 water bodies that currently would not meet the  
7 criteria for being classified that -- that might be  
8 treated as classified waters under the ultimate  
9 rulemaking.

10         And two of the areas that have been identified  
11 in this finding of necessity that I'd particularly  
12 like to focus attention on are the numeric standards  
13 for the nutrient criteria. To our understanding  
14 that's still in a pretty preliminary phase in terms  
15 of streams. The lake criteria were set but the  
16 stream criteria, the workgroup continues to discuss  
17 ways to address that issue.

18         And the second area would be the -- under the  
19 heading of the tables G and H, identification of  
20 classified waters. Two of the points that are, I  
21 think, important in the discussion are, Number One,  
22 the references to the letter -- to EPA's letter of  
23 2000 where this was one of the issues that was  
24 identified for DNR to address ultimately. But that  
25 letter was actually in response to submissions that

1 DNR had made in 1994 and 1996 and so it took a while  
2 for EPA to respond to the letter of submission where  
3 there were a number of issues raised.

4 And in that response, in that 2000 letter,  
5 there were categories of EPA setting either approval  
6 or disapproval. One category was for items that were  
7 neither approved nor disapproved, others, items where  
8 EPA is approving. Another for items EPA was  
9 disapproving. Existing provisions for which EPA  
10 Region 7 was requesting the administrator make a  
11 finding of inconsistency with the Clean Water Act.  
12 Items for attention for the 2000 triennial review,  
13 that was the category, that last category, items for  
14 attention for the 2000 triennial review where the  
15 protection of unclassified waters was listed.

16 And so DNR responded to that letter of 2000  
17 saying that we will prioritize these things that  
18 you've identified, responded to EPA explaining what  
19 their priority list was and, obviously, planned to  
20 begin working. They sent letters out to stakeholders  
21 saying we would begin the triennial review process  
22 with meetings with stakeholders. As that process  
23 unfolded the lawsuit that was filed by the Coalition  
24 for the Environment kind of took precedent over the  
25 dynamics of what had been initiated already.

1           And so we find ourselves again in a situation  
2 where there is the possibility of legal action that  
3 again changes the Department's priorities, changes  
4 the resources that are allocated to what is  
5 considered a priority and so in the context of the  
6 discussion of the -- the budget concerns that we have  
7 today that seems to be a pretty relevant point of  
8 discussion.

9           So when we -- when the comments are made about  
10 if we don't do something then there will be legal  
11 action initiated, which could result in EPA federally  
12 promulgating these standards, yes, that's true, but,  
13 I guess, what we've seen, too, is that another  
14 possible outcome and what has happened in some cases  
15 is that there is an agreement reached ultimately if  
16 the entity that's filing the litigation or  
17 petitioning EPA decides that we can come to some  
18 agreement ultimately then there is some agreement  
19 made and there is some provision for DNR to consider  
20 -- continue with the rulemaking proceeding that  
21 they're on.

22           So, I mean, I'm -- it just seems to be  
23 important to have all those types of options on the  
24 table as part of this discussion when we're talking  
25 about what things the Department absolutely has to do

1 with out -- out -- resources they already have  
2 available to them.

3 I haven't seen the December letter from the  
4 Coalition for the Environment so I don't know  
5 specifically what it is that they're asking for, but  
6 I'll be asking for that after this proceeding.

7 One other item under that same category of the  
8 tables G and H is the reference to delineating,  
9 starting and ending points of classified segments and  
10 that's an issue that I had talked with -- about  
11 before -- before the Commission and we have submitted  
12 some written comments, too. But EPA has indicated  
13 that they believe DNR needs to revise their system of  
14 calculating distances, lengths of segments and how  
15 they identify those segments. And DNR has  
16 acknowledged that, yes, they need to work on that,  
17 but it is still our contention that what DNR has in  
18 place now actually does meet the needs of EPA and the  
19 requirements of regulations and that issue is  
20 probably not as much of a priority as maybe it has  
21 been made to be.

22 I'd be happy to answer any questions.

23 CHAIRMAN HARDECKE: Questions?

24 (No response.)

25 MS. LESLIE HOLLOWAY: Thank you.

1 CHAIRMAN HARDECKE: Thank you.

2 Lorin Crandall.

3 MR. LORIN CRANDALL: Hello, it's Lorin Crandall.

4 Extending classification of fishable, swimmable to

5 all waters of the state is a basic standard of

6 compliance with the Section 101(a) and other

7 provisions of the federal Clean Water Act.

8 Compliance it is about 30 years behind schedule and

9 since we're standing in the Clean Water Commission it

10 seems like we ought to be in line with the Clean

11 Water Act.

12 The other point I'd like to make is that the

13 Missouri Coalition for the Environment does not

14 support the idea or use of categorical UAAs as part

15 of the discussion or rulemaking process for water

16 classification.

17 Any questions?

18 CHAIRMAN HARDECKE: In your thoughts about extending

19 these regulations to all unclassified streams; how do

20 you propose that the DNR as well as the public pay

21 for this?

22 MR. LORIN CRANDALL: We're currently paying for it.

23 Our waters of the state are polluted. And we are

24 paying for the externalized costs that are being

25 transferred into our commonly owned State water

1 resources.

2 Now, if you mean transferring the payment to  
3 actual entities that have to be responsible for what  
4 they're dumping into our waters, this is long  
5 overdue.

6 When you say pay for it, maybe you mean create  
7 jobs, economic stimulus, moving -- you know, money  
8 moving through our economy. So pay for it is a  
9 relevant term, I mean, it's -- it's something that  
10 we're going to have to do. There's no way around it.  
11 EPA is going to promulgate these rules one way or the  
12 other. So it's going to be paid for.

13 I mean, I don't know how you would expect a good  
14 answer to that question, like, a specific wastewater  
15 treatment facility or a specific CAFO or how would  
16 you expect an answer to come in terms of, like, a  
17 bill or a legislative tax hike. What -- what -- what  
18 -- what were you fishing for there?

19 CHAIRMAN HARDECKE: Well, it takes dollars which in  
20 our current economy, no one, whether it be private  
21 industry or government has enough money to go around  
22 right now. And so I'm just curious as to where you  
23 think the money will come from.

24 MR. LORIN CRANDALL: Well, we spend money on a lot of  
25 things. And water quality should be one of those.

1 CHAIRMAN HARDECKE: Okay. Thank you.

2 John Carter.

3 MR. JOHN CARTER: Mr. Chairman, members of the  
4 Commission. I'm John Carter. I'm an environmental  
5 engineer with the Doe Run Company. I also serve as  
6 the chair of the Associated Industries of Missouri,  
7 Environmental Committee. And I'm here to comment and  
8 raise the issue that the Chairman raised, Leslie  
9 Holloway raised, about how's the Department going to  
10 pay for their Staff costs for the activities needed  
11 to -- under this Tab No. 7.

12 I think the Department needs to prioritize what  
13 -- what they're going to do and try to keep it within  
14 their specific budget. The major industrial  
15 discharges are already paying their share of the cost  
16 of the permit fees. And we would like you to -- we  
17 will keep -- keep doing that whatever the Department  
18 decides, but, I think, the Department really needs to  
19 prioritize what they do under this Tab No. 7 to keep  
20 it within their budget.

21 Thank you.

22 CHAIRMAN HARDECKE: Okay. Thank you.

23 Any questions?

24 (No response.)

25 CHAIRMAN HARDECKE: Robert.

1 MR. ROBERT BRUNDAGE: Mr. Chairman, members of the  
2 Commission, just a few comments in the -- there's a  
3 very large number of rulemaking items in this. Many  
4 of which I support and I'm going to talk just briefly  
5 about one I don't support, but one thing I want to  
6 talk about first is; I want to make sure I have an  
7 understanding of what a necessity finding is here  
8 today.

9           There's a statute on the books in the Missouri  
10 Administrative Procedure Act that is the impetus for  
11 this today and it's called, its Section 536.01- --  
12 .016, pardon me. And it says any State agency shall  
13 propose rules based upon substantial evidence on the  
14 record and a finding by the agency that the rule is  
15 necessary to carry out the purposes of the statute  
16 that granted such rulemaking authority.

17           I think I heard the young lady who came up here  
18 first for the first necessity finding say it is non-  
19 binding. And if -- if -- I hope that's true. And  
20 I'm here to advocate that it -- to vote on a  
21 necessity finding at this very, very initial stage of  
22 all these rulemakings and say it is necessary that we  
23 have to go forward, I don't necessarily agree with  
24 that.

25           And one specific thing I want object to, today,

1 is what, I think, Leslie Holloway touched on a bit  
2 and John Hoke discussed a little bit and that's about  
3 the -- the Water Classification Workgroup. And some  
4 of the Commission have answered some questions about,  
5 for example, just whole body contact.

6 With this straw man rule that I know a number of  
7 us on that -- that workgroup object to and there's no  
8 consensus reached on that workgroup on what that rule  
9 should be. It is extending classified waters  
10 basically all the way -- well, maybe up to the top of  
11 the hill. I'm not exactly sure where, but we have a  
12 definition of waters of the state and that could go a  
13 long ways. And this could have dyer consequences.  
14 And, I think, we've gone through the UAAs on whole  
15 body contact for the classified waters and we know  
16 that there was a number of streams that didn't  
17 support whole body contact.

18 Now, in a way of the headwaters you know that a  
19 vast majority of them are not going to support whole  
20 -- I mean, just common sense tells you that. And  
21 there has to be some kind of process through the --  
22 in my opinion, it's got to go hand in hand before  
23 this rule will go into place because to -- to  
24 promulgate a regulation that classifies everything  
25 and say, now, it's whole body contact and then force

1 everybody to go out and do a UAA. We didn't have a  
2 very good experience with the UAAs the first time  
3 around. And it was kind of a debacle and I -- I  
4 would hope we would not go through that again.

5 So the Department has talked about processes by  
6 which maybe a categorical UAA could be done. I've  
7 advocated that position before the workgroup even  
8 goes forward considering this and I hope that occurs.

9 Regarding aquatic life protections in these  
10 unclassified waters I would submit to the Commission  
11 that no change is necessary because there were  
12 already Water Quality Standards in place that protect  
13 those water bodies, Subsection 3 and 4 of the Water  
14 Quality Standards already provide protections for  
15 aquatic life in these unclassified waters.

16 But if the straw man rule that this workgroup is  
17 working on were promulgated, today, by you it would  
18 require or impose rather the dissolved oxygen Water  
19 Quality Standard that we have on our books, today, of  
20 5.0 milligrams per liter way up into the headwaters,  
21 all the way up. And we know that a lot of the lower  
22 head -- the lower streams don't even achieve 5.0  
23 milligrams under natural conditions.

24 So, now, we are going to be placing umpteen  
25 thousands of miles of stream potentially in violation

1 of the Water Quality Standards just because we made a  
2 change and we still have the old dissolved oxygen  
3 standard on the books at 5.0 milligrams per liter.  
4 That's another untenable situation. That means  
5 anybody who builds a facility at the top of the hill  
6 would have to meet 5.0 and what is probably virtually  
7 a dry ditch most of the year 'cause it could be  
8 considered waters of the state when it rained.

9 So there -- my point being there's a lot of  
10 issues that are kind of hidden in the implementation  
11 of this phase that would have dier consequences on --  
12 on discharges and the Department trying to figure out  
13 how to implement this rule and implement it through  
14 issuing permits.

15 And so if you -- if, today, you vote on a  
16 necessity finding I hope -- I certainly hope that  
17 it's not binding. I certainly hope that it doesn't  
18 mean that it's necessary in all instances, but I'm  
19 willing to go forward and participate in the  
20 stakeholder groups to look at these issues.

21 So that'll conclude my remarks. If you have any  
22 questions, I'll be glad to answer them.

23 CHAIRMAN HARDECKE: Can you address the questions if  
24 it is binding?

25 MS. JENNIFER FRAZIER: Yes.

1           I think what we're talking about when we say not  
2 binding is that -- you're -- you're finding the  
3 necessity but you're not holding the Department to  
4 come up with a rule as exactly as -- you know, you  
5 still have to go through a rulemaking process that  
6 will define the -- what that rule is going to say and  
7 -- and things like that.

8           So in terms of binding I'm not exactly sure how  
9 that term is being used here today. If this is a  
10 finding that -- that the Department -- that you find  
11 that this rule is necessary so, I think, there's a  
12 little bit of confusion about that and I'd be happy  
13 to -- to come back to you with a better explanation  
14 based upon the statute and -- and any case law that's  
15 been out there on that issue.

16 CHAIRMAN HARDECKE: I guess, my question in that  
17 regard is there's several different individual items  
18 within this. And if we declare the necessity on all  
19 of them does that mean they all have to be in the  
20 final rule or can they individually be taken up?

21 MR. ROBERT BRUNDAGE: Mr. Chairman, one of my points  
22 was about this statute that I read you that has a  
23 necessity finding in it, it does not tell you at what  
24 point in this whole rulemaking process you need to  
25 make a necessity finding. And if I were a

1 Commissioner voting on a necessity finding, at this  
2 point, where you have basically a seven-page memo on  
3 about nine different rulemaking items, that is  
4 extremely vague in many respects, I really wouldn't  
5 know, at this point in time, whether it's necessary  
6 or not.

7         So if -- I would suggest to the Commission that  
8 you would encourage the Department to proceed down  
9 the rulemaking path and defer and table any necessity  
10 finding until you have enough information including  
11 maybe a Regulatory Impact Report or something else  
12 during the rulemaking process where you -- you say,  
13 well, it is necessary that we do something here.

14 MS. JENNIFER FRAZIER: Well, and -- and that helps me  
15 a little bit to answer the question, Robert. I don't  
16 think -- the Commission has the discretion at any  
17 point not to promulgate a rule that the Department  
18 has gone through this process. So even though you're  
19 finding that these particular points that are raised  
20 in each of these three presentations is necessary  
21 you're not bound to promulgate that rule at the end.  
22 So, I think, that's what we're talking about, which  
23 is consistent with what you're saying, Robert, I  
24 think. I won't speak for you.

25 CHAIRMAN HARDECKE: Okay. Thank you.

1 Trent Stober.

2 MR. TRENT STOBER: Good morning, Trent Stober, again,  
3 with Geosyntec. I'd just like to reiterate some of  
4 the discussions on the, quote, unquote, unclassified  
5 streams issue.

6 But maybe take another point in it, I think,  
7 that Leslie and Robert and John have described that  
8 adequately, but also there's -- with this there's the  
9 opportunity that we have to get our aquatic life uses  
10 correct within our standards and evaluate the -- the  
11 tiering of aquatic life uses. And that was another  
12 issue that was discussed within the stakeholders'  
13 group. And evaluate or develop an Aquatic Life Use  
14 Attainability Analysis protocol as part of this rule  
15 package and the implementation of it potentially.

16 So I'd like to keep that in front of the  
17 Commission as it -- as an issue that still stands out  
18 there that should be addressed through this --  
19 through this process.

20 Besides that issue --

21 CHAIRMAN HARDECKE: Can I ask a question about that?

22 MR. TRENT STOBER: Sure. Go right ahead.

23 CHAIRMAN HARDECKE: Where would that be used, the  
24 Aquatic Life UAA?

25 MR. TRENT STOBER: Well, that could be used to

1 subcategorize all these different uses. So for  
2 headwater stream, for example, typically unclassified  
3 stream in this situation could be put into a separate  
4 category with separate water quality criteria that  
5 would be protective of the uses that are -- that are  
6 potentially present within those types of water  
7 bodies.

8 But, also, we have lots of water bodies that --  
9 that the -- the existing classifications are likely  
10 not attainable. So the existing warm water  
11 aquatic life uses is prob- -- probably not attained  
12 and it's probably unattainable due to the six factors  
13 that are included within Aquatic Life Use  
14 Attainability Analyses. Such as natural conditions  
15 or non-reparable human cause conditions, socio-  
16 economic hardship and so forth and -- and with that  
17 there's -- I'd like to add that there's some other  
18 site-specific criteria and Use Attainability Analyses  
19 that are in the works to potentially get into this --  
20 this rulemaking package that we've worked with the  
21 Department on.

22 One of those is the main ditch down in -- down  
23 outside of Poplar Bluff, Missouri, where there's some  
24 question of whether the statewide aquatic life uses  
25 is truly attainable in some of those systems.

1           So, I think, there's some opportunity there to -  
2   - to fix some of that in -- in this rulemaking.  
3   Other site-specific criteria that we're working on as  
4   we discussed in the last Clean Water Commission  
5   meeting, Blackberry Creek in southwestern Missouri  
6   has issues with chloride and sulfate and we're  
7   considering -- or we're petitioning for site-specific  
8   water quality criteria for those -- those  
9   attributes, as well as, I would hope that we'll come  
10  forward, again, with another round of Sni-A-Bar Creek  
11  discussions.

12           If you recall there was a time limitation to the  
13  water -- the Water Quality Standards that were  
14  adopted at that -- at that location and we're trying  
15  to work with the Department and U.S. EPA to collect  
16  data necessary to -- to make -- to make the right  
17  permanent decision in that.

18           So with that, any other questions?

19   (No response.)

20  MR. TRENT STOBBER:   Okay.   Thank you.

21  CHAIRMAN HARDECKE:   Phil.

22  MR. PHIL WALSACK:   Phil Walsack, Missouri Public  
23  Utility Alliance.   I'd like to take the opportunity  
24  to answer Chairman Hardecke's question to Lorin a  
25  moment ago.

1           His question is: Who's going to pay? The  
2           federal taxpayers in this room are going to pay the  
3           federal government to implement and manage this  
4           program. The State taxpayers in this room are going  
5           to pay for DNR to manage this program. And, lastly,  
6           municipal governments are going to pay the bill for  
7           those -- for this stream reclassification. All those  
8           little utilities that work and live upstream of two  
9           miles from a classified water body; they're going to  
10          pay. That's who pays. Municipal governments of  
11          Missouri pay.

12           Thank you.

13          CHAIRMAN HARDECKE: Okay. Thank you.

14           Okay. You got some other comments.

15          MR. JOHN HOKE: I've just got to -- just kind of sum  
16          up in some points I've got.

17           I think as Ms. Frazier was saying, you know, the  
18          finding of necessity is kind of the first step in the  
19          rulemaking process. It's where you recognize that  
20          there are issues and there are needs that the  
21          Department needs to resolve through rulemaking to  
22          have an effective program. And, I think, that's what  
23          we're bringing before you today.

24           Historically, the Department has not been good  
25          about following a rhythmic cycle of every three years

1 as required by the Clean Water Act. The Department  
2 is committed to working with stakeholders who have  
3 built in time in the process to take care of some of  
4 these issues that have been mentioned.

5 As an example Robert mentioned, you know, our  
6 one-size dissolved oxygen criteria doesn't fit most  
7 streams and it probably won't fit these headwater  
8 streams. As I alluded to earlier the Department is  
9 intending on investigating, promulgating new  
10 dissolved oxygen criteria that are already found in  
11 EPA guidance that allows for some variance from that  
12 5.0. There's a 4.0, there's a 3.0; depending on what  
13 life stages happen to be there, where you happen to  
14 be in the watershed, those sorts of things.

15 So we think through the implementation process  
16 given that we've got 12 to 16 -- 18 months to work on  
17 it. We're going to have -- help -- hopefully satisfy  
18 a lot of those issues. All these rules are still  
19 going to go through the -- the public hearing  
20 process. They're still going to go through the  
21 Regulatory Impact Report process. And it's in that  
22 Regulatory Impact Report that the Department is going  
23 to develop this where we get into -- I heard a  
24 resounding issue; what's the cost going to be? That  
25 our RIR is going to give you the cost. And it's

1 going to give you our breakdown of who's affected and  
2 everything from municipalities to small businesses to  
3 -- you know, to the eighth degree. It's all built  
4 into the rulemaking process.

5 If something doesn't make the rulemaking, if  
6 there's not a consensus on one particular piece then  
7 it -- then it could get dropped off and put for  
8 another triennial review. There are some issues  
9 though that we feel that if the state doesn't take  
10 its kind of future in its own hands then the federal  
11 government will step in and do it for us regardless  
12 of where we are on -- even if we're not on the same  
13 page with implementation. We are forced into  
14 position to implement that rule that they promulgate  
15 immediately.

16 So we feel there's a lot of time built into the  
17 process to -- to handle a lot of the -- a lot of the  
18 comments and concerns that -- that have been  
19 addressed, but we would like your -- your approval --  
20 (Tape Two, Side A concluded.)

21 CHAIRMAN HARDECKE: Cost cutting measures right now? So  
22 you say the cost will be addressed in the Regulatory  
23 Impact Report but a lot of times it will get down to  
24 that line, you know, there aren't any changes made.  
25 It's just here's the cost. I haven't really -- I

1 don't recall having seen a decision be made on the --  
2 on the basis of the high costs if we don't do  
3 something. So, I guess, my question is; how -- how  
4 are you going to prioritize if say everything was  
5 through the rulemaking then how would you prioritize?  
6 And if we determine that something is going to cost  
7 to -- more than what we have; what are we going to  
8 do?

9 MR. JOHN HOKE: I mean, I --

10 CHAIRMAN HARDECKE: I -- I guess, I'm saying I  
11 don't see it be proper for the Commission to  
12 promulgate rules to have DNR do something they don't  
13 have the financial ability to do.

14 MR. JOHN HOKE: Okay. See you're more concerned with  
15 the financial impacts of the Department then what  
16 promulgating this rule will the cost of that to incur  
17 on the Department?

18 CHAIRMAN HARDECKE: Well, both.

19 MR. JOHN HOKE: Right.

20 The Regulatory Impact Report would get into the,  
21 you know, the effects of the permitted entities as  
22 well as, the Department costs.

23 CHAIRMAN HARDECKE: Right.

24 MR. JOHN HOKE: The Department's still going to write  
25 permits. The permit writer will just look further

1 upstream than where he's looking now to set the  
2 limits. The number of permits won't change unless  
3 you get a new permit application. So from a permit  
4 perspective, I think, that's -- that's a wash.

5 Adding more waters will necessitate obviously  
6 more mon- -- potentially monitoring by the  
7 Department. And we'd have to prioritize there where  
8 we thought we would need to -- to set monitoring  
9 priorities. We're hoping that EPA will work with us  
10 on having a rotating schedule so that we can not go  
11 out and assess these waters all at once, but somehow  
12 build them in to the -- the normal cycle of  
13 assessment that we go through for things like the  
14 303(d) List and things of that nature.

15 So, like I said, I haven't looked at the RIR,  
16 yet, but that's kind of from the top of my head --  
17 you know, what -- how we perceive the Department  
18 moving forward. As far as issue-by-issue  
19 prioritization, I think, the classified waters, that  
20 application of designated uses to all waters of the  
21 state is a -- is a key issue that needs to be  
22 addressed.

23 As far as the criteria development by and large all  
24 of them are important to -- to one stakeholder or  
25 another. Whether we may need more stakeholder input,

1 I can see that that particular perhaps criteria could  
2 slip to the -- the next rulemaking to build it in.

3 But if you like for us prioritize it that's  
4 something we can do and come back with a prioritize  
5 list. They're all important. They're all program  
6 deficiencies as we see it. Just kind of -- we've  
7 kind of combined them into one rulemaking here to  
8 present for -- before you today.

9 CHAIRMAN HARDECKE: It's noon. I would like to leave  
10 this until after lunch and ask EPA a few questions  
11 after lunch, so is that okay.

12 MS. MALINDA OVERHOFF: Lunch is not here, yet.

13 CHAIRMAN HARDECKE: Lunch isn't here. Okay.

14 VICE-CHAIR HUNTER: We can make a motion to do that  
15 and then move on if you want to.

16 CHAIRMAN HARDECKE: Well, it -- John.

17 MR. JOHN DeLASHMIT: Yes, sir.

18 CHAIRMAN HARDECKE: Would you like to come and give  
19 us some opinions?

20 MR. JOHN DeLASHMIT: Sure.

21 I feel like there's always some kind of  
22 disclaimer here, but sure. Once again I'm John  
23 DeLashmit. And I'm chief of the water quality  
24 management branch at EPA's Region 7 regional office  
25 in Kansas City, Kansas.

1 CHAIRMAN HARDECKE: In terms of costs, I guess, the -  
2 - a lot of these things could be called unfunded  
3 mandates. In light of the current economic situation  
4 both for EPA on the national level and the state and  
5 the local levels where's money going to come from?

6 MR. JOHN DeLASHMIT: That's not something --  
7 unfortunately, I think we're in kind of quandary  
8 here, aren't we? In that we are faced with a federal  
9 statute and the requirements of that federal statute.  
10 And some of these requirements have been tested in  
11 court and -- like the rebuttable presumption that's  
12 based on, I think, that was affirmed in an Idaho  
13 court case. But then, like you said, I was just  
14 reading a newspaper article this morning about the  
15 state of funding and the budget in -- in Missouri.

16 And I really -- I have no idea. I mean, I'm not  
17 blessed with the information that tells me where this  
18 money is coming from.

19 CHAIRMAN HARDECKE: I understand that. And I don't  
20 mean to put you on the spot, but I -- I feel like  
21 some point we have to begin to ask ourselves the  
22 question: How far can we afford to go?

23 MR. JOHN DeLASHMIT: I think that's a very reasonable  
24 question.

25 CHAIRMAN HARDECKE: And I would ask you to take that

1 to wherever it needs to go in EPA because if the  
2 money isn't there then how do we ask -- and, you  
3 know, it is allocation, yeah, but there comes a point  
4 where there isn't anymore to allocate.

5 MR. JOHN DeLASHMIT: Got you. I'll take that back.

6 CHAIRMAN HARDECKE: So other questions?

7 (No response.)

8 MR. JOHN DeLASHMIT: Thank you.

9 CHAIRMAN HARDECKE: Thank you.

10 I guess we'll go ahead and break for lunch and  
11 then we'll come back and conclude this tab. We want  
12 to make a motion.

13 VICE-CHAIR HUNTER: Yeah. We need a motion.

14 MS. MALINDA OVERHOFF: It's going to be another 15  
15 minutes before lunch gets here.

16 CHAIRMAN HARDECKE: We'll reconvene at one o'clock.

17 MS. JENNIFER FRAZIER: Oh. You need a motion -- oh,  
18 I'm sorry, you're going to do that. Okay.

19 VICE-CHAIR HUNTER: **Mr. Chairman, I move that the**  
20 **Clean Water Commission go into closed session to**  
21 **discuss legal, confidential or privileged matters**  
22 **under Section 610.021(1), RSMo.**

23 COMMISSIONER EASLEY: **Second.**

24 CHAIRMAN HARDECKE: **Malinda, take the vote, please.**

25 MS. MALINDA OVERHOFF: **Commissioner Hunter?**

1 VICE-CHAIR HUNTER: Yes.

2 MS. MALINDA OVERHOFF: Commissioner Easley?

3 COMMISSIONER EASLEY: Yes.

4 MS. MALINDA OVERHOFF: Commissioner Shorney?

5 COMMISSIONER SHORNEY: Yes.

6 MS. MALINDA OVERHOFF: Commissioner Parnell?

7 COMMISSIONER PARNELL: Yes.

8 MS. MALINDA OVERHOFF: Chair Hardecke?

9 CHAIRMAN HARDECKE: Yes.

10 (Break in proceeding.)

11 CHAIRMAN HARDECKE: And we'll finish **Tab No. 7** while

12 we're there and then go back to 4. Okay?

13 VICE-CHAIR HUNTER: Finish Tab No. 7, so do it first

14 and then we'll go back to 4.

15 CHAIRMAN HARDECKE: That's that one. So we got that.

16 Okay. We'll get back in session and we'll -- I

17 think we have an action on **Tab No. 7**.

18 COMMISSIONER SHORNEY: Ready?

19 (No response.)

20 COMMISSIONER SHORNEY: Mr. Chairman, with regard to

21 the Water Quality Standards I move the Commission

22 agree and sign the finding of necessity, today, for

23 10 CSR 20-7.031 with the exception of the fishable,

24 swimmable designated uses to all unclassified waters.

25 The exception would be that we recommend to Staff

1 that they do a Regulatory Impact Report to determine  
2 the cost of this and report back to the Commission.

3 COMMISSIONER EASLEY: Second.

4 CHAIRMAN HARDECKE: Malinda, take the vote, please.

5 MS. MALINDA OVERHOFF: Commissioner Hunter?

6 VICE-CHAIR HUNTER: Yes.

7 MS. MALINDA OVERHOFF: Commissioner Easley?

8 COMMISSIONER EASLEY: Yes.

9 MS. MALINDA OVERHOFF: Commissioner Shorney?

10 COMMISSIONER SHORNEY: Yes.

11 MS. MALINDA OVERHOFF: Chair Hardecke?

12 CHAIRMAN HARDECKE: Yes.

13 Okay. Now, we need to go back to **Tab No. 4** and  
14 we have action prepared for that.

15 COMMISSIONER SHORNEY: Mr. Chairman, I move the

16 Commission adopt the order of rulemaking for 10 CSR

17 20-7.015 and the Department file an order with the

18 Joint Committee on Administrative Rules with the

19 Secretary of State with the exception that the

20 sentence as follows be taken out. And that is: This

21 shall not preclude the Department from developing and

22 including in permits effluent limitations for E. coli

23 stated as maximum daily and average monthly for all

24 dischargers other than POTWs and average weekly and

25 average monthly for POTWs. And the reason for this

1 is we feel this is a significant change which has not  
2 had adequate stakeholder review.

3 VICE-CHAIR HUNTER: Second.

4 CHAIRMAN HARDECKE: Malinda, please, take the vote.

5 MS. MALINDA OVERHOFF: Commissioner Easley?

6 COMMISSIONER EASLEY: Yes.

7 MS. MALINDA OVERHOFF: Commissioner Shorney?

8 COMMISSIONER SHORNEY: Yes.

9 MS. MALINDA OVERHOFF: Commissioner Hunter?

10 VICE-CHAIR HUNTER: Yes.

11 MS. MALINDA OVERHOFF: Chair Hardecke?

12 CHAIRMAN HARDECKE: Yes.

13 Okay. Now, we're ready for **Tab No. 8**. Robert.

14 MR. ROBERT BRUNDAGE: Mr. Chairman, members of the  
15 Commission I want to introduce to you a member of my  
16 law firm. This is Brittany Barrientos. Brittany  
17 came to our law firm from the University of Missouri  
18 and she has been helping me on environmental matters  
19 and she is going to present to you the chloride and  
20 sulfate petition.

21 MS. BRITTANY BARRIENTOS: Good afternoon,  
22 Commissioners. I'm Brittany Barrientos and I am with  
23 Newman, Comley & Ruth. And I had previously spoken  
24 to Mr. John Hoke and Director Totten about the  
25 chloride and sulfate -- about this chloride and

1 sulfate petition and told them of our intention to  
2 file the petition on behalf of the Missouri  
3 Agribusiness Association and we are very pleased that  
4 they included this in their findings of necessity  
5 that you just approved. So this -- or this  
6 presentation is going to be much more of an inform- -  
7 - much more informative in nature and just to give  
8 you a little bit more background on the Iowa  
9 rulemaking that we believe is the appropriate model.

10 So I asked Robert earlier if he would hold a  
11 poster for the people in the back so that they could  
12 all see since they wouldn't be able to see the  
13 PowerPoint and he declined so if anyone later wants  
14 the PowerPoint just let me know and I'll get that to  
15 you as soon as possible.

16 We proposed this chloride and sulfate petition  
17 on behalf of the Missouri Agribusiness Association in  
18 part because we believe the current chloride and  
19 sulfate data is outdated. The current Missouri  
20 chloride data is 230 gram- -- milligrams per liter  
21 for chronic and 860 milligrams per liter for acute.  
22 And the sulfate standards are a little bit more  
23 confusing; they're for 7Q10 streams they are the sum  
24 of chloride plus sulfate must be less than 1,000  
25 milligrams per liter and for other waters it's the

1 sum of chloride plus sulfate must be less than 20  
2 percent of the estimated natural background  
3 concentration.

4 We also believe this is appropriate, right now,  
5 because Missouri is undergoing -- the Missouri DNR is  
6 undergoing its triennial review. The Missouri  
7 standards are based on the chloride standards are  
8 based on 1998 -- or 1988 EPA document, which is what  
9 the Iowa chloride Water Quality Standards were also  
10 based on and like John said earlier they have  
11 completed the rulemaking process and the final rule  
12 was sent from Iowa DNR to the EPA. And Iowa DNR last  
13 time I checked was still awaiting EPA's final  
14 approval on that rule. But said that because they  
15 worked so closely with the EPA Region 7 in  
16 formulating the rule they believe it will be  
17 approved.

18 When Iowa DNR began its -- began this rulemaking  
19 process it worked with EPA to develop and update the  
20 water quality criteria for chloride and create water  
21 quality criteria for sulfate. Iowa did not  
22 previously have criteria. They began by doing a  
23 literature search, which -- during which they  
24 discovered that additional toxicity testing was  
25 needed to study chloride impacts on different

1 species.

2           So after they did -- they come -- did toxicity  
3 testing to determine the chloride toxicity as to four  
4 species and then also to determine the effective  
5 hardness in sulfate on the chloride toxicity of  
6 Ceriodaphnia Dubia. Their results of their toxicity  
7 testing was working with EPA to formulate equations  
8 for chloride and sulfate. And in doing this --  
9 ultimately they wanted to protect aquatic life in  
10 Iowa waters which we think is appropriate for  
11 Missouri as well.

12           For chloride Iowa -- the Iowa DNR's research  
13 indicated that chloride toxicity is heavily dependent  
14 on water hardness and to a lesser degree of sulfate  
15 levels. This echoed testing that was done by the  
16 Wisconsin State Lab of Hygiene, which studied the  
17 acute and chronic impact of chlorides on  
18 invertebrates common to the mid -- Midwest -- to the  
19 Midwest region.

20           Thank you.

21           They created two equations, which are up on the  
22 screen. They have -- go back, further. Thank you.

23           They created two equations, One, is the acute  
24 chronic -- the acute chloride criteria and the other  
25 one is for chronic chloride. And those are on the

1 screen and they're also on Pages 309 and 311 of the  
2 briefing document.

3 In creating the equation Iowa -- the Iowa DNR  
4 used monitoring data from 2000 to 2007 to formulate  
5 statewide default values that will be used if  
6 facilities don't present site-specific data. They  
7 created hardness, site-specific hardness; number of  
8 200 milligrams per liter and a sulfate criteria  
9 default of 63 milligrams per liter. And we  
10 anticipate that the DNR would formulate similar  
11 statewide or maybe regional default values to be used  
12 in Missouri as well.

13 And that on the screen just shows what Table A  
14 of 20 -- or 10 CSR 20-7.031 would be amended to look  
15 like. It would insert the value formulated and then  
16 have a footnote to discuss how the equations would --  
17 would work.

18 The Iowa DNR also updated its sulfate criteria  
19 and it did this based on an Illinois -- based on some  
20 Illinois research when Illinois updated their sulfate  
21 criteria a couple of years ago they -- this one's a  
22 little bit more complex. And go a couple more to,  
23 next one. They made essentially a chart. And you  
24 look at the chloride levels and the hardness levels  
25 in water and then go through the chart to

1 corresponding -- to corresponding values. They  
2 incorporated an upper limit of 2,000 and a lower  
3 limit of 500. And then they have equations that you  
4 use like the chloride data, they have an equation to  
5 use to figure out what the sulfate criteria is.

6 They have default values for that as well and  
7 they did the default hardness of 200 milligrams per  
8 liter and the chloride for 34 milligrams per liter.

9 And then the next slide just shows the way --  
10 the amendment to 10 CSR 20-7.031, Table A, what we  
11 propose that that would look like in -- after the  
12 final rulemaking.

13 So -- and that's all I have unless you have any  
14 questions.

15 CHAIRMAN HARDECKE: Any questions?

16 (No response.)

17 MS. BRITTANY BARRIENTOS: Thank you very much.

18 CHAIRMAN HARDECKE: Thank you.

19 Robert do you have anything else on this?

20 MR. ROBERT BRUNDAGE: No.

21 CHAIRMAN HARDECKE: Trent.

22 MR. TRENT STOBBER: I'd just like to add that this  
23 seems to be a pretty critical water quality criteria  
24 revision that -- that the state can move forward on.

25 Several municipalities are in support of this

1 regulation as well.

2 I'd just like to add that there's still a role  
3 for site-specific criteria in dealing with -- with  
4 these parameters and so forth such as we brought  
5 forward with the Empire District, Blackberry Creek  
6 issue. So I just want to make sure we don't lose  
7 sight that there's a still necessity to look at other  
8 alternatives other than just the statewide criteria  
9 resolution.

10 So thank you.

11 CHAIRMAN HARDECKE: Thank you.

12 Richard.

13 MR. RICHARD LAUX: Good afternoon. I'm Richard Laux  
14 with the permit and engineering section and I'm here  
15 to talk about the **Center Creek 201 Wastewater**  
16 **Variance.**

17 On January 25th, of this year, a variance  
18 application and fee were received from the Center  
19 Creek 201 Wastewater Treatment Board for the Center  
20 Creek Wastewater Treatment Plant in Jasper County.  
21 The application was seeking a variance from current  
22 permit limitations on zinc.

23 The site is located in Jasper County and  
24 currently operates under NPDES permit with the number  
25 MO0040185. This treatment plant was original

1 constructed in 1988. It's an extended aeration  
2 activated sludge facility with UV disinfection  
3 discharging to an unnamed tributary to Center Creek  
4 in Jasper County. It's pretty close. It's a small  
5 trip.

6 The facility and collection system are located  
7 within the Oronogo-Duenweg Mining Belt Superfund Site  
8 being remediated by the Environmental Protection  
9 Agency. Staff put together a committee to  
10 investigate the variance request since it was  
11 received in January we had to kind of hurry to get it  
12 to this meeting.

13 We offer the following findings: Center Creek  
14 is an impaired water for the pollutant zinc. The  
15 TMDL has not been done, yet, at this point. The  
16 collection system for the Center Creek Treatment  
17 Plant drains large areas of previously lead and zinc  
18 mining. The application indicates the collection  
19 system is impacted by contaminated runoff and also  
20 by leachate from these areas during both periods of  
21 runoff, as well as, during dry weather. These areas  
22 are scheduled for mediation activities by the EPA  
23 within the next few years.

24 The cities involved with the Center Creek Board  
25 have only recently begun efforts to reduce

1 infiltration and inflow. Part of their application,  
2 which is in the packet, indicates that they started  
3 pretty much in the late 80s and late 90s and have not  
4 really done a whole lot in the way of I&I reduction  
5 at this particular point.

6 The discharge from the facility does not meet  
7 the existing effluent limits for zinc. And it  
8 appears the source of zinc is primarily the tailings  
9 and other waste left from the mining. The reason we  
10 can conclude that is because the water supply, which  
11 does not come from Center Creek does not appear to be  
12 substantially impacted by the mining for lead and  
13 zinc and doesn't contribute substantially to the  
14 levels of zinc in their particular discharge.

15 The drinking water source of most of this water  
16 is pretty clean as far as zinc goes. The application  
17 indicates the Board is only aware of one industry  
18 within the collection system that is contributing  
19 zinc to the treatment plant. We only have record of  
20 one being in the system, but our suspicion is that  
21 there may be more.

22 The application is seeking a seven-year  
23 schedule of compliance due in large part to the EPA  
24 schedule for cleanup of the mined areas. The first  
25 four years do not include any remedial actions to be

1 performed by the Board, but proposes to annually  
2 update progress on the EPA project and its effect on  
3 this zinc level of discharge.

4 Staff would recommend preliminary approval of  
5 the request with the following conditions:

6 Number One, Staff recommends the Commission  
7 require the Center Creek Board to conduct a complete  
8 "industrial waste survey" and "headworks analysis"  
9 (and these are terms defined by EPA in the  
10 pretreatment program) to be certain of all industrial  
11 and large commercial sources of zinc into the  
12 collection system. It is recommended that such  
13 surveys and analysis be conducted within one year of  
14 approval of the variance.

15 Number Two, Staff notes the application clearly  
16 indicates the source of zinc is from I&I due to the  
17 mining wastes in the area. Staff, therefore,  
18 recommends that the Commission require the Center  
19 Creek Board to provide an I&I reduction plan, which  
20 would include at a minimum: funding sources and  
21 annual budget for I&I reduction measures: annual  
22 goals for miles of sewers repaired, smoke tested,  
23 lined or otherwise having I&I eliminated; as well as  
24 calculations of percent of I&I eliminated on a semi-  
25 annual basis. The Center Creek Board agrees to

1 submit the I&I reduction plan for Department review  
2 and approval within one year of the approval of the  
3 variance. The I&I reduction plan and its  
4 implementation will be included in the State  
5 Operating Permit and the Center Creek Board agrees  
6 not to appeal their permit based on this condition.

7 Number Three, Staff recommends the Commission  
8 require all future sewer construction by the Center  
9 Creek Board or the independent cities to be conducted  
10 without the use of tailings or other mining wastes as  
11 "bedding material" or any other use where  
12 contamination of the sewage system could occur.

13 Staff recommends the variance be approved for a  
14 five-year period with the conditions noted above.  
15 And I would just point out we're recommending  
16 preliminary approval as the statute says you got to  
17 public notice your intent to approve before you can  
18 actually approve the variance.

19 And I would be available for any questions and,  
20 I think, you have some cards or at least one.

21 CHAIRMAN HARDECKE: Any questions so far?

22 (No response.)

23 CHAIRMAN HARDECKE: Trent.

24 MR. TRENT STOBER: Good afternoon, Trent Stober with  
25 Geosyntec. We were working with the Center Creek

1 Board on this variance application and -- and so  
2 forth. We also have members from some of the  
3 community cities, as well as, -- and the Board, as  
4 well as, Allgeier Martin who serves critical  
5 engineering consultant for the -- the Board and with  
6 the municipalities that -- that make up the -- the  
7 Board.

8 We appreciate the -- your consideration of this  
9 variance. The Center Creek Board is in a difficult  
10 situation right now with meeting the zinc limits that  
11 are prescribed in their permit limits due to --  
12 primarily due to the legacy issues that we have down  
13 in the area with respect to the historic mining  
14 activities and so forth as documents show. The  
15 influent levels into the wastewater treatment plant are  
16 probably in the neighborhood of eight times higher on  
17 average than their permit limits. Most municipal  
18 systems are not designed specifically to remove  
19 metals within the -- the process. They're mainly  
20 designed to address the organic compounds and the  
21 solids and ammonia and so forth that are -- that are  
22 present within -- within the municipal wastewater.

23 So we -- we do see a significant reduction in  
24 zinc levels through the wastewater treatment plant  
25 though, but not to a level sufficient to attain their

1 -- their permit limitations. As we've shown zinc  
2 levels are decreasing, but we don't feel comfortable  
3 that that's going to decrease in time to avoid non-  
4 compliance with the permit limits. There are several  
5 actions that are going on that -- that should help  
6 mitigate some of the -- the problems that we're  
7 seeing including source reduction, I&I controls and  
8 so forth that the cities are implementing on their  
9 own. For example, Webb City since 2005 has -- has  
10 invested over half a million dollars into their  
11 collection system.

12       So I want to make sure that you know the cities  
13 are taking this serious with respect to their  
14 collection systems and so forth. What we've brought  
15 up, too, is EPA has a significant Superfund  
16 remediation activity ongoing in the area that  
17 hopefully will -- will help mitigate some of the  
18 problems that we see within the stream.

19       There's some recommendations that the  
20 Department has that we'd like to clarify with the --  
21 with the Department and work through during this  
22 process, during the public comment period. So we  
23 would ask that we go ahead and receive preliminary  
24 approval with a caveat that we will work with the  
25 Department during the public comment period, address

1 those in our comments back to the Department and the  
2 Commission and hopefully resolve those at the next  
3 Commission meeting.

4 There's several aspects that are -- that are  
5 probably of interests statewide with respect to -- to  
6 this application that -- that need to be thought  
7 through, but this is a unique situation. This brings  
8 in the issue of satellite communities to a regional  
9 sewer board and how those interplay with collection  
10 system improvements and so forth.

11 But in this situation we hope to reach some  
12 agreements between the parties to -- to establish  
13 some of the controls that we think the Department is  
14 -- is recommending. So there's -- there's quite a  
15 bit of coordination that we need to do with the  
16 Department to make sure that we feel comfortable with  
17 the -- the final variance conditions. And -- and, I  
18 think, the Department is willing to discuss all  
19 those.

20 But, again, I'd like to clarify that this --  
21 this is a unique situation. As you're probably  
22 familiar there's not many municipal issues that have  
23 got these number of circumstances within their --  
24 their systems related to historic mining activities.  
25 And the way some of the collection systems were built

1 and so forth. So it's -- this type of approach  
2 probably doesn't work for all the regional sewer  
3 districts and shouldn't be necessarily used as -- as  
4 a precedent because, I think, there's some aspects of  
5 that that could reduce the likelihood of more  
6 regional efforts like this to occur.

7 But in this situation, we think, we might be  
8 able to come up with something that -- that makes  
9 sense both for the Board, the communities and -- and  
10 the Department.

11 So with that any questions for myself or any of  
12 the representatives from the cities, engineering  
13 firms?

14 COMMISSIONER SHORNEY: I just wonder about zinc  
15 levels and downstream portions in the streams  
16 supplying high concentrations.

17 MR. TRENT STOBBER: Yeah. The -- the stream  
18 definitely has -- has elevated levels of zinc. Both  
19 from -- you know, through this system but there's a  
20 large groundwater component of the base flow in the  
21 stream. The groundwater is quite contaminated with  
22 zinc as it is. There's some documents to that effect  
23 that EPA has prepared through the Superfund  
24 activities that go towards limitations of it -- if  
25 it's used even for drinking water supplies and so

1     forth.

2             So -- but it's not all attributed to -- to our  
3     dischargers. It's a serious contamination issue down  
4     in that -- in that area -- in that -- that mining  
5     area.

6     CHAIRMAN HARDECKE: Is there anyway to tell if  
7     there's just naturally high zinc outside of the  
8     mining -- old mining influence?

9     MR. TRENT STOBBER: Yeah. I would have to look into  
10    that more, more carefully -- you know, it's -- it's  
11    the -- those -- those metals were mined for a purpose  
12    or those activities were done for a purpose, but, you  
13    know, I'm not clear between the natural conditions  
14    versus what were exacerbated by the mining activities  
15    and so forth.

16    CHAIRMAN HARDECKE: Okay. Phil.

17    MR. PHIL WALSACK: Good afternoon, Commissioners,  
18    Phil Walsack, Missouri Public Utility Alliance. We  
19    are as an association seeking that the Department  
20    move forward with this variance request so that we  
21    can make comments during public comment period.

22             Our issue stems with Paragraph 2 of the Staff's  
23    recommendations. And -- and I'm going to  
24    respectively disagree with my -- my colleague Mr.  
25    Stober for a moment. And that is we're setting

1 precedent with this permit by making the Center Creek  
2 201 Board who is a regional authority implement  
3 activities in cities for which they don't own the  
4 system. And that's a very troubling road to go down.  
5 Okay? And I want the Commission to be very aware  
6 that that means that a regional authority has power  
7 and it says so right in the paragraph that the  
8 regional authority is going to develop budgets,  
9 inflow and infiltration budgets that are going to  
10 have to be initiated inside the communities. While  
11 this might be a unique situation this inflow and  
12 infiltration conversation has been -- we've been  
13 having that for quite a while.

14 It relates to the 002 overflows and outfalls.  
15 It relates to sanitary sewer overflows. It relates  
16 to combined sewer overflows. So we'd like the  
17 Commission to be aware that by having a regional  
18 authority in charge that municipal governments don't  
19 get as much say as they ought to say for collection  
20 systems that they own. Okay?

21 So we're very interested in this -- this  
22 variance permit. We'll certainly be making comments  
23 during the public comment period. We'd like the  
24 Department to go forward with this variance so that  
25 we can get some of those issues out on the table.

1           Right now, there are three federal orders that  
2           address how collection systems, satellite collection  
3           systems are managed; the Hampton Road Sewer District  
4           in the east coast. East Bay Mud on the west coast  
5           and Duluth, Minnesota. We would -- we would  
6           encourage the Department to look at that federal  
7           language to see where we ought to be going here.

8           This is a -- this is a very unique path that  
9           we're heading down, which is making a regional  
10          authority responsible for assets they don't own, they  
11          don't operate and they don't manage.

12          Any questions of me?

13          (No response.)

14          MR. PHIL WALSHACK: Thank you.

15          Go ahead Commissioner.

16          CHAIRMAN HARDECKE: Are there any representatives  
17          from those municipalities here that want to --

18          MR. PHIL WALSHACK: Good question. They're here.

19          CHAIRMAN HARDECKE: Do they have any further  
20          comments?

21          MR. TRENT STOBBER: Sure. Yeah. If you'd like them  
22          to speak they're here. You know I -- I do think Phil  
23          brings up a substantial issue. And that's why we  
24          need to really focus in on this with the Department  
25          and come up with something that's -- that's

1       implementable and effective. And we -- we have the  
2       time frames necessary to put some of those agreements  
3       in place because we're -- it's a -- it's a  
4       complicated issue to transfer some of these  
5       authorities and -- and come up with the agreements  
6       necessary to effectively implement these controls.

7               And probably in the process we need to build in  
8       some sort off ramps in case -- in case those issues -  
9       - you know, in case issues arise in the -- the  
10       decision-making of the individual cities and so forth  
11       as you can appreciate, I'm sure.

12       CHAIRMAN HARDECKE: Okay. Any of you care to comment  
13       on how the proposal will affect your individual  
14       cities or -- pro or con either way.

15       MR. JOHN BIGGS: My name is John Biggs. I'm the  
16       mayor of Webb City, which is the larger of the three  
17       satellites. We -- in our last Board meetings and the  
18       mayors of the three cities all sit on this Board,  
19       Center Creek Wastewater Board, and during this last  
20       Board meeting we -- we have addressed the problem we  
21       have with controlling a collection system from a  
22       center point.

23               So we're in the process of working out a plan  
24       that we hope and believe that you folks will be  
25       satisfied with. And it should resolve all those

1 control problems that -- that were addressed here, so  
2 --

3 I don't know how that's going to work out, yet,  
4 because this last Board meeting was only a week or so  
5 ago and we haven't had a lot of time to work at it.  
6 We'll look at what some other cities -- if there are  
7 any other cities with that kind of problem, what  
8 they've done and come up with a plan.

9 One of the things I'd like -- you asked the  
10 question about Center Creek downstream from our  
11 plant. Well, upstream from our plant coming into  
12 where we go into the plant the zinc rate is 3.5  
13 typically milliliters per gram -- or grams per liter.  
14 And our plant is like .18, .19 so we're actually  
15 putting less zinc in the creek than it already had.  
16 So we're actually clearing it up from zinc.

17 CHAIRMAN HARDECKE: Thank you.

18 COMMISSIONER EASLEY: You're diluting it down.

19 CHAIRMAN HARDECKE: Anybody else?

20 MALE SPEAKER: John pretty well summed everything up.

21 CHAIRMAN HARDECKE: Okay. Thank you.

22 (Off the record discussion was held by the  
23 Commission.)

24 **VICE-CHAIR HUNTER: Mr. Chairman, I move that the**  
25 **Commission give preliminary approval to the variance**

1 request.

2 COMMISSIONER SHORNEY: Second.

3 CHAIRMAN HARDECKE: Malinda, take the vote, please.

4 MS. MALINDA OVERHOFF: Commissioner Shorney?

5 COMMISSIONER SHORNEY: Yes.

6 MS. MALINDA OVERHOFF: Commissioner Hunter?

7 VICE-CHAIR HUNTER: Yes.

8 MS. MALINDA OVERHOFF: Commissioner Easley?

9 COMMISSIONER EASLEY: Yes.

10 MS. MALINDA OVERHOFF: Chair Hardecke?

11 CHAIRMAN HARDECKE: Yes.

12 Okay. Tab No. 10. Kevin, you're up.

13 MR. KEVIN MOHAMMADI: Good afternoon, Mr. Chairman,  
14 members of the Commission, Kevin Mohammadi, Chief of  
15 Compliance and Enforcement Section, Water Pollution  
16 Control Branch. We have five items that we are going  
17 to be recommending for referral to the office of  
18 Attorney General.

19 The first item is **Hidden Valley Estates**  
20 **Subdivision.** Hidden Valley Estates Subdivision  
21 consists of approximately 104 lots and eight houses  
22 located in Stone County. In 1987 the subdivision  
23 obtained Department approval for construction of a  
24 wastewater treatment facility to serve approximately  
25 25 residents.

1           On October 1989 the Department issued State  
2     Operating Permit authorizing the discharge of treated  
3     wastewater to the James River. The wastewater  
4     treatment facility operated pursuant to the permit  
5     until it expired by its own terms on June 2005.

6           On December 22nd, 2003, Staff conducted an  
7     inspection of the subdivision wastewater treatment  
8     facility and found that the wastewater treatment  
9     facility was in disrepair and the equipment did not  
10    run during the inspection.

11          On January 1st, 2004, the Department sent Notice  
12    of Violation to Mr. and Mrs. Van Pelt documenting  
13    these violations. On March 4th, 2004, the Department  
14    sent another letter to Mr. and Mrs. Van Pelt  
15    regarding the violations at Hidden Valley and  
16    requested that they enter into a schedule of  
17    compliance to resolve -- to resolve the matter.

18          On June 7th, 2004, the Department sent a follow-  
19    up letter to the owners requesting that they sign and  
20    return a schedule of compliance and offered to meet  
21    with them on July 8th, 2004. On June 2008, the  
22    Department sent a Letter of Warning of American  
23    Equity, new owners of the subdivision regarding the  
24    wastewater treatment facility continuing operation  
25    and maintenance issues.

1           On August 12th, 2008, the Staff conducted an  
2           inspection of wastewater treatment facility and,  
3           again, observed that the facility continued to  
4           operate without permit and is not being operated or  
5           maintained.

6           On October 17th, 2008, the Department sent Notice  
7           of Violation to notify the owners of the non-  
8           compliance. In July and August 2009, the Department  
9           sent letters to current owner American Equity,  
10          Incorporated, in an effort to negotiate an out-of-  
11          court settlement to resolve the past violation.

12          And to date we have not been able to reach an  
13          agreement. Therefore, Staff recommends the matter to  
14          be referred to the office of Attorney General for  
15          appropriate legal action.

16          CHAIRMAN HARDECKE: Is there anyone here from Hidden  
17          Valley Estates?

18          (No response.)

19          VICE-CHAIR HUNTER: Kevin, have any of these parties  
20          declared bankruptcy?

21          MR. KEVIN MOHAMMADI: The -- not the individuals, but  
22          the financial company who took over the property,  
23          now, it's my understanding that the have defaulted it  
24          on their own loan to the lending company, to another  
25          lending company.

1 VICE-CHAIR HUNTER: That's American Equity?

2 MR. KEVIN MOHAMMADI: Yes.

3 COMMISSIONER EASLEY: Well, if they've filed  
4 bankruptcy can you really affect any kind of  
5 enforcement against them?

6 MR. KEVIN MOHAMMADI: Well, basically, what would  
7 happen was it goes to the office of Attorney General  
8 Office they would find out exactly who is holding the  
9 notes on the property and then require them to comply  
10 with the law.

11 MS. JENNIFER FRAZIER: And I'd like to also add, if I  
12 may. Our office has people, I'm not one of them, who  
13 are specifically trained to address environmental  
14 issues with bankruptcy and you can make claims and  
15 there's certain things that you can seek to obtain  
16 even though it is in bankruptcy, so --

17 COMMISSIONER EASLEY: Ready for a motion?

18 CHAIRMAN HARDECKE: Sure.

19 **COMMISSIONER EASLEY: I move that the Clean Water**  
20 **Commission refer Mr. Steven Cope d/b/a American**  
21 **Equities, Inc., and any other responsible party to**  
22 **the Attorney General's Office for appropriate legal**  
23 **action in order to compel compliance, pursue a civil**  
24 **penalty and seek any other appropriate form of**  
25 **relief.**

1 VICE-CHAIR HUNTER: Second.

2 CHAIRMAN HARDECKE: Malinda, take the vote, please.

3 MS. MALINDA OVERHOFF: Commissioner Hunter?

4 VICE-CHAIR HUNTER: Yes.

5 MS. MALINDA OVERHOFF: Commissioner Easley?

6 COMMISSIONER EASLEY: Yes.

7 MS. MALINDA OVEHOFF: Commissioner Shorney?

8 COMMISSIONER SHORNEY: Yes.

9 MS. MALINDA OVERHOFF: Chair Hardecke?

10 CHAIRMAN HARDECKE: Yes.

11 MR. KEVIN MOHAMMADI: The next item is **Harris Land**

12 **Development, LLC, Pulaski County.** Harris Land

13 Development owned and operated by Gerald and Jerry

14 Harris, contracts, builds and sells single

15 family homes. The Harris' have two sites under

16 development in St. Robert, Heritage Estates and

17 Liberty Heights. The Heritage site is planned for 46

18 residential and six commercial lots. Storm water

19 runoff from the Heritage site discharges to Sawmill

20 Hollow a tributary to Gasconade River.

21 The Liberty site is a Phase I of the

22 development, clearing and grading roadways. Storm

23 water runoff form the Liberty site discharges to

24 Burchard Hollow a tributary to Roubidoux Creek. Both

25 receiving streams are loosing.

1           Since May 2006, Department Staff has conducted  
2 several compliance inspections of these two sites.  
3 During these inspections Staff observed Best  
4 Management Practices were not being implemented and  
5 maintained, sediment discharged into waters of the  
6 state and on-site inspection logs were not maintained  
7 as required by Missouri State Operating Permits.

8           Since July 17th, 2009, the Department have sent  
9 several letters to Harris Land Development and spoke  
10 to Mr. Jerry Harris on the telephone several times to  
11 -- several times offering to resolve past violations  
12 through an out-of-court agreement.

13           On August 19th, 2009, Staff met with Gerald and  
14 Jerry Harris and discussed the process to resolve the  
15 violations and requested their written response to  
16 the Department's offer.

17           To date the Department has not been able to  
18 reach an agreement with Harris Land Development.  
19 Therefore, Staff recommends the matter to be referred  
20 to the office of Attorney General for appropriate  
21 legal action.

22           CHAIRMAN HARDECKE: Is there anyone here from Harris  
23 Land Development?

24           (No response.)

25           **COMMISSIONER SHORNEY: Mr. Chairman, I move that the**

1 Missouri Clean Water Commission refer Harris Land  
2 Development to the Missouri Attorney General's Office  
3 for appropriate legal action in order to compel  
4 compliance, pursue a civil penalty and seek any other  
5 appropriate form of relief.

6 COMMISSIONER EASLEY: Second.

7 CHAIRMAN HARDECKE: Malinda, take the vote, please.

8 MS. MALINDA OVERHOFF: Commissioner Hunter?

9 VICE-CHAIR HUNTER: Yes.

10 MS. MALINDA OVERHOFF: Commissioner Easley?

11 COMMISSIONER EASLEY: Yes.

12 MS. MALINDA OVERHOFF: Commissioner Shorney?

13 COMMISSIONER SHORNEY: Yes.

14 MS. MALINDA OVERHOFF: Chair Hardecke?

15 CHAIRMAN HARDECKE: Yes.

16 MR. KEVIN MOHAMMADI: The next matter is **Gilbane**  
17 **Rebuilders, Boone County**. Mr. Kent Gilbane owns and  
18 operates an auto body repair shop known as Gilbane  
19 Rebuilders, which is located in Columbia, Boone  
20 County, Missouri. Wastewater from Gilbane Rebuilders  
21 is treated by two-cell lagoon with a design flow of  
22 150 gallons per day and design population equivalent  
23 of three. The lagoon discharges to an unnamed  
24 tributary to Little Cedar Creek, tributary to the  
25 Cedar Creek pursuant to Missouri state Operating

1 Permit which expired in April 2009.

2 On March 25th and July 14th, 2009, the Missouri  
3 Department of Natural Resources conducted inspection  
4 of Gilbane Rebuilders. During the inspection Staff  
5 observed several trees growing in the inner berm of  
6 the primary cell and one tree growing in the  
7 secondary cell of the lagoon. Staff, also, observed  
8 several tree stumps in the primary cell from trees  
9 that were removed. The Department has not received  
10 annual discharge monitoring reports since 2004,  
11 payment of annual fees and late penalties or a  
12 complete renewal application for a State Operating  
13 Permit.

14 Mr. Gilbane, also, owns a mobile home park less  
15 than quarter mile west of Gilbane Rebuilders that has  
16 four mobile homes and one single-family residence.  
17 Wastewater from Gilbane Mobile Home Park is treated  
18 by an un- --  
19 (Tape Two, Side B concluded.)

20 MR. KEVIN MOHAMMADI: -- Staff observed that the  
21 lagoon did not have security fence or warning sign  
22 posted. Deep rooted, woody vegetation was growing on  
23 the lagoon berms and the berm between the two cells  
24 was eroded away in one section connecting the two  
25 cells. Staff could not locate the outfall pipe.

1           On August 28th, September 23rd, October 8th, and  
2           December 9, 2009, Department sent letter to Mr.  
3           Gilbane offering to resolve the past violations of  
4           the Missouri Clean Water Law and its implementing  
5           regulations through an out-of-court settlement  
6           agreement.

7           To date the Department has not received a  
8           response. Therefore, Staff recommends the matters to  
9           be referred to the office of Attorney General for  
10          appropriate legal action.

11         CHAIRMAN HARDECKE: Anyone from Gilbane Rebuilders  
12          here?

13          (No response.)

14         VICE-CHAIR HUNTER: Mr. Chairman, I move that the  
15          Commission refer this matter to the Attorney  
16          General's Office for appropriate legal action in  
17          order to compel compliance, pursue a civil penalty  
18          and/or seek any other appropriate form of relief.

19         COMMISSIONER SHORNEY: Second.

20         CHAIRMAN HARDECKE: Malinda, take the vote, please.

21         MS. MALINDA OVERHOFF: Commissioner Hunter?

22         VICE-CHAIR HUNTER: Yes.

23         MS. MALINDA OVERHOFF: Commissioner Easley?

24         COMMISSIONER EASLEY: Yes.

25         MS. MALINDA OVERHOFF: Commissioner Shorney?

1       **COMMISSIONER SHORNEY: Yes.**

2       **MS. MALINDA OVERHOFF: Chair Hardecke?**

3       **CHAIRMAN HARDECKE: Yes.**

4       MR. KEVIN MOHAMMADI: Next matter is **Midwest Truck**  
5       **Stop, Texas County.** Mr. Harvey Davis owns a  
6       convenience store and restaurant called the Midwest  
7       Truck Stop, which is located at 450 Potter Road,  
8       Willow Spring, Texas County. There are  
9       approximately three unpermitted lagoon systems  
10      located on the property. Lagoon 1 is a single cell  
11      lagoon that treated wastewater from a truck wash that  
12      is no longer operating. The truck wash building was  
13      removed but the lagoon remains in place and has not  
14      been properly closed. Lagoon No. 2 is a single cell  
15      lagoon that treats wastewater from the convenience  
16      store and restaurant. Lagoon No. 3 is partially  
17      constructed three-cell aerated lagoon that is not  
18      connected to any services. Construction of Lagoon  
19      No. 3 began in 1994 under the previous owner.

20             Since November 1999, the Department of Natural  
21      Resources has conducted five inspections of the  
22      sewage lagoon serving the Midwest Truck Stop. During  
23      the inspections, Staff observed that the unpermitted  
24      lagoon could not provide adequate treatment of  
25      wastewater from the Midwest Truck Stop. Staff did

1 not observe any impacts on the receiving stream. The  
2 inspection reported that -- the inspection reports  
3 that were sent to Mr. Davis documented violations at  
4 the lagoon and recommended corrective actions that  
5 would enable the Midwest Truck Stop to comply with  
6 the Missouri Clean Water Law and its implementing  
7 regulations.

8 Since October 2009, Department has sent several  
9 letters to Mr. Davis and spoke with him on the phone  
10 several times offering to resolve the past violations  
11 through out-of-court settlement agreement.

12 To date the Department has not received a  
13 response. Therefore, Staff recommends the matters to  
14 be referred to the office of Attorney General for  
15 appropriate legal action.

16 CHAIRMAN HARDECKE: Anyone here from Midwest Truck  
17 Stop?

18 (No response.)

19 COMMISSIONER EASLEY: Ready for a motion?

20 (No response.)

21 **COMMISSIONER EASLEY: I move that the Commission**  
22 **refer this matter to the Attorney General's Office**  
23 **for appropriate legal action in order to compel**  
24 **compliance, pursue a civil penalty and/or seek any**  
25 **other appropriate form of relief.**

1 VICE-CHAIR HUNTER: Second.

2 CHAIRMAN HARDECKE: Malinda, take the vote, please.

3 MS. MALINDA OVERHOFF: Commissioner Easley?

4 COMMISSIONER EASLEY: Yes.

5 MS. MALINDA OVERHOFF: Commissioner Shorney?

6 COMMISSIONER SHORNEY: Yes.

7 MS. MALINDA OVERHOFF: Commissioner Hunter?

8 VICE-CHAIR HUNTER: Yes.

9 MS. MALINDA OVERHOFF: Chair Hardecke?

10 CHAIRMAN HARDECKE: Yes.

11 MR. KEVIN MOHAMMADI: The next matter is **Park Place**  
12 **Neosho**. Mr. Kenneth and Ms. Angie Thomure owns and  
13 operates Park Place Neosho Mobile Home Park located  
14 in Neosho, Newton County, Missouri. There are 41  
15 spaces and 26 mobile homes in Park Place. Wastewater  
16 from Park Place is treated by a septic tank and re-  
17 circulating sand filter bed with chlorination/de-  
18 chlorination. The wastewater treatment facility has  
19 a design population equivalent of 68 and average  
20 daily flow of 7,000 gallons per day. Effluent from  
21 the treatment facility discharges to an unnamed  
22 tributary to Buffalo Creek pursuant to Missouri State  
23 Operating Permit.

24 Since December 2005, the Department has  
25 conducted three inspections of the wastewater

1 treatment facility serving the Park Place. During  
2 these inspections Staff observed vegetative growth  
3 and ponding in the filter bed, no chlorine in the  
4 applicator tubes, no de-chlorination and Staff could  
5 not locate the outfall pipe due to the excessive  
6 vegetation -- vegetative growth. Chemical analysis  
7 of samples taken at the last point before effluent  
8 left the wastewater treatment facility revealed that  
9 the effluent was in violation of permit effluent  
10 limits for bacteria, Biochemical Oxygen Demand, Total  
11 Suspended Solids and Total Residual Chlorine. The  
12 Department has not received monthly discharge  
13 monitoring report since 2006.

14 Since January 2006, the Department has sent 22  
15 letters; two Letters of Warning and issued two  
16 Notices of Violation to Thomure's for failure to  
17 submit complete and timely discharge monitoring  
18 reports, failure to comply with permit effluent  
19 limits and failure to operate and maintain wastewater  
20 treatment facility to comply with the Missouri Clean  
21 Water Law and its implementing regulation.

22 The Department has reached an agreement in  
23 principle to resolve the past violation. Therefore,  
24 Staff recommends the matter to be referred to the  
25 office of Attorney General Office contingent upon no

1 final agreement is reached within 60 days.

2 CHAIRMAN HARDECKE: Okay. Is Mr. Thomure, here?

3 (No response.)

4 CHAIRMAN HARDECKE: I don't see anybody.

5 VICE-CHAIR HUNTER: Mr. Chairman, I move that the  
6 Commission refer this matter to the Attorney  
7 General's Office for appropriate legal action in  
8 order to compel compliance, pursue a civil penalty  
9 and/or seek any other appropriate form of relief?

10 COMMISSIONER EASLEY: Second.

11 CHAIRMAN HARDECKE: Do you want to -- we need to  
12 modify that. If -- contingent upon --

13 VICE-CHAIR HUNTER: Contingent upon no final  
14 agreement reached within 60 days.

15 CHAIRMAN HARDECKE: Second?

16 COMMISSIONER SHORNEY: Second.

17 COMMISSIONER EASLEY: Second.

18 CHAIRMAN HARDECKE: Malinda, take the vote, please.

19 MS. MALINDA OVERHOFF: Commissioner Easley?

20 COMMISSIONER EASLEY: Yes.

21 MS. MALINDA OVERHOFF: Commissioner Shorney?

22 COMMISSIONER SHORNEY: Yes.

23 MS. MALINDA OVERHOFF: Commissioner Hunter?

24 VICE-CHAIR HUNTER: Yes.

25 MS. MALINDA OVERHOFF: Chair Hardecke?

1       **CHAIRMAN HARDECKE: Yes.**

2       **MR. KEVIN MOHAMMADI: Thank you.**

3       **CHAIRMAN HARDECKE: Thank you, Kevin.**

4       **MR. SCOTT TOTTEN: Refaat.**

5       **CHAIRMAN HARDECKE: No. 15.**

6       MR. REFAAT MEFRAKIS: Good afternoon, Commissioners.

7       The permit and engineering report begins on Page 499,

8       **Tab No. 15.**

9               As usual the first chart is the permit  
10       backlog tracking. And just as this is an indication  
11       of it we're making progress meeting the 10  
12       percent goal set by EPA. We want to make sure that -  
13       - want to let you know that we're issuing quality  
14       permits and we're issuing correct- -- right permits.  
15       So we're not just trying to get them out of the door,  
16       so --

17              And I -- hopefully, in the next meeting I'm  
18       going to try to bring in another chart to show a  
19       distribution of permits over a five-year period,  
20       which will indicate that our peak load -- or peak --  
21       permit load will be in the next 12 months here, which  
22       probably will tell us that we may be exceeding the 10  
23       percent, so -- 'cause they'll be a lot of flood of  
24       renewals, applications coming to the Department. So  
25       we're going to have to look at resources.

1           We're trying to sustain below the 10 percent so  
2 we can catch up with the -- with the peak so,  
3 hopefully, we're going to sustain maintaining those  
4 backlog limits.

5           On the second page is the State Operating Permit  
6 completed. You've seen this chart. I don't know in  
7 the next meeting if you -- if we're going to be able  
8 to generate the same permit report for Operating  
9 Permit we're moving to a different system and so you  
10 may see a change in how we communicate the data to  
11 you. I think you're going to see an improvement on  
12 how we make -- make a report on our status of permits  
13 of -- on hand.

14           I know this chart -- the Table 1 that says:  
15 Permit completed from January 2006 to February 2010,  
16 I think, we're going to move away from the old data,  
17 but our current system only allows us to look at the  
18 entire four-year period which I'm going to try to  
19 provide you with a little more accurate  
20 representation of our permitting backlog as well.

21           As you can see, on the third table that there's  
22 a continuous progress on making -- getting those  
23 general permits out. As of June 2009 there are 3- --  
24 there were 339 permits on hold. As of February 2010  
25 that had dropped to 126 on the general permit so

1 that's due to our commitment to get those general  
2 permits renewed on time although we've been kind of  
3 lacking a little bit due to increased workload and  
4 the Staff retiring, so --

5 Site-specific, we're still working on that. We  
6 haven't really made a huge progress but the  
7 levels of backlog is still around that neighborhood  
8 of 300, so --

9 Any questions on that page?

10 (No response.)

11 MR. REFAAT MEFRAKIS: Move on. On Page 505 you have  
12 a report on water quality review  
13 assistance/antidegradation review. There are about  
14 seven active requests and they're listed on the table  
15 below. So we're making good progress, unfortunately,  
16 the number of permits that -- or number of requests  
17 that came in since the last Commission meeting are  
18 three and that's the lowest that they've ever been.  
19 These are pre-construction reviews and so that tells  
20 you the -- the state of the economy right now, so --

21 We're utilizing Staff from antidegradation to  
22 work on permits and getting that backlog down. So  
23 we're making some -- utilizing existing Staff to  
24 catch up with other work that we're behind, so --

25 Okay. And move on to, unless you have

1 questions, to Page 509, which is the -- our CAFO, Ag-  
2 Chem construction permits. There are about seven  
3 projects that are under review as stated here. One  
4 of them have actually been issued. Three are draft  
5 and will be issued next week, the bottom three. And  
6 the top three, where under the review comment column  
7 it says, hold for permit renewal PN, those are being  
8 drafted. The construction and the renewal permits  
9 are coming at the same time so what we would like to  
10 -- to issue one permit. So, basically, we're making  
11 headways here and making -- we're getting permits out  
12 on time.

13 And the last two reports, the water quality  
14 certification. We issue those on time so there's no  
15 delay as they come in. And the last report is our --  
16 our general permit status list as far as expirations  
17 and renewals. There are -- a few of them are  
18 expiring this month and we're working on getting a  
19 draft out to public notice. Some of them are already  
20 on public notice. The one that had expired last year  
21 of 2009, December, which is the wood treater that --  
22 that will be issued this week, so --

23 And on the second page on Page 515 the MOG  
24 permits, G699, the dredging return water, storm water  
25 runoff associated with a habitat creation in the

1 Missouri and Mississippi River has -- has been  
2 terminated per your request, so we don't issue that  
3 permit anymore.

4 So that concludes my permit reports, permits and  
5 engineering; if you have any questions or --

6 CHAIRMAN HARDECKE: Any questions?

7 (No response.)

8 MR. REFAAT MEFRAKIS: Thank you.

9 CHAIRMAN HARDECKE: Okay. **No. 16**, Joe.

10 MR. JOE BOLAND: Good afternoon, Mr. Chairman,  
11 members of the Commission. As always we save the  
12 most exciting part for last.

13 (Laughter.)

14 MR. JOE BOLAND: This -- I have to say in four years  
15 this has been the easiest Commission meeting for me  
16 anyway. We -- we have nothing, but good news here  
17 today.

18 First of all, our update on our bond sale; there  
19 hadn't been a whole lot of activity on these, this  
20 grant program because of the stimulus funding that we  
21 received. But, now, that's picking back up.

22 Today, we've received almost 280 applications  
23 for that 50 million. Those applications total 113  
24 million. We've already awarded 33 million leaving  
25 about 22 and a half million. Obviously, that's over

1 the \$50 million sale, but we obviously have to -- we  
2 have to distribute the interest earnings on that as  
3 well. So that's up to about five and a half million,  
4 believe it or not, so --

5 And that's five and a half million in extra  
6 projects we get to fund. So we're well on our way in  
7 picking back up on those projects, pushing those  
8 along. We only have till November of this year to  
9 get this money, the remaining money out. Those --  
10 the sale occurred in 2007. We have three years to  
11 distribute those proceeds and, of course, that  
12 anniversary is November of this year. So we're  
13 sending letters to all of our applicants. All the  
14 remaining money is obligated to -- to projects, but  
15 like I said some of the stimulus activity really  
16 curbed the progress of those since not only our Staff  
17 but the consulting community was very, very busy in  
18 trying to get all their stimulus projects done. So,  
19 now, the focus is back on these projects.

20 Any questions on our state bond funds?

21 CHAIRMAN HARDECKE: When you get to the 50 million  
22 that's it, right?

23 MR. JOE BOLAND: That's it. That's correct. Except  
24 for -- some -- we have used some of those proceeds to  
25 make some small loans and those loans will revolve

1 basically in perpetuity unless -- you know, something  
2 unforeseen happened or there's legislative activity  
3 to do something different with -- with those funds.

4 But we -- we do have a very small revolving fund  
5 program just within these State proceeds.

6 CHAIRMAN HARDECKE: Okay.

7 MR. JOE BOLAND: As for our ARRA funding update, I'm very  
8 happy to report that we met our February 17th deadline to have  
9 all of our projects under contract as well as all the funding  
10 agreements executed. So that was quite a task. I'm very --  
11 very proud of our Staff. They worked very hard, a  
12 lot of overtime. The consulting community responded  
13 very well in all of our requests for -- to expedite  
14 things -- get things moved forward; get plans and  
15 specs in by a certain time. So every -- we're very  
16 proud of everybody's participation in this. There  
17 was a lot of -- a lot of effort put forward and we're  
18 very happy we didn't have to turn any money back.  
19 And, as matter of fact, none of the states had to  
20 turn any money back. All -- all the ARRA funding  
21 through the SRF programs was utilized. We're very  
22 happy about that.

23 Now, as far as numbers on the wastewater side we  
24 pushed out over 105 -- about 105 million in stimulus  
25 funding. We matched that with about 115 million of

1 regular program funding, so -- because some of those  
2 projects were rather large. So in total we  
3 administered -- or we were successful in closing on  
4 \$220 million worth of wastewater projects in about a  
5 six month period; so, again, that's quite an  
6 accomplishment for us. We didn't -- did that without  
7 any additional Staff. And, again, it was -- it was  
8 quite an effort and we're very proud of that.

9 (Due to inactivity in your conference this call will  
10 be terminated unless you press the digit 1 on your  
11 telephone. Once again, please, press the digit 1 on  
12 your telephone in order to continue your call.)

13 MR. JOE BOLAND: All right. Thank you.

14 Just one more note. I also want -- just to be  
15 aware we also had quite an effort on the drinking  
16 water side. We received about 38 million in  
17 stimulus funding for drinking water projects. We  
18 pushed out a total of about 40 million. Those are  
19 typically smaller projects. But, again, we were --  
20 it was quite an effort. And altogether in about six  
21 months we pushed out 270 million in funding through  
22 the SRF. So we're very proud of that, so --

23 Any questions from me?

24 (No response.)

25 MR. JOE BOLAND: All right. Thank you.

1 CHAIRMAN HARDECKE: Don't hold your breath, right.

2 MR. JOE BOLAND: We'll take a breath for now, but --  
3 thank you.

4 CHAIRMAN HARDECKE: Thank you.

5 Jenny, do have anything?

6 MS. JENNIFER FRAZIER: I don't.

7 MR. SCOTT TOTTEN: I just want to remind the  
8 Commission to make sure you get your personal finance  
9 disclosure statements in; those are due Monday as  
10 wanted for the calendar year 2009.

11 I'll let you know that EPA's coming to Jefferson  
12 City to review our SRF programs the week of March the  
13 22nd and our NPDES programs the week of April 19th.  
14 I think that's all I have.

15 MR. PHIL WALSACK: Are we ready, Commissioners?

16 CHAIRMAN HARDECKE: We're ready.

17 MR. PHIL WALSACK: Hey, Morrison, would you like to  
18 know you're too high paid. How 'bout would you press  
19 the button and move it forward for me when I say  
20 (inaudible).

21 I have to get my friends here. And, now, that's  
22 Rob's on the private side. I want to make a  
23 presentation to you, today.

24 This is a unique presentation in that some folks  
25 look at this presentation and they think, um, Phil.

1 This looks like David and Goliath. It looks like  
2 you're out there to really go after the EPA on how  
3 they manage permits. Somebody mentioned that to me  
4 yesterday and I said, now, hang on I might be David,  
5 but I don't have a stone and I don't have a  
6 slingshot. And they still are Goliath. Okay?

7 They're a big federal agency: 17,000 employees,  
8 10.02 billion dollars. They're big and I am not.  
9 I'm very small. But we're looking at differences in  
10 permits between two states Kansas and Missouri,  
11 today. And you might be asking me, why, Phil am I  
12 talking to you about a facility in Kansas. And we'll  
13 be answering that question here in a couple of  
14 moments.

15 The next thing is while I may be David and they  
16 may be Goliath tomorrow morning I have to work with  
17 them. I have to work with them everyday from here on  
18 out. We have to have negotiations, discussions,  
19 arguments; but we have to get over those and get back  
20 to work.

21 So while it may look like it's inflammatory at  
22 times keep that in mind that I'm trying to rise --  
23 raise the public perception of this wet weather deal,  
24 our wet weather deal, Kansas' wet weather deal, the  
25 national wet weather deal through this presentation.

1 Go ahead, John.

2 Now, it's usually my style to walk around when I  
3 present so this will be a little awkward for me.  
4 You'll see that you just got a new handout. The  
5 reason for that is this is a moving target. The  
6 federal government and I, the Staffers who are in  
7 this room have been working for the last several  
8 weeks on this presentation; this is now draft four.  
9 I'm expecting to see other drafts as we continue this  
10 discussion.

11 But we want to talk -- I want to talk to you,  
12 today, about regulatory agencies in Missouri and  
13 Kansas. They issue permits and are they consistent  
14 when we talk about wet weather and is the EPA Region  
15 7 is requiring each state to follow the same approach  
16 when we talk about this phrase called storm water  
17 clarification or outfall 002s or FEBs, Flow  
18 Equalization Basins; that's what we're going to talk  
19 about. John.

20 Osawatomie, Kansas, is in fact not in Missouri,  
21 all right? It's across the border. I did go there  
22 because the federal government issued an order to  
23 these folks and I wanted to see what it was all about  
24 because I saw the order and thought there were things  
25 in there that don't look the same as we do in

1 Missouri. So I drove there, took some pictures. And  
2 you have this general perception that when the  
3 federal government comes in to do an inspection or to  
4 write you up you have this perception that, wow,  
5 things must really be bad there.

6 And, in fact, they're not. It's a very well run  
7 treatment plant as you'll see the pictures of the  
8 grounds, they're very nice. The Staff was very  
9 informative. So I wanted to spell that notion that  
10 these guys didn't know what they were doing because  
11 in fact the opposite was true. You can see there the  
12 little red star where Osawatomie is as compared to  
13 John Reece's backyard -- backyard here. Thank you,  
14 Google Earth.

15 And there is the treatment plant right there.  
16 The storm water holding lagoon is there. John. And  
17 this is important to point out that -- that river the  
18 Marais des Cygnes starts in Kansas and flows to  
19 Missouri; flows through Missouri and into our Lake  
20 Ozark. John.

21 And in fact there's the text on how it gets  
22 here from there to here. It's in our watershed.  
23 This is a regional watershed. It is -- there are  
24 activities happening in Missouri as well as Kansas.  
25 There's our infamous State line and the watershed is

1 on both sides. As the crow flies 29 almost 26 miles  
2 between the headwaters -- excuse me -- from the --  
3 the outfall at Osawatomie to the Missouri line.

4 This picture shows the peak flow holding basin.  
5 That's that big object and the other little round  
6 object off to the left is the storm water  
7 clarification basin. John. Some pictures of the  
8 head works just too kind of give you an idea of what  
9 we're looking at. And, again.

10 This is a storm water clarifier. Now, this is  
11 one of the first pieces of information that I'm  
12 interested in because this asset is not in the Kansas  
13 permit and that gave me some heartburn. We usually  
14 list assets in the permit. And you'll notice they  
15 have a broken skinner arm that the EPA referred to in  
16 its federal order. So I know I was in the right  
17 place. I was in Osawatomie and that's where I was  
18 supposed to go and this is a storm water clarifier  
19 and it wasn't in the Kansas permit.

20 This is a two million gallon wet weather  
21 holding basin; concrete lined, very clean, the  
22 operators do a very a nice job. So if it starts  
23 raining in Kansas, which we know it will prior to the  
24 head works becoming inundated the operators manually  
25 split the flow, allow some flow to go through the

1 treatment plant and some to go through their storm  
2 water clarifier. That was the round thing with the  
3 arm broken.

4 From there it goes to the holding basin. That  
5 was that big concrete structure. Now, if the rain  
6 stops the flow is pumped back to the wastewater  
7 plant, the storm water clarifier is closed and the  
8 holding basin is pumped back to the head works so  
9 that all the effluent receives full secondary  
10 treatment.

11 And here's some pictures of how that works.  
12 There's the storm water clarifier on the left. Rains  
13 come it goes into that holding basin. If the holding  
14 basin doesn't discharge the flow is pumped back to  
15 the head works.

16 Now, let's say that Kansas like Missouri gets a  
17 -- you know, some ferocious rains. If the rains  
18 persist the storm water clarifier operates, the  
19 holding basin is allowed to fill up. It's -- it's  
20 not permitted, all right, to fill up but it  
21 physically fills up. It does fill. The influent  
22 doesn't lesson. Okay? Here's some pictures; storm  
23 water clarifier.

24 The rain continues to fill the -- the lagoon to  
25 the red line that's on the right there and then it

1 discharges through that grate that you see in the  
2 photographs. So the holding basin is discharging.

3 Now, in Missouri we call that a 002 outfall, an  
4 outfall No. 2, an outfall that is in our permits, an  
5 outfall that's regulated, but in Kansas they don't  
6 call that an outfall 2. Okay? They don't have that  
7 language in this particular permit. It doesn't say  
8 this is where that extra flow goes. John. And one  
9 more.

10 So does this look like a forbidden outfall?  
11 And if you were in Missouri the answer is, yes. Now,  
12 the EPA folks who are here in the room are going to  
13 say that this is also an outfall here in Kansas  
14 although it's not in their permit.

15 The other piece of this puzzle that's  
16 interesting is this is a blending facility. It's a  
17 very small town, almost 5,000 people. But, that  
18 water that goes through grates hangs a left and goes  
19 back to a manhole. John, go back for a little bit.  
20 Thank you.

21 It goes back to a manhole where the full-blown  
22 treated and disinfected effluent runs through the  
23 pipe and then that storm water discharges added to it  
24 and they sample downgraded of that. Okay? So you  
25 got once piece of effluent that's disinfected.

1 Another piece that is not and below that they sample.  
2 And that's how they got in trouble with the feds  
3 because that outfall -- that effluent was not -- when  
4 it was sampled came up high for bacteria.

5 Now, this blending issue was an issue that we  
6 have been working with Washington D.C. to solve because  
7 it's very complex. There's a lot of folks impacted  
8 by this. There's going to be some folks impacted by  
9 blending in this room even today for the remaining  
10 customers who are here. So this is a very big federal issue  
11 that EPA headquarters has told us they're going to  
12 work out.

13 How do we blend? What do we do? And, yet,  
14 this is a facility that blends that received a federal  
15 orders. John.

16 So here's just some -- some facts. Okay.  
17 August 03, 2009, this permit was issued. This is a  
18 recent permit. This is not some historic deal.  
19 30/30 BOD TSFs, facility with a once a month grab and  
20 when that holding basin discharges the city samples  
21 that water that goes through that grate. And that's  
22 part of their permit.

23 Now, here's when we get into some differences.  
24 They have a federal order, in fact, that's -- the  
25 young lady who's in the room, today, Melissa Bagley,

1 that's her signature on their federal order. So  
2 we've been very engaged on this subject matter.  
3 John.

4 So the permit doesn't say that they have a storm  
5 water clarifier and I'd kind of like to know, why  
6 not? The EPA isn't consistent with its regulatory  
7 approach of storm water clarifiers, you know, we're  
8 not going to allow discharges from those. I  
9 understand that. We need to put it in the permit.  
10 John.

11 Inside the NPDES permit for Kansas they have  
12 this language that says: Permittee shall continue  
13 repair, rehabilitation of the sewer collection system  
14 to eliminate wet weather bypasses and holding basin  
15 overflows. You know, I thought those were the same  
16 thing. And that was one of the reasons I went there.  
17 I said, hang on second, that's the federal definition  
18 of a bypass is when you let that water get out of a  
19 treatment plant. That's bypassing the plant. That's  
20 bypassing secondary treatment. So are these two  
21 different things? I don't know, but in Missouri we  
22 call that, right now, as a bypass. We wouldn't mix  
23 these terms together.

24 And here's what's happening in Missouri when we  
25 talk about this 002 outfall we're saying, if you have

1 one of those we're not going to let you do that  
2 anymore and with that you get something. We're  
3 calling it a voluntary compliance agreement. That's  
4 the stuff that John Rustige was talking about this  
5 morning. That if you have a 002 you better come sign  
6 up for a voluntary deal with us or the feds might just -- you  
7 know, come to town. Go ahead.

8 This has been one of our arguments about 002  
9 outfalls in our permits. We want them to be there.  
10 Okay? We don't want them eliminated because some  
11 people say when you eliminate them that means you  
12 pick up the pipe and you don't let it discharge  
13 anymore. You slam the gate shut. And we're saying,  
14 no, no. There are situations where you need to be  
15 able to let water flow out of there; so that you  
16 don't wreck your biology, so that you don't damage  
17 the property, so that you don't damage the people.  
18 'Cause if you put that thing closed all the way and  
19 water starts to back up you're going to inundate the  
20 plant and there's going to be guys in boots walking  
21 around up to their knees in sewage. And we're  
22 suggesting that's not a good idea. We need a place  
23 to release that.

24 So our question is: How many Kansas permits  
25 have one of those 002s in them? Because they're not

1 specified in the two or three permits -- the two  
2 permits that have been -- have federal orders. And  
3 so when I called Kansas, I called them and say, hey,  
4 you know, I'd like -- I can't work your website can  
5 you tell me how to pull down the permits. They said,  
6 oh, they're not for public viewing. Excuse me? I'm  
7 from Missouri and every permit is for public viewing  
8 in Missouri; draft permits and regular permits. Now,  
9 how come you-all in Kansas don't do that? I don't  
10 know. They're not forced to do that. And  
11 transparency -- with transparency is a cost, a cost  
12 to the Department to be transparent. You got to pull  
13 that stuff on the website. You have to maintain the  
14 website. How come Kansas doesn't have to do that and  
15 we have to do that? That's a good question.

16 The federal order is also silent on this concept  
17 of discharging through its peak wet weather holding  
18 basins. Okay? And I have the wording "ignore" there in  
19 quotes. And you'll probably here some federal folks,  
20 today, say, well, hang on a minute we didn't ignore  
21 that because they're illegal. Then what I want to  
22 hear them say is, they're illegal. We're going to  
23 force you to do something about just like they're  
24 talking to Missouri about us doing something about  
25 it. John.

1           So I'm trying not to put words in the federal  
2 governments' mouth. Okay? 'Cause that's a very  
3 dangerous position to me 'cause I am, in fact, just  
4 David. They can just, in fact, run over me. But do  
5 they feel that the use of this 002 violates the Clean  
6 Water Act? I'm going to guess that they say, yes,  
7 that that is a bypass. But when you read some of the  
8 language that they talk about in their inspection  
9 report they talk about the sample results that were  
10 done from the 002 outfall and equate that to the 001  
11 outfall. And I'm saying that's not right. John.

12           And in their inspection report the language is here.  
13 The weekly average BOD limit for outfall No. 1, 30  
14 grams -- milligrams per liter was exceeded at outfall  
15 2. If that statement was in Missouri I would tell  
16 you that we wouldn't even have that sentence in  
17 there. It's illegal to discharge from outfall No. 2.  
18 I don't care what you put through there. You're not  
19 allowed to meet permit requirements on one outfall  
20 and have it applied to another. That's not what  
21 we're doing. The federal government is insisting,  
22 adamantly, so I would say that using 002 outfalls  
23 violates the bypass language of the Clean Water Act.  
24 In other words, it's a violation.

25           And that they don't allow us to meet 002 outfall

1 standards and limits with an outfall that's located  
2 somewhere else in the plant or somewhere else  
3 in the watershed.

4 So how come? All right. That question six and  
5 seven are kind of a how come question because at some  
6 point in the future I'm going to have to go to  
7 somebody like a Chamber of Commerce and be able to  
8 say that the rules and regulations are fair, in each  
9 state, in each region. And we know that from  
10 experiences, today, already that it's not always the  
11 same from region to region. And I'm suggesting it's  
12 not even fair and balanced between two states.

13 Now, fair and balanced. I'll have some critics  
14 who say, now, it is fair. It is balanced. And I'm  
15 telling you from where I stand some of that is not  
16 fair and balanced. John.

17 We're using compliance tools and other states  
18 are not. And I applaud Missouri's dedication to use  
19 a compliance tool. But this 85 percent removal  
20 efficiency this is really something interesting  
21 because this gets inside the fence we call it in  
22 wastewater operations. By using this we break apart  
23 the treatment plant into its separate components and  
24 measure each of them independently rather than  
25 collectively. You don't measure the fact that we met

1 our effluent limits. You say, you know, what you met  
2 your effluent limits, but you didn't meet 85 percent  
3 removal.

4 Now, in this particular facility -- John, go  
5 ahead -- I want this question answered which is; so  
6 my BOD was seven on the outfall but maybe it was only  
7 -- you know, 40 on the influent. So I came up a  
8 little short on that 85 percent efficiency but my --  
9 I hit my permit limits. So because I hit my permit  
10 limits how does -- John, back up one; would you,  
11 please? How does that 85 -- that -- that not hitting  
12 the 85 percent removal efficiency affect water  
13 quality in the Gulf of Mexico? How does that -- how  
14 is that affected? John.

15 And there it is right there. How does that lack  
16 of 85 percent removal support continued discharges  
17 from the peak flow wet weather basin? I've come down  
18 to two last questions here. Missouri, 002 outfall,  
19 we want you to sign up for a voluntary compliance  
20 order and we want you to get on track and spend money  
21 within the next ten years to hit your targets for  
22 inflow and infiltration reduction by signing up for  
23 voluntary compliance orders. In Kansas they get to  
24 continue at their own pace. And because they get to  
25 continue at their own pace they're allowed to slow

1 down the process. Slow down the infusion of capital  
2 into municipal governments. And we're saying in  
3 Missouri, well, you don't get to do that.

4 In fact, the way we have this voluntary  
5 compliance order structured -- agreement structured  
6 you have a five plus five. The first five years of  
7 your permit, second five years. So why would we want  
8 to do that. I mean, that seems like a lot of work  
9 for folks like Owensville and Cassville and other  
10 communities around the state to even want to consider  
11 signing up with a program for the state. And that's  
12 a great question to which I have this following  
13 answer.

14 In the last seven years there have been two  
15 federal orders issued in the state of Kansas, one,  
16 for Osawatomie and the other for Moundridge and there  
17 are 32 orders in Missouri. John.

18 So if we use the last seven years as a guide  
19 for every 222 municipals in Kansas you're going to  
20 have the misfortune of getting a federal order; if  
21 you're in Missouri that's one in 23. Why is it --  
22 why is it that Missouri warrants a ten-fold order  
23 issuance rate by Region 7? Why is that? Are our  
24 operators in our cities just not that good? I beg to  
25 differ with that. I think we do have good operators,

1 good municipalities and good cities. I want to know  
2 why -- I know why we need protection 'cause we feel  
3 like we need it. We're buying protection with a  
4 voluntary compliance agreement, but other states  
5 aren't buying one of those.

6 And the risk, of course, is the (inaudible) of  
7 the federal government could get you. They could  
8 come to municipalities in Kansas and cite them with  
9 federal orders and I'd appreciate that. I would  
10 appreciate that 'cause I see one in 23 getting  
11 orders. I think it's a big deal here. And I want to  
12 see how the feds are going to level the playing  
13 field.

14 Those are thought provoking questions. Now, I  
15 noticed Goliath. I don't feel them, yet, but, you  
16 know, I am still just David and I don't have a rock  
17 or a slingshot. So these are thought provoking  
18 questions. And in front of this group that's a great  
19 idea because we have to -- we're in control of some  
20 of the purse strings later on in the process of about  
21 how much money we spend and when and how and how fast  
22 we have to spend it.

23 Do you have any questions of me?

24 (No response.)

25 CHAIRMAN HARDECKE: You've asked several.

1 MR. PHIL WALSACK: Thank you.

2 CHAIRMAN HARDECKE: Melissa.

3 MS. MELISSA BAGLEY: Hi, Melissa Bagley from EPA,  
4 Office of Regional Counsel. We were provided the  
5 opportunity to review this presentation before Phil  
6 made it today and we appreciate that very much. And  
7 we've had several conversations and I think that Phil  
8 has done a good job in listening to us and making  
9 sure that certain statements weren't attributed to  
10 -- EPA that -- that weren't made by us.

11 There are a couple points I do want to clear up.  
12 I don't want to go through point by point and discuss  
13 the specific questions raised, but I do want to make  
14 a couple points today. The first point I do want to  
15 make is that the Osawatomie permit does specifically  
16 prohibit bypass in their permit language.

17 What Kansas does is they -- they reference the  
18 holding basin. They say that the discharge from the  
19 basin is prohibited per their standard conditions.  
20 And Kansas standard conditions prohibit the discharge  
21 of a bypass specifically in their standard  
22 conditions.

23 The other point I do want to make is that any  
24 discharge from a prohibited bypass in a permit is  
25 something that is illegal under that permit and

1       therefore a violation of the Clean Water Act and --  
2       and that position is clear across the board.

3               Finally, we do appreciate that Missouri will be  
4       moving forward with putting prohibition language in  
5       their NPDES permits as they move forward to reissue  
6       many of these permits that Phil has addressed. We  
7       appreciate that. For the first time some of these  
8       facilities may be facing a clear prohibition of the  
9       bypass as well as facing non-compliance as soon as a  
10       discharge may occur from that point. We appreciate  
11       the fact that DNR has worked to develop a compliance  
12       -- a voluntary compliance agreement to address that  
13       immediate non-compliance and EPA supports DNR in this  
14       effort.

15               I think those are the two points I did want to  
16       make. I'll answer any questions that you have.

17       CHAIRMAN HARDECKE: Any questions?

18       (No response.)

19       MS. MELISSA BAGLEY: Thank you.

20       CHAIRMAN HARDECKE: Thank you.

21       MR. SCOTT TOTTON: Sonya would you like to address  
22       the Commission?

23       MS. SONYA WELLS: Hello, I'm **Sonya Wells**. I've  
24       talked to several people with DNR throughout the last  
25       three years. This is a problem that's been going on

1 since 2007. And we have been a lawsuit since 2007,  
2 civil. And then we recently were able to get the  
3 attention of the prosecuting attorney in Ozark,  
4 Missouri, which is in Christian County, which I have  
5 a copy of; where, also, criminal charges were placed  
6 on the person who sold us some property.

7 I've told this story so many times and I've  
8 talked to Charles Harwood, Dan Leyland, Leanne  
9 Tippett, Marty Miller, Scott Totten, Zoe a  
10 constituent of the Attorney General's office, Ron  
11 Cleek prosecuting attorney, Christian County  
12 detective and Clair McCaskill's office. I am looking  
13 for justice.

14 I have been taken advantage of. I am somebody  
15 that I would consider to be knowledgeable and however  
16 it is apparent to me that I have been really taken  
17 advantage of and hurt financially because of that.

18 We purchased some property from a Suzanne Vanvig  
19 where it was property that was auctioned. Twelve  
20 three acres tracts, Christian County and Ozark  
21 allowed her to walk through three minor contiguous  
22 subdivisions in a row within two weeks of each other  
23 she changed the names. First her name, then her  
24 husband's name and then her and her husband's name so  
25 that was the first violation, that was in '01.

1           I'm a real estate agent in Ozark Missouri, and -  
2           - you know, I deal with real estate all the time. I  
3           had known about this subdivision. It had been  
4           marketed in '03. I had gotten information on it many  
5           times so on. None of the lots were ever sold. So in  
6           2007 it was put up for auction. We live within a  
7           mile of there. My husband is a builder. We're just  
8           hardworking people trying to do our job. We have  
9           excellent credit and we've maintained that somehow  
10          through this extreme duress that this has caused for  
11          us.

12          We -- the lots we found out -- well, at auction  
13          they were auctioned off as individual lots, sequence  
14          of lots and then as all the lots together. We didn't  
15          even want all 12 lots. We wanted six lots. We  
16          wanted the ones on the top where we could put a road,  
17          cud le sac. We tried to do good business. Never  
18          have been in a lawsuit ever before and I've sold real  
19          estate for 20 years.

20          (Tape Three, Side A concluded.)

21          MS. SONYA WELLS: So we ended up with all the tracts.  
22          We were notified -- told while my husband was in  
23          Christian County Planning & Zoning that we could not  
24          build on all six lots -- or all 12 lots. So, also,  
25          from that point; I started contacting DNR, started

1 talking, started calling Attorney General's Office,  
2 started doing everything I knew to find justice, you  
3 know.

4 And I just kept getting -- I had a meeting with  
5 John Grubaugh the Commissioner in Ozark. We had the  
6 meeting, they said they'd get back to us; guess what?  
7 They didn't get back with us. So long story short we  
8 were contacted by DNR, Christian County turned us  
9 into DNR, DNR knew about the problem before the  
10 auction. Apparently, the owner -- there was a report  
11 filed on 12/20 of '0- -- let's see, yeah, 12/20 of  
12 '06 and Dan Leyland was involved in that. So they  
13 knew about the auction, but unfortunately Ms. Vanvig  
14 convinced your attorneys at DNR that she wasn't  
15 necessarily going to sell it as a subdivision. She  
16 claimed she was a widow lady that needed to -- that  
17 money in order to survive and -- you know, really  
18 played on her heart, I guess.

19 And so ultimately DNR didn't do anything to stop  
20 the sale. However, they tried. I have inner-office  
21 e-mails saying that I talked to Suzanne Vanvig,  
22 today, that was on December 26th of '07. And, yet,  
23 she was warned. I pretty much have proof of that.  
24 And then phone calls were made to her residence and  
25 so on. Long story short she sold it as twelve three

1        acres tracts so that she could get more money.

2        That's called fraud the way I read it in the -- you  
3        know, when you look up the word fraud.

4                So since then we had to go through compliance  
5        with the DNR. We had to do the -- hire an engineer.  
6        Everything fell on to us to bring it into compliance.  
7        So we couldn't do anything. We were shut down. We  
8        were told you can't sell. You can't do any -- lease  
9        your -- you can't do anything. You're shut down  
10       until you bring it into compliance. So we did, you  
11       know, we have -- we certainly didn't want to do  
12       anything against DNR.

13               So we did everything they asked and then we  
14       hired the engineer and I -- funny I was looking -- as  
15       I was waiting I was looking back through this and the  
16       engineer said there's very little runoff on this  
17       property, there's ridges. And it says there's very  
18       little water runoff on this property, however, when  
19       we got our -- our geohydrological groundwater  
20       evaluation rating it said 4.9 acres is all we can  
21       have per tract.

22               Well, the big problem with that is we had  
23       already roughed in a road and we had already sold two  
24       lots so now we had to figure out a way to make things  
25       work for us and to work for you guys and everybody.

1 So what we ended up doing is combining some of our  
2 three acres tracts into six acre tracts.

3 So there's six tracts that we had to then change  
4 into three tracts ultimately we lost three tracts.  
5 Now, we have large undesirable tracts that now we  
6 can't sell. They're priced way to high. We have --  
7 we can't get our allotment out of our \$80,000  
8 blacktop road that we put in. Everything is defunct  
9 lost thee tracts, lost the profit of six tracts  
10 because when you combine them you lose six profits,  
11 defunct the subdivision. You know everything about  
12 the economy since we were held up for months -- I  
13 mean, the appraisal and everything was based on  
14 twelve tracts. The appraiser said everything was in  
15 line and so on.

16 So anyway long story short we've sold four three  
17 acres tracts. Our six acre tracts are priced 10,000  
18 over what the three acre tracts are selling for and,  
19 yet, they won't sell. Nobody wants them because the  
20 -- the owner of the property, Suzanne Vanvig, also,  
21 put subdivision restrictions on it the day we closed.  
22 So even though you-all told her she couldn't sell it  
23 as a subdivision she not only did, but she put  
24 subdivision restrictions and when we didn't ask her  
25 permission when we built a home there she came on to

1 our property and threatened us and -- you know, it's  
2 just been a nightmare.

3 We've been in a lawsuit for three years and  
4 we've made no progress. We've had three different  
5 attorneys. We have been out \$20,000 -- you know, it  
6 just -- it has been a nightmare. And for us to keep  
7 up the debt that we have, you know, economy now has  
8 changed nobody's building houses, you know, so it  
9 threw off the timing. Everything is just a big fat -  
10 - you know, big fat mess.

11 And with our deal with Christian County, the  
12 prosecuting attorney, there was recently a mix-up on  
13 times. The judge dismissed our criminal case. So  
14 once again no justice, however, Ron Cleek is going to  
15 re-file. We're going to put it before another judge.  
16 We've had a rash of bad luck and it's not anything  
17 that we ourselves have done to DNR, you know, we  
18 didn't do it.

19 CHAIRMAN HARDECKE: Can I ask a question?

20 MS. SONYA WELLS: You may.

21 CHAIRMAN HARDECKE: So it sounds like these are  
22 issues that are not -- wouldn't be something we can  
23 deal with here.

24 MS. SONYA WELLS: Well, my quest - -- well, and that's  
25 -- I'm hoping that you guys can help. My -- what I

1 would like to have done is to change my six acre  
2 tracts back into three acre tracts so that I can sell  
3 those for what I have in them. I don't believe that  
4 there is any way to think there's any risk of  
5 contamination.

6 Phillips Engineering indicates that the offsite  
7 storm water flows on to this property is very little.  
8 And then you-all's report indicates that it is,  
9 somewhere on here, extremely likely. And so there's  
10 some conflicting things on here. Since this analogy  
11 we've also -- the City of Ozark has looped in city  
12 water to that whole area. The whole exterior west  
13 and north or -- south portions of our property, now,  
14 are serviced by city water not just a community well,  
15 but city water.

16 So once again the risk of contamination, the  
17 flow of the land goes -- it doesn't go down to any  
18 wells, there are no wells, you know. The fact is  
19 that, you know, once again if we had bought six  
20 instead of twelve or if somebody else had bought  
21 four, four and four we wouldn't be here, today, I  
22 mean, common sense -- you know, there's got to be a  
23 little common sense to these rules. And when -- when  
24 -- when DNR had the possibility of stopping the sale,  
25 but was coaxed into allowing somebody to sell her

1 property and didn't con- -- try to control that any  
2 better.

3 And Christian County, you know, Planning &  
4 Zoning let me down and then -- I mean, you know, my  
5 husband's 55-56 years old. I mean, this is our life  
6 savings. So, I mean, the potential of us coming out  
7 of this and having a way to overcome this -- I mean,  
8 we just redid our loan. Guess what the bank is only  
9 willing to give us another six -- well, six months  
10 starting in January, you know, they'll only redo our  
11 note for six months since, you know, very few of the lots have  
12 sold now, so --

13 CHAIRMAN HARDECKE: I don't know that we can do  
14 anything about the economic situation that's caused  
15 these problems and we'll have to get comment from  
16 Staff with regard to the --

17 MR. SCOTT TOTTEN: Chuck Harwood's here he can  
18 provide some perspective and some background, I  
19 think, on that. Chuck would you like to kind of give  
20 some --

21 MS. SONYA WELLS: I understand the economic times.  
22 That is not your fault and I'm not saying -- I'm  
23 saying there's a lot of things that could have  
24 changed this for us. And we're out 300 and some odd  
25 thousand is how much we will lose. And so I don't

1 think you would -- if you were in the same position I  
2 don't think that you'd be standing up here and asking  
3 for anything less than what I'm asking for.

4 It is catastrophic to a family. And everybody  
5 could have done something a little bit different and  
6 because -- and I'm -- I'm -- I think, there is a  
7 problem a little bit with the correlation between my  
8 engineer's report and the -- and the overall  
9 analysis. I'm just asking you to take a look at it.  
10 If there's risk then don't do it, but I don't see  
11 risk as a layman or a non-engineer but we didn't  
12 create this.

13 Christian County indicates when they approve a  
14 subdivision that all environmental issues have  
15 already been addressed. They weren't. Every single  
16 government entity that we rely on and should be able  
17 to rely on has let us down. And it -- it's -- you  
18 know, it's huge for a normal family.

19 CHAIRMAN HARDECKE: Yeah. And I understand that, but  
20 I don't know that we can solve the legal problems of  
21 Christian County or -- and I -- we'll listen to what  
22 -- what's his name --

23 MR. SCOTT TOTTEN: Chuck Harwood.

24 CHAIRMAN HARDECKE: -- Chuck has to say and -- go  
25 ahead.

1 MR. CHUCK HARWOOD: Thank you.

2 I am Chuck Harwood. I'm soil scientist with the  
3 permits engineering unit. The situation with -- I'm  
4 not sure -- I'll give a very brief background on what  
5 the residential housing development rule is. It is  
6 to come up with a minimum lot size based on two  
7 accepted sciences, geology and soil science. The  
8 geology looks at and gives the minimum acreage based  
9 on groundwater contamination potential only. The  
10 soil science of it looks at the ability for that soil  
11 to landscape, a soil landscape model. How it can  
12 treat and control that effluent effectively and  
13 reduce adverse effects of the environment and  
14 hopefully protect some public health.

15 The minimum acreage is calculated from the  
16 higher value of the two investigations. So that's  
17 why we always tell somebody when doing a development  
18 to get the geohydrologic evaluation done. The  
19 Department has done this -- some type of a geo-  
20 hydrologic evaluation for subdivisions since  
21 basically our inception. And this has always been  
22 done as a service and, I think, it's worked out well.

23 Again, we do this as a check and balance to come  
24 up with a minimum lot size so we know that the soils  
25 and the geology can treat and control that effluent.

1 It's kind of, like, a mass balancing equation. And  
2 we use -- again, base it on accepted field soil --  
3 field soils and geology practices. So that's how it  
4 is. There are some other nuances within it, but I  
5 won't get into that at this time.

6 When it goes to this particular situation, when  
7 we learned about this early on, right at the end of  
8 December right before this proposed sale we tried to  
9 do everything we could to contact Ms. Vanvig and tell  
10 her that the sale in this nature would be  
11 inappropriate and be a violation. Once we did find  
12 out about it after we don't -- as you know, we don't  
13 have the right to go in there and stop a sale. We  
14 can tell her and tell any developer that if you do  
15 this, this is what will happen. But we, as the  
16 Department, do not have that jurisdiction to stop a  
17 sale.

18 So we went and told her and informed her and  
19 tried to do the best we could. That I know I was  
20 trying to contact, I did not contact her personally  
21 and tell her to not sale the property. I did not  
22 hear about until later, until several months after  
23 they had -- the sale had gone down. And we found out  
24 what had happened that they did get all twelve lots  
25 so that means they had -- part of the regulation is

1 to have seven or more lots less than five acres in  
2 size then all of those lots less than five acres in  
3 size use onsite wastewater systems need to be --  
4 receive approval from the Department prior to the  
5 sale, lease or the commencement of construction on  
6 any of those lots.

7       So we told them when we found this out we said,  
8 hey, let's stop. Let's see what's going on here.  
9 Let's get a geohydrologic evaluation done and go  
10 from there. The geohydrologic evaluation done, is  
11 done obviously out of -- out of Rolla. The  
12 individual that did this -- they were -- they're  
13 registered geologists. This was done on June of '07  
14 with the fact that the water supply would be a public  
15 water supply as what they have now. Even with that  
16 it came out as the 4.9.

17       If they used individual wells on a lot just for  
18 whatever subdivision it may be the minimum acreage  
19 right there would be 1.2 because of groundwater  
20 contamination potential. So they were given the  
21 credit that there's going to be public water there.  
22 So there was no minimum acreage on that.

23       We have looked -- one of the ways that -- to  
24 help with this and we gave and she has done is to  
25 state, if you have six lots less than five acres

1 'cause I had another magic number out there that was  
2 seven, but if you have six lots less than five acres  
3 then the remainder of five acres and greater then you  
4 would be in compliance with the regulation.

5 The Christian County Planning & Zoning under its  
6 current administration has been telling people that's  
7 the way to go. Get the geohydrologic. This is the  
8 way to go for it. Why they let this be recorded the  
9 way they did under previous administration I don't  
10 know and I can't state them. I can say that we had  
11 talked with the Planning & Zoning Department on  
12 several different occasions and worked with them and  
13 the Commission on that.

14 And that is, again, basically, our --

15 CHAIRMAN HARDECKE: So seven or more lots constitutes  
16 a -- that's the threshold for --

17 MR. CHUCK HARWOOD: That's the threshold for the  
18 regulation, yes. We use -- we say a subdivision for  
19 purpose of this rule is three or more lots, but the  
20 threshold to -- for the regulation is seven or more  
21 for a new subdivision or an expansion of an existing  
22 development would be three or more lots less than  
23 five acres.

24 CHAIRMAN HARDECKE: And I'm assuming that an option,  
25 another option would be a centralized system and go

1 ahead and have the --

2 MR. CHUCK HARWOOD: Yes. We've come up with some  
3 different ones. The others could be, I know that we  
4 talked about it, would be even doing some multiple  
5 family residences there and still using onsite. We  
6 would need a different type of report, which would  
7 still be -- fall under this regulation or connecting  
8 to the City of Ozark but I believe that's a quite a  
9 distance away.

10 CHAIRMAN HARDECKE: But the city's brought water; how  
11 close is their sewer? Are they going to bring sewer?

12 MS. SONYA WELLS: Uh-huh. No sewer. Water there --  
13 this year it was completely looped in with city  
14 water. It's not based on the community wells that  
15 were in -- at that time. Most of our lots will have  
16 city water -- I mean, we've got one well. We've sold  
17 the lots -- you know, there's restrictions that she  
18 also put on there. So it is single family  
19 residential. We're tapped into that. She's also  
20 sued us to -- for something else. She accidentally put  
21 restrictions on her land, now, she wants to take  
22 those off but she still wants to encumber our land,  
23 so--

24 MR. CHUCK HARWOOD: I --

25 VICE-CHAIR HUNTER: She sounds like a lawyer to me.

1 MR. CHURCK HARWOOD: -- yeah, I -- you know, again, I  
2 know that's a difficult situation, but, one, is I do  
3 believe this regulation is a good check and balance  
4 throughout the whole -- entire State. There are  
5 sometimes when, yes, we have these numbers that come  
6 up high either on the geology or on the soils end of  
7 it and the lots that come up that way.

8 The -- I've asked -- I talked with the geologist  
9 down in Rolla in DGLS and I asked them about  
10 the situation and they reviewed other reports that  
11 they did in same area and they still stand behind  
12 this particular report that they have.

13 I have not seen or read the -- any engineering  
14 report that you had talked about, but --

15 MS. SONYA WELLS: Well, here's from Phillips  
16 Engineering where it says -- has very little off site  
17 storm water flows and it tells the reason why.

18 MR. CHUCK HARWOOD: I mean, if I could take that and  
19 make a copy of that --

20 MS. SONYA WELLS: Sure.

21 MR. CHUCK HARWOOD: -- and hand that to the  
22 geologist. As I said, I'm a soil scientist. I'm not  
23 going to change a registered geologist stamped  
24 report. I don't think that'd be --

25 MS. SONYA WELLS: So it's conflicting with you-all's

1 hydrological report which says that they have it  
2 marked as 1.2 regional discharge on watershed  
3 hydrology instead -- you know, very limited --

4 MR. CHUCK HARWOOD: Yes. I see that and the  
5 macropore and all that, so, yes, we can -- let me do  
6 this -- this is the first that I have seen of this.

7 MS. SONYA WELLS: Well, that -- I mean, that's all  
8 the information --

9 MR. CHUCK HARWOOD: I always say never say never,  
10 but, again, I --

11 MS. SONYA WELLS: Yeah. Well, and then her brings --

12 MR. CHUCK HARWOOD: -- I'm talking with them on this.

13 MS. SONYA WELLS: -- up and -- and Charles and I have  
14 discussed this. He's brought up about the multi-  
15 family -- you know, it's weird 'cause multi-family  
16 you could put that over here. Well, that's a lot  
17 more people pooping into the soil than if it was  
18 single family residence, I mean, I'm not trying to be  
19 brass. I'm just trying for -- for -- there to make  
20 sense of this.

21 MR. CHUCK HARWOOD: I understand that. The other  
22 thing is, obviously, that would be an engineering  
23 system and would be a little bit different than your  
24 standard single family resident onsite wastewater.

25 But, again, we wanted to put -- give you every

1 option that we could think of on this, so --

2 MS. SONYA WELLS: And it's just three more lots --  
3 you know, it's just three more lots, but it makes a  
4 difference in me being able to get rid of this  
5 property in a fire sale as opposed to not. And I'm  
6 trying to save my creditability and my -- you know,  
7 we've -- three years we've made payments on this.  
8 And we've hung on. And we did it because we're  
9 decent people. We didn't throw it back to the bank  
10 like 90 percent of the people in today's world, you  
11 know, we're -- we have a lot of pride. So we're  
12 trying as hard as we can. I am asking for justice.

13 It wouldn't make any difference if two people  
14 bought this same six acre or -- two sets of people  
15 joined in a bought six tracts and six tracts you  
16 would still have the soil contamination. It doesn't  
17 make sense to make us lose this kind of a nest egg.  
18 And all we need is to be able to change it back into  
19 three acre tracts, sell it. I don't even care if you  
20 stipulate that I can't build on it. I don't even  
21 care. All I want is out of this investment. It's  
22 been a nightmare, misrepresented for the potential of  
23 obtaining more money. And she convinced you-all's  
24 Staff as well as everybody at the sale.

25 CHAIRMAN HARDECKE: Well, I --

1 MR. SCOTT TOTTEN: Chairman -- Chairman, if I might?

2 CHAIRMAN HARDECKE: Yes.

3 MR. SCOTT TOTTEN: I asked Ms. Wells to come here  
4 today because -- to present her issue in front of you  
5 verbally because her -- her original request was that  
6 she get a variance from the Commission from this  
7 regulation.

8 CHAIRMAN HARDECKE: Okay.

9 MR. SCOTT TOTTEN: And with all the money she's been  
10 out already I didn't want her to spend another \$250  
11 to -- to ask formerly for a variance request with you  
12 not having the background and just to gauge your  
13 interest in entertaining such a -- such a request. I  
14 wanted you to hear the information, first, in other  
15 words.

16 CHAIRMAN HARDECKE: Why don't you take that report  
17 that she gave you and see if there's anything that  
18 you can make out of that. Would that be --

19 MR. CHUCK HARWOOD: Again, this is the first I've  
20 seen it.

21 CHAIRMAN HARDECKE: Right.

22 VICE-CHAIR HUNTER: Yeah.

23 MS. SONYA WELLS: And see I'm sorry, but I thought  
24 DNR had all the reports from the -- the engineer. It  
25 was required of us to do it. So I -- so it should

1 have been given to every- -- I mean, that -- that was  
2 the purpose of it.

3 MR. CHUCK HARWOOD: Right.

4 MS. SONYA WELLS: So anyway I'd be more than happy to  
5 share anything I have just so you know.

6 MR. CHUCK HARWOOD: And that's -- that's the other  
7 thing on, One, this regulation for part of the  
8 subdivision using individual lots. We don't require  
9 an engineer to sign off on this or to write a report  
10 up. A qualified soil scientist and our geologist,  
11 yes, but not an engineer.

12 MS. SONYA WELLS: I don't know -- we just --

13 MR. CHUCK HARWOOD: I don't know where that came  
14 from. That may have been --

15 MR. SONYA WELLS: -- done what we were told to do and  
16 we did and immediately.

17 MR. CHUCK HARWOOD: If I can make a copy of this,  
18 I'll get it back to you.

19 MS. SONYA WELLS: Okay. Yeah.

20 MR. CHUCK HARWOOD: All right?

21 MS. SONYA WELLS: Okay.

22 MR. CHUCK HARWOOD: I'm going to do that and then  
23 I'll --

24 CHAIRMAN HARDECKE: Any other questions for --

25 MS. SONYA WELLS: Thank you, appreciate it.

1 VICE-CHAIR HUNTER: Well, one question. Have you --

2 MS. SONYA WELLS: Okay.

3 VICE-CHAIR HUNTER: -- have you considered putting in  
4 a central system?

5 MS. SONYA WELLS: No. You mean, septic systems? No,  
6 really not because we've --

7 VICE-CHAIR HUNTER: Will it support something like  
8 that?

9 MR. CHUCK HARWOOD: You mean for the individual or  
10 for --

11 VICE-CHAIR HUNTER: For the entire subdivision.

12 MR. CHUCK HARWOOD: For that development is what he's  
13 talking about a centralized system that would serve  
14 every lot, basically, a mechanical plant for them.

15 MS. SONYA WELLS: Well, we sold. We have already  
16 sold it for a certain -- you know, we're doing three  
17 party -- we did one three party well and we will have  
18 to do one other three party well. The rest of the  
19 lots will be serviced by city water. So, no, it  
20 didn't make sense to --

21 VICE-CHAIR HUNTER: I'm talking about sewers.

22 MS. SONYA WELLS: Well, it didn't make sense cost  
23 wise to put in a centralized sewer system when our  
24 soil scientist says that -- that the land is suitable  
25 for standard septic systems. I know from years ago

1 talking with Glen Hubble if it's engineered correctly  
2 even a half acre tract is satisfactory to take care  
3 of waste if it's put in appropriately. All our  
4 septic systems are put in appropriately.

5 We have so much wrapped up in the cost of  
6 developing this property. They changed all the rules  
7 as we went along -- I mean, instead of a \$30,000 road  
8 we've had to put in an 80, which isn't you-all's  
9 problem, but if you can't buy a property and in your  
10 mind know to develop it you can make money, I mean,  
11 that's how we make a living. So this hasn't been  
12 just an investment. This is our wages. This is how  
13 we make a living. So, no, it didn't balance out to  
14 do a -- a centralized sewer system. And it's way too  
15 far away to bring it to our site.

16 So, I mean, no, it -- it wasn't cost effective  
17 to do that, so --

18 VICE-CHAIR HUNTER: That was just a suggestion.

19 MS. SONYA WELLS: And I appreciate it.

20 VICE-CHAIR HUNTER: I know you hate to throw good  
21 money after bad, but sometimes in order to get out of  
22 the trap you have to put a little cheese in there.

23 MS. SONYA WELLS: Well, I don't think our bank would  
24 -- would loan us another dime on the property -- I  
25 mean, we are at this point -- you know, we have

1 always been able to make really good investments  
2 based on our knowledge. Unfortunately, this one went  
3 beyond our knowledge and there was hidden defects to  
4 the -- to the property that nobody would have known  
5 about.

6 So with that being said, no, I -- we can't  
7 afford it at this point, I mean, we're -- we have  
8 borrowed against our home -- you know, a lot of money  
9 to try to get to this point just to stay current with  
10 our loans. Hoping everyday that I can get this  
11 relinquished. We've never even gotten to court.  
12 That or -- Suzanne Vanvig has a very good attorney.  
13 We've just had -- we can't even get to the court --  
14 you know, we just -- they keep stopping. They keep  
15 changing. They keep -- I -- and as you know you  
16 can't represent yourself. I've had to put my civil  
17 case on hold because I -- I'm -- he wants another  
18 10,000 and I don't have another 10,000 when I just  
19 paid my daughter's college. You know what I mean. I  
20 mean we're just struggling to maintain and that's why  
21 I'm asking for like I said from the beginning I'm  
22 asking for a little justice. A little bit of common  
23 sense. And for somebody to just --

24 CHAIRMAN HARDECKE: I -- I don't think --

25 MS. SONYA WELLS: -- realize that this does affect

1 the family.

2 CHAIRMAN HARDECKE: -- that we are in the position to  
3 bring justice to this situation, but see if you can  
4 do anything with that. But I don't think it would be  
5 fair for us to change the whole subdivision  
6 regulations for a case -- I mean, I -- I'm sorry for  
7 your situation you're in. But I -- I don't think  
8 that's because the regulations were unfair. It's  
9 just that you weren't aware of them at the time you  
10 got into this.

11 MS. SONYA WELLS: Um-huh. And that's true. However,  
12 you guys were aware of it. And so I think -- I mean,  
13 in all honesty, I think, everybody has a little  
14 responsibility in this.

15 And for that reason --

16 CHAIRMAN HARDECKE: I don't think DNR, as Chuck  
17 stated, I don't think DNR has the ability to stop  
18 sales. That's a whole another --

19 MS. SONYA WELLS: Well, you stopped mine. That's  
20 where I disagree. You stopped me. You completely  
21 shut me down. Told me I couldn't sell or do anything  
22 with my property. So it's real hard for me to say  
23 you can't -- you can't stop her, but you can  
24 certainly stop me. And I've relinquished all my  
25 offices that I can go to.

1           So if you guys say, no, you know what I'm just  
2           done. This is my last deal. My daughter's trying  
3           out for cheerleading today and I choose to be here  
4           instead so I don't act like that I'm here in vein. I  
5           have a life and this has been -- this has taken so  
6           much away from my family so don't sit there and act  
7           like you can't do anything because I know that this  
8           is an injustice and your office is just as  
9           responsible as anybody else's. You've hurt us.

10          MR. CHUCK HARWOOD: I will review this.

11          CHAIRMAN HARDECKE: Thank you.

12          MR. CHUCK HARWOOD: Thank you.

13                 Let me get this. I'll get this back to you.

14          CHAIRMAN HARDECKE: Is there any other -- does  
15          anybody have anything else?

16          VICE-CHAIR HUNTER: No.

17          CHAIRMAN HARDECKE: Motion?

18          COMMISSIONER SHORNEY: For adjournment?

19          (No response.)

20          COMMISSIONER SHORNEY: I move --

21          VICE-CHAIR HUNTER: So moved.

22          COMMISSIONER SHORNEY: Second.

23          CHAIRMAN HARDECKE: Malinda, take the vote, please.

24          MS. MALINDA OVERHOFF: Commissioner Shorney?

25          COMMISSIONER SHORNEY: Yes.

1 MS. MALINDA OVERHOFF: Commissioner Hunter?

2 VICE-CHAIR HUNTER: Yes.

3 MS. MALINDA OVERHOFF: Commissioner Easley?

4 COMMISSIONER EASLEY: Yes.

5 MS. MALINDA OVERHOFF: Chair Hardecke?

6 CHAIRMAN HARDECKE: Yes.

7 (Tape Three, Side B concluded.)

8 CERTIFICATE OF TRANSCRIPTIONIST

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Respectfully Submitted,

Scott B. Totten  
Acting Director of Staff