

1                   BEFORE THE CLEAN WATER COMMISSION  
2                   DEPARTMENT OF NATURAL RESOURCES  
3                   STATE OF MISSOURI

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5

6                   MEETING OF:  
7                   MARCH 4, 2009

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11                   CONDUCTED BY:

12                   CHAIRPERSON KRISTIN M. PERRY

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## 1 PROCEEDINGS

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3 CHAIRPERSON PERRY: Yo, everybody! Let's have a  
4 meeting.

5 Has anybody seen Davis here?

6 COMMISSIONER EASLEY: I did.

7 CHAIRPERSON PERRY: But he's not here, now.

8 COMMISSIONER EASLEY: He said he was checking  
9 out and he'd be in then.

10 CHAIRPERSON PERRY: Oh. That's right.

11 Well, maybe I should've waited. I won't  
12 introduce him until he comes.

13 As soon as all the members of the Commission  
14 approach the table --

15 For a reminders, I'm waiting just a minute for  
16 Davis Minton to enter the room. I hope he'll make it soon.  
17 I remind everyone if you have conversations please  
18 take them out in the hall. If you have cell phones,  
19 please, turn them off or on vibrate.

20 I welcome you-all to my end of the state. I  
21 hope you enjoy the beautiful hills of northeastern  
22 Missouri. If you time driving home I suggest you  
23 take 79 down, it's the scenic route along the river.  
24 It's not probably the prettiest day but it is still  
25 awful beautiful up this way. And I'm glad you-all

1 were able to come here.

2 For those of you who are local I'm glad we were  
3 able to have a meeting closer to you. And closer to  
4 me since two of us met in the airport last night at  
5 ten o'clock.

6 Davis still isn't here so I think I'm going to  
7 go ahead. Ed, are you here?

8 (No response.)

9 Okay. I'd like to say a few words. Those of  
10 you --

11 (AUDIO CHANGED SPEAKER)

12 VICE-CHAIR HARDECKE: The bold print is all new  
13 language but the highlights --

14 (AUDIO CHANGED SPEAKER)

15 CHAIRPERSON PERRY: -- that we had some strong  
16 and rather passionate discussion. I don't apologize  
17 for that. I think it makes this Commission a better  
18 Commission. I think strong and passionate discussion  
19 is a good thing. It's the same thing that Jefferson  
20 and Adams had that started this country. And they  
21 came up with a better place and a better democracy  
22 because they were willing to engage in that.

23 I think that the purpose of this Commission is  
24 to offer a counter-balance to the Department in some  
25 of the bureaucratic ideas. And I think that there is no

1 one with whom, in my nine years of experience on  
2 this Commission, I've engaged in heated discussion  
3 with more strongly than with Ed Galbraith.

4 But never during that conversation did I ever  
5 lose respect for Ed Galbraith. Never in those  
6 conversations did Ed Galbraith ever fail to return my  
7 call or did I ever fail to return his. He never ran  
8 away from it. He always came right up and we had  
9 that discussion. And at almost every single case by  
10 the time we got to a Clean Water Commission meeting  
11 we had reached a resolution that I think we both felt  
12 was a better resolution than had we not had those  
13 discussions.

14 I encourage those of you in the Department to  
15 continue to engage in those discussions. Nobody  
16 knows how to solve these problems alone.

17 Now, because we come at them from different  
18 points and we may state them in kind of strong ways  
19 that go, "Ewe, ewe, I don't want to talk about it.  
20 I'm going to go around and just do what I want to  
21 do." That's not a good idea. And so, Ed, I admire  
22 you for the example that you have set. And I  
23 publically acknowledge that it was indeed my pleasure  
24 to work with you. And if you would come up here, we  
25 have something for you.

1           Missouri Clean Water Commission in recognition  
2 of Edward Galbraith, Be it known that, whereas, Ed  
3 Galbraith as Director of Staff of the Missouri Clean  
4 Water Commission, served the Commission since  
5 February 2005, and, whereas, Edward Galbraith  
6 demonstrated a vital link between the Commission, the  
7 Department and the public. And, whereas, Ed  
8 Galbraith, has supported the Missouri Clean Water  
9 Commission with distinction and dedication, devoting  
10 many hours to the challenges facing Missouri's  
11 environment and, whereas, Edward Galbraith,  
12 demonstrated a sincere desire to support the goals of  
13 the Missouri Clean Water Commission in its water  
14 protection efforts and, whereas, under Ed Galbraith's  
15 innovativeness and leadership the Water Protection  
16 Program has been able to maximum limited resources to  
17 implement numerous new federal mandates and, whereas,  
18 Edward Galbraith's dedication and professionalism are  
19 recognized by all now, therefore, be it resolved that  
20 the Missouri Clean Water Commission hereby recognizes  
21 Mr. Galbraith for his service to the Commission and  
22 to the State of Missouri; March 4th, 2009.

23           It was indeed my pleasure to sign this.

24           (Applause.)

25           MR. GALBRAITH: I just want to take an issue

1 with one thing that Kristin said, no, I'm just  
2 kidding.

3 (Laughter.)

4 CHAIRPERSON PERRY: It's okay. I'll listen.  
5 I'll listen for 30 seconds.

6 MR. GALBRAITH: Thank you all. It was a  
7 pleasure to serve you. As always, thank you for your  
8 service to the State of Missouri.

9 CHAIRPERSON PERRY: Okay. I would like to  
10 introduce to you, your Clean Water Commission. Is  
11 Davis Minton in the room?

12 VICE-CHAIR HARDECKE: Right there.

13 CHAIRPERSON PERRY: Oh, good. I want to  
14 introduce to -- to my immediate right is Ron  
15 Hardecke, Commission Vice-chair from Owensville.  
16 Next, is Sam Hunter, Commissioner from Sikeston,  
17 next, is Frank Shorney, Commissioner from Lee's  
18 Summit, Jan Tupper, Commissioner from Joplin, Bill  
19 Easley, Commissioner from Cassville. And I would  
20 like to reiterate how much I appreciate the fact that  
21 all of you make these meetings from all ends of the  
22 state. Some of you traveled about as far as it would  
23 take to get through three other states.

24 COMMISSIONER TUPPER: Amen.

25 CHAIRPERSON PERRY: So we appreciate it very

1 much.

2 (Laughter.)

3 CHAIRPERSON PERRY: We appreciate it. And to  
4 remind all people here that this Commission is a  
5 group of volunteers. And if you look at the size of  
6 these packets you can just start to imagine the hours  
7 that they spend reading and preparing for these  
8 meetings. Thank you all.

9 To my left is Earl Pabst, Acting Director of the  
10 staff for the Commission and Acting Director of the  
11 Water Protection Program, Deputy Director-Division of  
12 Environmental Quality. To his left is a new face, Jennifer  
13 Frazier, she's Commission legal counsel from the Attorney  
14 General's Office. And to her left is not such an  
15 unfamiliar face the lady who keeps all the details  
16 going for us, and there's another person who is  
17 always answering those e-mails right on and doing  
18 whatever she can to help out. Thank you. She is  
19 secretary -- it is Malinda Overhoff, Secretary to the  
20 Commission and Secretary to the Program.

21 We would also like to introduce a former Clean  
22 Water Commissioner. And, now, he has a position with  
23 DNR and we'd -- is -- I don't understand exactly what  
24 that title is, but, Davis would you please stand up  
25 and introduce that?

1           MR. MINTON: I'm Davis Minton. My title as of  
2 last week was special assistant to the director.  
3 Thank you very much.

4           CHAIRPERSON PERRY: Thank you. With that, we  
5 shall proceed.

6           Okay. **Item No. 1** on this agenda, **State Fiscal**  
7 **Year 2010 Clean Water State Revolving Fund Intended**  
8 **Use Plan.** The Commission will begin the public  
9 hearing on the Clean Water State Revolving Fund  
10 Intended Use Plan for the State Fiscal Year 2010.

11           Are you ready by the way?

12           MS. FIALA: I am.

13           CHAIRPERSON PERRY: The purpose of this public  
14 hearing is to provide the Department opportunity to  
15 present testimony and to provide both the Department  
16 and the public the opportunity to comment on the  
17 Intended Use Plan for State Fiscal Year 2010.

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

22           The Commission will first hear testimony from  
23 the Department. Following the Department's testimony  
24 the Commission will give the public an opportunity to  
25 comment. We ask that all individuals present fill

1 out an attendance card so our records are complete.  
2 If you wish to present verbal testimony, please,  
3 indicate that on your attendance card.

4 When you come forward to present testimony,  
5 please, speak into the microphone and begin by  
6 identifying yourself to the court reporter.

7 Following the public hearing, today, the  
8 Commission will receive testimony presented and make  
9 appropriate modifications to the proposal.

10 The Commission plans to take final action at  
11 the May 6th, 2009, meeting, the court reporter will  
12 now swear in anyone wishing to testify at this public  
13 hearing before the Clean Water Commission, today.

14 Will all those wishing to comment, please, stand?

15 (Public Hearing heard in regards to Draft 2010  
16 State Revolving Fund Intended Use Plan presented by  
17 Doug Garrett, Financial Assistance Center,  
18 transcribed by Ms. Susan Fiala of Midwest Litigation  
19 Services, 711 N. 11th Street, St. Louis, Missouri,  
20 63103. Transcript of the public hearing proceedings  
21 will be found in a separate transcript provided by  
22 Ms. Susan Fiala.)

23 (Tape One, Side A concluded.)

24 CHAIRPERSON PERRY: The Commission will receive  
25 written testimony on this proposal until 5:00 p.m. on

1 March 11th, 2009. You may submit this written  
2 testimony to Malinda Overhoff, Secretary to the  
3 Missouri Clean Water Commission, P.O. Box 176,  
4 Jefferson City, Missouri 65102, prior to that  
5 deadline.

6 On behalf of the Commission I thank everyone  
7 who has participated. This hearing is now closed.

8 Okay. Our next item is **Tab No. 2, approval of**  
9 **the January 7th, 2009, Clean Water Commission meeting**  
10 **minutes.** Commissioner Tupper did you have a  
11 correction.

12 COMMISSIONER TUPPER: Yeah. We need a  
13 correction on Page 69 of the minutes, 191 of the  
14 book. In the third line it refers SFY-2008, that  
15 should be SFY-2009.

16 CHAIRPERSON PERRY: Any further corrections?  
17 (No response.)

18 COMMISSIONER TUPPER: With that correction, I  
19 move the minutes be accepted.

20 COMMISSIONER EASLEY: Second.

21 CHAIRPERSON PERRY: We have a motion and a  
22 second. Would you call for the vote, please?

23 MS. OVERHOFF: May I ask who seconded it?

24 CHAIRPERSON PERRY: Who seconded it?

25 VICE-CHAIR HARDECKE: Bill Easley.

1 COMMISSIONER SHORNEY: Bill Easley.  
2 COMMISSIONER TUPPER: Bill.  
3 CHAIRPERSON PERRY: Commissioner Easley.  
4 MS. OVERHOFF: Commissioner Easley?  
5 COMMISSIONER EASLEY: Yes.  
6 MS. OVERHOFF: Commissioner Shorney?  
7 COMMISSIONER SHORNEY: Abstain. I was not  
8 present.  
9 MS. OVERHOFF: Commissioner Tupper?  
10 COMMISSIONER TUPPER: Yes.  
11 MS. OVERHOFF: Commissioner Hunter?  
12 COMMISSIONER HUNTER: Yes.  
13 MS. OVERHOFF: Commissioner Hardecke?  
14 VICE-CHAIR HARDECKE: Yes.  
15 MS. OVERHOFF: Chair Perry?  
16 CHAIRPERSON PERRY: Yes.  
17 Moving to **Item No. 3**.  
18 MR. ROB MORRISON: Morning Madam Chair, members  
19 of the Commission. My name is Rob Morrison. I'm  
20 Chief of the Water Pollution Control Branch at the  
21 Water Protection Program. Before you this morning  
22 is, I believe, relatively straight forward matter;  
23 probably not as stimulating as your last discussion.  
24 Anyway that was a joke. Sorry.  
25 (Laughter.)

1           MR. ROB MORRISON: This is a -- the reason this  
2 appeal item is before you, the **Dyno Nobel, Inc.**,  
3 facility there in Carthage appealed their Missouri  
4 State Operating Permit back in 2001, I believe, to  
5 the Commission. It was not appealed to the  
6 Administrative Hearing Commission. So, therefore,  
7 you'll recall that your instructions to us were that  
8 for appeals that were appealed to the AHC where we  
9 had a voluntary dismissal that there was no need for  
10 us to bring those items to you for your disposition.

11           This appeal is one of two, today, that falls  
12 under the category of being appealed to you and,  
13 therefore, you need to take some sort of action to --  
14 to dismiss the appeal. The appeal has been resolved.  
15 The permit -- their revised permit has been out. I  
16 can go through a couple of the issues, if you'd like.  
17 But I'll let you decide what your pleasure is, in  
18 that regard.

19           CHAIRPERSON PERRY: Are there any questions for  
20 Rob?

21           (No response.)

22           **VICE-CHAIR HARDECKE: I move the Commission**  
23 **dismiss the Dyno Noble appeal.**

24           **COMMISSIONER SHORNEY: Second.**

25           **CHAIRPERSON PERRY: We have a motion and a**

1 second, please, call for the vote.

2 MS. OVERHOFF: Commissioner Shorney?

3 COMMISSIONER SHORNEY: Yes.

4 MS. OVERHOFF: Commissioner Tupper?

5 COMMISSIONER TUPPER: Yes.

6 MS. OVERHOFF: Commissioner Hunter?

7 COMMISSIONER HUNTER: Yes.

8 MS. OVERHOFF: Commissioner Hardecke?

9 VICE-CHAIR HARDECKE: Yes.

10 MS. OVERHOFF: Commissioner Easley?

11 COMMISSIONER EASLEY: Yes.

12 MS. OVERHOFF: Chair Perry?

13 CHAIRPERSON PERRY: Yes.

14 Moving on to **Tab No. 4**.

15 MS. FRAZIER: It's me.

16 VICE-CHAIR HARDECKE: It is.

17 MS. FRAZIER: Do you want me to stay here or go

18 up front?

19 CHAIRPERSON PERRY: I'd prefer it, so we can see

20 you.

21 MS. FRAZIER: Sure.

22 CHAIRPERSON PERRY: Would you introduce

23 yourself, so the rest of the group knows a little bit

24 about you.

25 MS. FRAZIER: I'm Jenny Frazier with the

1 Attorney General's Office, legal counsel for the  
2 Commission. I'm going to be just summarizing a  
3 recommended decision -- or a recommendation by the  
4 AHC revolving -- involving a permit appeal. This is  
5 an appeal of CAFO Construction Permit by the Missouri  
6 Parks Association and four private individuals.

7 A summary of the facts is very basically, that  
8 on September 12th, 2008, the Department issued Permit  
9 3711 to Cin-Way authorizing the construction of a  
10 4,800 head deep concrete pit swine finishing  
11 building. The permit was thereafter appealed to the  
12 Administrative Hearing Commission by the Missouri  
13 Parks Association, what I'll refer to as MPA, and  
14 four private citizens.

15 On December 23rd the Department filed a motion  
16 for summary determination. On January 2nd and 6th,  
17 2009, the private citizens dismissed their appeal  
18 leaving only the appellant MPA. MPA did not respond  
19 to the Department's motion for summary determination  
20 and the AHC is recommending that you grant the  
21 Department's motion for summary determination.

22 The Missouri Parks Association raised two issues  
23 in its appeal. The MPA argued that the permit should  
24 be denied because airborne odors and pollutants from  
25 the facility would damage the use of Mark Twain State

1 Park; that facility is located approximately 12 miles  
2 from Mark Twain State Park. In support of its  
3 argument MPA relied primarily upon Department's  
4 statutory responsibilities for state parks in Chapter  
5 253.

6 The Administrative Hearing Commission is  
7 recommending that the Commission reject this argument  
8 as a matter of law because the Commission had  
9 previously determined in cases such as in re MOARK  
10 Productions that it does not have responsibility or  
11 authority to enforce any laws other than clean water  
12 laws in your permits.

13 And this would include any laws pertaining to  
14 state parks. The AHC references state regulation 10  
15 CSR 20-6.020, which states the Department does not  
16 have jurisdiction to address questions of zoning,  
17 location, property values or other non-water quality  
18 related items in clean water permits.

19 Additionally, the AHC notes that Chapter 640  
20 does contain certain buffer distances and neighbor  
21 notification requirements for CAFOs that are intended  
22 to consider odor related and nuisance related impacts to persons  
23 by visiting public building or occupied residences.

24 The AHC concludes that these buffer distances  
25 already protect park visitors to the extent allowed

1 by law. And they indicate that the Commission does  
2 not have the authority -- or they recommend to expand  
3 the buffer distances as the MPA desires or impose  
4 permit conditions concerning air quality issues.

5       Finally, on this issue the MPA contends that the  
6 Cole County Circuit Court ruling in MPA versus  
7 Department of Natural Resources, which involved the  
8 CAFO at Arrow Rock -- near Arrow Rock State Historic  
9 Site prohibits CAFOs from being located within a 15  
10 mile radius of a state park. However, this order was  
11 later amended by the Cole County judge to reduce that  
12 buffer zone in that case from 15 miles to 2 miles.

13       The second argument that the MPA raises against  
14 granting Cin-Way's construction permit is that were  
15 seven deficiencies in the permit application. And  
16 I'd be happy to go through each of the seven;  
17 however, the AHC determines the Department of Natural  
18 Resources had established facts refuting all of the  
19 alleged deficiencies. And the MPA presented no  
20 evidence disputing those facts and that the permit  
21 was indeed complete.

22       The AHC determines that the facts as established  
23 by the Department and not disputed by MPA entitled  
24 the Department to a favorable decision as a matter  
25 of law. And they are recommending that the

1 Commission grant the Department's motion for summary  
2 determination.

3 And I want to mention there were two other --  
4 actually, there were three other pending motions in  
5 the case. There was a motion to strike filed by DNR;  
6 all water quality issues in the appeal and the AHC  
7 dismissed that -- or denies the motion to strike as  
8 mute. DNR also followed a motion for sanctions and  
9 involuntary dismissal because MPA had not responded  
10 to its discovery requests. The AHC also denied that  
11 motion as mute.

12 And there is a pending motion of Cin-Way, a  
13 motion to dismiss. Cin-Way did not file a motion for  
14 summary determination, but since the relief it's  
15 seeking is the same as what the Department asked for  
16 the AHC is recommending that the Commission dismiss  
17 that motion as mute.

18 And I'd be happy to answer questions.

19 CHAIRPERSON PERRY: Are there any questions?

20 (No response.)

21 CHAIRPERSON PERRY: Guess what? I got one.

22 (Laughter.)

23 CHAIRPERSON PERRY: There was an amendment to  
24 the amended answer to Arrow Rock.

25 MS. FRAZIER: Um-huh.

1 CHAIRPERSON PERRY: Does that affect this in  
2 anyway?

3 MS. FRAZIER: I do not know the answer. I don't  
4 think so. The Arrow Rock decision is not pertinent  
5 to this, but --

6 CHAIRPERSON PERRY: It shouldn't be --

7 MS. FRAZIER: -- Tim -- Mr. Duggan would like to  
8 answer that.

9 CHAIRPERSON PERRY: -- precedential to this  
10 either, correct?

11 MS. FRAZIER: No.

12 CHAIRPERSON PERRY: So it's not precedential to  
13 this case, but I think they changed -- did they  
14 change that two mile radius?

15 MR. DUGGAN: No. That remains the same in the  
16 secondary judgment.

17 CHAIRPERSON PERRY: Oh, okay. So then there's  
18 no issue.

19 MS. FRAZIER: Right.

20 CHAIRPERSON PERRY: Thank you.

21 MR. DUGGAN: I don't know if there's anyone here  
22 on behalf of the Missouri Parks Association, but I -

23 CHAIRPERSON PERRY: No one requested to speak.

24 MR. DUGGAN: Okay. I am Tim Duggan from the  
25 Attorney General's Office. And I just want to let

1 the Commission know that our office has retrieved  
2 this particular case and all other pending appeals  
3 before the AHC with respect to challenges to CAFOs  
4 brought by the Missouri Parks Association.

5           When these appeals were initially filed, Jay  
6 Nixon was attorney General and he decided to delegate  
7 the responsibility of defending those permits to the  
8 Department directly and authorized them to hire  
9 private counsel to represent their -- their interest.  
10 Now, Attorney General, Koster has said, "We'll take  
11 those cases back."

12           And just so you know Cin-Way is the first.  
13 There are four of -- actually, there are five cases.  
14 I've been handling one. The so-called Roaring River  
15 CAFO that was before the Arrow Rock case. And I was  
16 assigned to that and that has been tried. That was  
17 in early January and we are now on a briefing  
18 schedule. We're still awaiting the record. But that  
19 is Arrow Rock alike in that some of the same issues  
20 were raised by friends of Roaring River State Park  
21 and in that case the Missouri Park Association  
22 raised in the Gessling case at Arrow Rock and also  
23 the four other administrative appeals that are  
24 pending before the AHC. This is the first AHC  
25 recommendation you will -- you have received to date

1 on a CAFO case other than Arrow Rock, which, I think,  
2 the recommended dismissal because it was mute.

3 Arrow -- as you may recall from a meeting or so  
4 ago the Gessling application for a construction  
5 permit, he was successful in getting the permit but  
6 it expired before he actually constructed anything.  
7 So there was nothing for the AHC to recommend other  
8 than dismissal in that case.

9 Cin-Way, however, is a little bit different.  
10 And as Jennifer very well explained to you, this is a  
11 situation where the facts are undisputed. And  
12 according to the AHC's analysis of the law the  
13 Department is entitled to a ruling in its favor on  
14 the merits without having to go to a hearing in this  
15 particular case.

16 The only thing I might suggest to you about Cin-  
17 Way's recommendation, the recommendation by the AHC;  
18 it does go into some detail explaining restrictions  
19 on the Department's authority with respect to permits  
20 issued under your laws and regulations. You -- you  
21 might not be surprised if in the future the  
22 Department kind of reevaluates whether it has more  
23 authority or not and takes another look at that  
24 issue.

25 But for purposes of Cin-Way their lawyers did

1 argue the very points that the AHC is agreeing with  
2 on the legal analysis. And as I stand here, today,  
3 as the new lawyer on the case, with a client who may  
4 not necessarily want to say the same things in the  
5 future, I can tell you we support the result here.  
6 That we feel this was an appropriately issued permit.  
7 And that the facts do support the issuance of the  
8 permit and we do agree that the Circuit Court  
9 decision out of Cole County affecting Gessling is  
10 simply inapplicable here because there is a two mile  
11 buffer, now, that that court has put in place as  
12 opposed to the 15 mile buffer.

13       There is no buffer requirement being violated in  
14 this particular case because the Cin-Way facility is  
15 more than two miles outside of whatever park would be  
16 of concern. And there's an argument whether Arrow  
17 Rock even applies to this because it's not Arrow Rock  
18 it's a different state park.

19       CHAIRPERSON PERRY: That was the point I wanted  
20 to make, that we -- I think we need to be very  
21 careful to make sure that that circuit level decision  
22 doesn't suddenly become state law.

23       MR. DUGGAN: Well, let me tell you one other  
24 point of information. We've taken that case back to  
25 and we are appealing the case. In fact, there are

1 two sets of appeals in Arrow Rock. The first set of  
2 appeals followed the first amended judgment, which is  
3 the one that modified the buffer zone from 15 miles  
4 down to two miles. Those were appealed, but the  
5 court, after the appeals were filed modified the  
6 decision again. And this time it retained the two  
7 mile buffer zone. It tried to clarify which specific  
8 parks or historic sites it was trying to protect in  
9 the vicinity of Arrow Rock and then it added a  
10 paragraph that restricted the existing CAFOs from  
11 expanding if they were within two miles of any of  
12 these facilities. That was -- that was a new issue  
13 that was thrown in to that case and the Department  
14 has appealed that as well.

15 And I will be the lead attorney on those  
16 appeals. At this point we're assembling the record  
17 and we will be setting up a briefing schedule with  
18 the court.

19 CHAIRPERSON PERRY: And there -- there's one  
20 more distinction between the Cin-Way case and the  
21 Arrow Rock case. The Arrow Rock case was suing the  
22 director of DNR on the basis of his job as the  
23 director of the state parks.

24 MR. DUGGAN: Right.

25 CHAIRPERSON PERRY: This is a permit appeal.

1 MR. DUGGAN: Right.

2 CHAIRPERSON PERRY: And that was not. And then  
3 it's my understanding that we have four more that are  
4 permit appeals.

5 MR. DUGGAN: Yes.

6 COMMISSIONER SHORNEY: Tim --

7 MR. DUGGAN: They raise the same issues about  
8 state parks, but they are permit appeals.

9 COMMISSIONER SHORNEY: Tim, is the Cin-Way  
10 permit and the Gary Windmann permit one in the same?

11 MR. DUGGAN: No. They are two different  
12 facilities. But they have similar issues. In  
13 Windmann we just received a similar recommendation. I  
14 don't know if -- it's --

15 CHAIRPERSON PERRY: It's not on our agenda.

16 MR. DUGGAN: -- probably on your agenda for the  
17 May meeting. But the AHC has issued an almost  
18 identical recommendation for the Windmann facility.

19 MS. OVERHOFF: That information was mailed to  
20 the Commissioners the week before last, I believe, so  
21 you should be getting that in the mail, if you  
22 haven't already. And it will be on the May meeting  
23 agenda.

24 VICE-CHAIR HARDECKE: I got that.

25 COMMISSIONER TUPPER: What?

1           VICE-CHAIR HARDECKE: I got it.

2           MR. DUGGAN: There are two other CAFOs that are  
3 under appeal, one, Steve Renner and the other one  
4 Russell Renner. They're brothers. Those cases are  
5 set for hearing April 1 and 2, respectively before  
6 the Administrative Hearing Commission, each for a  
7 full day.

8           In those cases, I have filed motions for summary  
9 determination and the Missouri Parks Association has  
10 been ordered by the AHC to respond to those motions.  
11 We'll see whether they do or not in those two cases.  
12 If they do not we would expect to see similar  
13 recommendations from the AHC in those two cases  
14 unless there's something different about them that we  
15 haven't picked up on.

16           So that's where -- the status of all those cases  
17 right now.

18           CHAIRPERSON PERRY: My thanks to both of you for  
19 very clearly explaining some rather complicated legal  
20 issues.

21           MR. DUGGAN: You're very welcome.

22           VICE-CHAIR HARDECKE: Ready for a motion.

23           CHAIRPERSON PERRY: Oh, you don't have a card.

24           MR. BRUNDAGE: It's in the basket in the back at the room.

25           (Laughter.)

1 MR. BRUNDAGE: Sorry.

2 CHAIRPERSON PERRY: Were there other cards in  
3 that basket when you put yours in?

4 MR. BRUNDAGE: I think I'm the only tardy one.  
5 Pardon me.

6 Madam Chair, members of the Commission, my name  
7 is Robert Brundage with the Law Firm Newman, Comley &  
8 Ruth in Jefferson City and we serve as legal counsel  
9 to Cin-Way and we intervene in this appeal. And I'm  
10 here to support this appeal.

11 I want to introduce to you Mr. and Mrs. Wayne  
12 Windmann over here. They are Cin-Way, a family  
13 farming operation and Gary Windmann just happens to be  
14 his brother. So similar to the Renner two appeals,  
15 we've got two pairs of brother caught up in appeals  
16 here in the State of Missouri that are all family  
17 farming operations.

18 We strongly advocate that you vote to adopt this  
19 recommended decision. We think it's the proper  
20 decision. And just to put this in perspective in  
21 regards to the Arrow Rock case the legal holding in  
22 this case in many respects is exactly adverse to what  
23 Judge Joyce ruled in Cole County Circuit Court. And we  
24 look forward to the Clean Water Commission taking the  
25 opportunity to try take this whole issue back from

1 the Circuit Court and to demonstrate that what --  
2 your alls legal opinion is on this. On Page 307 of  
3 your briefing document there's some -- there's just a  
4 few quotes, I just want to point out that really kind  
5 -- you know, go to the heart of this issue.

6 And as you may recall one of your regulations quoted at the  
7 bottom of Page 307 of your briefing document says that the  
8 Commission does not have jurisdiction to address  
9 questions of zoning location, property values or non-  
10 water quality related items. And then on to Page  
11 308, at the end of the first paragraph, it says DNR  
12 and the Clean Water Commission simply lack the  
13 authority to include in their construction permit  
14 conditions that relate to state park and historic  
15 sites and landmarks.

16 Then on that same page it goes on and it talks  
17 about that we already have in state law setback  
18 distances for concentrated animal feeding operations  
19 in this state. And at the bottom of the page, it  
20 says as such, these requirements, these setback  
21 requirements already protect visitors to state parks  
22 and historic sites and landmarks.

23 The next page says, at the top of the page,  
24 again, the Clean Water Commission simply lacks the  
25 authority to expand these buffer distances as the

1 Missouri Parks Association desires.

2           And it says, again, at the beginning of the next  
3 paragraph, the Clean Water Commission lacks the  
4 authority to impose conditions concerning the air  
5 quality issues that the Parks Association raises.

6           So these are the exact legal issues that my  
7 clients believe is the correct legal determination.

8 I encourage you to adopt this in regards to a couple  
9 of motions that my client had pending, one, was a  
10 motion to strike parts of the Parks - sections of the  
11 Missouri Parks Association appeal that we thought  
12 related to these non-water quality decisions.

13 The Administrative Hearing Commission recommends that  
14 that motion to strike be dismissed simply because  
15 they addressed all of those issues in here. And  
16 we're -- we accept the dismissal -- or the overruling  
17 of our motion to strike because they did address  
18 those issues.

19           Our motion to dismiss was also recommended to be  
20 overruled because basically this addressed the issues  
21 and said that the Parks Association really didn't  
22 have a case in the first place on those issues. So  
23 that's fine with us about overruling a motion to  
24 dismiss.

25           So we are okay and we recommend that you adopt

1 this recommended decision exactly the way it is in  
2 the -- in your packet.

3 Thank you.

4 CHAIRPERSON PERRY: Are there any other cards in  
5 the basket?

6 (No response.)

7 MR. BRUNDAGE: And Madam Chair, I might point  
8 out that -- and I think Ms. Frazier may have said  
9 this that the Missouri Parks Association was asked by  
10 the Administrative Hearing Commission to file a  
11 response to the motion for summary determination and  
12 they filed no response. And I suppose, I guess, they  
13 are not even here today to defend themselves. So I  
14 wanted to make sure that that was clear.

15 VICE-CHAIR HARDECKE: I move that the Commission  
16 adopt the recommended decision of the Administrative  
17 Hearing Commission on the Cin-Way, LLC CAFO Permit  
18 Appeal.

19 COMMISSIONER HUNTER: Second.

20 CHAIRPERSON PERRY: Motion and a second, please,  
21 call for the vote.

22 MS. OVERHOFF: Commissioner Tupper?

23 COMMISSIONER TUPPER: Yes.

24 MS. OVERHOFF: Commissioner Hunter?

25 COMMISSIONER HUNTER: Yes.

1 MS. OVERHOFF: Commissioner Hardecke?

2 VICE-CHAIR HARDECKE: Yes.

3 MS. OVERHOFF: Commissioner Easley?

4 COMMISSIONER EASLEY: Yes.

5 MS. OVERHOFF: Commissioner -- excuse me.

6 Commissioner Shorney?

7 COMMISSIONER SHORNEY: Yes.

8 MS. OVERHOFF: Chair Perry?

9 CHAIRPERSON PERRY: Yes.

10 Are you all set for the next tab?

11 MR. ROB MORRISON: I'm ready.

12 CHAIRPERSON PERRY: Good. So therefore we will

13 move on to --

14 MR. ROB MORRISON: We're moving on to **Tab No. 5.**

15 CHAIRPERSON PERRY: Five. The voluntary

16 dismissal.

17 MR. ROB MORRISON: Good morning, again, Madam

18 Chair and members of the Commission. My name is Rob

19 Morrison. Before you, again, is another voluntary

20 dismissal in a very similar situation to the Dyno

21 Noble permit. The City of Kansas City appealed their

22 permit for their west side treatment plant to the

23 Commission and therefore, today, we bring this issue

24 back for you.

25 The issues related to their permit have been

1 resolved. And we have issued a revised permit to the  
2 satisfaction of Kansas City, EPA, and the Department.  
3 I can go through a couple of the issues. They were  
4 effluent limit related. There was a dye-study  
5 completed by US EPA and revised limits were  
6 calculated according to that -- results of that dye-  
7 study there in Kansas City on the Missouri River. So  
8 with that if there are any questions I'd be happy to  
9 answer them.

10 COMMISSIONER HUNTER: I move that the Missouri  
11 Clean Water Commission adopt the City of Kansas  
12 City's voluntary dismissal.

13 COMMISSIONER SHORNEY: Second.

14 CHAIRPERSON PERRY: We have a motion and a  
15 second, please, call for the vote.

16 MS. OVERHOFF: Commissioner Hunter?

17 COMMISSIONER HUNTER: Yes.

18 MS. OVERHOFF: Commissioner Hardecke?

19 VICE-CHAIR HARDECKE: Yes.

20 MS. OVERHOFF: Commissioner Easley?

21 COMMISSIONER EASLEY: Yes.

22 MS. OVERHOFF: Commissioner Shorney?

23 COMMISSIONER SHORNEY: Yes.

24 MS. OVERHOFF: Commissioner Tupper?

25 COMMISSIONER TUPPER: Yes.

1           **MS. OVERHOFF: Chair Perry?**

2           **CHAIRPERSON PERRY: Yes.**

3           Moving on to **Tab No. 6.**

4           MR. BOLAND: Good morning, again, this is Joe  
5 Boland with the Water Protection Program's Financial  
6 Assistance Center.

7           I come before you this morning to bring you our  
8 Storm Water Grant and Loan Program rule amendment as you  
9 should be aware we had a constitutional amendment on  
10 the November ballot to fix our Storm Water Program  
11 and that did pass. And, now, we are following up  
12 with the necessary rule changes.

13           And you -- I believe in your blue packet you  
14 were provided with an updated version of the proposed  
15 rule changes. What was originally in the packet --  
16 we had a stakeholder meeting between that time and  
17 now and we've incorporated some of those comments  
18 based on that stakeholder meeting.

19           So I'm prepared to go through this line by line  
20 if you'd like or I can hit on some of the highlights  
21 or we can just proceed however you would like.

22           Just a quick summary. The changes that we made  
23 -- correct. Sorry.

24           VICE-CHAIR HARDECKE: Under SW in the blue  
25 packet?

1 MR. BOLAND: Yes.

2 Some of the changes that were made to the  
3 constitution allows for us to offer these  
4 funds as grants or loans instead of grants and loans,  
5 which sounds like a very subtle difference but it  
6 really hamstrung us for -- well, in the past, let me start over  
7 here. This Program is funded through the sale of state general  
8 obligation bonds. So if the state decided to sale  
9 bonds to fund this Program we want to have everything  
10 in place to distribute this money.

11 The Program is designed for -- it's kind of  
12 sister program to the Rural Water and Sewer Grant  
13 Program. This Storm Water Grant Loan Program is for  
14 first class counties and first class cities within  
15 those counties. And the funding is distributed by  
16 formula as described in the constitution and that's  
17 based on population.

18 VICE-CHAIR HARDECKE: Only first class counties?

19 MR. BOLAND: That's correct and cities within  
20 those first class counties.

21 CHAIRPERSON PERRY: Joe, can I stop you just a  
22 second?

23 MR. BOLAND: Sure.

24 CHAIRPERSON PERRY: Because I noticed that we  
25 received something in the blue packet that looks like

1 what you're holding up.

2 MR. BOLAND: That is correct.

3 CHAIRPERSON PERRY: And that which is in the  
4 packet for the meeting is somewhat different.

5 MR. BOLAND: Correct. As I stated we had a  
6 stakeholder --

7 CHAIRPERSON PERRY: Many people here may have  
8 that first version. And can you give us some idea of  
9 what changes were made?

10 MR. BOLAND: Yeah. We -- I can go through that.  
11 And there are some copies of this in the back.

12 CHAIRPERSON PERRY: Does anybody need to stop  
13 and get one of those copies?

14 MR. BOLAND: It has some yellow highlights.

15 CHAIRPERSON PERRY: Okay. Thanks.

16 MR. BOLAND: But very briefly on Page 1 that --  
17 again, these changes should be highlighted in yellow  
18 so they should be easy to spot, we simplified the  
19 definition. It was a very cumbersome definition of  
20 eligible entity. So we wanted to just put it into  
21 kind of bullet form and make it very clear who is  
22 eligible.

23 And just stop me anytime here. The next change  
24 from what was provided to you originally is on Page  
25 3. This had to do with comprehensive storm

1 water management plans. We previously were requiring  
2 the submittal and approval by the Department of a  
3 comprehensive storm water management plan that the  
4 Department -- this was an issue for some of the  
5 smaller recipients and we really weren't -- didn't  
6 have any formal approval process. We didn't  
7 necessarily have the authority to do this.

8           So we wanted to simplify things and just put it  
9 in the form of, we would like to see this -- you  
10 know, your projects should be consistent with a  
11 comprehensive storm water management plan, but --

12           (Tape One, Side B concluded.)

13           MR. BOLAND: -- we don't intend to make it as  
14 confusing as possible, it just happens to be that  
15 way.

16           So, again, the -- we kind of backed off on this  
17 comprehensive storm water management plan  
18 requirement. We'd like to see everything submitted  
19 to be consistent with a master plan, but, again,  
20 we're not requiring a formal submittal of that plan.

21           Let's see the next comment is on Page 9. Some  
22 of our recipients prefer to use their own labor and  
23 equipment for these projects and we refer to that as  
24 a force account. And this just clarifies some of the  
25 eligibilities there on what they can use for a force

1 account and some of the requirements to submit to us.  
2 Basically, if they're going to use their own labor we  
3 want to see time sheets, we want to see names, we  
4 want to see hours, just some very good documentation.

5 And then skipping to Page 13; this has to do  
6 with small purchase contracts. We just added another  
7 line in there that a minimum of three quotes must be  
8 obtained and approved by the Department.

9 And that -- I'm sorry.

10 CHAIRPERSON PERRY: A small purchase is anything  
11 under \$100,000?

12 MR. BOLAND: That is correct.

13 CHAIRPERSON PERRY: That's what I call  
14 it too.

15 (Laughter.)

16 MR. BOLAND: I have no comment.

17 And that's essentially the only differences  
18 here. Again, these changes -- we're proposing these  
19 changes to be in align with this rule with the  
20 changes that were made in the constitution and  
21 approved by -- by the Department.

22 And if you remember,  
23 in some of our briefings,  
24 in the past, when we had to defease  
25 some of the remaining bonds

1 from the last bond sale for this Program,  
2 all these fixes are --  
3 are to prevent that from happening  
4 in the future.

5 We want to clear the way to if  
6 we do sale bonds under this Program  
7 we want to be able to distribute  
8 these quickly to who they are  
9 intended - who they are --  
10 intended for.

11 One of the other changes  
12 in the constitution allows us to --  
13 based on the population  
14 distribution we notify all the  
15 first class counties  
16 that are eligible recipients  
17 of what their share might  
18 be based on whatever  
19 amount we sell.  
20 They are notified, if the  
21 . choose to accept this--  
22 these grants, they let us know.

23 If they do not accept them  
24 historically we did not have the ability  
25 to immediately reallocate those left over

1 proceeds to the folks that did need more, now, we can  
2 do that through the changes we've made. And, again,  
3 our intention is to have nothing left in the pot when  
4 we're done offering this money.

5         So that's our intention. We're actually  
6 streamlining things, making it easier to get this  
7 money out. And that's our goal. So I kind of went  
8 through that very quickly, but are there any specific  
9 questions on the regulation? And, again, today,  
10 we're just asking for permission to move forward to  
11 file this proposed rulemaking.

12         COMMISSIONER SHORNEY: I don't know exactly how  
13 to ask this question, but what kind of monies are we  
14 talking about in funds and so forth?

15         MR. BOLAND: That -- that's a very good  
16 question. It depends on how much -- how many bonds  
17 we sell. If we sold -- for instance, \$20 million;  
18 that \$20 million is based -- is divided up between  
19 the 17 first class counties and then within those  
20 counties by population. So Jackson County gets a  
21 huge chunk, St. Louis County, MSD is the designated  
22 entity for St. Louis County and the City of St. Louis  
23 so they get -- you know, they get a large chunk.  
24 Cole County gets -- you know a certain amount. It's  
25 all based on a population breakdown.

1           So without giving you -- calculating through  
2 some specific numbers I don't have those populations  
3 in here. There might be an example in the back. I  
4 doubt it.

5           COMMISSIONER SHORNEY: There's -- there's no --  
6 there are no funds right now?

7           MR. BOLAND: There are no funds right now.

8           COMMISSIONER SHORNEY: Right. This is a future  
9 sale?

10          MR. BOLAND: That's correct.

11          We wanted to get all the changes made and  
12 necessary things in place to be able to have an  
13 effective program. But we did -- we have made a  
14 recommendation to sale bonds for this program, but  
15 its -- hasn't been approved yet, so -- based  
16 economic conditions I'm not real sure how  
17 far it's going to go because of the --

18          VICE-CHAIR HARDECKE: What will determine how  
19 many you sale?

20          MR. BOLAND: Basically, our recommendation and  
21 the willingness of the state to take on additional  
22 debt. It's really more of a matter of that than --  
23 than how much we recommend because they'll look at it  
24 --

25          VICE-CHAIR HARDECKE: Does that go through the

1 budgeting process?

2 MR. BOLAND: That's correct.

3 However, whatever amount we sell there is an  
4 associated debt service with that and the state looks  
5 at that and makes a decision whether, you know, do we  
6 want to take on an additional \$5 million in general  
7 revenue debt at this time or not, so -- it basically,  
8 comes down to a budget issue.

9 COMMISSIONER SHORNEY: And there's not likely to  
10 be any federal monies associated with this?

11 MR. BOLAND: No. This is purely a state-funded  
12 program. Storm water in an eligible activity  
13 under the regular state revolving fund, but, again, that's  
14 normally a loan program, so --

15 VICE-CHAIR HARDECKE: So how much of the given  
16 pot of money will be grants and how much loans or how  
17 is that determined?

18 MR. BOLAND: We -- historically, it was supposed  
19 to be 50/50 but we've changed that simple language  
20 change from grants and loans to grant or loans and  
21 it's up to the recipient. If -- let me back up a  
22 little bit. Even if the recipient does not want a  
23 loan they still have to provide a local match to  
24 whatever grant we give them of 50 percent.

25 So if you have, a storm water project at the

1 local level the maximum we can fund that through a  
2 grant is 50 percent of your project. They still have  
3 to provide match for half that.

4 Now, we have had a few participants in the past  
5 who chose to match that with a loan out of this,  
6 which is fine, which is eligible. But we cannot fund  
7 your project 100 percent through grants. And that's  
8 in the constitution.

9 COMMISSIONER HUNTER: But the loan can be 100  
10 percent?

11 MR. BOLAND: Correct. The loan can be the match  
12 for that grant.

13 COMMISSIONER SHORNEY: Um-huh.

14 VICE-CHAIR HARDECKE: So do you anticipate your  
15 need in deciding how much to request or is that  
16 done through the finance -- or the fiscal side?

17 MR. BOLAND: It's a balance of both. I -- we  
18 could -- it's limited ultimately by the  
19 constitutional authority of, originally it was \$200  
20 million that was approved by the -- a vote of the  
21 people in 1998, I believe. We have only sold, from  
22 that time the state has sold \$45 million in bonds for  
23 this effort. So we have \$155 million left in  
24 authorization. Then there's the statutory  
25 authorization that the legislature approves. We have

1 plenty there as well. And then it gets down to the  
2 state level, the Board of Fund Commissioners has to  
3 meet and approve this and then -- and that's based on  
4 the recommendation from the budget people and folks  
5 at OA. And it's a measure of tolerance of how much  
6 debt they want to take on at this time, so --

7 We can make the recommendation to sale all \$155  
8 million.

9 VICE-CHAIR HARDECKE: It would be your own  
10 stimulus.

11 MR. BOLAND: It would be our own stimulus. Yes.  
12 But then there is the challenge that some of the  
13 counties at the local to come up with that much  
14 match, so --

15 In some cases there's no challenge at all, they  
16 have the need now.

17 VICE-CHAIR HARDECKE: But they pay it back.

18 MR. BOLAND: The state has to pay it back,  
19 exactly.

20 CHAIRPERSON PERRY: Is there other questions?

21 (No response.)

22 CHAIRPERSON PERRY: If not, the Chair will entertain  
23 a motion.

24 COMMISSIONER TUPPER: I move the Commission  
25 approve the filing of the proposed amendment to 10

1 CSR 20-4.061 Storm Water Grant and Loan Program to  
2 the Secretary of State's Office for publication in  
3 the Missouri Register.

4 COMMISSIONER SHORNEY: Second.

5 CHAIRPERSON PERRY: A motion and a second, call  
6 for the vote.

7 MS. OVERHOFF: Commissioner Hunter?

8 COMMISSIONER HUNTER: Yes.

9 MS. OVERHOFF: Commissioner Hardecke?

10 VICE-CHAIR HARDECKE: Yes.

11 MS. OVERHOFF: Commissioner Easley?

12 COMMISSIONER EASLEY: Yes.

13 MS. OVERHOFF: Commissioner Shorney?

14 COMMISSIONER SHORNEY: Yes.

15 MS. OVERHOFF: Commissioner Tupper?

16 COMMISSIONER TUPPER: Yes.

17 MS. OVERHOFF: Chair Perry?

18 CHAIRPERSON PERRY: Yes.

19 Now, I'm going to do something you-all have just  
20 been dying to do because half of you have left the  
21 room already. The poor Commission doesn't have that  
22 ability. So I'm going to take an exactly 10 minute  
23 break. At eleven o'clock this gavel is going to  
24 pound and we're going to go ahead.

25 The other question is, I'd like to talk to the

1 next two people on the agenda and see if we can get -  
2 - if we're going to fit that time frame. So that's  
3 probably John Ford and Darrick, right?

4 MALE SPEAKER: And Phil Schroeder.

5 COMMISSIONER TUPPER: And Phil.

6 CHAIRPERSON PERRY: And Phil. Okay. I want to  
7 see how -- 'cause I notice there's some things in the  
8 supplemental packet and I just want to see how we can  
9 do the timing most effectively.

10 All right. With that, eleven o'clock, I have  
11 nine minutes till now.

12 (Break in proceedings.)

13 CHAIRPERSON PERRY: I'm going to make just  
14 another adaptation here. As you can see the  
15 conversation up at this end of the room prohibited  
16 some of us from even getting our break. But I think  
17 the dialog is important so that what is presented to  
18 you in a little while has some of all the arguments  
19 worked out.

20 And so therefore we will continue that after  
21 lunch to give the chance for some of us to go find a  
22 few more facts to make sure. I heard a great line,  
23 yesterday, it says you're entitled to your opinion;  
24 you're not entitled to your own facts.

25 So we have some factual issues, actually, my

1 mother always taught me don't argue fact. And so,  
2 therefore, I'm going to move the Nutrient Management  
3 tab, which is No. 8 until after lunch. Anybody in  
4 this room who is waiting to do that and hoping to go  
5 home after that, I'm just warning you it's going to  
6 be a little bit longer.

7 Therefore, let's go to **Tab No. 7.**

8 MR. SCHROEDER: Thank you, Madam Chair. And for  
9 those of us that were able to enjoy the break, thank  
10 you for that too.

11 (Laughter.)

12 CHAIRPERSON PERRY: You're welcome.

13 MR. SCHROEDER: Hopefully, we'll get us -- this  
14 topic will get us restarted on an issue that will  
15 take not much of your time.

16 The Department is asking for your adoption of an  
17 order of rulemaking. This affects rules at 10 CSR  
18 20-7.050, which regards Methodology for Development  
19 of the Impaired Waters List. The changes that were  
20 proposed here removes reference to a document that  
21 was developed in 2006 that guided the development of  
22 the 2006 impaired waters list. The 2006 list is now  
23 complete. So we need to remove the reference to that  
24 outdated document in order to proceed now to the 2008  
25 and future 303(d) Lists.

1           The change also inserts language which retains  
2 the public participation requirements in the  
3 development of this methodology for determining the  
4 303(d) List as well as retains the requirement that  
5 the Missouri Clean Water Commission accept or adopt a  
6 written procedure or methodology before the  
7 Department proceeds in developing any future 303(d)  
8 Lists.

9           So we think that even though there may not be  
10 future rulemakings needed in order to incorporate a  
11 methodology into rule, all of the essential elements  
12 of public participation and Commission adoption of  
13 the methodology still resides in what we're proposing  
14 as an amended rule.

15           The rule was proposed in October of last year.  
16 It went through a lengthy public participation  
17 process review up until January 14th of 2009. We did  
18 not receive any comments during the proposed  
19 rulemaking process up until this date. So,  
20 therefore, without any comments being received we're  
21 suggesting that the Commission adopt the proposed  
22 rule as it was written for the order of rulemaking.

23           In your packet on Page 346 is the language that  
24 would appear in this portion of the rule in the Code  
25 of State Regulations if the order was adopted as

1 we're proposing. And then on Page 348 is how the  
2 Register would propose the order after we file it  
3 with the Secretary of State's Office.

4 So with that, again, we request that the  
5 Commission adopt the order of rulemaking that we're  
6 proposing here so that we can go ahead and file that  
7 with the Secretary of State's Office at our earliest  
8 convenience.

9 CHAIRPERSON PERRY: Are there any questions?

10 (No response.)

11 CHAIRPERSON PERRY: If hearing none, the Chair  
12 will entertain a motion.

13 COMMISSIONER SHORNEY: Madam Chair, I move the  
14 Commission adopt the draft order of rulemaking on 10  
15 CSR 20-7.050 Methodology for Development of Impaired  
16 Waters List as presented by the Department staff.

17 COMMISSIONER TUPPER: Second.

18 CHAIRPERSON PERRY: Call for the vote, please.

19 MS. OVERHOFF: Commissioner Hardecke?

20 VICE-CHAIR HARDECKE: Yes.

21 MS. OVERHOFF: Commissioner Easley?

22 COMMISSIONER EASLEY: Yes.

23 MS. OVERHOFF: Commissioner Shorney?

24 COMMISSIONER SHORNEY: Yes.

25 MS. OVERHOFF: Commissioner Tupper?

1           **COMMISSIONER TUPPER: Yes.**

2           **MS. OVERHOFF: Commissioner Hunter?**

3           **COMMISSIONER HUNTER: Yes.**

4           **MS. OVERHOFF: Chair Perry?**

5           **CHAIRPERSON PERRY: Yes.**

6           MR. SCHROEDER: Thank you.

7           CHAIRPERSON PERRY: Okay. I'd like to move on  
8 to **Tab No. 9**. And also like to mention I only have  
9 one person who wants to speak on Tab No. 8 other than  
10 staff if anyone desired to so speak would you please  
11 -- Mr. Brundage did you have your number on there.

12          MS. OVERHOFF: Yes. He has applied for No. 8.

13          CHAIRPERSON PERRY: Pardon?

14          Oh. Okay. There we go. Number 9.

15          MR. BOLAND: This is Joe Boland, again. I have  
16 a small borrower request for the City of  
17 Highlandville. They are undertaking a project with a  
18 total cost of \$589,000. They're matching that with  
19 their own funds to the tune of \$231,000. They have  
20 also -- will be receiving a rural sewer grant from us  
21 for \$258,000 and to make a complete package they are  
22 wanting to borrow another \$100,000 through the Small  
23 Borrower Loan Program and that's for, let's see, lift  
24 station, about 8,000 feet of pressure sewer main and  
25 all the necessary details that go along with that, so

1 --

2 And, today, we're asking for your approval for  
3 that small borrower loan.

4 **COMMISSIONER EASLEY: I move to approve the**  
5 **small borrower loan of \$100,000 for the City of**  
6 **Highlandville.**

7 CHAIRPERSON PERRY: Can I ask one question,  
8 first?

9 COMMISSSIONER EASLEY: Sure.

10 CHAIRPERSON PERRY: I was looking at that,  
11 there's inspection \$30,000 and the legal and  
12 administrative of \$42,000; am I in the right place?

13 MR. BOLAND: Under other costs. I think that's  
14 -- I'm not sure if they meant to scratch out  
15 equipment.

16 CHAIRPERSON PERRY: And that is my question. I  
17 didn't quite understand what that meant.

18 MR. BOLAND: And I can't honestly answer that  
19 without digging into that with a little bit more  
20 detail.

21 CHAIRPERSON PERRY: And this is asking for the  
22 small borrower loan, but I realize you've already got  
23 44 percent into this through the --

24 MR. BOLAND: Right, with the rural sewer grant.

25 CHAIRPERSON PERRY: Right.

1 MR. BOLAND: That is correct.

2 CHAIRPERSON PERRY: And that other loan is that  
3 from you too?

4 MR. BOLAND: No. The other is just local funds,  
5 cash they have on hand, so --

6 COMMISSIONER TUPPER: That \$30,000 for  
7 inspection looks about right. They are probably  
8 overpaying the lawyer though, Kristin.

9 (Laughter.)

10 CHAIRPERSON PERRY: We all know that they're  
11 overpaid except for the one I know really well.

12 MR. BOLAND: Yeah.

13 CHAIRPERSON PERRY: Okay.

14 MR. BOLAND: Percentage wise I don't think  
15 that's too far out of line, but I can promise you we  
16 will -- we can --

17 CHAIRPERSON PERRY: Okay. I -- I --

18 MR. BOLAND: -- verify that.

19 CHAIRPERSON PERRY: -- just wanted to make sure  
20 they didn't have some oversight over that --

21 MR. BOLAND: Oh, yeah. Yes.

22 CHAIRPERSON PERRY: -- because I wasn't sure.

23 Okay. Now, I'm sorry. If you would like to  
24 second the motion.

25 COMMISSIONER HUNTER: **Second.**

1           CHAIRPERSON PERRY: We have a motion and a  
2 second, please, call for the vote.

3           MS. OVERHOFF: Commissioner Easley?

4           COMMISSIONER EASLEY: Yes.

5           MS. OVERHOFF: Commissioner Shorney?

6           COMMISSIONER SHORNEY: Yes.

7           MS. OVERHOFF: Commissioner Tupper?

8           COMMISSIONER TUPPER: Yes.

9           MS. OVERHOFF: Commissioner Hunter?

10          COMMISSIONER HUNTER: Yes.

11          MS. OVERHOFF: Commissioner Hardecke?

12          VICE-CHAIR HARDECKE: Yes.

13          MS. OVERHOFF: Chair Perry?

14          CHAIRPERSON PERRY: Yes.

15          MR. BOLAND: Thank you.

16          CHAIRPERSON PERRY: Thank you.

17          Can **Tab No. 10** be done in 35 minutes?

18          (No response.)

19          CHAIRPERSON PERRY: Think so. It's yours.

20          I'm really trying to get us to lunch on time,

21 did you notice that.

22          MR. FORD: As long as my assistant here gets the

23 PowerPoint presentation going, we're in good shape.

24          Good morning, Madam Chairman, Commissioners, my

25 name is John Ford. I work in the Monitoring and

1 Assessment Section of the Water Pollution Control  
2 Program. I'm here today to give an update on the  
3 proposed 2008 303(d) impaired waters list.

4 And hopefully with the assistance of a  
5 PowerPoint presentation here -- I think in your blue  
6 packets there are copies of the PowerPoint  
7 presentation. It'll probably be a lot easier to read  
8 on the screen than in those.

9 So you have to go to start. Go down to the  
10 lower, to start and programs. Yeah.

11 Okay. I think we're in business. First, a  
12 brief chronology; the Commission approved the listing  
13 methodology document for the '08 list in January. We  
14 had a draft list and all the water quality data  
15 assessed by April. We then had a Department review  
16 and in January we started a long public notice  
17 process that was over 100 days that ended about the  
18 middle of January '09. During that public notice  
19 period we received quite a bit of -- well, not a huge  
20 amount of information but some comments from the  
21 public, also, some additional information and studies  
22 became available to us that were appropriate to some  
23 of the waters that were under consideration for the  
24 list. So we reassessed those.

25 And, now, in January and February we made that

1 revisions to the list and we're before here today  
2 just to give you an update of the list that we're  
3 proposing now.

4       Okay. First of all, the number of waters on our  
5 proposed list; we're proposing -- in the public  
6 notice that we had in September 192 water body  
7 pollutant pairs. And we say water body pollutant  
8 pairs because on some water bodies we may have three  
9 or four different pollutants and they may be added to  
10 the list in different years and because of that they  
11 have different end dates by which TMDLs must be done.

12       So our TMDL folks like us to -- to note each  
13 pollutant separately for a water body, the date they  
14 entered the list. So that's why we're doing that.  
15 It's also the way EPA likes to do their list. So we  
16 are listing things as a water body combined with a  
17 single pollutant.

18       Okay. So we had 192 of those on the September  
19 public notice. As a result of the public notice,  
20 comments and information that we received we removed  
21 10 of those waters, we added 15. And, then, also,  
22 during the public notice process EPA published their  
23 final 2004/2006 list. And on this list were 80  
24 waters that we looked at that we did not have data  
25 that would justify removing them from the '08 list.

1 So those waters are proposed to be added to the list.

2 So right now we have a total of 277 listings,  
3 today, on our proposed list. To put this in some  
4 sort of context, the final list in 2002 for Missouri  
5 had 243 water body pairs and the current list, the  
6 '04/'06 list has 228. So we're a little bit larger.

7 I think you probably want to skip a couple.  
8 Okay. Good. So here's just a pie chart of that. We  
9 started with 182, we removed 10, we added 15 due to  
10 public comments and then that dark section says 80, I  
11 believe, and those are the waters that were added  
12 from the '06 list that EPA finalized.

13 Go forward one more, one more. Go back. Okay.  
14 Let's see one more. Okay. One of the things, I  
15 guess, the thing that we received the most public  
16 comment on during our public notice procedures; and  
17 if you've read the comment letters and responses you  
18 know was, how we interpreted narrative criteria.  
19 When we finalized the '08 listing methodology last  
20 year there was a good bit of discussion how this  
21 should be done. The final decision by the Commission  
22 was that we would use a threshold number and if our  
23 data showed that levels were above that number we  
24 would do a weight of evidence analysis. And this  
25 weight of evidence analysis would need to be in

1    someway scientifically defensible.

2           And so I want to talk a little bit about how we  
3    approached doing these weight of evidence analysis  
4    and the sort of data that we had to work with. We  
5    have on our list a number of waters that are listed  
6    for narrative criteria. There are 27 that are listed for  
7    mercury and fish tissue. There are 29 waters on the  
8    list or water body pollutant pairs -- I'm sorry,  
9    these are waters; 29 waters listed for biological  
10   monitoring.

11           The difference between the number and the number  
12   that might be following it in parenthesis is that the  
13   number in parenthesis are the number that are put on  
14   the list using our own listing methodology. A few of  
15   these are kind of legacies from very -- from much  
16   older 303(d) List before we had the type of listing  
17   methodology that we have now.

18           We have 15 on the list for toxic sediments, 13  
19   on the list for fine sediment deposition only six of  
20   which really are a result of our LMD procedures, four  
21   for nutrients none of which are the result of our  
22   listing methodology procedures, two listings for lead  
23   and fish tissue and one for just toxicity based on  
24   toxicity test results.

25           Okay. Yeah.

1           CHAIRPERSON PERRY: You say you have four that  
2 are a result of our procedures for the fine  
3 sediment?

4           MR. FORD: Six. In other words, there's 13  
5 things listed on the list for sediment.

6           CHAIRPERSON PERRY: Oh. Okay.

7           MR. FORD: Okay. A lot of those were older ones  
8 that were essentially habitat concerns when they  
9 first went on the list. And for some reason, over  
10 the years, they got changed into sediment and so now  
11 that's -- our legacy is to try and deal with those  
12 and write TMDLs on them even though sediment itself  
13 may not be the exact problem.

14           We have six of those where we've actually used  
15 the listing methodology procedures for measuring fine  
16 sediment deposition. Is that clear?

17           (No response.)

18           MR. FORD: In other words, six for fine  
19 sediment based upon the listing methodologies that we  
20 have now. And seven that were kind of legacies back  
21 from early list, like, '96 or '98 lists.

22           CHAIRPERSON PERRY: Six new ones that fit the  
23 methodology. And we're looking for sediment as a  
24 pollutant.

25           MR. FORD: That's correct; where sediment was

1 actually measured as a pollutant, fine sediment  
2 deposition. Yes.

3 VICE-CHAIR HARDECKE: Excuse me. Those other  
4 seven, were they retested --

5 MR. FORD: They --

6 VICE-CHAIR HARDECKE: -- and not found to be  
7 polluted under the new listing methodology?

8 MR. FORD: Most of those have been the subject  
9 of biological monitoring. In many of those cases  
10 they have been delisted when the biological  
11 monitoring showed that there wasn't any obvious  
12 problem. Some of them remain on the list probably  
13 because the biological monitoring was either not  
14 conclusive or indicated that there was in fact some  
15 sort of problem there. It doesn't necessarily mean  
16 that the problem was sediment. But there's no --  
17 there was no justification for removing them from the  
18 list.

19 CHAIRPERSON PERRY: Okay. That's the old ones,  
20 but of the six new ones the problem has been  
21 determined to be sediment?

22 MR. FORD: Yes. In other words, we have a  
23 procedure in the listing methodology for doing --  
24 measuring the amount of fine sediment deposition. If it  
25 exceeds a certain level then it is list-able.

1           COMMISSIONER SHORNEY: That's if EPA inspects  
2 this, so --

3           MR. FORD: Yes. It's beyond the normal levels.  
4 In other words, you would have to have a controlled  
5 stream, a controlled watershed that you would compare  
6 it to. It's the amount of anthergenetically derived  
7 sediment, fine sediment beyond natural levels.

8           CHAIRPERSON PERRY: So how do you define natural  
9 levels in the Missouri River?

10          MR. FORD: Well, in this case what we would use  
11 is either a controlled stream or if we were concerned  
12 about a particular area on the stream we would go and  
13 test upstream of that area and compare it to the  
14 section we were concerned with downstream.

15          CHAIRPERSON PERRY: So we all know if you went  
16 upstream of Jamison Island you would have a very  
17 different number than you would have downstream of  
18 Jamison Island. Okay. I don't mean to get off on  
19 that. I just want to point it out there.

20          MR. MORRISON: Statement inaudible.

21          CHAIRPERSON PERRY: I'm sorry. I didn't hear  
22 you.

23          MR. MORRISON: Never mind.

24                 (Laughter.)

25          MR. MORRISON: Truckload estimates.

1           CHAIRPERSON PERRY: Truckload estimates. Yeah.  
2 There you go.

3           MR. FORD: In our approach to developing a  
4 weight of evidence analysis we had to think about  
5 this for a while. There are basically two approaches  
6 that we could take.

7           The first was to do some sort of mathematical  
8 analysis that would either come up with a statement  
9 of a mathematical probability of impairment or some  
10 statement of additional risk, human health risk or  
11 whatever. So it was kind of a mathematical  
12 demonstration of the likelihood of a problem or an  
13 impairment.

14           The second approach was where we had other  
15 types of data we would pull in other types of data  
16 and look at it as well. So those are the two -- two  
17 lines of -- the two pronged approach I guess that we  
18 used for the weight of evidence analysis.

19           The next few slides talk about this weight of  
20 evidence analysis approach that we used for various  
21 types of pollutants. The first is mercury and fish  
22 tissue. The threshold value that was used was the  
23 EPA national criterion value. That's .3 milligrams  
24 per kilogram. The second piece of evidence we used  
25 was Missouri Department of Conservation data showing

1 that Missouri fish consumption rates exceeded  
2 national averages used to develop the national  
3 criterion. That meant that probably Missourians, on  
4 average, if we were going to use this national  
5 criterion were probably eating -- getting more mercury in their  
6 diet than was used to develop the national criterion  
7 of people nationally.

8 The third concern -- or the third criterion  
9 value -- or piece of information that we used, was  
10 the fact that Missouri Department of Health & Senior  
11 Services has issued a mercury fish tissue consumption  
12 advisory for all waters in Missouri.

13 So our approach here was to use the threshold  
14 value with these other two things as the additional  
15 consideration that justified that use of that value.

16 VICE-CHAIR HARDECKE: And that's only on  
17 mercury?

18 MR. FORD: That's only on mercury. Right.

19 The second is --

20 VICE-CHAIR HARDECKE: So did it take all three  
21 of those or just one of those three?

22 MR. FORD: Well, all three of those things apply  
23 to all waters. In other words, the criterion  
24 applies. The MDC fish consumption data was basically  
25 statewide data. They pulled everything together and

1 made an average estimate of fish consumption from  
2 people that eat fish. And the third, as I said, is a  
3 statewide advisory on all waters.

4 For biological monitoring, actually, these are  
5 spelled out in the listing methodology itself. Most  
6 of the waters that we listed for biological  
7 monitoring were based upon aquatic invertebrate  
8 monitoring done by the DNR laboratory. And the rules  
9 for using that type of data and judging impairment  
10 are already in the listing methodology. So we just  
11 followed those.

12 And, again, the statistical test there in the  
13 listing methodology requires we be at least 90  
14 percent certain that we have altered biological  
15 community.

16 For sediment chemistry the threshold value was  
17 the probable affect concentration. We know from  
18 reading the published report that was used to develop  
19 for -- where these probably affect concentrations  
20 were developed that they are approximately 90 percent  
21 effective at predicting toxicity when these values  
22 are exceeded. We went a little bit farther to  
23 increase our defensibility by listing only waters  
24 that exceeded 150 percent of these probable affect  
25 concentration values.

1           Therefore, we believe that the probability of  
2   impairment in these waters is considerably greater  
3   than 90 percent.

4           The weight of evidence analysis for fine  
5   sediment deposition, again, basically it says you  
6   look at a control, you select either a control stream,  
7   similar geology and land use or you have an upstream  
8   site, you measure the percent of the bottom of that  
9   control site that is -- has fine sediment, which is  
10   basically sand size or smaller material covering the  
11   bottom. You then compare that with your downstream  
12   site, the site that you're compared about. And if  
13   the downstream site has a high probability of having  
14   more than 10 percent additional bottom covered  
15   compared to the upstream site, in this case, again, a  
16   90 percent or greater probability then it would be  
17   list-able.

18           Okay. Lead --

19           VICE-CHAIR HARDECKE: You're talking about on  
20   the bottom?

21           MR. FORD: Yes. This is fine sediment deposited  
22   on the bottom of the stream. It's actually --

23           VICE-CHAIR HARDECKE: And how's that different  
24   from a mud bottom of a stream?

25           MR. FORD: If the bottom upstream -- the control

1 you used was 100 percent mud and fine sediment,  
2 things like that than obviously you would never make  
3 a downstream determination of impairment because  
4 you'd never have more than 100 percent. It has to be  
5 -- with 90 percent probability it has to be at least  
6 10 percent more of the bottom than what you have  
7 upstream.

8 CHAIRPERSON PERRY: So you don't use, like the  
9 fact that a place north of a certain location? Water  
10 testing has 10 percent difference as sediment and  
11 carries load --

12 MR. FORD: This does not use any water or column  
13 data at all. This is a visual test that the lab has  
14 for measuring the amount of the bottom that's covered  
15 by sand size material or smaller.

16 VICE-CHAIR HARDECKE: So the streams in north  
17 Missouri, who are all mud bottom will not --

18 CHAIRPERSON PERRY: You can't tell.

19 MR. FORD: Right.

20 CHAIRPERSON PERRY: How can you tell the  
21 difference?

22 (No response.)

23 CHAIRPERSON PERRY: How do they do that?

24 MR. FORD: They have a -- they have a 1 foot --  
25 I think, it's about a 1 foot grid. The process

1 they're using now there are like five lines that go  
2 either way that intersect each other that gives you  
3 25 intersection points. They look straight down on  
4 each of those intersection points and they look at  
5 the size of the material that they are looking at,  
6 underneath that.

7           So you've got 25 of those, so each of those  
8 represents 4 percent of the bottom approximately and  
9 they just kind of tick them off.

10           CHAIRPERSON PERRY: And they're doing that --

11           MR. FORD: And they do --

12           CHAIRPERSON PERRY: -- in the stream?

13           MR. FORD: Yes. And they do it many times at a  
14 site, at randomly selected locations. They don't do  
15 one, they'll go out and do 20 or 30 at a site and  
16 then go up to their control stream and do 20 or 30  
17 more up there.

18           CHAIRPERSON PERRY: Would it be easier to do  
19 water testing?

20           MR. FORD: Well, the thing we're really worried  
21 about is the -- the biological impact is probably  
22 less, in terms of, what's suspended in the water  
23 column compared --

24           CHAIRPERSON PERRY: Compared to what's on the  
25 bottom.

1           MR. FORD:  -- to what's on the bottom because  
2 the animals -- the benthic animals can be smothered  
3 and have problems sometimes living where there's too  
4 much fine sediment.

5           CHAIRPERSON PERRY:  Unless you're a Pallid  
6 Sturgeon.

7           MR. FORD:  Some are adapted to it and do very  
8 well, other types not.

9           Okay.  Lead and fish tissue the threshold value  
10 used was 0.3 milligrams per kilogram, which is the  
11 value currently used by the Missouri Department of  
12 Health & Senior Services for their fish advisories.  
13 In addition, we used the EPA IEUBK Lead Human Uptake  
14 Model to estimate the amount of lead that would be  
15 getting into people that consumed fish from a  
16 particular stream.

17           And, basically, what we did was we took the  
18 output from that model and for those waters where the  
19 increase -- where the percent of people in the high  
20 risk category that would go above a certain federal  
21 action level increased so that there was more than 10  
22 percent of that high risk population.  We listed  
23 those.  I think the federal guidelines for doing this  
24 is -- they think there's a problem if more than 5  
25 percent of the high risk population exceed this 10 --

1 this blood lead level.

2           So we kind of doubled that and said if it's  
3 above 10 percent of the high risk population.

4           And for toxicity tested -- toxicity testing we  
5 followed the listing methodology guidelines, again,  
6 there because it specifically states in the listing  
7 methodology for toxicity tests; how many failures of  
8 toxicity tests or toxic events you have to have in a  
9 certain time period before you can list something.  
10 And basically if you have more than one toxic event  
11 in your last three years of data, that's  
12 justification for a listing impairment.

13           Okay. The types of data that we used for  
14 mercury and fish tissue; all waters of the state are  
15 under a fish consumption advisory. Twenty-five of  
16 the waters listed on our list, they are listed solely  
17 due to mercury and fish tissue. Two of the waters  
18 that we listed for mercury and fish tissue were also  
19 listed for other pollutants, but it by far is the one  
20 of our -- the narrative criteria that is most  
21 commonly -- it appears on our list, it is unsupported  
22 by other types of data. So, basically, we're relying  
23 on the federal criterion value, which has widely  
24 accepted the EPA value for making these listing  
25 decisions.

1 CHAIRPERSON PERRY: And that has to do with  
2 atmospheric mercury? About which we can do nothing.

3 MR. FORD: In -- in large part. In large part.  
4 Yeah.

5 VICE-CHAIR HARDECKE: So are you going back and  
6 taking additional fish tissue samples or are you  
7 relying on the ones from 10 years ago?

8 MR. FORD: We're -- we've actually in  
9 the last two years, EPA , the Department of  
10 Conservation, DNR and they Department of Health  
11 decided strictly because of the mercury issue to make  
12 some major revisions in their fish tissue monitoring  
13 program. Prior to this we took fewer samples and we  
14 analyzed them for a fairly large suite analytes  
15 including a lot of pesticides, which was expensive.

16 What we're doing now is we are sampling maybe  
17 twice as many waters per year as we did before for  
18 fish tissue, but we're limiting and only doing this  
19 broad suite of analytes on a small number and we're  
20 doing mercury on everything.

21 So we're keeping our costs about the same. We  
22 may be expanding our costs a little, but we're  
23 getting a lot more data on mercury, probably twice as  
24 much per year as we were previously.

25 So, yes, we're going back on all the waters

1 where we had a listing based upon just a few. We're  
2 definitely going back and getting some of those.  
3 Also, where we've got data -- where we have a couple  
4 pieces of data that indicate there's a problem but  
5 it's not enough data, yet, to put it on our list, to  
6 qualify it for a list, we're monitoring there also.

7 VICE-CHAIR HARDECKE: So has there been any  
8 change in the mercury that you've found on a  
9 particular water body?

10 MR. FORD: You mean one particular body from one  
11 year to the next?

12 VICE-CHAIR HARDECKE: Right, or from now to ten  
13 years ago?

14 MR. FORD: I haven't looked at long-term trends  
15 in several years. I think the last analysis I did  
16 was several years ago, but it tended to indicate, and  
17 at that time we probably had 20 years of data, the  
18 Program goes back about 1970, that there was a --  
19 appeared to be a slow but gradual increase in mercury  
20 statewide.

21 I think we'd want to revisit that because  
22 sometimes just one or two years of data when you have  
23 a -- particularly, when you don't have a very large  
24 data sack can cause things to change. But we don't  
25 think the problem is getting any less worse at this

1 point.

2           Okay. After mercury the second biological  
3 criteria thing that we used was -- or the narrative  
4 criteria thing we used was bio-monitoring. We looked  
5 at those and we listed 13 waters that were listed  
6 solely based on the biological monitoring. Ten  
7 waters we had listing -- the listing was supported by  
8 one additional type of data and for five waters the  
9 listing was supported by two or more additional kinds  
10 of data.

11           So where we listed things due to biological data  
12 that we had, predominantly aquatic invertebrate data,  
13 a little more than half of those listings also  
14 indicated impairment from another type of data.

15           Okay.

16 MALE SPEAKER: I think you went over one.

17           MR. FORD: Yeah. Here's toxic sediments; three  
18 waters listed solely based upon sediment toxicity,  
19 seven waters where we had one other type of data,  
20 five waters where we had two or more types of data;  
21 so 80 percent of our listings for sediment toxicity  
22 have an additional, at least one other type of data  
23 supports an indication of impairment.

24           And for fine sediment deposition; four waters  
25 where it was the sole basis for listing, seven where

1 there was one other type of data, one where there was  
2 two or more, so two-thirds of those waters we have  
3 some other type of data indicating impairment.

4 For lead and fish tissue there were only two  
5 waters that were listed for this, both are supported  
6 by at least two other kinds of data. Both of these  
7 waters that we're proposing to list for lead and fish  
8 tissue are currently under the Department of Health &  
9 Senior Services fish consumption advisory for lead.  
10 So, basically, 100 percent of those waters are  
11 supported by other types of data.

12 Toxicity testing; just one water was listed and  
13 it is supported by two or more additional types of  
14 data.

15 So to kind of summarize this for our narrative  
16 criteria, in terms of waters that are supported by  
17 other types of data; mercury generally not, for our  
18 other types of narrative criteria if you put those in  
19 the group about two-thirds of those are supported by  
20 other types of data that indicate that there is some  
21 sort of impairment.

22 I think that's it.

23 CHAIRPERSON PERRY: Did you-all have any  
24 questions?

25 (No response.)

1 MR. FORD: Any questions?

2 VICE-CHAIR HARDECKE: You have some on here  
3 listed --

4 MR. FORD: Oh, I got the recommendation.

5 VICE-CHAIR HARDECKE: -- the pollutant is  
6 unknown and the source is unknown so how do you know  
7 it's polluted?

8 MR. FORD: Where we've got a pollutant unknown,  
9 source unknown that's usually an indication that we  
10 have biological information that indicates that the  
11 biological community either the invertebrates or the  
12 fish are being harmed or they are abnormal, but at  
13 that point that's the only data we have. We don't  
14 have any other data that indicates -- that points to  
15 exactly what the problem is.

16 VICE-CHAIR HARDECKE: So how do you list it, if  
17 you don't know what's wrong?

18 MR. FORD: Well, we know from the Clean Water  
19 Act that one of the beneficial uses that we have to  
20 protect is protection of -- is our aquatic life. So  
21 when we see biological evidence that we're not  
22 meeting that beneficial use, that we have an  
23 impairment in that community that's -- that's an  
24 impairment of that beneficial use so it needs to be  
25 listed.

1           EPA and their guidance has anticipated this sort  
2 of problem; and they say, specifically, to the states  
3 their guidance is that if you have something where  
4 you have biological evidence indicating impairment  
5 but you don't know the source it should be listed as  
6 unknown and it should be placed in Category 5, which  
7 is the 303(d) List.

8           COMMISSIONER SHORNEY: John, can you -- could  
9 you just explain briefly the difference between the toxicity and  
10 the biological monitoring impairment?

11          MR. FORD: Sure.

12          COMMISSIONER SHORNEY: What --

13          MR. FORD: Right.

14          COMMISSIONER SHORNEY: -- the difference is  
15 there?

16          MR. FORD: Biological monitoring is the  
17 monitoring of the biological community. And it may  
18 be going out and just seeing what type of fish are  
19 there, what type of aquatic invertebrate animals are  
20 there. So it's a description of the aquatic  
21 community and usually comparing it to something in a  
22 -- what we call a reference stream that we know is --  
23 is a normal or natural community. And so if you see  
24 differences between those two; in other words, if you  
25 see fewer species or if they're at different atrophic

1 levels, they're not feeding the same way, they don't  
2 have the same type of habitat for successfully  
3 breeding, whatever it is, then you say it's impaired  
4 based upon those findings.

5 Toxicity tests are where they -- you take a  
6 living organism and you test it in the water that  
7 you're concerned about and see if the animal either  
8 dies or changes it's habits in someway. In some  
9 tests it's the amount of movements and the kind of  
10 movements they make or it may be fecundity, the  
11 number of young that they're able to produce. So  
12 it's actually a measurement of is there a chemical  
13 impact on the animal.

14 CHAIRPERSON PERRY: Could you help me with an  
15 over arching concern? The Clean Water Act has to do  
16 with uses, and uses that are attainable. What does  
17 this have to do with that?

18 MR. FORD: When you say this are you talking  
19 about --

20 CHAIRPERSON PERRY: Yeah. The 303(d) List  
21 because it doesn't talk about uses does it. We have  
22 all of these fancy --

23 (Tape Two, Side A concluded.)

24 (No audio recorded on Tape Two, Side B; this  
25 portion of transcript begins, Tape Three, Side A.)

1           MR. FORD: -- waters are those that are not  
2 meeting all of their beneficial -- designated  
3 beneficial uses.

4           CHAIRPERSON PERRY: So any use?

5           MR. FORD: Any -- any use that's listed in our  
6 Water Quality Standards. And, I think, all of our  
7 waters are listed for protection of aquatic life,  
8 human consumption of fish, livestock and wildlife  
9 watering.

10          CHAIRPERSON PERRY: Okay. I appreciate that.  
11 That was just -- I never got the connection.

12          MR. FORD: On the -- Rob said on the -- the copy  
13 of the 303(d) List actually beneficial uses are  
14 there. The columns, if you start on Page 372 the  
15 column header that says IU, that's the impaired use  
16 and OU are other uses and there's a code that  
17 basically the ones are protection of aquatic life and  
18 two, I think, is swimming, four is livestock water.  
19 So you can kind of see which -- which uses we're  
20 saying are impaired.

21          CHAIRPERSON PERRY: Okay. But don't they also  
22 say those uses have to be attainable?

23          MR. FORD: Well, --

24          CHAIRPERSON PERRY: So it gets back to the  
25 mercury deal. How is that going to be attainable?

1           MR. FORD: Well, I think the presumption -- when  
2 we're doing the 303(d) List, the presumption is that  
3 if that beneficial use is listed in our Water Quality  
4 Standards then it's attainable.

5           If -- if we don't believe that's true then I  
6 think we need to go through the standards revision  
7 process to address that.

8           VICE-CHAIR HARDECKE: Well, at one time I  
9 remember we talked about putting the ones that were  
10 solely listed for mercury on another section of the  
11 303(d) List because if it's due to atmospheric  
12 deposition, which is listed as a source in a lot of  
13 cases here, obviously, there isn't anything we can do  
14 about it here.

15           So what happened to that thought of putting them  
16 separate so that they're not --

17           MR. FORD: I guess whether --

18           VICE-CHAIR HARDECKE: -- in that perception?

19           MR. FORD: -- whether the State of Missouri  
20 produces a 303(d) List that's -- and, I think, in '98  
21 we did this. We had like three categories --

22           CHAIRPERSON PERRY: We did.

23           MR. FORD: -- of waters we put on the list, when  
24 that goes to EPA that's going to come back as one  
25 list.

1           CHAIRPERSON PERRY: They did that to us and,  
2 therefore, we had things that didn't really belong on  
3 a 303(d) List and now we can't get them off.

4           VICE-CHAIR HARDECKE: Well, okay. Then on the  
5 mercury what do you do with the TMDL on mercury?

6           MR. FORD: I think we're planning right now,  
7 right now the TMDL section is starting to do their  
8 homework on how to do a mercury TMDL.

9           CHAIRPERSON PERRY: Okay. Statewide, but how do  
10 you get rid of it? You get rid of the air.

11          MR. MORRISON: (Inaudible) are completing  
12 statewide mercury TMDLs. So there's a lot of this --  
13 EPA has recognized this and they're -- we are working  
14 on that issue with EPA.

15          CHAIRPERSON PERRY: And doesn't that fly back in  
16 the face of the word attainable?

17          VICE-CHAIR HARDECKE: I think we're back to --

18          MR. SCHROEDER: When you write a TMDL, Total  
19 Maximum Daily Load, the primary thing we're doing  
20 there is establishing the amount of mercury in those  
21 waters listed that needs to be removed or how much  
22 the water can actually contain in terms of mercury  
23 before it -- but, you know, before it affects the  
24 beneficial use of human health through fish  
25 consumption.

1           So the TMDL has its benefit of establishing what  
2   that threshold is for each of these independent  
3   waters. From there there's an implementation issue  
4   that you're raising.

5           CHAIRPERSON PERRY: Okay.

6           MR. SCHROEDER: And we all understand it.

7           CHAIRPERSON PERRY: Yeah.

8           MR. SCHROEDER: How are we going to address it?  
9   We, now, know through the TMDL what that number is  
10   that we need to pull from that water body. Now, the  
11   tough issue of trying to implement it is going to  
12   have to be done through some national effort. You  
13   know, I think, EPA is providing a lot of guidance, a  
14   lot of information to the states in how we're going  
15   to try to address this issue nationally because  
16   that's the way it's going to have to be addressed  
17   because remember Missouri can't address it's issue  
18   with its own waters because mercury is coming from  
19   out of state. It's coming from a lot of different  
20   places.

21          VICE-CHAIR HARDECKE: So why do we have the  
22   expense of jumping through all those hoops if we're  
23   not going to do anything about it?

24          MR. SCHROEDER: It's sort of a way of  
25   establishing a number that we can focus on. It uses

1 it -- and we use that number, that TMDL as a way of  
2 managing those efforts and measuring our progress  
3 toward accomplishing implementation.

4 VICE-CHAIR HARDECKE: So you would do one for  
5 the whole state?

6 MR. SCHROEDER: Right. We would have one --  
7 probably, not necessarily but probably if we do a  
8 statewide TMDL we're going to identify that the  
9 amount mercury in each one of these waters, that  
10 amount, is going to be about the same, not exactly  
11 the same.

12 Now, there's cases, like, John mentioned that  
13 maybe there is a higher fish consumption level in  
14 certain water bodies. There may be a higher  
15 sensitivity there and a higher exposure to fish  
16 consumption or to the mercury that's in fish. We may  
17 want to create a more stringent standard or a tighter  
18 TMDL for those waters.

19 Those are some of the issues we need to take a  
20 look at. And that's where the TMDLs really come in  
21 to play is if we want to protect public health and  
22 consider these other factors that are intersected in  
23 Missouri's borders. Now, there's how much fish we  
24 consume, then we're going to have to write out own  
25 TMDLs to establish that because at the national level

1 they're not going to consider that. They may come up  
2 with a national level for mercury in all waters, but  
3 that won't consider the amount of fish that  
4 Missourians consume. So there's a value there.

5 MR. ROB MORRISON: And let me just add what Phil  
6 is saying. He's right on the mark.

7 And one of the other things of the -- the  
8 benefits, if you will, of a statewide mercury TMDL  
9 there is a component of that that will require us to  
10 go through an inventory of local sources of mercury  
11 discharge. In other words, you know, do we have  
12 POTWs or -- or other discharges that are discharging  
13 mercury? Are we appropriately controlling those? Do  
14 we have other state sources of mercury deposition,  
15 for example, that we could -- we address through  
16 other programs and -- you know, get that information  
17 all sort of co-enlist into a report? So a component  
18 of that, Commissioner Hardecke, is that we have to do  
19 an inventory of our sources of mercury here in the  
20 state as well.

21 VICE-CHAIR HARDECKE: Did you have something to  
22 add to that, Rebecca?

23 (No response.)

24 MR. FORD: I think I've still got their  
25 recommendation around here somewhere.

1 Any other questions?

2 (No response.)

3 MR. FORD: We do have a recommended action.

4 The Department recommends the Commission direct  
5 staff to post the proposed draft of the 2008 303(d)  
6 List for a 30-day public notice comment period for  
7 March 11th, 2009 to April 10th, and prepare a final  
8 recommendation for Commission review on May 6th, 2009.

9 CHAIRPERSON PERRY: Robert, did you want to  
10 speak?

11 MR. BRUNDAGE: I just want to support that  
12 recommendation that it be placed on the public notice  
13 that John just mentioned.

14 CHAIRPERSON PERRY: Is that all you want to say?

15 MR. BRUNDAGE: I'll save it up for the next  
16 meeting.

17 (Laughter.)

18 CHAIRPERSON PERRY: Is there anyone else who  
19 wants to speak -- I'm sorry. I think --

20 VICE-CHAIR HARDECKE: Kate (sic)?

21 CHAIRPERSON PERRY: No. Kate (sic) was on 8.  
22 Did you want to speak on this Kate (sic)?

23 (No response.)

24 CHAIRPERSON PERRY: Are there any further  
25 questions on behalf of the Commission?

1 (No response.)

2 CHAIRPERSON PERRY: You got 30 seconds to stir  
3 it up. Hearing none, the Chair will entertain a  
4 motion.

5 COMMISSIONER TUPPER: I move the Commission  
6 direct staff to post the proposed draft to the 208 --  
7 2008 303(d) List as presented by staff or as further  
8 modified by the Commission for a 30-day public  
9 comment period March 11th, 2009 to April 10th, 2009 and  
10 prepare a final recommendation for Commission review  
11 on May the 6th, 2009.

12 COMMISSIONER EASLEY: Second.

13 CHAIRPERSON PERRY: Move and a second, please,  
14 call for the vote.

15 MS. OVERHOFF: Commissioner Shorney?

16 COMMISSIONER SHORNEY: Yes.

17 MS. OVERHOFF: Commissioner Tupper?

18 COMMISSIONER TUPPER: Yes.

19 MS. OVERHOFF: Commissioner Hunter?

20 COMMISSIONER HUNTER: Yes.

21 MS. OVERHOFF: Commissioner Hardecke?

22 VICE-CHAIR HARDECKE: Yes.

23 MS. OVERHOFF: Commissioner Easley?

24 COMMISSIONER EASLEY: Yes.

25 MS. OVERHOFF: Chair Perry?

1           **CHAIRPERSON PERRY: Yes.**

2           Do we have any closed session items?

3           MR. PABST: Yes.

4           CHAIRPERSON PERRY: Thank you.

5           VICE-CHAIR HARDECKE: Jan, do you want to do

6           that?

7           CHAIRPERSON PERRY: Okay. Somebody has the

8           motion.

9           COMMISSIONER SHORNEY: I got it. Madam Chair --

10          CHAIRPERSON PERRY: Don't leave until we make

11          the motion.

12          COMMISSIONER SHORNEY: -- I move the Clean Water

13          Commission go into closed session to discuss legal,

14          confidential and privileged matters under Section

15          610.021(1) RSMo; personnel actions under Section

16          610.021(3), RSMo.

17          COMMISSIONER TUPPER: Second.

18          CHAIRPERSON PERRY: Call for the vote, please.

19          MS. OVERHOFF: Commissioner Tupper?

20          COMMISSIONER TUPPER: Yes.

21          MS. OVERHOFF: Commissioner Hunter?

22          COMMISSIONER HUNTER: Yes.

23          MS. OVERHOFF: Commissioner Hardecke?

24          VICE-CHAIR HARDECKE: Yes.

25          MS. OVERHOFF: Commissioner Easley?

1           **COMMISSIONER EASLEY:** Yes.

2           **MS. OVERHOFF:** Commissioner Shorney?

3           **COMMISSIONER SHORNEY:** Yes.

4           **MS. OVERHOFF:** Chair Perry?

5           **CHAIRPERSON PERRY:** Yes.

6           I have straight-up 12. So I'd like us all to

7 return at straight-up one.

8           Thank you.

9           (Break in proceedings.)

10          **CHAIRPERSON PERRY:** -- for EPA to show up.

11          **MS. LANDEWE:** Oh, I'm sorry, I left my packet in the car.

12          **CHAIRPERSON PERRY:** Okay. We're all ready to  
13 go. I call this -- we've already come out of closed  
14 session and I call this meeting to order. Tab Item  
15 **No. 8**, Darrick.

16          **MR. STEEN:** Let me get situated here.

17          Good afternoon, Commission. My name is Darrick  
18 Steen. I'm the Agricultural Unit Chief for the Water  
19 Protection Program. I think to begin with I'd like  
20 to say a few words of appreciation for Commissioner  
21 Perry's remarks at the beginning of the meeting.

22          She made some remarks about having discussion  
23 and debate on issues and indeed, I believe,  
24 discussions on issues -- on these issues that we're  
25 dealing with today are critical in order to make

1 forward progress on any given issue. And though we  
2 may disagree on certain aspects, I think, we all have  
3 common goals in mind. And so as long as we keep  
4 focused on those common goals, I'm confident that  
5 we'll get through the minor issues.

6 I've always been taught and recently it's been -  
7 - I've been reminded to debate the issue and not the  
8 person and so certainly, I think, you-all believe in  
9 the same thing. And I'll do my best to uphold that.  
10 I respect the opinions and suggestions and the  
11 direction that the Commission gives us and I pledge  
12 to take that direction that you may give me,  
13 back to Department staff along with stakeholders and  
14 workgroup, our CAFO workgroup that is  
15 ongoing.

16 So with that in mind, you have before you,  
17 today, a final draft of the CAFO Nutrient Management  
18 Technical Standard. The Department -- the  
19 Department's Nutrient Management Standard has been  
20 developed by staff within the Department of Natural  
21 Resources, Water Protection Program. This was done  
22 in consultation with the University of Missouri  
23 Extension and the USDA Natural Resource Conservation  
24 Service along with the CAFO workgroup, which meets  
25 fairly regularly at least relatively every other

1 month and has been engaged on this particular  
2 subject.

3         At the January 7th, Clean Water Commission  
4 meeting Department staff provided the Commission a  
5 copy of the first draft of this particular  
6 standard and presented it to the Commission for  
7 background and briefing. At that particular January  
8 7th meeting we provided opportunity for the public to  
9 provide additional comments to the Commission. But  
10 we also received comments from stakeholders, from the  
11 workgroup outside of that Commission meeting also.

12         The Department tried to incorporate many of  
13 those changes into this new final draft. I wouldn't  
14 say that we agreed and incorporated all those  
15 changes but many of them were. And what you have  
16 before you, today, is reflective of that.

17         And so, now, the Department believes that the  
18 standard is of a nature now that is ready for  
19 approval or at least it's ready for approval with maybe some  
20 minor edits that -- that I'm going to point out here  
21 in a minute, with this in mind.

22         So we, the Department, at this -- at this point  
23 in time, request approval of the Commission for this  
24 standard; and I might point out that we feel it is  
25 absolutely critical that we get approval on this,

1 soon, now, because essentially any construction  
2 permit applications that we receive from this point  
3 on will need this standard in order to know how to  
4 prepare a nutrient management plan at least on the  
5 agronomic side of things in compliance with the  
6 regulation. So, certainly, we've -- we've talked  
7 with the consultants and those -- those folks that  
8 are preparing construction permit applications and  
9 made them aware that they need -- they need to begin  
10 following this. So it -- so it is critical that we  
11 move forward on this in my opinion.

12       So I think, what I'm going to do is I'm going to  
13 hit a few highlights on what changed from the  
14 last version. I need to point out one of the  
15 changes that needs still to be made and then  
16 obviously open it up for comment.

17       There was really three -- three primary changes  
18 that we made. The first one being a reference to the  
19 nutrient -- the nutrient removal values and,  
20 basically, the last version required the nutrient  
21 removal values for crops be obtained from the  
22 University of Missouri only, basically. And they had  
23 another option to do site specific plant tissue  
24 sampling to develop a very site specific rate if they  
25 so choose. But if they didn't want to do that they

1 can use the published values from the University.

2 Well, we -- this was -- this was a pretty  
3 contentious item with regard to the CAFO workgroup  
4 and some of the stakeholders. We had -- we had some  
5 that really wanted us to go quite a ways -- quite a  
6 ways out and basically open it up to any type of  
7 published values, private or public sector and then  
8 we had some that were just really concerned about the  
9 adjoining states --

10 CHAIRPERSON PERRY: Can -- and would you point  
11 to the -- do you-all understand the provision they're  
12 talking about in on Page 356, the first full  
13 paragraph labeled E. And it has to do with the topic  
14 fertilizer recommendations.

15 MR. STEEN: Right. So --

16 CHAIRPERSON PERRY: And it's the different ways  
17 you can tell how much phosphorous was removed by the  
18 crop.

19 MR. STEEN: Right. And so this is important in  
20 order to know how -- in order to develop a  
21 recommendation of -- a fertilizer recommendation,  
22 which will then dictate how much manure you put on  
23 the field to meet the crop needs.

24 And, so -- so this was something we got a lot of  
25 feedback on from the workgroup. And it appeared to

1 be a pretty important item to them. So essentially  
2 in a deal to try to reach a compromise we -- we felt  
3 like it was okay to allow a Land-grant university in  
4 adjoining states to -- to -- their removal numbers to  
5 be utilized.

6         And we weren't -- we weren't in agreement on the  
7 private sector numbers because they really -- we had  
8 no control over them and there was really no check --  
9 you know, balance and check on those type of numbers.  
10 So we agreed to allow adjoining state Land-grant  
11 university numbers to be utilized. And we have many  
12 producers in the state that farm in two states. And  
13 I agree that most of these are larger operations, but  
14 nonetheless they may have farms in Illinois and Iowa  
15 and in Missouri and in many cases they have a well-  
16 developed program, nutrient management program, that  
17 may -- may already be put together utilizing Iowa  
18 numbers. And up to this point that -- that was fine.

19         And, so, we wanted -- we didn't want to put  
20 obstacles in their path that mandated that they --  
21 you know, change a program and make significant  
22 changes when -- when we really didn't feel like there  
23 was a lot -- a lot at stake there. We really didn't  
24 feel like there was going to be significant  
25 differences between -- between the states.

1           CHAIRPERSON PERRY: Darrick, do we actually know  
2 what the differences are?

3           MR. STEEN: We do not actually know what the  
4 differences are. They're -- it is presumed by the  
5 Department or by me that the removal values will be  
6 similar. And the University of Missouri's numbers,  
7 which are prepared by the -- I work in concert with  
8 the Extension Department mostly reference national  
9 numbers anyways. Their national resource council  
10 numbers that are -- that are published throughout the  
11 state, throughout the county -- excuse me.

12           And it would be my belief that the other states  
13 probably utilize those same national numbers although  
14 I can't say that for certain.

15           CHAIRPERSON PERRY: So you're asking us to adopt  
16 numbers that we don't know what they are?

17           MR. STEEN: I'm asking you to adopt removal  
18 values that have been adopted by join Land-grant  
19 universities obviously Land-grant universities by virtue--  
20 you know, they're going to base their decisions on  
21 sound science or one would expect them to. And so  
22 that's -- that's what we're asking. That's  
23 correct.

24           And so that was -- that was sort of a compromise  
25 that was made and seemed to -- to resonate well

1 within the workgroup and we got good feedback on that  
2 and up to this point we haven't had any disagreement  
3 on that with -- again, with the stakeholders.

4 So that -- that was one of the changes.

5 CHAIRPERSON PERRY: (Inaudible) with me.

6 VICE-CHAIR HARDECKE: You're not a stakeholder.

7 MR. STEEN: Let me -- let me go on to the second  
8 one, here quick. The second one had to do with --  
9 the workgroup wanted us to instill some guides on how  
10 to -- how to cope with large application fields. We  
11 require these little 20 acre sampling areas, but in a  
12 big field how -- how do those smaller 20 acre tracts  
13 fit in to the grand scheme of things. And so they  
14 wanted us to add a paragraph about how to deal with  
15 that. And so we did and that's on Page 356 at the  
16 top under F, titled Field Level Fertilizer  
17 Applications.

18 And, basically, it's -- it's saying that when  
19 they are very similar you can adjoin all these 20 acre  
20 tracts together in a big field and have one  
21 application rate so it's not all cut up in a whole  
22 bunch of pieces.

23 The third major change was -- was with regard to  
24 -- to when you have a P-based application rate maybe  
25 because the phosphorous levels were -- were high

1 and/or there was -- or the P-index rating resulted in  
2 a P-based rate. As I told you in the past many times  
3 --

4 CHAIRPERSON PERRY: Would you --

5 MR. STEEN: -- that P-based rate is -- is a  
6 value that's so low it's difficult for application  
7 equipment to actually apply it. And so they -- they  
8 need to apply more than that in order to even  
9 practically do it. And so what the -- the EPA rule  
10 allowed for and we've adopted is a multi-year  
11 phosphorous application rate, which allows them to  
12 bank phosphorous into the soil up to four years  
13 worth.

14 They can't apply more -- they still can't apply  
15 more than the nitrogen rate, but they are allowed to  
16 apply let's say in year one what they need for the  
17 next four years and then basically they would lay off  
18 of it -- that particular field for four or five years  
19 or however long it took for the phosphorous to be  
20 removed and then they can start over again.

21 So that -- that give -- that gives some  
22 practicality to -- to the actual application of the  
23 manure. The difference was in the past, in the prior  
24 version we were -- we were asking them to look back.  
25 That became an issue with recordkeeping and actually

1 just explaining it to people. We decided it was  
2 overly complicated. Plus it didn't fit in real well  
3 with the way our regulation was wrote and so we  
4 changed that to a plan forward type scenario.

5       The one change that I -- that I made mention  
6 about, that -- that needs to be made; there was some  
7 discussion in prior workgroup meetings about moisture  
8 content. Right now, the plan requires that a  
9 moisture analysis be part of manure -- moisture  
10 testing be part of the manure analysis.

11       And there were originally some reasons why we  
12 did that though, they weren't -- they weren't reasons  
13 that were probably critical and so the real reason  
14 you need a moisture content on a manure sample is --  
15 is when -- when it's tested and when the result is  
16 given on a dry basis you have to have the moisture  
17 content in order to back calculate it to an as-is  
18 basis because everyone applies manure based on an as-  
19 is basis or a wet basis if you -- if you want to call  
20 it.

21       And if you have it -- if the result comes back  
22 to you in a dry basis, the only way you can go  
23 backwards is if you have the moisture content. Well,  
24 I was under the assumption that that occurs a lot.

25       And after looking at a little more detail

1 evidentially most labs have converted back --  
2 converted to giving these analysis results in an as-is  
3 basis. So that's not necessary. And so what I've  
4 proposed as a change, which will have to be incorporated  
5 into an approval if -- if so given is a change -- let  
6 me get to the right page here.

7 CHAIRPERSON PERRY: It's on 359.

8 MR. STEEN: Well, let's start --

9 CHAIRPERSON PERRY: Two(b).

10 MR. STEEN: -- it's in -- yeah. It's in two  
11 spots let me get to the -- it's in -- on Page 356  
12 kind of middle No. 3.

13 CHAIRPERSON PERRY: Three(b).

14 MR. STEEN: Three(b). What I'm going to do is  
15 I'm going to end that first sentence after total  
16 potassium and then -- and then I'm going to say  
17 percent moisture of dry matter must be analyzed when  
18 results are given on a dry basis only.

19 So the moisture -- percent moisture dry matter  
20 will only be necessary -- or will only be required if  
21 results are given on a dry matter basis otherwise  
22 it's not required as part of the sample, sampling  
23 analyzed list.

24 And I'll have to make that change, also, on the  
25 record side, in the back, where it requires that they

1 record what the moisture analysis is, and so it will  
2 only be required to be recorded, again, if it's -- if  
3 the manure analysis is given on a dry basis.

4 CHAIRPERSON PERRY: Do you want to use the  
5 university wording, like only needed if results are  
6 not on an as-is basis?

7 MR. STEEN: Yes. That's fine. We can use that  
8 wording.

9 The -- the -- and what Commissioner Perry is  
10 referring to is we reference a MU guide with regard  
11 to how -- the manure analysis and the MU guide gives  
12 that kind of guidance already. So it certainly makes  
13 sense to be consistent with the MU guide that we  
14 reference.

15 So that -- those are the major changes and I  
16 think we're ready to take questions.

17 CHAIRPERSON PERRY: So you had those two? All  
18 right.

19 MR. STEEN: Those two changes. That's correct.  
20 Was the same -- it's the same changes it is just  
21 in two different spots.

22 CHAIRPERSON PERRY: Okay. Are there any  
23 questions for Darrick?

24 Do you think we should go ahead and also  
25 address the concerns of -- Kate (sic) did you want to

1 speak and then we can discuss issues?

2 VICE-CHAIR HARDECKE: And Robert.

3 CHAIRPERSON PERRY: And Robert. I'm sorry. I  
4 forgot that.

5 Oh, yeah. Darrick, would you -- did you also  
6 agree under total phosphate to be expressed as P2O5  
7 and total potash -- phos -- potash as K2O?

8 MR. STEEN: Yes. Yeah, that -- I mean, that's --  
9 -- that's really just a material change. It's really  
10 a wording change. Let me make sure that I have that  
11 wrote down though. I thought I wrote that down -- it's on  
12 page --

13 CHAIRPERSON PERRY: Three fifty-nine, 2(b).

14 In agricultural circles phosphorous is expressed  
15 as P2O5 and that has a significant impact on the  
16 amount of phosphorous.

17 MR. STEEN: Right. There -- there is a  
18 difference between total phosphorous and phosphate  
19 and there's a conversion factor to go back and forth,  
20 but I'll add that to ensure that that is clear to  
21 everyone.

22 CHAIRPERSON PERRY: And there was no reason to  
23 require the potash as you said other than that most  
24 manure test are done in terms of MPK?

25 MR. STEEN: Right. I mean, I think, it is my

1 understanding that sort of the base manure analysis  
2 by any lab would include M, P and K. Now, I mean, I  
3 can tell you that from an environmental point the K  
4 isn't really all that important to us. We don't  
5 regulate K in anyway when I'm talking about potash.

6 It's not really relevant to our review of a  
7 nutrient management plan although it is relevant to  
8 the producer and it his cropping sequence on the nutrient  
9 side of what he's doing. But it is included in  
10 there. I'm not proposing to take it out but, again, I  
11 don't -- I don't think it's gonna -- it's going to  
12 make or break anything with regard to the standard.

13 COMMISSIONER SHORNEY: Darrick, page 358 item E manure  
14 applications must be monitored; how's that going to be done?

15 I mean, what kind of control do we have?

16 MR. STEEN: Well, we don't have a hard and fast  
17 -- there's no hard and fast check and balance there  
18 to ensure that -- that a farmer is monitoring the  
19 application rates. What -- putting that in the  
20 standard, what it does is provide us sort of some  
21 leverage when we have a situation where there was --  
22 you know, an application issue and it sort of gives a  
23 foot hole in to ensuring that -- you know, that --  
24 what am I trying to say here? Gives us some  
25 leverage when working -- working these issues out on

1 if there would be an enforcement case or with at the  
2 regional office level with inspections, so --

3 I -- we -- there's -- it's not -- I mean,  
4 there's a certain amount of -- of a trust there, if  
5 you will with the producers.

6 VICE-CHAIR HARDECKE: I think what you're  
7 talking about is it will be monitored by the person  
8 applying it.

9 MR. STEEN: That's correct. Yeah. Yeah.

10 VICE-CHAIR HARDECKE: You'll -- whoever is  
11 applying it will monitor the rate as they're applying  
12 it --

13 COMMISSIONER SHORNEY: Okay.

14 MR. STEEN: But there's -- yeah -- I mean, I  
15 took that question to mean like an over -- kind of an  
16 oversight.

17 COMMISSIONER SHORNEY: Okay. Then from an  
18 oversight standpoint these documents then are turned  
19 in by the various entities and it's reviewed by the -  
20 - your office, the State, once a year or how is that  
21 done?

22 MR. STEEN: Well, right now they're --

23 COMMISSIONER SHORNEY: I am just thinking of the  
24 control aspect of this whole thing.

25 MR. STEEN: Sure. I mean, right now, the way

1 this would work is that these nutrient management  
2 plans will be part of the -- the permitting process,  
3 the permit application essentially. And, you know,  
4 that -- that's, at this point in time, its part of  
5 the construction permitting application process. In  
6 the future it will be part of anytime there permit is  
7 modified or renewed -- you know, those types of  
8 issues will have to be sort of re-flushed out if  
9 changes are made.

10 But it's -- I mean, it's really only seen by the  
11 Department one time during -- at the time of the  
12 permit application request. And then we -- you know,  
13 we approve that. And it's really -- to an extent  
14 it's part of the permit at that point. So they're  
15 obligated to follow that plan.

16 COMMISSIONER SHORNEY: So the next time it's  
17 reviewed, is permit renewal?

18 MR. STEEN: As far as the nutrient management  
19 plan itself goes, yes, but, obviously, there's a  
20 recordkeeping component to the permits and these  
21 nutrient management plans, records that they have to  
22 keep onsite. Some of those records though are part -  
23 - are also reporting requirements. And so they are  
24 going to be submitting on an annual basis certain --  
25 certain records to us for review; and most certainly

1 all the records that they're required to maintain  
2 will be available for inspection. And, also, the  
3 inspector has -- certainly has the right to -- to ask  
4 for a copy of the nutrient management plan and likely  
5 will in the future as we -- as we get these new  
6 regulations implemented. That'll be -- that'll just  
7 be one of the -- the items on the checklist for an  
8 inspector to ensure that they have -- have it in  
9 place.

10 COMMISSIONER TUPPER: Darrick, I see where the  
11 labs have to be accredited; are there any controls on  
12 the person that collects the sample?

13 MR. STEEN: There's -- there's not. I mean, the  
14 -- the MU guides that we reference gives pretty  
15 instructions on how to take a sample. Obviously, if  
16 someone wants to cheat the system intentionally  
17 there's -- there's plenty of ways that they -- I  
18 mean, there's plenty of different places they can do  
19 that. It would be very difficult for us to implement  
20 a fail safe process here.

21 And -- but soil sampling and manure sampling is  
22 something that's -- that can easily be done correctly  
23 by any farmer.

24 COMMISSIONER TUPPER: Anybody?

25 MR. STEEN: Yeah.

1           And so -- you know, we wouldn't want to limit  
2 that to -- you know, a professional, whatever that  
3 might be. So right now it's in the hands of the  
4 farmer or -- you know, or someone that he may hire to  
5 do it.

6           COMMISSIONER TUPPER: What I was thinking about  
7 was back in the '70s when the counties began to do  
8 septic tank regulations we had a bunch of people that  
9 called themselves soil scientists and, basically, all  
10 they had was enough money to buy business cards. And  
11 it didn't -- it didn't work.

12          MR. STEEN: Well, I mean, in this business I  
13 would say that by intentionally manipulating samples  
14 they're hurting their own cause to an extent because  
15 if they're growing a crop and they're trying to make  
16 money at it -- you know, good data is going to be  
17 important to get good results. And so -- you know,  
18 if they're doing that they're really hurting their  
19 own pocket books to an extent. And I don't -- I  
20 don't see that probably being as big as a problem in  
21 the agri-- you know, in this CAFO sector but it could  
22 be and it's something for us to certainly keep an eye  
23 on.

24           And on the manure analysis side it's much easier  
25 because when we -- when we get manure analysis

1 results in for different type of systems, we know  
2 where they should be -- I mean, there's a ballpark  
3 range where they -- they should fit in and when they  
4 start -- you know, start getting outside of that  
5 range is when -- you know, we'll start asking  
6 questions.

7       Soil sampling is a little more difficult to do  
8 'cause there is a pretty good range, a pretty good  
9 variation out there.

10       COMMISSIONER SHORNEY: Darrick, I guess one of  
11 the biggest controls would be the amount of land that  
12 they have to apply this manure on in the first place,  
13 right? So that's one of the permit things that you  
14 ask for.

15       MR. STEEN: Right.

16       COMMISSIONER SHORNEY: I guess that would be the  
17 first control --

18       MR. STEEN: Yeah.

19       COMMISSIONER SHORNEY: -- aspect of it.

20       MR. STEEN: Yeah. I mean, basically our  
21 construction permit application process is -- is a  
22 feasibility study to an extent. I mean, we require  
23 that a CAFO operator prove in that they have the land base  
24 necessary to manage the amount of manure they're  
25 going to generate. Now, I'll admit -- excuse me.

1 I'll admit that there's -- there is some loopholes or  
2 some ways around that that we're -- that we're  
3 certainly trying to address, but certainly when it  
4 comes to swine manure -- or swine facilities, really  
5 any type of liquid manure system -- you know, we --  
6 before we issue permits, we ensure that they've got  
7 the land base necessary. And that land can be owned  
8 or leased, but we require that they provide spreading  
9 agreement -- you know, signed spreading agreements.

10 And we have -- we have turned down permits for  
11 that reason in the past, in the recent past actually.

12 CHAIRPERSON PERRY: Any other questions for  
13 Darrick?

14 (No response.)

15 CHAIRPERSON PERRY: Hang close because I want  
16 you to come back again.

17 Kate (sic)?

18 MS. LOGAN-SMITH: Good afternoon.

19 CHAIRPERSON PERRY: Good afternoon.

20 MS. LOGAN-SMITH: We've got some comments we'd  
21 like to submit in writing for the record.

22 There's a couple of things that I want to bring  
23 to your attention, immediately, which have to do with  
24 new and expanded facilities because he said this is  
25 going to come up -- this plan is going to come up

1 every time a permit comes up, but we've created a  
2 definition in here that limits how often that  
3 happens.

4 And I don't have the same copy that you have.

5 CHAIRPERSON PERRY: I think I can help you get  
6 there.

7 MS. LOGAN-SMITH: Section 311 and the  
8 applicability of this section, of the draft MDNR  
9 Nutrient Management Technical Standards must be  
10 revised to ensure proper review of expanding and  
11 existing CAFO facilities.

12 And what was added from one part to another was  
13 the phrase in addition of a barn, it says --

14 VICE-CHAIR HARDECKE: What page are you on?

15 MS. LOGAN-SMITH: I'm -- I don't have your copy.  
16 I have the workgroup copy, so -- an expanding -- or  
17 CAFO is a CAFO that is adding a manure storage  
18 structure or a confinement barn and expanding the  
19 total animal capacity of the operation.

20 And when we discussed this in the workgroup it  
21 was pointed out that if you add a barn, at one time,  
22 but don't expand your animal capacity, at that time,  
23 and then come back later and expand your animal  
24 capacity but don't add a barn do you escape this provision because  
25 it looks a lot like a sort of a crafted loophole.

1           And Darrick's response to that concern, at the  
2 time, was "Oh, well, we would probably catch that.  
3 It would be a red flag for us."

4           VICE-CHAIR HARDECKE: Darrick, do you know what  
5 page she's on?

6           CHAIRPERSON PERRY: Can you -- can you help us?  
7 I don't think it's here at all.

8           MS. LOGAN-SMITH: It's under applicability.

9 MS FRAZIER: I've got it.

10           CHAIRPERSON PERRY: Under applicability for  
11 purposes of this paragraph --

12 MS FRAZIER: Three fifty-three --

13 -- Paragraph B.

14           MS. LOGAN-SMITH: So I think if you wanted to  
15 make this --

16 MS. FRAZIER: -- second to the last sentence.

17           MS. LOGAN-SMITH: -- really work, better --

18           CHAIRPERSON PERRY: Could we stop just a second  
19 so we can get there?

20           It's under B, Applicability, second to the last  
21 sentence on Page 353.

22           COMMISSIONER HUNTER: Three what?

23           CHAIRPERSON PERRY: Three fifty-three.

24           MS. LOGAN-SMITH: This language might be  
25 interpreted as encouraging expansions to take place

1 in separate operations between animal housing and  
2 waste storage when integrated planning on both counts  
3 should prevail as the most appropriate management.  
4 Many CAFO pollution problems occur when animal  
5 populations are increased without making commensurate  
6 increases in waste storage and land application  
7 capabilities.

8 The language that's presently stated in the  
9 draft also fails to recognize that an increase in  
10 animal populations of a CAFO without also making an  
11 increase in waste storage or barn size should be  
12 considered as an expansion of a CAFO operation since  
13 such a change will increase the annual waste volume  
14 for disposal.

15 Finally, existing CAFO operations should be  
16 required to comply with any newly published Technical  
17 Standards at the time of publication rather than at  
18 the time of permit renewal. Little in the MDNR draft  
19 actually constitutes much change from longstanding  
20 nutrient management planning practices previously  
21 evident in Missouri under NRCS requirements.

22 Which brings me to --

23 CHAIRPERSON PERRY: Excuse me. My brain wasn't  
24 working quite fast enough there. Were you objecting  
25 to the part that it says, confinement barn --

1 MS. LOGAN-SMITH: Confinement barn.

2 CHAIRPERSON PERRY: -- and --

3 MS. LOGAN-SMITH: Yes. Confinement barn "and"  
4 should be deleted.

5 CHAIRPERSON PERRY: Okay. Are you suggesting  
6 that that be an and/or?

7 MS. LOGAN-SMITH: It should be an "or". And  
8 confinement barn should be removed.

9 VICE-CHAIR HARDECKE: Why would you want to  
10 remove that --

11 MS. LOGAN-SMITH: Or you could leave it and just  
12 change it to "or", yeah. Because any addition is  
13 going to be some kind of change so adding a barn  
14 whether you add more animals at that time or not  
15 needs to be acknowledged as an expansion.

16 VICE-CHAIR HARDECKE: Well, you wouldn't add a  
17 barn unless you put animals in it.

18 MS. LOGAN-SMITH: That would be my argument.  
19 (Laughter.) I mean, what would be the point? It  
20 would be hard to find a bank to fund that one.

21 VICE-CHAIR HARDECKE: Well, that's why it would  
22 be correct the way it's stated. A confinement barn -  
23 -

24 MS. LOGAN-SMITH: No. Well, if you -- there was  
25 concern expressed that it could be exploited as a

1 loophole and it would be nice to avoid that.

2 VICE-CHAIR HARDECKE: Yeah, but who's going to  
3 spend the money to build a barn and leave it sit  
4 empty?

5 MS. LOGAN-SMITH: It depends on how big a  
6 loophole they want.

7 VICE-CHAIR HARDECKE: Well, nobody would loan  
8 you the money to build the building.

9 MS. LOGAN-SMITH: We would hope not.

10 CHAIRPERSON PERRY: Okay. So that was the first  
11 objection. I'm just trying to track and make sure I  
12 understand what you're trying to say.

13 MS. LOGAN-SMITH: That's probably the only item  
14 in here that would be something that you could  
15 address, today. The -- the large presence -- the  
16 Missouri Department of Natural Resources must resolve  
17 to carryout its conservation stewardship and public  
18 trust responsibilities to address pollution effluents  
19 from CAFO operations by regulatory efforts in support  
20 of national requirements to abate CAFO effluents.

21 One of our challenges here is that we're looking  
22 at NRCS standards and NRCS is not a regulatory  
23 institution and it doesn't have responsibilities from  
24 a regulatory standpoint to meet the Clean Water Act  
25 in the way that DNR does. And so we have a bit of a

1 challenge trying to reconcile two different missions  
2 with this.

3 But we do have CAFO pollution problems and DNR  
4 acknowledges that in their 305 reports.

5 CHAIRPERSON PERRY: May I ask you, where is the  
6 reference to NRCS in this?

7 MS. LOGAN-SMITH: NRCS was where a lot of this  
8 work was sourced from, so --

9 CHAIRPERSON PERRY: Right. And NRCS is  
10 responsible with giving technical information, right.

11 MS. LOGAN-SMITH: Correct.

12 CHAIRPERSON PERRY: But there's nothing in this  
13 rule that --

14 MS. LOGAN-SMITH: Right. But the approach of  
15 NRCS -- this rule -- this rule is inadequate to meet  
16 Clean Water Act standards is our contention.

17 VICE-CHAIR HARDECKE: Yeah. But they're not  
18 referenced. They're referencing the University of  
19 Missouri. I don't see any references to NRCS in the  
20 --

21 MS. LOGAN-SMITH: Right. Well, they do -- yes.  
22 They rely a lot on the 590.

23 CHAIRPERSON PERRY: And then repeat again,  
24 please, why is this rule not meeting the Clean Water  
25 Standards?

1 MS. LOGAN-SMITH: Let's go into that. MDNR  
2 acknowledges some CAFO related water problems in our  
3 305 reports, at least in the 2006 report. Despite  
4 these acknowledgements overall consideration of MDNR  
5 Clean Water Program structure decisions and  
6 implementation indicate a record which fails to properly  
7 address water pollution from CAFO operations.

8 Despite acknowledging that CAFO operations have  
9 caused water quality problems not a single entry on  
10 the proposed 303(d) List for 2008 shows a single CAFO  
11 related nutrient water quality impairment. There are no  
12 indications of impairments in the year 2008 Section  
13 303(d) proposal of any Missouri water course because  
14 of excessive nuisance, algae or aquatic vegetation in  
15 violation of Missouri's Narrative Standards.

16 Failure to enforce nutrient related narrative  
17 Water Quality Standards through the 303(d)  
18 designation removes considerable regulatory pressure  
19 from CAFOs located in locations where Water Quality  
20 Standards are violated even if MDNR is not listed or  
21 classified the stream segment.

22 MDNR's policy of considering CAFO permits is no  
23 discharge permits leads to MDNR's policy allowing  
24 CAFO NPDES permits to escape antidegradation review  
25 taking further regulation and environmental

1 evaluation burdens off of operating CAFO facilities.

2 Missouri must make changes to increase the  
3 stringency of CAFO water regulation over current  
4 authorities and performance and commit additional MDNR  
5 agency resources to field inspections and nutrient  
6 management plan compliance review in order to  
7 properly protect and manage waters of the state.

8 Failure to enforce narrative Water Quality  
9 Standards related to nutrients and their impairments  
10 in water courses frustrates the national goal of  
11 making our waters fishable and swimmable and denies  
12 these benefits to Missouri citizens by allowing  
13 objectionable but avoidable environmental degradation  
14 from CAFO operations.

15 Because of the threat to water quality from this  
16 agricultural sector and past agency inaction and  
17 resistance by MDNR to EPA regulatory program  
18 standards the State of Missouri is presently ill  
19 prepared to address CAFO related wastewater effluents  
20 and water quality problems caused by such effluents.

21 Because of the draft MDNR Nutrient Management  
22 Technical Standards failed to properly address MDNRs  
23 Clean Water Act responsibilities for effluent  
24 limitation and protection of water quality the  
25 standard should not be adopted as final at the

1 present time or without additional opportunities for  
2 public comment after further amendment.

3 CHAIRPERSON PERRY: Okay. This is an  
4 opportunity for public comment. What I heard you  
5 make was a lot of overall general allegations that --

6 MS. LOGAN-SMITH: Right. And I can go into  
7 specifics.

8 CHAIRPERSON PERRY: -- like permitting. And  
9 they're saying there's -- they have -- these are no  
10 discharge requirements meaning they can't let  
11 anything go. My question is --

12 MS. LOGAN-SMITH: Well, this is in --

13 CHAIRPERSON PERRY: -- my question is, what  
14 we're considering at this point in time is this rule.  
15 And you made some blanket statements that this rule  
16 does not address, the effluent and the Water Quality  
17 Standards. But other than changing and "and" to an  
18 "or" I haven't heard any suggestions as to how that  
19 should be changed.

20 MS. LOGAN-SMITH: I've got 26 pages. But I  
21 probably don't want to read them all to you.

22 Let me --

23 CHAIRPERSON PERRY: Well, are they all that  
24 general?

25 MS. LOGAN-SMITH: No. They are not all that

1 general. But some of the issues pertain to  
2 enforceability of the Nutrient Management Technical  
3 Standards. This needs to be an enforceable -- they  
4 need to be enforceable under -- in part of the  
5 permit.

6 CHAIRPERSON PERRY: And how are you proposing  
7 that they be enforced?

8 MS. LOGAN-SMITH: They need to be enforceable  
9 through citizen action per the Clean Water Act.

10 In promulgating CAFO Nutrient Management  
11 Technical Standards DNR must ensure that such  
12 standards reflect --

13 CHAIRPERSON PERRY: Okay. Now, you're really not  
14 going to read 26 pages to us, are you?

15 MS. LOGAN-SMITH: No. I'm just going to read  
16 the highlights.

17 Must ensure such standards reflect a degree in  
18 level effluent control and performance avail --  
19 achievable through the application of federal Clean  
20 Water Act requirements for best available technology  
21 and best conventional technology effluent limitations  
22 for CAFO production area and land application  
23 effluents.

24 CHAIRPERSON PERRY: Okay. Is that -- are we  
25 still talking enforceability?

1 I'm looking for -- this Commission is charged  
2 with these rules right now in front of us. And if --  
3 if they're general comments that may be able to come  
4 up with the rulemaking, we should maybe save those.  
5 But what I really need to know is suggestions on, you  
6 said, "enforceability." Do you see some places here  
7 that -- and you have a suggestion on how it can be  
8 enforced. The filing of the --

9 MS. LOGAN-SMITH: If the draft Technical  
10 Standard is to be enforceable for Missouri CAFO  
11 nutrient management plans its provisions must be  
12 legally binding on affected CAFOs and the content of  
13 their nutrient management plans.

14 CHAIRPERSON PERRY: Okay. They're giving a  
15 nutrient management plan, right?

16 MS. LOGAN-SMITH: I'm sorry?

17 CHAIRPERSON PERRY: And that's -- by having a  
18 nutrient management plan they're showing that they're  
19 complying; isn't that the enforceable mechanism?

20 MS. LOGAN-SMITH: The draft an contains an important  
21 qualifier and it says: an operation may choose to  
22 use alternative protocols. This qualifier further  
23 illustrates the Technical Standard as proposed is not  
24 mandatory because people can come up with another way  
25 to do it. It does not have the affect of the

1 Missouri Administrative Rule since the qualifier  
2 indicates the Technical Standard doesn't have to be  
3 used in making nutrient management plans under  
4 unstated admin -- alternative protocols.

5 CHAIRPERSON PERRY: It says it has to  
6 demonstrate -- that the alternative protocol provides  
7 both a reliable and a technically valid basis. For -  
8 - perhaps, they have some alternative way of doing it  
9 that may be more affective. They are trying to --

10 MS. LOGAN-SMITH: But we don't know how that's  
11 going to meet best available technology for effluent  
12 limitations, so -- we don't -- we haven't spelled  
13 that out.

14 VICE-CHAIR HARDECKE: That would fall within  
15 "best available." I mean, that's what you're asking  
16 for is best available and that's what -- what is here  
17 or something else that would be equal to that.

18 MS. LOGAN-SMITH: The only way for abate  
19 effluent limitation requirement is a best management  
20 practice to be enforceable as for it to be a permit  
21 provision with the required rule citation arising  
22 from the binding affect of a Missouri statute permit  
23 provision or an administrative rule provision.

24 As a practical matter for NPDES permit issuance  
25 decision-making and effluent limitation can only be

1 enforceable it it's included in the provisions of a  
2 permit. As to a publically available version of the  
3 CAFO site's specific nutrient management plan that is  
4 part of the NPDES permit requirements.

5 CHAIRPERSON PERRY: Okay.

6 MS. LOGAN-SMITH: Compliance with that is deemed  
7 to be compliance with the act of the permit shield.

8 CHAIRPERSON PERRY: Excuse me. Can we stop on  
9 that point? Are these not going to be a part of  
10 permit? So doesn't that address your --

11 MS. LOGAN-SMITH: A Technical Standard is  
12 guidance.

13 CHAIRPERSON PERRY: That's the standard for  
14 requiring that they have nutrient management plans;  
15 am I right?

16 MR. STEEN: Technical Standards -- in future  
17 permits this Technical Standard will be adopted or  
18 incorporated by reference in future -- certainly in  
19 future general permits.

20 MR. MORRISON: The nutrient management plan is the product of  
21 this Nutrient Management Technical Standard and it  
22 will certainly be a part of -- an enforceable part of  
23 the permit.

24 CHAIRPERSON PERRY: Okay. So doesn't that  
25 address what you were asking for there?

1 MS. LOGAN-SMITH: One of the big concerns about  
2 this issue is the -- how the Nutrient Technical  
3 Standard establishes a de facto variance policy  
4 allowing CAFO land application discharges to be  
5 excused from effluent limitation enforcement and  
6 permitting requirements.

7 CHAIRPERSON PERRY: Would you explain that? I  
8 want to know how these CAFOs are excused from  
9 effluent limitations.

10 MS. LOGAN-SMITH: Well, it's all considered an  
11 agricultural storm water discharge.

12 VICE-CHAIR HARDECKE: They're not discharging.  
13 It's not a storm water discharge.

14 CHAIRPERSON PERRY: These are --

15 MS. LOGAN-SMITH: It's only an exempt discharge  
16 if it's used with -- if ensures appropriate  
17 agricultural utilization. And that is --

18 CHAIRPERSON PERRY: Right. And all this is  
19 about how they're going to land apply and make sure  
20 they have enough --

21 MS. LOGAN-SMITH: Correct.

22 CHAIRPERSON PERRY: -- that's going to be taken  
23 up by the crop

24 MS. LOGAN-SMITH: MDNR asserts that compliance  
25 with this standard though will ensure appropriate

1 agricultural utilization, but they never say how this  
2 claim was establish, tested and verified.

3           A claim that a standard must necessarily be  
4 considered to ensure such agricultural utilization is  
5 of a character appearing to guarantee a very high  
6 probability approaching virtual certainty that such  
7 utilization will be achieved.

8           But if you -- appropriate agricultural  
9 utilization must be considered to be maintaining  
10 applied CAFO nutrients so that applied nutrients stay  
11 in the crop route zone for later plant utilization.  
12 At this writing no finding from MDNR is available  
13 that explains how and why the proposed Technical  
14 Standards will either provide virtual near certainty  
15 that applied nutrients will be used in the  
16 agricultural system or that applied nutrients will be  
17 maintained in the crop route zone.

18           The failure of MDNR to make such a finding on  
19 the record denies the public due process in  
20 commenting. MDNR will be considered -- considering  
21 CAFO land application discharges and whether or not  
22 such discharges will be considered to be exempt or  
23 not. However, MDNR makes its decisions on this  
24 important of the Clean Water Program. Operation is a  
25 crucial matter for public and EPA review.

1 CHAIRPERSON PERRY: Okay. How much information  
2 do you think needs to be in the rule to explain to you  
3 the agronomic -- how plants work?

4 MS. LOGAN-SMITH: I don't think --

5 CHAIRPERSON PERRY: Because this is basically --

6 MS. LOGAN-SMITH: -- I need some explanation on  
7 how plants work. What I see happening in watersheds  
8 in across the state is we have -- we have streams  
9 that are impaired with nutrients. We have -- you  
10 know, streams that are choked with algae. We have --  
11 we have land application that's occurring repeatedly  
12 at fields. We have land application that's occurring  
13 in ways that isn't necessarily best for water  
14 quality. And we have a challenge trying to regulate  
15 these operations given that we consider them no  
16 discharge operations when, in fact, the waters of the  
17 state are being affected.

18 VICE-CHAIR HARDECKE: That's what these are for  
19 --

20 CHAIRPERSON PERRY: That's what this is about,  
21 but -- you know --

22 VICE-CHAIR HARDECKE: -- to address any  
23 situations like that.

24 CHAIRPERSON PERRY: -- clearly we're going after  
25 that here. And I would propose to you I don't

1 remember you taking a statement about 648 parts per  
2 million phosphorous being dumped in by the  
3 government. Just to get that in.

4           You know, we're trying to balance everything.  
5 This is a sources and I think you'll find that it  
6 addresses most of your concerns without generalities  
7 but these are very specific using P-indexes on what  
8 is clearly understood for a long time to be what the  
9 amount of nutrients a plant takes up.

10           MS. LOGAN-SMITH: Right. But our concern is not  
11 in the nutrients that the plant takes up. Our  
12 concern is the nutrients that the plant does not take  
13 up --

14           CHAIRPERSON PERRY: Right.

15           MS. LOGAN-SMITH: -- and how those get into the  
16 waters of the State of Missouri. So there are some  
17 issues that need to be dealt with in general in some cases with  
18 regard to this particular standard that deals with those other  
19 nutrients that are not getting taken up by the plant.

20           So although the use of soil tests and methods of  
21 phosphorous controlled through sheet erosion are  
22 important tools for limiting potential land  
23 application related nutrient discharges such methods  
24 alone cannot ensure nutrient utilization because of  
25 discharges of animal waste and production wastewater

1 can arise during land application from other physical  
2 phenomenon not address soil results, the Missouri P-  
3 index and control of sheet erosion runoff with  
4 entrained nutrients.

5 CHAIRPERSON PERRY: What are those?

6 MS. LOGAN-SMITH: Some of these physical  
7 phenomenon and practical occurrences are described:  
8 one of them, land application discharge to surface  
9 waters resulting from applied process wastewater intrusion  
10 into field tile systems; intrusion into the  
11 groundwater from macropore transport to points below  
12 the roots crop zones; three, fall nutrient application with long  
13 durations before crop utilization or use of winter  
14 cover crops and subsequent nutrient intrusion to  
15 groundwater particularly if such applications are not  
16 incorporated.

17 CHAIRPERSON PERRY: Okay. I didn't understand  
18 that one, about the crops -- the winter crops are  
19 doing what?

20 MS. LOGAN-SMITH: Before they're -- before the  
21 nutrients are being used by winter cover crops. So  
22 with -- before the cover crops are on the ground if  
23 you're applying it -- doing a fall application and  
24 leaving it on the ground for a long time without incorporating  
25 it, there can be a groundwater issue from nutrients.

1 If there's no crops there to take up the nutrients  
2 they are not going anywhere except where the water  
3 carries them.

4       Surface land applications of animal waste to  
5 fields without incorporation followed by erosive  
6 precipitation the P-index does not consider the  
7 mobility of surface applied in non-integrated waste  
8 to be different than soil particular mobility so the  
9 Missouri P-index does not account for such discharge  
10 potential.

11       Non-incorporated land application to soils with  
12 a diminished field holding capacity followed by runoff  
13 in a field concentrated to flow to surface waters.

14       Application of wastewater at volumetric rates  
15 exceeding the actual hourly soil, water and  
16 infiltration rate are in total volumes which exceed  
17 the soil moisture in capacity.

18       VICE-CHAIR HARDECKE: That is spelled out in  
19 here.

20       MS. LOGAN-SMITH: Volumetric rates?

21       CHAIRPERSON PERRY: Um-huh.

22       VICE-CHAIR HARDECKE: It -- the infiltration  
23 rates and the ability of the soil to --

24       CHAIRPERSON PERRY: To take it.

25       VICE-CHAIR HARDECKE: -- absorb.

1           CHAIRPERSON PERRY: And it says that it can't be  
2 applied in those times when the soil is saturated --

3           MS. LOGAN-SMITH: Or frozen.

4           CHAIRPERSON PERRY: -- when the fields are  
5 saturated, when the ground is saturated.

6           MS. LOGAN-SMITH: Application to wastewater to  
7 fields in a manner that applied wastewater runs off  
8 the edges of fields particularly through concentrated  
9 flow areas and unincorporated non-injected  
10 application of process wastewater or containing  
11 ammonia subject to evaporative losses and, thus,  
12 failure to maintain agricultural utilization.

13           Some of the other points, too, that we need to  
14 think about as a state is that sometimes these wastes  
15 contain pollutants in addition to just nutrients and  
16 we don't explain how we're going to be dealing with  
17 those from a Clean Water Act perspective.

18           CHAIRPERSON PERRY: What other pollutants are  
19 you talking about?

20           MS. LOGAN-SMITH: Pathogens, sometimes metals,  
21 pharmaceuticals, which we don't have to worry about,  
22 yet, but it's on the list; so chemical oxygen  
23 demands, suspended solids, dissolved solids, animal  
24 hormones, amino acids, veteran pharmaceuticals,  
25 copper, sulfides, ammonia odors and endotoxins, so --

1           CHAIRPERSON PERRY:  As the Clean Water  
2 Commission we don't address air issues.

3           MS. LOGAN-SMITH:  True.

4           Pathogens, biological oxygen demands, suspended  
5 solids, dissolved solids, animal hormones and  
6 metabolic waste products have no role in agricultural  
7 crop utilization and as a result such pollutants  
8 entering surface waters should not be deemed as  
9 eligible for exempt under the --

10          (Tape Three, Side A concluded.)

11          MS. LOGAN-SMITH:  The Missouri P-index does not assess the  
12 discharge risk of applications to fields, only the risk of in situ  
13 soil phosphorous off field runoff, off field surface transfer and  
14 transport, the P-index cannot be used to justify any agricultural  
15 storm water exemption determinations of that technique of applying  
16 nutrients ensure appropriate agricultural  
17 utilization.

18          CHAIRPERSON PERRY:  Excuse me.  Isn't the  
19 purpose of the P-index so you don't have runoff?

20          MS. LOGAN-SMITH:  The purpose of the P-index is so you don't  
21 over apply phosphorous.

22          CHAIRPERSON PERRY:  Okay.  And that purpose --

23          MS. LOGAN-SMITH:  It doesn't necessarily stop  
24 runoff though, which is one of the issues.

25          CHAIRPERSON PERRY:  Well, you're trying not to

1 over apply more than you're going to use in a four-  
2 year build. And you're also not applying to anything  
3 greater than a 20 percent slope. So you don't have a  
4 runoff problem. Are you saying that those numbers do  
5 not adequately address your concerns and, if so, what --  
6 what are your suggestions? And, also, were these  
7 brought up at the workgroup?

8 MS. LOGAN-SMITH: No. This -- some of this was  
9 brought up at the workgroup, but some of this  
10 analysis is -- is fairly new.

11 CHAIRPERSON PERRY: Did you participate in the  
12 workgroup?

13 MS. LOGAN-SMITH: Yes. I did.

14 So Missouri has not published important  
15 procedural work practices associated with the use of  
16 the Missouri P-index, nothing in the draft CAFO Technical  
17 Standards addresses procedures and timing on P-index  
18 determinations. CAFO operations should be placed  
19 under requirement to conduct field specific P-index  
20 determinations at the beginning of each crop year.  
21 CAFO land application field P-index determination  
22 should be made on an annual basis. Operators should  
23 not be allowed to use five-year or rotation log  
24 intervals as extended averaging times for P-index  
25 integration.

1 COMMISSIONER TUPPER: (Statement inaudible.)

2 MS. LOGAN-SMITH: Nothing about the P-index  
3 addresses nitrogen leaching and nitrate pollution of  
4 groundwater, which is a particular important in karst  
5 areas.

6 CHAIRPERSON PERRY: Are we on Page 26, yet?

7 MS. LOGAN-SMITH: Not quite.

8 If a nutrient management plan assumes that a  
9 conservation practice will be in place as part of P-  
10 index determination in other management such  
11 conservation practices must be verified and enforced.

12 For example, if the soil loss is calculated by  
13 assuming a winter cover crop after fall tillage then  
14 such a cover crop must be in place -- put in place or  
15 the operator should be considered in violation of  
16 their nutrient management plan. And one of the big  
17 challenges for us is figuring out how to enforce all  
18 of this.

19 CHAIRPERSON PERRY: Are you aware that fall  
20 tillage is not a very common thing?

21 MS. LOGAN-SMITH: Fall -- yeah, it is. But fall  
22 application can be.

23 CHAIRPERSON PERRY: Right. In fact, I would  
24 assume if there is tillage it's to get that  
25 application in the ground so it doesn't runoff; am I

1 correct, farmers?

2           Okay. Because you kept saying that, and I was  
3 just saying -- you know, that shouldn't be a  
4 significant problem to you 'cause it's not what the  
5 practices are.

6           MS. LOGAN-SMITH: It is interesting what we see  
7 on ground in Missouri is some practices that really  
8 raise concerns about how things are applied. I mean,  
9 its one thing to apply manure and incorporate it and  
10 make sure that the nutrients get in the root zones --

11           CHAIRPERSON PERRY: And isn't that the point of  
12 these rules?

13           MS. LOGAN-SMITH: But it's common practice in  
14 Missouri to -- to use center pivots and traveling guns  
15 and other such things to spray liquid waste across  
16 fields. And in our experience across waterways and  
17 across water courses so that you are creating a  
18 direct path to the waters of the State of Missouri.  
19 And that isn't specifically prohibited in the  
20 Technical Standards, but I think we should consider  
21 prohibiting it because getting the nutrients in the  
22 root zone of the crops is better for the crops, it's  
23 better for water quality and it makes a lot more  
24 sense in terms of counting -- counting manure as a  
25 resource.

1           The Technical Standards need to be much more  
2 detailed because properly managing nutrients on  
3 fields in Missouri is a very site specific challenge.  
4 It's not -- soil samples vary, and so having that 20  
5 acre field and being familiar with the details of  
6 that compared to an 80 acre segment is probably  
7 preferred.

8           But each field needs to have a level of detail  
9 known to -- that applies to this nutrient management  
10 plan. So the Technical Standards should require that  
11 the CAFO NPDES have a topographic map and a boundary  
12 to depiction for each land application field.

13           There also needs to be a way to track these  
14 things to make sure that -- that multiple year --  
15 that one field isn't receiving applications -- you  
16 know, multiple applications in years -- you know, if  
17 they can't -- if they can't handle it.

18           VICE-CHAIR HARDECKE: That's what the soil  
19 testing and plant nutrient removal values and the --

20           MS. LOGAN-SMITH: But that's for the -- that's  
21 for the CAFO, but what about the landowner? What if  
22 -- what if I a leasing agreement with a CAFO and  
23 you're spreading -- I take -- you know, you come and  
24 spread manure on my field and then I get truck loads  
25 in from -- of poultry litter from Arkansas or from

1 Barry County and put those on my field too.

2 VICE-CHAIR HARDECKE: On the same field?

3 MS. LOGAN-SMITH: On the same field.

4 VICE-CHAIR HARDECKE: Okay.

5 CHAIRPERSON PERRY: If you don't own a CAFO  
6 you're exactly right.

7 MS. LOGAN-SMITH: That -- and that is a  
8 challenge for water quality in Missouri.

9 VICE-CHAIR HARDECKE: But who is going to  
10 purchase that much extra nutrients?

11 MS. LOGAN-SMITH: Well, --

12 VICE-CHAIR HARDECKE: I guarantee you, if you had any idea of  
13 the economic situation of agricultural much of this land  
14 application of manure is done to replace commercial  
15 fertilizer. And so the economics of agricultural in  
16 the last two years, particularly, are certainly going  
17 to address any over application problems because many  
18 of these units are built solely to get the -- the  
19 organic fertilizer as a nutrient.

20 CHAIRPERSON PERRY: And it has enough value that  
21 a lot of people want it. So it's not being over  
22 applied.

23 MS. LOGAN-SMITH: A lot of people do want it.  
24 And you asked you would over apply it; the answer to  
25 that question is not the responsible landowner. It's

1 not the people that you don't see in this room. It's  
2 not the responsible people that over apply it. It's  
3 the people for whom the laws are written. It's the  
4 ones who don't do the right thing. The ones who are  
5 trying to get out of the regulations, the ones who  
6 try to escape all of that, they're the ones that --  
7 that would over apply nutrients. And if I hadn't --  
8 if I didn't get phone calls and photos and documents  
9 about this stuff I wouldn't be here, today. But the  
10 fact is it's not the good guys that need the laws.

11 CHAIRPERSON PERRY: And we know that. And we're  
12 here to enforce those who aren't the good guys. But my  
13 second point is 20 years ago, what you just said was  
14 much more true than it is now. People have  
15 discovered -- they used to take their honey wagon to  
16 that place closest so that they wouldn't have to  
17 drive so far and they dumped it out kind of heavy and  
18 it was looked at as a waste. That has completing  
19 turned around when nitrogen hit a \$1,000 a ton. So,  
20 now, this has tremendous value and people are being  
21 very careful on how they apply it because they have  
22 to buy it. Farmers are not just dumping it someplace  
23 or finding somebody else's land on which to dump,  
24 people are looking at this as a valuable nutrient and  
25 they're carefully applying. And I think you'll find

1 that there are a lot less of those bad actors, who by  
2 the way we are very quick to prosecute in this  
3 Commission.

4 MS. LOGAN-SMITH: When we get them identified  
5 though. That's the challenge for us is identifying.

6 CHAIRPERSON PERRY: Well, that's what -- that's  
7 what you kept calling your neighbor, if you want to.

8 The next thing is you've made mention to how big  
9 the fields are; you realize this is a Missouri  
10 statewide statute and you might be familiar that the  
11 fields in the bootheel, an 80 acre field would be a  
12 small field and it's very flat and it's very  
13 consistent. And so for that, that would work. And  
14 this said, if it works to go a stronger more  
15 consistent area then we will go to that larger area.  
16 And we have to figure out a way to adapt to the most  
17 diversified agricultural state in this country.

18 MS. LOGAN-SMITH: Granted, we do have a lot of  
19 diversity.

20 One of our other points is that MDNR has  
21 provided no basis for its existing proposal to allow  
22 CAFO operators to exceed planned and recommended  
23 fertilizer application rates. At a number of  
24 locations in Section --

25 CHAIRPERSON PERRY: Where did they say that?

1 MS. LOGAN-SMITH: In Section 382 of the draft  
2 Technical Standard.

3 CAFOs are authorized to exceed the recommended  
4 or planned target nutrient application rates by 10  
5 pounds per acre or 10 percent, whichever is greater.  
6 But there's no basis to show why that's okay.

7 VICE-CHAIR HARDECKE: Where is that?

8 CHAIRPERSON PERRY: Oh. I see.

9 It's A2 on Page 356, Number 1. All manure  
10 applications on land.

11 MS. LOGAN-SMITH: So there needs to be some  
12 explanation of why they can exceed the recommended  
13 nutrient rates and the manner envisioned should be  
14 considered a best management practice and what such  
15 excessive application rates will have, what affect  
16 they'll have on surface and groundwater.

17 CHAIRPERSON PERRY: I think I can explain that  
18 to you.

19 MS. LOGAN-SMITH: No. It's not that I need the  
20 explanation. It's just that it needs to be as part  
21 of the record. DNR needs to explain to people where  
22 it came from and why.

23 CHAIRPERSON PERRY: The problem is you fertilize  
24 before you grow your crop. You put the fertilizer  
25 when you plant the seed. And if you can tell me

1 within 10 percent of what yield any farmer in this  
2 state is going make, they would be happy to call you  
3 god.

4 MS. LOGAN-SMITH: Right.

5 CHAIRPERSON PERRY: There are just entirely too  
6 much in nature things that happen in storms. And so  
7 they're saying that you need to predict your  
8 phosphorous within 10 percent of what you're going to  
9 take off. And nobody can get any closer than that.

10 MS. LOGAN-SMITH: And -- but that also comes up  
11 against the appropriate agricultural utilization of  
12 nutrients because -- you know, that -- and it does  
13 have an issue if you put 10 percent extra because  
14 you're putting it on --

15 CHAIRPERSON PERRY: Well, I don't think --

16 MS. LOGAN-SMITH: -- and spring rains are coming  
17 and their your crops are going in --

18 CHAIRPERSON PERRY: Excuse me. They're not  
19 planting 10 percent extra. This is going back in  
20 reverse; am I right?

21 The annual amount can't exceed 10 percent per  
22 acre whichever is greater. But you won't know what  
23 that was if it was greater until after you take your  
24 crop off; am I right?

25 VICE-CHAIR HARDECKE: And then by -- by

1 addressing your nutrient management plan for the next  
2 year of plant removal rates, if you did not remove an  
3 adequate amount of crop to use that on the previous  
4 year you would reduce that for the next year.

5 CHAIRPERSON PERRY: That's how this Program is  
6 working. So we're trying -- where nobody goes out an  
7 over applies fertilizer. I haven't met the farmer  
8 who does it.

9 VICE-CHAIR HARDECKE: Very few farmers apply  
10 enough fertilizer.

11 MS. LOGAN-SMITH: If we're lucky you'll get to  
12 meet them soon.

13 The rest has to do with recordkeeping, which, I  
14 think, is fairly well covered. But the issue for us  
15 is where is the enforceability -- I mean, Darrick  
16 admitted a minute ago a lot of this is based on --  
17 you know, cross your hands -- cross your fingers and  
18 hope and trust that it gets done. And that there's  
19 not a lot of mechanisms in place for making sure it's  
20 happening on the ground.

21 And one of our big concerns is, particularly,  
22 impaired watersheds. We have impairments that are  
23 potentially related to land application items, and  
24 where we have sensitive groundwater issues in karst.  
25 So how are we going to make sure that this happens

1 the way -- to protect clean water if it's not spelled  
2 out with lots of detail and enforceable in the  
3 permit?

4 CHAIRPERSON PERRY: Do you believe this has the  
5 same level of enforcement like a point source where  
6 they're set to do their self monitoring?

7 MS. LOGAN-SMITH: Well, I don't think it gives  
8 us the same -- I think -- I don't think this is set  
9 up to -- to be as enforceable with -- through citizen  
10 action as a point source issue.

11 And part of that is we need to have access to  
12 nutrient management plans, not just in -- but earlier  
13 and often.

14 And I would like the Commission to also think  
15 about one of the things we're discussing in the  
16 workgroup, which is a state level permit that covers  
17 our Class 2 and Class 3 facilities or Class 2 and  
18 non-class facility, but definitely Class 2 facilities  
19 so that we can start looking at cumulative impacts of  
20 multiple facilities in a watershed because if you've  
21 got a certain amount of land in a watershed and all of it or a  
22 big chunk of it is getting land application from Class 2  
23 facilities. There are cumulative impacts that we're  
24 seeing in certain parts of the state that need to be  
25 addressed. And if the federal rules are not going to

1 be tight enough and strong enough to address those  
2 then, we, as a state need to consider a state  
3 permitting opportunity that looks at how we can  
4 protect and upgrade the -- protect those waters and  
5 upgrade the situation that's happening there, so --

6 I think our reservoirs in this state and the  
7 neighboring states would be particularly grateful if  
8 we started looking at cumulative impacts of our Class  
9 2 facilities in trying to make sure that water  
10 protective measures are being taken.

11 And I know NRCS is not a regulatory agency and  
12 they do have some challenges with conservation  
13 compliance because they are mostly carrots and not  
14 many sticks.

15 But we've got a lot of opportunity with farm  
16 built programs in addition to the regulatory side of  
17 things that this -- that we bring to the table as the  
18 DNR and the Clean Water Commission that we might be  
19 able to make some progress on that issue.

20 CHAIRPERSON PERRY: Do you believe that  
21 agricultural phosphorous is in most significance or  
22 phosphorous in general?

23 MS. LOGAN-SMITH: Not phosphorous. It depends  
24 on the watershed, actually. Certain watersheds, it  
25 is the problem. Other watersheds, it's not.

1           CHAIRPERSON PERRY: Okay. Do you acknowledge  
2 there are other sources going down our rivers that  
3 are not coming from agricultural lands?

4           MS. LOGAN-SMITH: There are tons of other  
5 sources going down our rivers. And we've -- we've  
6 seen -- you know, we've seen the impact of making  
7 progress on those point sources, too. And -- but I  
8 do think that we need to start looking closely at  
9 cumulative impacts and in particular watersheds of  
10 the state where we are seeing lots of other things.

11           The other challenge we're dealing with in the  
12 stakeholder group is imported waste from Arkansas.  
13 We get a lot of stuff from Arkansas. We don't know  
14 where it's going and we don't know where it's being  
15 applied, but we know it's coming here and we need to  
16 come up with a way to track it.

17           CHAIRPERSON PERRY: Well, this would -- oh, no  
18 it wouldn't.

19           MS. LOGAN-SMITH: No. This wouldn't. This  
20 wouldn't, that's a whole other hearing. We'll talk  
21 later about that one.

22           CHAIRPERSON PERRY: Okay. Can we summarize now?

23           MS. LOGAN-SMITH: But let me submit this in  
24 writing and -- so you can see how many of these  
25 points that you want to address now and this may be

1 more of an ongoing project --

2 CHAIRPERSON PERRY: Well, actually, I'd really  
3 like you to limit your comments because of time to  
4 what we need to address for this rule.

5 MS. LOGAN-SMITH: For this rule, right now, I  
6 can't -- I can't see an easy way to make -- this do  
7 what I would like it to do. So we have -- we have to  
8 limit my comments on what to do about this particular  
9 document to fixing the definition of expansion  
10 because I think that's a big deal.

11 CHAIRPERSON PERRY: And did you make other  
12 copies of your 26 pages that we can read?

13 MS. LOGAN-SMITH: I only have one copy, but I  
14 can e-mail them to you if you want to distribute them  
15 that way.

16 CHAIRPERSON PERRY: I would like that.

17 MS. LOGAN-SMITH: It may be easier.

18 CHAIRPERSON PERRY: Yeah. If you would e-mail  
19 it or mail it to Malinda, you can distribute that to  
20 the Commission.

21 MS. LOGAN-SMITH: Right. And we can start  
22 looking at how to address -- how to make this really  
23 work for Missouri because I think it has to and I  
24 think everybody in the room probably agrees that it -  
25 - it does have to work.

1           So thank you.

2           CHAIRPERSON PERRY: Thank you. Mr. Brundage?  
3 Robert, I called her Kate (sic) so I'll call you  
4 Robert.

5           Is it Kat? I'm sorry. Kat, I apologize for  
6 calling you Kate (sic). I can't read.

7           MS. LOGAN-SMITH: Oh. That's okay. You can use  
8 that for comments or Kathleen.

9           MR. BRUNDAGE: Madam Chair, members of the  
10 Commission, I have a pathetic six bullet points on  
11 the back of a piece of paper to talk to you about  
12 today.

13          CHAIRPERSON PERRY: I hope it doesn't take you  
14 as long as would have to read 26 pages.

15          MR. BRUNDAGE: No. It won't. But I'm glad I  
16 have an opportunity to listen to Kat.

17           One thing I would like to point out is that, I  
18 think, there's only one watershed in the State of  
19 Missouri that is impaired partially by livestock  
20 operations. And I think that is demonstrative that  
21 the people that I represent the Pork Association, the  
22 members of the Missouri Agribusiness and some of my  
23 other CAFO clients are overall doing a very, very  
24 good job in the State of Missouri when you have no  
25 other water bodies on the 303(d) List that are

1 impaired by livestock.

2           And the one that I am aware of being the Elk  
3 River watershed down in McDonald County, the TMDL  
4 that is written on that demonstrates that there is  
5 about maybe four different sources of phosphorous.  
6 There's wastewater treatment facilities, there's  
7 septic tank failures from anthropogenic sources,  
8 there's cattle and CAFOs, all of those sources are  
9 contributing so even -- even in that instance you  
10 can't point the finger just at CAFOs and say that  
11 they're doing -- you know, they're the problem. So -  
12 - you know, the people that I represent, the people  
13 I've worked closely with for years are out there  
14 trying to do a good job. They are trying to protect  
15 the environment and they're trying to make a living.

16           Now, some people that would want to comment on  
17 these and make negative comments really don't have  
18 anything at risk out there, but the people that I  
19 represent are trying to make a living at the same  
20 time trying to comply with the laws and you're here  
21 trying to weigh and balance these things to try to  
22 point out and get at those bad actors. Anybody,  
23 like, Kat mentioned who is spraying wastewater out  
24 over a stream or something like that, they need to be  
25 prosecuted. Please turn them in. I'm sure DNR would

1 love to hear from them because we don't support  
2 anything like that.

3           But we do -- what we support is trying to come  
4 up with a workable solution to allow my clients to  
5 write nutrient management plans and go out and do the  
6 best they can by land applying nutrients to grow the best  
7 crop they can to feed this country. Because everyday  
8 we wake up and we go to the breakfast table and it's  
9 my clients that are providing the food on your table.

10           One thing I wanted to say about this -- this  
11 document is that, I think, Darrick, would probably  
12 attest to this when we -- when he first putting it  
13 together probably didn't think he was going to run  
14 into as many comments as he did. But there is a  
15 plethora of guidance documents from the University of  
16 Missouri and other sources out there on how to manage  
17 nutrients. This is not an exact science, this is  
18 science that is going on everyday and that's why we  
19 have the University of Missouri and other Land-grant  
20 institutions that everyday are researching and  
21 studying how to become better farmers.

22           So this is not an exact science and I think  
23 this document goes along way of trying to do the best  
24 job it can to put down what appropriate standards  
25 are. And I support the fact that this document is a

1 guidance document on how to write a nutrient  
2 management plan. And, although, Kat and others  
3 oppose this statement but on Page 353, at the bottom  
4 of the page, there's a note that says, this is  
5 guidance on how to write a nutrient management plan  
6 and -- you know, if you want to deviate from this you  
7 certainly may if you can justify it. That is a  
8 statement that my clients support because there's a  
9 lot of different instances out there where people are  
10 successfully using alternative management practices  
11 in their operations.

12           So the way I look at this document is that this  
13 is a guidance document to help us write the nutrient  
14 management plans. Now, remember under our Phase 2  
15 rulemaking and -- you know, my clients are going to  
16 have to write a nutrient management plan. Those are  
17 going to be put on public notice for people to read.  
18 That is where these things are going to be held  
19 accountable. If somebody wants to comment on a  
20 nutrient management plan and thinks somehow its  
21 deficient, they can comment on it and then DNR will  
22 look at those comments.

23           But we're going to be writing these nutrient  
24 management plans. This provides the overarching  
25 guidance for us to do that. And since it is guidance

1 we support it with that note written in that fashion.

2           Another thing I wanted to talk about on Page  
3 353 is the paragraph in the middle of the page, it  
4 starts with, this MNTS will be used by the Department  
5 et cetera, et cetera, about when fields or land  
6 application fields are exempted from the agricultural  
7 storm water exemption. I suppose that's true and I  
8 don't know if this is the place to put a paragraph  
9 like that because you already have in your  
10 regulations in this Phase 1 rulemaking that you just  
11 adopt it, where it says there is an agricultural  
12 storm water exemption. It's been in the law for a  
13 long time in the point source definition. And this  
14 will be one tool. But it -- but it's not the -- the,  
15 be all, end all; as to look at this document, about  
16 whether somebody is exempt from the storm water. So  
17 that is -- that is a complete separate legal review  
18 and I don't feel too strongly about that this  
19 paragraph is in here because, I think, it's just some  
20 suggested language on how this -- this guidance will  
21 be used.

22           Now, it talks in the next to last line of that  
23 paragraph about CAFOs will qualify for the  
24 agricultural storm water exemption when they can  
25 demonstrate compliance with the standard at the time

1 of a precipitation related discharge. That basically  
2 means it rains and I suppose that if some nutrients  
3 get washed off -- you know, were they in compliance  
4 with their nutrient management plan. Well, there are  
5 so many different aspects of a nutrient management  
6 plan from recordkeeping of how much it rained in  
7 December when you weren't land applying or whatever --  
8 -- it's endless the number of things that you  
9 could keep track of. And I suppose DNR, and I hope  
10 DNR, in the past, most of the time they have used  
11 good judgment on when enforcing these type of things.  
12 But this says demonstrate compliance. I suggested  
13 that it should be substantial and material compliance  
14 with this standard.

15 But, again, as I said this paragraph doesn't necessarily  
16 belong there. So I'll leave that up to your  
17 discretion as to whether or not you think that  
18 paragraph should be amended to talk about substantial  
19 and material compliance. Because what we want to do  
20 is that with somebody following their plan, pretty  
21 closely; did they land apply 11 percent over their  
22 recommendation? If they did land apply 11 percent by  
23 accident or whatever should we write them a notice of  
24 violation and fine them? I don't think so.

25 So, therefore, I think if there were some words

1 in there that talks about how you substantially  
2 comply with something -- you know, you comply with  
3 the spirit of your nutrient management plan. I think that's  
4 what Department -- DNR -- the DNR would follow when  
5 enforcing this, but I wanted you to consider that  
6 comment.

7 I had -- I was going to comment on one of the  
8 same paragraphs that Kat just commented on, on Page  
9 353, about the manure storage structure or  
10 confinement barn and expanding the total animal  
11 capacity. Now, these permits have in them about how  
12 many animal units you're allowed to have on your  
13 farm. So I don't know why it makes any difference on  
14 whether you build an extra lagoon just to store some  
15 more storage, but if you don't add any animals you're  
16 not increasing the pollution potential on your farm.

17 If you wanted to build another barn for some  
18 reason and put one animal in it that you were already  
19 permitted to have that animal on your farm you're not  
20 increasing the amount of pollution -- or not pollute  
21 -- excuse me. You're not including expanding the  
22 amount of manure on your farm that would need to be  
23 managed properly. So I think it's written just fine  
24 the way it is when it has the word "and" in there,  
25 because what you're looking at is; are they expanding

1 the animal -- the total animal capacity at their  
2 farm? If they are, the more animals they have the  
3 more manure you have and, therefore, it might -- it  
4 should trigger the -- the requirement to have a  
5 nutrient management plan.

6 But I want you to remember that when the  
7 general permit that is issued to -- how many? Four  
8 hundred.

9 MR. STEEN: Five hundred and fifty.

10 MR. BRUNDAGE: Five hundred and fifty CAFOs  
11 across the state, when that thing expires in a couple  
12 years from now, at that point in time, everybody has  
13 to have their nutrient management plan upon renewal  
14 of that permit.

15 So we're just basically talking about a short  
16 period of time on whether somebody goes out and  
17 starts adding more animals to their farm. And if  
18 they do, then that would trigger the nutrient  
19 management plan requirements. So I support the  
20 paragraph as written.

21 There was a discussion that Darrick gave on how  
22 there were approximately three things changed in this  
23 before it came to you, today. And one of them was  
24 allowing people -- or allowing nutrient management  
25 plans to be written based upon the recommendations

1 from Land-grant universities that surround or --  
2 excuse me, adjoin the State of Missouri. My clients  
3 support that provision. And the reason we support  
4 that provision is that there are members that -- that  
5 we represent that are located around the perimeter of  
6 Missouri. And there are times that they utilize  
7 consultants that are across the border, today we're  
8 in Hannibal. There might be a consultant across the  
9 river in Illinois that uses Illinois' Land-grant  
10 university recommendations for corn application and  
11 that they know how to write a nutrient management  
12 plan. Are Illinois recommendations going to differ  
13 from Missouri? Yeah. They might, it's not going to  
14 be by much -- I mean, we're in this part of the  
15 country anyway --

16 CHAIRPERSON PERRY: Do you know the answer to  
17 that? Is that based on fact or conjecture?

18 MR. BRUNDAGE: A conjecture.

19 CHAIRPERSON PERRY: Go ahead.

20 MR. BRUNDAGE: But I'm -- I don't know why that  
21 --

22 CHAIRPERSON PERRY: I'll get back to you.

23 MR. BRUNDAGE: -- I don't why it would be any  
24 different from that.

25 CHAIRPERSON PERRY: I'll get there in a minute.

1 Go ahead.

2 MR. BRUNDAGE: Okay. Good.

3 So to -- to force those producers to go find new  
4 sources of -- of people to assist them when they've  
5 had an established relationship on how they manage  
6 the nutrients in their operations, we don't think  
7 it's necessary to force those operations to try to go  
8 hire somebody new and reinvent the wheel to try to  
9 use a University of Missouri recommendation when in  
10 all likelihood it's probably very, very close to  
11 another state.

12 CHAIRPERSON PERRY: Are you saying those  
13 consultants are not capable of adapting to the  
14 Missouri rules?

15 MR. BRUNDAGE: They can but it is going to at  
16 additional cost or it's going to be cost on our  
17 producers.

18 CHAIRPERSON PERRY: Did they give you any idea  
19 of how much that cost is? Is it a matter of putting  
20 a few different numbers into their program?

21 MR. BRUNDAGE: Their programs probably -- you know,  
22 some people have set their program up on Land-grant  
23 universities --

24 CHAIRPERSON PERRY: Do you know who that is? We  
25 keep hearing about "some people"; is this one --

1           MR. BRUNDAGE: Well, I -- I -- I don't know the  
2 name, but I know --

3           CHAIRPERSON PERRY: I think you might be  
4 referring to --

5           MR. BRUNDAGE: -- I know there is producer in  
6 northeast Missouri that does an Illinois, for a fact,  
7 an Illinois --

8           CHAIRPERSON PERRY: Consultant. And the guy  
9 can't use Missouri data?

10          MR. BRUNDAGE: I'm sure he could but it's going  
11 to take extra time -- he's probably going to say,  
12 listen I don't even want to deal with it. Then he's  
13 got to go hire somebody in Missouri to -- and then,  
14 he says, well, fine I'll have to charge you a bunch  
15 of start up cost to get all the information from you  
16 and I'll have to charge you more for it.

17          CHAIRPERSON PERRY: It has to do with removal  
18 rates of a crop. And what we're worried about is that  
19 what Illinois says is the removal rate of phosphorous for  
20 a corn crop or for any non-lagoon crop might be  
21 different from the University of Missouri and nobody  
22 in this room seems to know that answer.

23          But if that is, you're asking someone who does  
24 business in Illinois and wants to comply with  
25 Illinois law to say, well, you just keep complying

1 with Illinois law and use that in Missouri because we  
2 don't want to cause you any extra trouble even  
3 though Missouri's law might be a little different;  
4 is that right?

5 MR. BRUNDAGE: That's right. And let me -- you  
6 know, in my experience in talking to the researchers  
7 at the University of Missouri or Land-grant  
8 university, on how they come up with the  
9 recommendations, I have seen guide sheets that have  
10 recommendations that don't come out for a long period  
11 of time. And why is that? Because you got  
12 scientists behind the scenes arguing back and forth should this  
13 number be more here or here. I told you this is not an exact  
14 science so it doesn't bother me that much that --  
15 that the State of Illinois or Iowa State, another  
16 excellent Land-grant university, that their  
17 recommendation is a little different from corn then  
18 it's two different people --

19 CHAIRPERSON PERRY: Yeah. Well, its crop --

20 MR. BRUNDAGE: -- if you want somebody up --

21 CHAIRPERSON PERRY: -- this isn't their  
22 recommendation on what to apply, is it? This is on  
23 crop removal, correct?

24 VICE-CHAIR HARDECKE: That's right. But that  
25 will factor --

1 MALE SPEAKER: But that would be used to calculate  
2 it.

3 CHAIRPERSON PERRY: So you're saying then the  
4 calculation is actually that we're going to start  
5 applying Illinois' recommendations?

6 MR. STEEN: (Inaudible) removal value will be  
7 important. It will be important to calculate -- as  
8 part of the equation calculating fertilizer by the  
9 application rate -- fertilizer rate to those crops.

10 CHAIRPERSON PERRY: Why don't they just do a  
11 soil test and then they'll know?

12 VICE-CHAIR HARDECKE: No. That wouldn't matter  
13 'cause this is --

14 MALE SPEAKER: That doesn't work.

15 CHAIRPERSON PERRY: Okay.

16 VICE-CHAIR HARDECKE: -- this is plant removal.

17 CHAIRPERSON PERRY: They can do a tissue test;  
18 isn't that right here?

19 VICE-CHAIR HARDECKE: Yeah. But that's another  
20 test. That's a pretty extensive --

21 CHAIRPERSON PERRY: When necessary nutrient  
22 removal rate should be based or often can be based on  
23 measured plant analysis. And that would give you the  
24 most accurate, would it not?

25 VICE-CHAIR HARDECKE: Maybe.

1           CHAIRPERSON PERRY:  Maybe?

2           You can see how much nitrogen was taken up into  
3 the plant and you can calculate that pretty -- or  
4 phosphorous and calculate it out to how many bushels  
5 you got.  But -- or you can use the guesstimate by  
6 the University of Missouri or we can, because the  
7 consultant lives in Illinois he can apply what his  
8 state thinks because you just told me everybody  
9 thinks differently, right?  Right?

10          MR. BRUNDAGE:  Yes.  So I don't see the harm in  
11 allowing, probably, what is going to be a relative  
12 few, operate in the State of Missouri who have  
13 existing business relationships with professionals in  
14 other states close by, now, because some people were  
15 arguing that it should be any Land-grant university  
16 and Darrick wouldn't allow that.  They were wanting  
17 to go to Purdue --

18          CHAIRPERSON PERRY:  That's a good school.

19          MR. BRUNDAGE:  -- or Ohio State or let's keep  
20 going east.  Darrick thought that this was an  
21 appropriate middle ground to choose, a compromise to  
22 make.  I support that compromise because I've got  
23 people on both sides of it who want to keep using the  
24 folks that they've been using, so that's --

25          CHAIRPERSON PERRY:  Again, so you don't think

1 that these people are capable of when they're dealing  
2 with their clients in another -- in this state can go  
3 by our rules, they'd rather because they already put  
4 something in their computer with somebody else's  
5 rules that they should apply those, because it would  
6 be too much trouble for them if they're going to be  
7 doing business in Missouri to follow the Missouri  
8 rule?

9 MR. BRUNDAGE: That's correct. And partly that  
10 some of those people -- and I'm sure you won't agree  
11 with, but if you're -- you're located on the edge of  
12 the state sometimes that can be so similar to that  
13 other state that those people are familiar with that  
14 part of the world anyway. So that's why using  
15 adjoining --

16 CHAIRPERSON PERRY: Except that in the edges of  
17 all those states, all those parts of the states and  
18 this is what you're not remembering are some very  
19 important research facilities of the University of  
20 Missouri, they are not only located in Missouri, that  
21 you have your recommendations come out of  
22 Portageville, which is right on the edge --

23 VICE-CHAIR HARDECKE: Are -- are we going to --

24 CHAIRPERSON PERRY: -- of Delta Center.

25 VICE-CHAIR HARDECKE: -- are we going to change

1 the University of Missouri's recommendations  
2 according to what section of the state you're in?

3 CHAIRPERSON PERRY: They don't change.

4 VICE-CHAIR HARDECKE: Well, so then they're not

5 --

6 CHAIRPERSON PERRY: They have figured out what's  
7 good for Missouri.

8 VICE-CHAIR HARDECKE: -- they're not applicable  
9 to that part of the state.

10 CHAIRPERSON PERRY: And I don't know what the  
11 crop removal -- I think we have underlying piece of  
12 fact that we don't understand whether this is -- we  
13 could be spending a lot of time arguing of something  
14 we don't know.

15 VICE-CHAIR HARDECKE: That could be.

16 CHAIRPERSON PERRY: I can tell you, I don't want  
17 to vote for that provision until I know what we're  
18 talking -- this could be a 20 percent difference and  
19 make a 50 percent difference in fertilizer  
20 application. We don't know the answer. And I would really  
21 like to have a comparison of the -- of Iowa,  
22 Illinois, Kansas, Arkansas, Tennessee, Nebraska and  
23 Missouri on their crop uptake, nutrient removals.  
24 And if they are the same, well, then is no big deal  
25 and we're wasting too much time. But if they're

1 significantly different, we've just heard a big  
2 complaint over 10 percent, then, I think we have a  
3 problem because when I drive in Illinois, I got to  
4 abide by Illinois laws. And what we're talking here  
5 is in Missouri Technical Standard.

6 MR. BRUNDAGE: Well, --

7 CHAIRPERSON PERRY: And just because somebody  
8 else came up with theirs first, I'm not so sure that  
9 we have to jump and say, oh, well, why don't we just  
10 take the whole Illinois law and just do that.

11 MR. BRUNDAGE: Commissioner Perry, I respect  
12 your opinion. However, I would ask the Commission to  
13 vote and adopt it the way it's written and we'll just  
14 --

15 CHAIRPERSON PERRY: Okay. I'm sorry. The  
16 reason I did all that was so you can see those are  
17 the arguments.

18 MR. BRUNDAGE: And let me talk about that 10  
19 percent issue, again -- I mean, -- you know, a lot of  
20 times when you calculate how much nutrients you've  
21 got, you look at what your crop yield was the year  
22 before, how much residual, crop residual you have --  
23 I mean, there is so many different factors involved  
24 that what happens if you haven't limed your field for  
25 five years and you go out and lime your field, last

1 year and, now, the lime is really kicking in and you  
2 know your crop yield is going to be a lot better this  
3 year because you just limed. You got to have  
4 flexibilities in this whole system to be able to  
5 apply manure so the 10 percent is -- is relatively a  
6 small percentage in here and doesn't bother me at all  
7 because -- because there are so many different  
8 variables and you have to be able to go with the flow.  
9 I mean, last year -- or two years ago was a drought,  
10 last year it rained a lot, there are so many things  
11 that are going on out there that these challenges  
12 that these farmers have to face is -- it's very  
13 difficult at times, so, 10 percent is really not an  
14 unreasonable figure at all.

15 CHAIRPERSON PERRY: And I don't think I'm  
16 arguing with that. In fact, I know.

17 MR. BRUNDAGE: Okay. Let's see if I can find my  
18 next point. And I'll try to -- I wanted to talk  
19 about Page 357 the very last Paragraph B, at the very  
20 bottom there's two lines.

21 Talk about another challenge that farmers face.  
22 No farmer wants to land apply the nutrients if they  
23 think it's going to rain and wash it all away because  
24 then they just wasted all their diesel fuel and  
25 wasted all their time putting the nutrients out if it

1 gets washed away. This talks about, you can not land  
2 apply manure if precipitation likely to cause runoff  
3 is forecast to occur within 24 hours of planned  
4 application.

5 I've had discussions about this type of  
6 provision for years with the Department because what  
7 do you do in the summertime when -- and sometimes you  
8 look at these weather forecast and you look four days  
9 out and it says there's a 30 percent chance of rain,  
10 everyday in the summer because of popup  
11 thunderstorms. And we know some popup thunderstorms  
12 can be -- you know, have a lot of rain in them. And  
13 if it rains and inch or two from a popup thunderstorm  
14 that certainly could cause some -- cause some runoff.  
15 So I'm not sure that this provides any guidance. And  
16 maybe -- maybe Darrick wrote it that way, I don't  
17 know.

18 But -- you know, if precipitation likely to  
19 cause runoff is forecast to occur within 24 hours --  
20 you know, if there's an 80 percent chance of rain you  
21 probably shouldn't land apply unless they say it's  
22 just going to be just a little tiny sprinkle.

23 So my point being is that -- you know, as a  
24 farmer you want some kind of certainty of what is  
25 lawful and what is not lawful and this doesn't

1 provide us very much guidance to what is lawful. And  
2 I don't know if it could ever be written that way.  
3 So I don't know if you want to leave it the way it  
4 is. But I'm certainly pointing out to you that I  
5 don't really know what that means whether it should  
6 be a 50 percent chance of a tenth of an inch of rain  
7 or an 80 percent chance or a 30 percent chance. I  
8 don't really know what to do there. I've worked with  
9 farmers for a long time. I've worked in the field with some  
10 of these folks. We look at the weather forecast and  
11 we just do the best job we can on trying to determine  
12 what the percent -- what's it going to do and how much it's going  
13 to rain and we don't try to land apply if it is going  
14 -- you know, definitely going to rain the next day or  
15 in that afternoon.

16 So I don't know if you feel comfortable with  
17 that paragraph, but I'm not exactly sure what it's  
18 going to mean to -- to my clients on -- when they're  
19 land applying. And, unfortunately, I don't have  
20 really a good recommendation for you on how to write  
21 that.

22 It's just a good example for how this document  
23 is -- it should be looked at as a guidance document  
24 and if there's a problem somewhere DNR should use  
25 best professional judgment on whether or not a

1 producer was being -- or was trying to be responsible  
2 in land applying.

3 I was going to talk about the percent moisture  
4 that was -- but, you've already handled that and I  
5 support the change that Darrick discussed with you,  
6 today.

7 But in closing, I want to say this, that this is  
8 -- this document is -- a lot of people have read this  
9 and a lot of people have had comments and concerns  
10 and questions about it. It's going to be -- it's not  
11 very -- I can't predict how producers are going to be  
12 able to write nutrient management plans based upon  
13 just the guidance on how this is going to turn out.  
14 But I would hope that you would be open-minded that  
15 if producers and there's going to be 550 of them  
16 writing these nutrient management plans in two years  
17 from now, that if there -- there very well could be  
18 changes that my clients will come back and ask to --  
19 for you to look at. And, I guess, the beauty of you  
20 being able to adopt this document, today, is that  
21 this is not a rulemaking. It was kind of discussed  
22 in the Phase 1 rulemaking that this document would  
23 just be referenced, that it would go through a  
24 workgroup process and that's what we've done. And I  
25 certainly hope that you adopt this, today, because

1 the producers that are applying for permits, as of a  
2 week ago, have to write a nutrient management plan.  
3 So we need this on the books. But there is a  
4 possibility that it might need to be revisited in the  
5 next year or so when we have some experience under  
6 our belt on how -- when we start writing these  
7 nutrient management plans and the challenges that  
8 we'll face so there could be an opportunity to change  
9 this in the future since it is just an issue that the  
10 Commission can take up on relatively short notice and  
11 make changes as they wish.

12 Thank you.

13 CHAIRPERSON PERRY: Thank you.

14 Commissioners, I just want to make a comment.  
15 I've been doing a lot of arguing here and I've been  
16 doing it on purpose so that you could see the other  
17 side of some of these issues. I have 37 years of  
18 experience with nutrient management and I feel that -  
19 - of everything that we've ever considered that this  
20 is probably the thing with which I am most familiar.

21 And I'd -- I've got a couple things I'd like to  
22 add, if I  
23 may? If you-all are okay?

24 And I can tell you what some of my objections  
25 are to this. Before I get into the specifics, I

1 would like to send a message back to EPA because I  
2 think you've just heard of some of the uncertainty in  
3 agriculture and a big one is; you don't know what  
4 rainfall is going to be that year. So you don't  
5 know. If you don't have the rain, the plant is not  
6 going to grow. We haven't figured out how to grow  
7 plants in this state, yet. We've learned how to make  
8 them more drought resistant but we haven't figured  
9 out how to grow them without rain.

10       Because of that sometimes you have more  
11 fertility because you thought you were going to get  
12 200 bushel corn, but you only got 150 because you  
13 didn't get enough rain. Everybody understand that? I just want  
14 to explain this, hopefully, for non-farmers.

15       This Commission, a year ago, approved a project  
16 that I said at the time I thought would revolutionize  
17 farming because it would take some of that guesswork  
18 away by trapping the moisture during the rainy season  
19 in the spring and holding it in tiles underneath the  
20 fields along with the nutrients. So, Kat, the  
21 nutrients wouldn't runoff. They would be held on the  
22 field. This Commission unanimously approved that as  
23 a 319 Project. And then because of some little  
24 undercurrent at EPA and DNR, I guess, is where it  
25 started it was -- the funding was -- it was never

1 approved for funding.

2           There was a meeting for four hours last December  
3 where the person who was doing the project, who  
4 proposed it from the University of Missouri, came and  
5 met with EPA for four hours and I listened to that.  
6 I was in the hospital with my granddaughter and I  
7 listened to it. They then put a list of opposition  
8 of -- a list of things -- of concerns -- or things  
9 they would like to be addressed. Those things were  
10 all addressed in another 16 page document, a copy of  
11 which I have, because every time we ask EPA what's  
12 happening to it, they've lost their copy. And I have  
13 another one with me. I would like you to get it back  
14 because it is one of those things that will make all  
15 of this better.

16           I think we all have a goal and I think  
17 agriculture has the goal to be good stewards of the  
18 soil and good managers of nutrients. Okay. So I  
19 want that message back.

20           (Tape Three, Side B concluded.)

21           CHAIRPERSON PERRY: -- has a stand on that; are  
22 you not representing them on that?

23           MR. BRUNDAGE: I don't think but I represent the  
24 other plant that has an opposite stance so I told  
25 them they are going to have to fight it on their own.

1 I represent the Pork Association, also.

2 CHAIRPERSON PERRY: Okay. And so your other  
3 client is aware that you're not representing their  
4 stand?

5 MR. BRUNDAGE: Yes.

6 CHAIRPERSON PERRY: Because I heard somebody  
7 tell me, they thought you were.

8 Anyway, MOAG has this -- let me read this. A  
9 certified crop advisor has met these professional  
10 standards set by the American Society of Agronomy as  
11 part of the largest agriculturally oriented  
12 certification program in North America. CCAs have  
13 technical knowledge. They must pass exams and they  
14 must meet education and experience requirements.  
15 They also pledge to uphold the CCA code of ethics.

16 The Missouri CCA Program works in conjunction with the  
17 international CCA Program to certify that a Missouri  
18 CCA is qualified to provide advice for Missouri  
19 cropping systems.

20 There are currently 300 CCAs in Missouri and  
21 they must have two years of crop advising experience  
22 if they have a Bachelor degree; three years if they  
23 have an Associate degree and four years if they have  
24 no college. They must pass the test, have  
25 credentials approved, complete 40 hours of training

1 every two years so they are kept updated on nutrient  
2 issues.

3 In Missouri the CCA Program is administered by  
4 MOAG, the Missouri Agribusiness Association.

5 My suggestion and we discussed it here was that  
6 people to promote that project and to make smarter choices  
7 when people put these together that this would be a  
8 good minimum requirement that the people who do the  
9 nutrient management plans are certified crop  
10 advisors. I am told from Darrick that this is not  
11 the appropriate place to put that into a rule.

12 I think Davis agrees with that. So I am willing  
13 to say, okay, I'm not going to put it here. But I am  
14 willing to show up at every Water Commission meeting  
15 and every workgroup until we worked as agriculture to  
16 try to come up with some people that we know that we  
17 can depend on because we have certified laboratories  
18 doing the testing, we have certified engineers doing  
19 our engineering and I think that it's time for us to  
20 have a standard because in my 37 years of experience  
21 I've seen an awful lot of people giving some very bad  
22 advice. And I think it's a good idea to get people a  
23 little bit more educated on these issues.

24 I am having a problem with that we don't even  
25 know what the numbers are and, yet, we're going to

1 approve it for somebody else because somebody who is  
2 already doing these has something punched in their  
3 computer. I would really feel a lot more comfortable  
4 if I knew what the actual facts were.

5 Frankly, my feeling about it is, this is  
6 Missouri and Missouri is making rules for Missouri.  
7 If they want to practice in Missouri, that's great,  
8 here's the Missouri rules. When I drive in Illinois,  
9 I have to obey the Illinois rules.

10 I don't know what to do about Robert's thing.

11 COMMISSIONER TUPPER: I am going to have to  
12 disagree with you. Soils are function in geology and  
13 geology doesn't stop at state lines.

14 CHAIRPERSON PERRY: Okay.

15 COMMISSIONER TUPPER: University of Missouri may  
16 do a great job up here, but we get better information  
17 from Arkansas in southwest Missouri and that's just a  
18 fact. So -- you know, I can't agree with tying it to  
19 Missouri.

20 CHAIRPERSON PERRY: But what if we find out that  
21 those rules were all the same and now we are opening  
22 something up to the rest of the other parts of this  
23 are now being influenced by other states?

24 VICE-CHAIR HARDECKE: We don't have to do that.  
25 We're talking about a specific plant removal figures,

1 correct?

2 CHAIRPERSON PERRY: Okay. Yeah. We are talking  
3 about plant removal. And actually I think that's a  
4 function of genetics more than it's a function of  
5 where it's located.

6 VICE-CHAIR HARDECKE: Well, it's a function of  
7 the weather, too.

8 CHAIRPERSON PERRY: Yeah.

9 COMMISSIONER TUPPER: The weather and the whole  
10 soil certainly.

11 COMMISSIONER HUNTER: I definitely say there's a  
12 difference between north Missouri and --

13 CHAIRPERSON PERRY: Oh, oh, excuse me. It  
14 doesn't have anything to do with yields. It has to  
15 do with a plant taking it and then you calculate it  
16 against your yields.

17 COMMISSIONER TUPPER: The amount of nitrogen it  
18 takes out, yes.

19 CHAIRPERSON PERRY: Right.

20 COMMISSIONER HUNTER: And our growing degree  
21 days down there are more than yours are up here.

22 CHAIRPERSON PERRY: Right.

23 But see I think the University accounts for that  
24 because they have places --

25 VICE-CHAIR HARDECKE: But if you have one set of

1 data for Missouri it will only be one set of data for  
2 Missouri. It will not be -- it does not say in this  
3 -- if you strike that the Missouri data does not --  
4 is not specific to Portageville or Greenlee Center or  
5 those.

6 CHAIRPERSON PERRY: And, again, I -- I really  
7 don't know if it needs to be or if it is. Again, I  
8 don't know if we're fighting it through the same  
9 numbers every where.

10 VICE-CHAIR HARDECKE: Well, I propose that we go  
11 ahead and approve it as written and ask the staff to  
12 get those numbers and -- you know, I still agree that  
13 from Tarkio, Missouri to Kennett, Missouri or from  
14 Kahoka to where's the other corner, McDonald County -  
15 -

16 COMMISSIONER TUPPER: McDonald County.

17 VICE-CHAIR HARDECKE: -- we can't set one standard  
18 that will be any closer to being accurate in  
19 Columbia, Missouri than it would to the neighboring  
20 state, so --

21 CHAIRPERSON PERRY: So what if it's like Robert  
22 said, they guy's in Illinois and Robert is way up in  
23 northwest Missouri. Because that guy is used to  
24 giving his Illinois numbers is that okay because he  
25 happens to be the person who does the work for

1 somebody in northwest Missouri? Because that was  
2 that's -- that was the example you used, right?

3 VICE-CHAIR HARDECKE: No. Northeast Missouri.

4 MR. BRUNDAGE: Northeast Missouri.

5 CHAIRPERSON PERRY: Oh, okay. I'm sorry.

6 VICE-CHAIR HARDECKE: Across the line.

7 CHAIRPERSON PERRY: I was thinking about your  
8 old client in northwest.

9 MR. BRUNDAGE: Different client.

10 CHAIRPERSON PERRY: Different client.

11 COMMISSIONER TUPPER: Well, what I'm talking  
12 about is that Barton County is more like Kansas --

13 CHAIRPERSON PERRY: Yeah.

14 COMMISSIONER TUPPER: -- than anything up here.

15 CHAIRPERSON PERRY: Granted.

16 COMMISSIONER TUPPER: But Newton and Barry  
17 County are more like northwest Arkansas than anything  
18 up here.

19 CHAIRPERSON PERRY: And I don't even know --

20 COMMISSIONER TUPPER: And you can't -- Missouri  
21 has the most varied geology of any state in the 50.

22 CHAIRPERSON PERRY: -- see and I don't even know  
23 if this isn't put somewhere according to county. I  
24 don't know how --

25 VICE-CHAIR HARDECKE: Well, we --

1 CHAIRPERSON PERRY: -- crop uptake is reported, do  
2 you?

3 VICE-CHAIR HARDECKE: -- I don't think we can  
4 ask DNR to -- to make 114 different recommendations  
5 of plant uptake, plant removal statistics. So I  
6 think from a standpoint of the variability of our  
7 state this is a pretty good --

8 CHAIRPERSON PERRY: But we don't know what it  
9 is.

10 VICE-CHAIR HARDECKE: We don't know what the  
11 University of Missouri's is either.

12 CHAIRPERSON PERRY: But we're going to add six  
13 more universities.

14 VICE-CHAIR HARDECKE: But before we spend a  
15 whole lot more effort arguing about it, I think, we  
16 probably should --

17 CHAIRPERSON PERRY: Find out.

18 VICE-CHAIR HARDECKE: -- find out.

19 CHAIRPERSON PERRY: I think so, too.

20 VICE-CHAIR HARDECKE: **But since there are people**  
21 **waiting on this standard I would move that we move**  
22 **forward and approve the standard, today, and if we**  
23 **find glaring differences we can address that at a**  
24 **later time.**

25 COMMISSIONER TUPPER: I would make that motion.

1           **COMMISSIONER HUNTER:** I'll second that.

2           **CHAIRPERSON PERRY:** Okay. Can we add the other  
3 edits?

4           **COMMISSIONER TUPPER:** Hum?

5           **CHAIRPERSON PERRY:** Are you also willing or do  
6 we need to go through it? The -- the two changes for  
7 percent moisture; you were okay with that?

8           **COMMISSIONER UPPER:** I'm assuming that we've  
9 made -- made that correction.

10          **CHAIRPERSON PERRY:** No. We haven't put that --  
11 that all has to be in your motion.

12          **COMMISSIONER TUPPER:** Okay.

13          **I move that the Commission approve the Missouri**  
14 **Concentrated Animal Feeding Operation Nutrient**  
15 **Management Technical Standard with the provision of**  
16 **the moisture content changes made.**

17          **CHAIRPERSON PERRY:** The two moisture changes.  
18 **Did you have a thought on the "and" on Page 353?**

19          **VICE-CHAIR HARDECKE:** I think its fine the way  
20 it is because --

21          **COMMISSIONER TUPPER:** The only change I made is  
22 the moisture.

23          **COMMISSIONER HUNTER:** Yeah.

24          **CHAIRPERSON PERRY:** And that's in your motion.

25          **VICE-CHAIR HARDECKE:** If you would add

1 additional manure storage that is going to be  
2 environmental friendly. That would be a plus for the  
3 environment. And I doubt that anybody would add  
4 significant barn space without adding animal --  
5 animal units to it. If they did, it would also be a  
6 plus for the environment because you have more  
7 capacity for your manure storage.

8 MS. LOGAN-SMITH: Excuse me, Chairman. Just to  
9 help you with --

10 CHAIRPERSON PERRY: We haven't had a second. We  
11 are sort of building the motion, here.

12 MS. FRAZIER: You need a second on the motion  
13 before discussion.

14 **COMMISSIONER HUNTER: I second.**

15 MS. FRAZIER: Okay.

16 COMMISSIONER HUNTER: I second.

17 CHAIRPERSON PERRY: Okay. Now, discussion. I  
18 was just adding if we are going to edit any other  
19 part of the motion.

20 We had a few other issues; is there anyone who  
21 thinks differently about the "and" on Page 353 that  
22 Kat brought up?

23 (No response.)

24 CHAIRPERSON PERRY: Okay. Move on. There was  
25 some conversation brought of whether or not we should

1 have that paragraph, the third paragraph on Page 353  
2 explaining the use of this; did the Department have  
3 some response to Robert's thought?

4 VICE-CHAIR HARDECKE: He had proposed that the  
5 word demonstrates substantial and material  
6 compliance; is that right, Robert?

7 MR. STEEN: Robert's suggestion was that that  
8 last paragraph in that first section. The primary  
9 basis for me putting that paragraph in there was that  
10 that's -- that's actually wording or guidance, if you  
11 will, that's coming out of -- out of EPA rule. It's  
12 not actually in the rule. It's in the preamble of  
13 their rule. And so -- I mean, that -- that's wording  
14 that EPA has essentially dictated in their guidance  
15 and so I thought it would -- I thought it was good to  
16 put it in the document to give it an understanding as  
17 to -- to how the nutrient -- this standard would be  
18 utilized.

19 It's not critical to the document so -- I mean,  
20 I -- it's not going to change any --

21 VICE-CHAIR HARDECKE: Substantial and material -  
22 -

23 COMMISSIONER TUPPER: My thinking was it softens  
24 the document and I didn't want to soften the  
25 document.

1 CHAIRPERSON PERRY: So you want to delete that?

2 COMMISSIONER SHORNEY: Leave it like it is.

3 COMMISSIONER TUPPER: Leave it like it is and  
4 don't add substantial --

5 CHAIRPERSON PERRY: Oh. Leave it like it is.

6 COMMISSIONER TUPPER: Yes.

7 CHAIRPERSON PERRY: Okay. Is there anyone who  
8 wants to change that because then we can move on to  
9 the next issue?

10 (No response.)

11 CHAIRPERSON PERRY: I pointed out to Darrick and  
12 I don't know if that has to be an amendment to the  
13 motion, but I believe the University of Missouri to  
14 Missouri University. You might check into that. If  
15 that's so, would you be okay that he change that?

16 VICE-CHAIR HARDECKE: That will be an edit.

17 CHAIRPERSON PERRY: Take that -- take that  
18 instruction.

19 And there was one other that Robert brought up  
20 about the notice of surface application manure is  
21 allowed if precipitation likely to create runoff is  
22 forecast within 24 hours. We all understand the  
23 intent of that. And we all understand how difficult  
24 it is to know when it's going to rain. Did you want  
25 to change that?

1           VICE-CHAIR HARDECKE: I would hate to put any  
2 specific percent in there because that could vary to  
3 which weather man you listen to.

4           CHAIRPERSON PERRY: And whether or not he's in  
5 Missouri or next door.

6           VICE-CHAIR HARDECKE: But we take your point,  
7 Robert.

8           CHAIRPERSON PERRY: Got to love it.

9           So did you want to change that?

10          (No response.)

11          CHAIRPERSON PERRY: So it seems to me we have no  
12 further changes to make to the motion that has been  
13 made.

14          COMMISSIONER TUPPER: It stands by the way it  
15 is.

16          CHAIRPERSON PERRY: We have a motion and a  
17 second and no discussion, would you call for the  
18 vote, please, Malinda?

19          MS. OVERHOFF: Commissioner Hunter?

20          COMMISSIONER HUNTER: Yes.

21          MS. OVERHOFF: Commissioner Hardecke?

22          VICE-CHAIR HARDECKE: Yes.

23          MS. OVERHOFF: Commissioner Easley?

24          COMMISSIONER EASLEY: Yes.

25          MS. OVERHOFF: Commissioner Shorney?

1           **COMMISSIONER SHORNEY: Yes.**

2           **MS. OVERHOFF: Commissioner Tupper?**

3           **COMMISSIONER TUPPER: Yes.**

4           **MS. OVERHOFF: Chair Perry?**

5           **CHAIRPERSON PERRY: Yes.**

6           Sometimes I feel like saying, Amen.

7           Okay. Let's go. Do you guys want, like, a

8 short break?

9           **COMMISSIONER: No.**

10          **CHAIRPERSON PERRY: Okay. Let's barrel on**

11 through.

12          I believe we are on Tab No. 11?

13          **VICE-CHAIR HARDECKE: Eleven. Yes.**

14          **MR. ROB MORRISON: Could I make a suggestion,**

15 Madam Chair, perhaps we could move this to the end of

16 the meeting, I believe, we do have some people

17 waiting for their enforcement cases; if that would be

18 acceptable to you-all?

19          **CHAIRPERSON PERRY: Okay.**

20          **MR. ROB MORRISON: Let's go ahead and perhaps**

21 process the enforcement cases and we can pick that up

22 at the end; if that's acceptable? Would that be all

23 right?

24          **CHAIRPERSON PERRY: That's fine with me.**

25          Let's talk about **Tab No. 12**, then, right?

1 COMMISSIONER HUNTER: Twelve?

2 MR. DICKERSON: Madam Chair, members of the  
3 Commission my name is Paul Dickerson. I'm the Unit  
4 Chief of the Compliance and Enforcement Unit in the  
5 Program. Kevin was unable to make it, today, so I'll  
6 be presenting the cases.

7 I'm going to start out with **Sunset Palms**.  
8 Sunset Palms owns and is currently developing  
9 condominiums known as Sunset Palms and it's located  
10 in Camden County.

11 On February 1st, 2006, the Department issued a  
12 construction permit to the former developer for a  
13 construction of a 31,418 gallon extended aeration  
14 facility.

15 Mr. Mark Kelly, managing member of the company  
16 purchased the facility from the former owner sometime  
17 after this date. On February 26th, 2007, the  
18 Department issued a construction permit to Mr. Kelly  
19 for the construction of a 40,394 -- I'm sorry; 40,  
20 394 gallon extended aeration unit to serve 117 condo  
21 units.

22 On August 9th, 2007, Department staff conducted a  
23 complaint investigation at Sunset Palms and observed  
24 untreated wastewater filling a holding tank of a  
25 partially constructed lift station.

1           On September 18th, 2007, staff conducted a  
2 construction inspection of the wastewater treatment  
3 facility and documented that the facility had been  
4 constructed -- had not been constructed as approved  
5 by the Department permit.

6           On January 18th, 2008, Department staff conducted  
7 a follow-up inspection of -- at Sunset Palms and  
8 observed untreated wastewater discharging from the  
9 lift station and flowing into the Lake of the Ozarks.

10           Since August of 2007 the Department has issued  
11 Mr. Kelly four letters of warning and one notice of  
12 violation in an attempt to bring the facility back  
13 into compliance with the law.

14           On July 15th, 2008, the Department and Mr. Kelly  
15 entered into negotiations to resolve the past  
16 violations through an out of court settlement  
17 agreement. On or about September 8th, 2008, the department and  
18 Mr. Kelly agreed reached upon an agreement in principle. And on  
19 December 15<sup>th</sup>, 2008, the Department received a statement of work  
20 complete and an application for the operating permit.

21           On December 18th, 2008, Department staff  
22 conducted inspection of the facility to verify that  
23 construction was complete and during this inspection  
24 staff observed partially treated wastewater leaking  
25 around a pipe between the clarifier and the chlorine

1 contact tank and that the construction of the  
2 wastewater treatment facility had not been completed.

3 On January 22nd, 2009, Department staff conducted  
4 a second inspection of the wastewater treatment  
5 facility and observed partially treated wastewater  
6 leaking from the wall of the aeration unit and water  
7 leaking around a pipe between the clarifier and the  
8 contact -- the chlorine contact tank. Due to the  
9 deficiencies documented by staff -- documented by  
10 staff the Department returned two separate  
11 applications for the operating permit.

12 The Department is unable to issue the operating  
13 permit until all deficiencies have been corrected.  
14 Due to the serious and continuing nature of the  
15 violations, staff recommends the Clean Water  
16 Commission refer this matter to the Attorney  
17 General's Office for appropriate legal action to  
18 obtain compliance with the Missouri Clean Law and its  
19 implementing regulations, payment of a civil penalty  
20 and any relief deemed appropriate by the office.

21 CHAIRPERSON PERRY: Any questions on part of the  
22 Commission?

23 (No response.)

24 CHAIRPERSON PERRY: I believe we have someone  
25 here.

1 MR. PABST: Yeah. I believe there was someone.

2 CHAIRPERSON PERRY: We have a professional  
3 engineer, Matt Marschke.

4 MR. MARSCHKE: Good afternoon. If I may, I have  
5 a handout. My name is Matt Marschke. I work for  
6 Midwest Engineering. I have been doing business at  
7 the Lake of the Ozarks for 15 years building  
8 wastewater, water systems.

9 CHAIRPERSON PERRY: Oh. We're going to need you  
10 to speak into the mic.

11 MR. MARSCHKE: This is just my propaganda.

12 CHAIRPERSON PERRY: You'll have to wait and tell  
13 us about yourself when you get to the mic.

14 COMMISSIONER HUNTER: Here, you might want to  
15 put one right here.

16 CHAIRPERSON PERRY: He'll be back.

17 MR. MARSCHKE: Well, then I didn't bring enough.

18 CHAIRPERSON PERRY: Well, then we'll share.

19 COMMISSIONER HUNTER: That's okay, we'll share.

20 MR. MARSCHKE: I'm sorry.

21 CHAIRPERSON PERRY: Okay.

22 MR. MARSCHKE: Basically, in summary, first and  
23 foremost there are no violations currently.  
24 Secondly, there are no major violations. Mr. Kelly  
25 has completed this facility in accordance with the

1 construction permit, the lift stations, the plant,  
2 the pipe lines have all been completed in accordance  
3 with the approved plans from the Department with the  
4 only missing item is a flume (inaudible). During a  
5 two-day period wastewater did spill from the lift  
6 station into a rock filled pile that he did agree to  
7 pay the \$22,000 settlement.

8 At no other time did my client cause, place or  
9 permit contaminants to cause pollution to the waters  
10 of the state. We've spent lots of money and hauled  
11 lots of sewage while waiting for this plant to be  
12 permitted.

13 I also kind of detailed the timeline from our  
14 end. In reviewing the Department's letter to the  
15 Commission it kind of seems like a one-way  
16 conversation. So without beating the timeline to  
17 death, I think, there's been several problems on this  
18 project that have been fixed, that have been worked  
19 through as of March 2008 this treatment plant was  
20 complete.

21 During the Department's last inspection the  
22 inspector noted a wet spot on the side of the plant.  
23 This plant has twice been tested to the standards of  
24 a leak test for a concrete tank and has passed and  
25 been verified by myself. This plant is read to be

1 operational. There is no existing environmental violations.  
2 There has been problems but they've been rectified. I  
3 don't know -- any time you have a question, I'm kind  
4 of caught up in the moment here.

5         But the problem I have at Sunset Palms is, well,  
6 two. One, in the State of Missouri anybody with a  
7 hammer can build a wastewater treatment plant. You  
8 have to put in a septic tank, you have to have  
9 permit. My client elected to hire a low bidder  
10 against my advisement who basically ran the job into  
11 the ground. We've also had issues where we've  
12 relocated the plant. DNR would not let us move the  
13 plant without a permit. So that caused another 120-  
14 day delay when, in fact, I had offered that we were  
15 going to build a bigger facility under the same  
16 construction permit, but they wouldn't allow us to do  
17 it, which would be totally acceptable because we  
18 would be over the conservative from the original  
19 permit.

20         Those delays, problems with our contractor,  
21 problems with our project management all caused  
22 various problems in this project. This project was  
23 started in 2006 when we were selling condos like  
24 pancakes. During that time the treatment plant  
25 construction was delayed, the condo buildings

1 continued to be erected. The condo buildings were  
2 occupied before the plant was finished and caused the  
3 project to store wastewater until the plant was  
4 permitted.

5 We can't get DNR to permit the plant. I find no  
6 reason the plant is not operational. And I have  
7 submitted that to DNR in letter. Let me know when --  
8 any questions you have.

9 CHAIRPERSON PERRY: Is -- is something that can  
10 be worked out or does it need to be --

11 MR. DICKERSON: The last inspection we have was  
12 on January 22nd, 2009, Megan Hart from the southwest  
13 regional office conducted an inspection and during  
14 that inspection Megan noted that the -- there was  
15 still some -- a couple of leaks in the treatment  
16 plant.

17 We received a letter, I believe, last Friday  
18 that stated those had been corrected. I don't think  
19 we've been out there to verify that, yet.

20 CHAIRPERSON PERRY: I don't think that answered  
21 my question.

22 MR. DICKERSON: As of this morning we had not.

23 CHAIRPERSON PERRY: Do you-all think that if we  
24 gave you another 60 days you could get these issues  
25 worked out or does this need -- it's your

1 recommendation to refer it to the AG's Office?

2 MR. DICKERSON: We would prefer -- we would  
3 recommend to go ahead and refer this. We can still  
4 keep the lines of communication open and to work with  
5 them to reach some sort of an agreement, but we --  
6 but the goal is to get this thing fixed so that we  
7 can get the permit issued.

8 MR. MARSCHKE: And that issue is, as the design  
9 engineer, I am confident that this plant is working.  
10 It has past the test that's required by the plans.  
11 This -- this wet spot we have is only evident when  
12 the temperature is between 27 and 32 degrees. I  
13 don't know why it is, it just happens. Yesterday,  
14 there was no moisture on the wall. But, again, we  
15 can not measure the loss of this tank. So you're  
16 asking us -- basically, and Ms. Hart is being held up  
17 by this wet spot. Yeah. The datalogger needs to be  
18 installed. That has been ordered. My client is  
19 moving forward -- and you can see on the timeline  
20 that every time DNR asks for something my client  
21 moves, slowly and sometimes inappropriately but we've  
22 gotten to a position where this plant is functional.  
23 We just need to install the datalogger and we've  
24 complied with every aspect that's on there.

25 COMMISSIONER HUNTER: You -- Mr. Marschke, now,

1 you have been associated with this project since the  
2 beginning?

3 MR. MARSCHKE: Yes, sir.

4 COMMISSIONER HUNTER: You're the engineer?

5 MR. MARSCHKE: Yes, sir.

6 COMMISSIONER HUNTER: You're not the contractor?

7 MR. MARSCHKE: No, sir.

8 COMMISSIONER HUNTER: Were you aware of all  
9 these things going on?

10 MR. MARSCHKE: Yes. Most of the time I was and  
11 at one point I noted in my timeline that we've --  
12 I've had some problems with DNR in regard to this  
13 project. I had -- we have project superintendents  
14 that work on behalf of Mr. Kelly who oversee  
15 contractors working on the plant. They gave the job  
16 to a contractor that I did not approve of. When DNR  
17 showed up and found a violation the client contacted  
18 me and I came out. I wrote up about a 32 page -- 32  
19 item punch list and gave that to my client. DNR  
20 issued a letter on their inspection and listed four  
21 items. I think at that time the project manager kind  
22 of thought that I was being to -- what's the word for  
23 it, anal retentive or over engineering things and  
24 kind of discounted my service. They -- they went and  
25 fixed those four items that DNR pointed out, but when

1 DNR showed back up they came up with another four  
2 items. And so it just became this issue with this  
3 project manager that we ended up terminating from the  
4 project before we were finally able to get the  
5 project to move in the correct direction and start taking  
6 guidance from the design engineer on the project.

7 COMMISSIONER TUPPER: Matthew is Mr. Kelly on  
8 board, now? Is he ready to cooperate?

9 MR. MARSCHKE: Yes, sir. Yes, sir. And he  
10 always has been. And as I admit in the problems that  
11 we've had with the process, the problems my client  
12 has, funding has been a problem for him. I mean, you  
13 can see it on the timeline the delays in  
14 construction.

15 COMMISSIONER TUPPER: Well, in your last  
16 paragraph or next to last paragraph you admit he  
17 didn't return phone calls. He just did not try.

18 MR. MARSCHKE: The phone call thing, I kind of -  
19 - I -- I kind of just touched on that a little bit  
20 because our contact with DNR was put off by maybe a  
21 lack of returned phone calls. Well, Mr. Kelly says  
22 that he never received such phone calls. The client  
23 that I manage around Lake of the Ozarks we deal with  
24 DNR. My job is to keep them out of trouble and get  
25 down the road. And, typically, when DNR calls me

1 things move forward. When they try to contact the  
2 client, the clients rely on me. I don't know if the  
3 client is able to respond or expects me to take care  
4 of the problems, so --

5 COMMISSIONER TUPPER: Is the collection system  
6 complete at this point?

7 MR. MARSCHKE: Yes. It's been tested and we've  
8 -- we've tested the force main, we've tested gravity  
9 mains, the manhole has been leak tested.

10 COMMISSIONER TUPPER: I'm a little troubled  
11 about this statement; the plant was ready to operate  
12 or store sewage at this time. Which, that's not the  
13 same thing?

14 MR. MARSCHKE: Well, the problem -- the problem  
15 we have and it's an ongoing issue with me and clients  
16 is a treatment plants design for a project of 200 or  
17 300 units. They go in there and build one building.  
18 And they wait for that building to sale. The client  
19 has to take down a \$300 to \$500,000 investment for  
20 the plant and I'm going to do it.

21 COMMISSIONER TUPPER: Right.

22 MR. MARSCHKE: All of them are getting away with  
23 storing sewage. And so DNR has flat told me that  
24 we're not going to permit that but, basically,  
25 they've allowed it. We've gone through a transition

1 at the Lake from 2005 till now we've seen where -- we  
2 didn't see DNR to where they're every where in which  
3 -- which we welcome that. Did I answer your  
4 question?

5 COMMISSIONER TUPPER: Yeah. Yeah. I'm  
6 satisfied.

7 COMMISSIONER SHORNEY: Matthew, if we turn to  
8 Tab No. 13 there's another Mark Kelly with Royal  
9 Palms; are you the engineer for that project, too?

10 MR. MARSCHKE: Yes, sir.

11 CHAIRPERSON PERRY: Are we to treat these as  
12 separate motions?

13 MR. DICKERSON: Yes. They are separate motions.

14 COMMISSIONER SHORNEY: I mean, if we make a  
15 decision on one here, well, before we hear the second  
16 one would we be regretting a decision or not, I guess  
17 is my question.

18 MR. MARSCHKE: I'd be more than happy to talk  
19 about that, now.

20 CHAIRPERSON PERRY: Is it your pleasure to wait  
21 until you hear both? That's fine.

22 COMMISSIONER SHORNEY: Well, I think --

23 CHAIRPERSON PERRY: Okay.

24 COMMISSIONER SHORNEY: -- I think so.

25 CHAIRPERSON PERRY: Right. Okay.

1 MR. MARSCHKE: Whatever is easier. Yeah.

2 CHAIRPERSON PERRY: Well, could we -- should we  
3 start with staff first?

4 VICE-CHAIR HARDECKE: Yeah.

5 CHAIRPERSON PERRY: Okay.

6 MR. DICKERSON: The situations are a little bit  
7 different. I mean, the facts aren't similar but the  
8 -- in the **Royal Palms**, this is a case where we  
9 actually issued an administrative order to try to get  
10 the facility finished and get a permit issued and  
11 that hasn't happened.

12 But I can go ahead and present the --

13 CHAIRPERSON PERRY: Please do. Could you give  
14 us synopsis?

15 MR. DICKERSON: It's another condominium  
16 development. Let's see it was constructed under a construction  
17 permit that was issued prior to Mr. Kelly obtaining the  
18 property. The construction permit was issued in  
19 2005. Let's see -- since the Sept -- August 17th,  
20 2006, the Department has conducted three inspections  
21 of the facility and documented that it has been  
22 receiving wastewater without an operating permit.

23 In April, 2008, the Department issued an  
24 administrative order to Mr. Kelly. The order  
25 required him to complete construction of the facility

1 in accordance with the construction permit and submit  
2 a certificate of construction from an engineer and a  
3 complete application for an operating permit by June  
4 14th, 2008.

5 Since September 22nd, 2008, staff conducted three  
6 inspections and documented that the wastewater  
7 treatment facility had not been constructed in  
8 accordance with the permit, the construction permit.  
9 The Department has returned four applications of the  
10 operating permit due to deficiencies observed during  
11 inspections.

12 So we are recommending referral of this case,  
13 also, to the AG's Office.

14 COMMISSIONER TUPPER: It would get Kelly's  
15 attention.

16 CHAIRPERSON PERRY: Are there any further  
17 questions?

18 (No response.)

19 COMMISSIONER EASLEY: Are you ready for a  
20 motion?

21 CHAIRPERSON PERRY: I'm ready for a motion or  
22 have you-all reviewed that thoroughly enough that  
23 you're ready to move?

24 MR. MARSCHKE: I want to --

25 CHAIRPERSON PERRY: Oh. I'm sorry. Yes. You

1 had your card and I forgot it.

2 MR. MARSCHKE: Again, I have the same  
3 information available.

4 Buyer beware. This project was originally  
5 permitted and constructed by a previous developer  
6 under a construction permit issued in 2004, Mike  
7 Schlup. Well, I believe, the State Attorney General  
8 has band him from doing business in the State of  
9 Missouri after several workers fell to their death  
10 from the roof of one of these buildings.

11 Mr. Kelly bought this project kind of as a  
12 step-in to finish the project. When we inspected the  
13 facilities, they looked fine. They were designed.  
14 We had a proper DNR permit. We had water tanks in  
15 the sky. We had lift stations out front. Within  
16 about six months we realized that the wastewater  
17 treatment plant that was sitting there did not hold  
18 water, not that it did not pass a leak test, but it  
19 did not hold water.

20 The honeycomb in the concrete, the lack of  
21 reinforcement as a total -- we almost got to the  
22 point where we almost just knocked it down and tried  
23 again. The client spent \$50,000 trying to patch this  
24 plant.

25 We went to DNR to get a permit to build a new

1 plant. DNR refused to issue that permit. DNR said,  
2 well, we want to see the permit that was issued to  
3 the other developer in 2004 finished so back to the old plan  
4 we went.

5           After significant investment we did get the  
6 plant to pass the leak test as required by  
7 regulation. During that time, we also found that the  
8 force main that was serving the existing 35 units in  
9 this project that DNR permitted, never inspected,  
10 never followed up on and we were kind of stuck with  
11 the problem and we had to work our way out of it. Of  
12 course, my client purchased the project assuming that  
13 wastewater and water were adequate and did not have a  
14 million dollars in the budget to fix these systems  
15 and he was forced to upgrade them.

16           The lift station was pumping directly to Lake  
17 of the Ozarks for most of 2006. We found that  
18 problem. We tested the force main and we repaired  
19 it. We had to do something with the sewage of the  
20 residents that were already there and that was what  
21 got us in trouble with DNR. After different types of  
22 technologies to repair the tanks we were successful.  
23 We've past the leak test in this twice. We had a  
24 problem when we fired the blowers up that the  
25 additional vibration of the blowers caused more

1 leaks. And I think that was one of the leaks that  
2 Ms. Hart seen in her visit within the last three  
3 months.

4       We -- those leaks have been reduced to about a  
5 gallon a day. This plant under current DNR  
6 regulation is allowed to loose somewhere around 50 to  
7 55 gallons a day. And one of the problems, I think,  
8 that the Department has is that there is no actual  
9 leak testing in the -- in the regulations for a  
10 concrete tank. So the only thing that the Department  
11 has suggested to us to spec is the lagoon  
12 qualifications for a leak test. And, so -- with --  
13 that's the only measure we have of the tank.

14       And, again, it's hard to measure a tank that's  
15 -- you know, 60 to 45 feet wide and you're trying to measure  
16 just a millimeter or several millimeters of a drop in  
17 water level. We tried very hard to qualify that  
18 loss. And, again, problems with sewage being there,  
19 we had to store it and haul it to an approved site  
20 and we have submitted that to DNR as proof that we  
21 have not discharged any wastewater there.

22       DNR has made several trips where they noted  
23 that there was sewage there. Well, yes, there was  
24 sewage there. There was a plant and people living  
25 when we brought the project. We have fixed this

1 plant. There is two wet spots on each side of the  
2 tank. One side of the tank, actually, you can see  
3 the water -- you can see it kind of run. Sunset  
4 Palms was a damp spot. This is more of a -- of a  
5 seepage. I indicated in the permit we were going to  
6 pump the tank and try it again even though this tank  
7 passed the leakage test that was required by the  
8 permit.

9 We also indicated that the datalogger will be  
10 added to the plant. And there was a problem with the  
11 weir and that had already been corrected. So, again,  
12 we're at a point where this plant is fully  
13 operational. My client is willing to do more work to  
14 fix the plant and we notified DNR of the fact and  
15 then we're sent up here to present to you.

16 COMMISSIONER TUPPER: Matthew, I got two Sunset  
17 Palm letters and no Royal Palm letter.

18 COMMISSIONER SHORNEY: I've got one.

19 COMMISSIONER TUPPER: You've got one. Thank  
20 you.

21 MR. ROB MORRISON: If I could just make a  
22 comment to the Commission. You know, this is  
23 admittedly a difficult circumstance. Staff have been  
24 working to try and gain compliance as you can see  
25 from your -- your Commission packets that -- that

1 this has been going on for quite sometime. As Paul  
2 mentioned in his remarks this isn't just because we are  
3 referring this to the Attorney General's Office does  
4 not mean that we're going to cease communicating in  
5 trying to reach a settlement of these issues.

6 In one case we still have -- in the first, the  
7 Royal Palms, the first one, I don't know if that's  
8 Royal or Sunset but in either -- whatever the case is  
9 we have an outstanding settlement agreement that's  
10 not been reached yet. We still have the matter of  
11 civil penalty that still needs to be negotiated as  
12 part of that agreement.

13 We believe it would be appropriate, given the  
14 length of time that has passed on these to go ahead  
15 and refer those issues to the Attorney General's  
16 Office so that we can solidify and get that agreement  
17 in place and move forward.

18 On the second one we do have some violations of  
19 an administrative order. And we believe it's  
20 appropriate, at this point, given the length of time  
21 that's passed -- and we recognize work that Mr.  
22 Marschke and his folks have done in attempting to  
23 gain compliance, I think, it's still, at this point,  
24 be beneficial to the project to keep things moving,  
25 to facilitate an agreement in acceptance of the

1 solutions that are out there. So I think the  
2 perception that everything stops when we go to the  
3 Attorney General's Office would be an inappropriate  
4 assumption here.

5           And I realize he's not trying to make that --  
6 that case. But I just wanted to kind of bring that  
7 back to your attention that this is -- this is here  
8 as a backstop if we're not able to reach resolution  
9 of these issues then we already have the matter  
10 before the Attorney General and we can take whatever  
11 appropriate actions are necessary.

12           MR. MARSCHKE: Mr. Kelly is willing to write a  
13 \$22,000 check tomorrow to settle the agreement he  
14 agreed to. Mr. Kelly cannot sale anymore units. I  
15 believe we have an underlying personality conflict  
16 with personnel of Mark Kelly and the Department which  
17 led the Department to contact Camden County P & Z and  
18 inform them not to sale anymore condos until these  
19 problems have been solved. Our projects are dead in  
20 the water. We need our permit. And we are willing  
21 to do whatever the Department wants to fix the  
22 problem we just need to get it done.

23           Thank you.

24           COMMISSIONER HUNTER: What'd you think?

25           COMMISSIONER EASLEY: You ready for a motion?

1 CHAIRPERSON PERRY: I'm ready.

2 COMMISSIONER EASLEY: I move that the Missouri  
3 Clean Water Commission request the Missouri Attorney  
4 General to institute appropriate legal action against  
5 Mr. Mark Kelly and Sunset Palms, LLC, on behalf of  
6 the Missouri Clean Water Commission and the Missouri Department  
7 of Natural Resources to require Mr. Kelly and Sunset  
8 Palms, LLC, to comply with the Missouri Clean Water  
9 Law; pay a civil penalty for past violations; and any  
10 relief deemed appropriate by the Attorney General's  
11 Office.

12 COMMISSIONER SHORNEY: Second.

13 CHAIRPERSON PERRY: We have a motion and a  
14 second, please, call for the vote.

15 MS. OVERHOFF: Commissioner Hardecke?

16 VICE-CHAIR HARDECKE: Yes.

17 MS. OVERHOFF: Commissioner Easley?

18 COMMISSIONER EASLEY: Yes.

19 MS. OVERHOFF: Commissioner Shorney?

20 COMMISSIONER SHORNEY: Yes.

21 MS. OVERHOFF: Commissioner Tupper?

22 COMMISSIONER TUPPER: Yes.

23 MS. OVERHOFF: Commissioner Hunter?

24 COMMISSIONER HUNTER: Yes.

25 MS. OVERHOFF: Chair Perry?

1 CHAIRPERSON PERRY: Yes.

2 COMMISSIONER EASLEY: I'd like to make another  
3 motion.

4 I move that the Missouri Clean Water Commission  
5 request the Missouri Attorney General to institute a  
6 civil action against Mr. Mark Kelly on behalf of the  
7 Missouri Clean Water Commission and the Missouri  
8 Department of Natural Resources, requiring Mr. Kelly  
9 to comply with the Missouri Clean Water Law; pay  
10 civil penalty for past violations; and any relief  
11 deemed appropriate by the Attorney General's Office.

12 COMMISSIONER SHORNEY: This would be in relation  
13 to Royal Palms?

14 COMMISSIONER EASLEY: Yes.

15 COMMISSIONER SHORNEY: Second.

16 CHAIRPERSON PERRY: We have a motion and a  
17 second. Anymore discussion?

18 VICE-CHAIR HARDECKE: I guess I would want to  
19 offer Mr. --

20 MR. MARSCHKE: Marschke.

21 VICE-CHAIR HARDECKE: -- Marschke's  
22 consideration that you will work with him if he wants  
23 to get that cleared up right away, then that could  
24 happen, right?

25 MR. MARSCHKE: We're ready. We can't satisfy

1 our inspector.

2 CHAIRPERSON PERRY: And it's my thought if you  
3 had the Attorney General's Office involved perhaps  
4 you'll have a mediator.

5 Are we ready to call for the vote?

6 (No response.)

7 CHAIRPERSON PERRY: Please do so, Malinda.

8 MS. OVERHOFF: Commissioner Easley?

9 COMMISSIONER EASLEY: Yes.

10 MS. OVERHOFF: Commissioner Shorney?

11 COMMISSIONER SHORNEY: Yes.

12 MS. OVERHOFF: Commissioner Tupper?

13 COMMISSIONER TUPPER: Yes.

14 MS. OVERHOFF: Commissioner Hunter?

15 COMMISSIONER HUNTER: Yes.

16 MS. OVERHOFF: Commissioner Hardecke?

17 VICE-CHAIR HARDECKE: Yes.

18 MS. OVERHOFF: Chair Perry?

19 CHAIRPERSON PERRY: Yes.

20 Okay. So we're still going with these.

21 MR. DICKERSON: Is it **Tab No. 14**?

22 CHAIRPERSON PERRY: Right.

23 MR. DICKERSON: **Mr. Dennis Kallash, Rockport**  
24 **Subdivision, Lincoln County.**

25 CHAIRPERSON PERRY: Do I have any other cards?

1 Were you going to speak on this?

2 MR. BRUCE MORRISON: Madam Chair, I have a card  
3 on No. 15.

4 CHAIRPERSON PERRY: Okay. Thank you.

5 MR. FINN: Well, on 16 also.

6 CHAIRPERSON PERRY: Oh, okay. I'm sorry. I  
7 missed the pipeline. Thank you.

8 MR. DICKERSON: Mr. Dennis Kallash owns and is  
9 developing approximately 38 acres of property located  
10 in Lincoln County.

11 The property is platted for 100 residential  
12 lots. The development is known as Rockport  
13 Subdivision Phase 2. Mr. Kallash is grading the land  
14 for future sewer lines and intends to sale the  
15 undeveloped lots.

16 In November, 2007, staff conducted a complaint  
17 investigation and observed that best management  
18 practices were not adequate to control the transfer  
19 of silt offsite. During subsequent site inspections  
20 on December 10th, 2007, and April 9th, 2008, staff  
21 observed sediment deposits in the tributary to Sand  
22 Run and documented that perennial ground cover had  
23 not been established on a large area of disturbed  
24 land in the development.

25 Since November, 2007, the Department has issued

1 three notices of violation to Mr. Kallash in an  
2 attempt to bring the site into compliance.

3 On August 15th, 2008, the Department sent a  
4 certified letter to Mr. Kallash offering to resolve  
5 past violations through an out of court settlement  
6 agreement. On October 8th, 2008, Department staff met  
7 with Mr. Kallash and Ms. Toni Kallash to discuss the  
8 process to resolve the violations through the  
9 agreement. And October 23rd, 2008, the Department  
10 received a letter from Mr. Kallash.

11 The Department responded on October 21st, 2008,  
12 and in this letter the Department explained our  
13 position and the process to resolve the matter. To  
14 date we've been able -- unable -- we've been in  
15 contact with his attorney, also, by letter and  
16 telephone and to date we've been unable to reach any  
17 agreement to resolve this.

18 Therefore, staff recommends the Clean Water  
19 Commission refer this matter to the Attorney  
20 General's Office for appropriate legal action to  
21 obtain compliance with the Missouri Clean Water Law  
22 and its implementing regulations, payment of civil  
23 penalties for past violations and any relief deemed  
24 appropriate by the Attorney General's Office.

25 VICE-CHAIR HARDECKE: You haven't had any recent

1 correspondence with Mr. Kallash?

2 MR. DICKERSON: Well, after our initial contact  
3 with him and a couple of letters back and forth with  
4 him we did receive a letter from his attorney. I  
5 talked to him on the telephone yesterday and we're  
6 just -- our positions are so far apart that we're  
7 just unable to reach an agreement at this time.

8 CHAIRPERSON PERRY: Who is that attorney?

9 MR. DICKERSON: Edward Grewach out of Troy,  
10 Missouri.

11 CHAIRPERSON PERRY: Are you like Grewach? Eddie  
12 Grewach?

13 MR. DICKERSON: Yeah. Grewach.

14 CHAIRPERSON PERRY: Okay. I know Eddie.

15 COMMISSIONER HUNTER: Did he understand that you  
16 were coming before the Commission, today, to  
17 recommend --

18 MR. DICKERSON: Yeah. Yes. Yeah.

19 He had sent us a letter and I called him  
20 yesterday to talk to him about where we were at and  
21 our positions are just too far apart to reach some  
22 sort of an agreement.

23 VICE-CHAIR HARDECKE: So have the problems been  
24 corrected at this point?

25 MR. DICKERSON: I don't think we've been out

1 there for a couple of months. So I'm not sure what  
2 the site looks like at this point.

3 VICE-CHAIR HARDECKE: Are they still going on  
4 with construction?

5 MR. DICKERSON: Yeah. Yeah. Development is  
6 still going on.

7 CHAIRPERSON PERRY: Any further thoughts?

8 (Tape Four, Side A concluded.)

9 CHAIRPERSON PERRY: -- on this. I mean, that  
10 might be a message that Mr. Grewach is just as happy  
11 to discuss in another form.

12 COMMISSIONER TUPPER: Ready for a motion?

13 CHAIRPERSON PERRY: Yep.

14 COMMISSIONER TUPPER: I move the Missouri Clean  
15 Water Commission request the Missouri Attorney  
16 General to institute appropriate legal action against  
17 Mr. Dennis and Ms. Toni Kallash, in a court of  
18 competent jurisdiction on behalf of the Missouri  
19 Clean Water Commission, Missouri Department of  
20 Natural Resources to require compliance with the  
21 Missouri Clean Water Law and its implementing  
22 regulations, payment of civil penalties for the past  
23 violations and any relief deemed appropriate by the  
24 Attorney General's Office.

25 COMMISSIONER HUNTER: Second.

1           **CHAIRPERSON PERRY:** Call for the vote, please.

2           **MS. OVERHOFF:** Commissioner Shorney?

3           **COMMISSIONER SHORNEY:** Yes.

4           **MS. OVERHOFF:** Commissioner Tupper?

5           **COMMISSIONER TUPPER:** Yes.

6           **MS. OVERHOFF:** Commissioner Hunter?

7           **COMMISSIONER HUNTER:** Yes.

8           **MS. OVERHOFF:** Commissioner Hardecke?

9           **VICE-CHAIR HARDECKE:** Yes.

10          **MS. OVERHOFF:** Commissioner Easley?

11          **COMMISSIONER EASLEY:** Yes.

12          **MS. OVERHOFF:** Chair Perry?

13          **CHAIRPERSON PERRY:** Yes.

14          Now, we have someone that is also going to join

15          you. Go ahead, please.

16          **MR. DICKERSON:** Okay.

17          **Biermann and Turntine Lagoon, Franklin County.**

18          Biermann and Turntine Properties, LLC, own an

19          unpermitted single cell lagoon located in Crawford

20          County that collects wastewater from area businesses

21          and homes. The lagoon, businesses and homes are

22          located within the city limits of the Village of West

23          Sullivan, which is located just outside the western

24          boundary of the City of Sullivan city -- the City of

25          Sullivan city limits.

1           On March 22nd, 2007, staff responded to a report  
2 concerning a wastewater treatment facility located  
3 near the north outer road in West Sullivan and found  
4 the lagoon in operation.

5           On May 10<sup>th</sup>, 2007, the Department sent a certified  
6 letter to Mr. Turntine notifying that the lagoon is  
7 in operation without a permit and in violation of  
8 Missouri Clean Water Law and requesting a written  
9 response describing how he planned to address the  
10 violations.

11           On April 20th, 2007, staff met with Mr. Turntine  
12 who is also the Chairman of the Village Board of West  
13 Sullivan, several other board members and government  
14 -- other government officials to discuss wastewater  
15 treatment options in West Sullivan.

16           On June 22nd, 2007, the Department sent Mr.  
17 Turntine a letter requesting that he respond in  
18 writing by October 1st, 2007, detailing his intentions  
19 for resolving the violations. The Department did not  
20 receive a response and on December 27th, 2007, staff  
21 conducted a site inspection and verified the lagoon  
22 was still in operation.

23           Since May of 2008, the Department has attempted  
24 to reach an out of court settlement agreement with  
25 Mr. Turntine and Mr. Biermann. On July 1st, 2008,

1 Department staff met with Mr. Bruce Morrison to  
2 discuss the steps necessary to resolve the  
3 violations. Mr. Morrison is an attorney representing  
4 Mr. Biermann and Mr. Turntine. And he's here today.  
5 The Department has also -- Department staff has also  
6 remained in contact with Mr. Morrison through several  
7 letters and telephone conversations. However, to  
8 date the Department has not received an appropriate  
9 response to its offer to resolve this matter through  
10 an agreement.

11 Therefore, staff recommends referral of this  
12 matter to the Attorney General's Office for  
13 appropriate legal action to obtain compliance with  
14 Missouri Clean Water Law and its implementing  
15 regulations, payment of a civil penalty for the past  
16 violations and any relief deemed appropriate by the  
17 Attorney General's Office.

18 MR. BRUCE MORRISON: Madam Chair and members of  
19 the Commission, I'm going to pass out some documents  
20 in that they look formidable. I only have a few  
21 minutes worth of remarks so I'm just going to a few  
22 sentences in these. So I hope that's of comfort when  
23 you get this stack.

24 COMMISSIONER TUPPER: Thank you, sir.

25 CHAIRPERSON PERRY: As long as you don't read it

1 to us.

2 VICE-CHAIR HARDECKE: Thank you.

3 MR. BRUCE MORRISON: I do represent Mr.'s  
4 Biermann and Turntine. I am also representing the  
5 Town of West Sullivan. This matter is about the Town  
6 of West Sullivan and its wastewater issues. Biermann  
7 and Turntine are shouldering much of the towns burden  
8 regarding these issues.

9 Biermann and Turntine and the town are  
10 aggressively pursuing a remedy. For that reason,  
11 we're asking that the Commission not refer this  
12 matter to the Attorney General at this time.

13 There are two issues here. There's the issue of  
14 the remedy, there's the issue of the penalty. Tab  
15 No. 15 in the briefing packet on Page 1 does set out  
16 the issue -- or a key issue and its one Mr. Dickerson  
17 alluded to that Biermann and Turntine has not  
18 responded to the Department's offer.

19 For the penalty that is accurate. It's not so  
20 for the remedy. The Department has made a demand for  
21 a penalty. There's been no counter offer and I want  
22 to explain to the Commission why it's counter  
23 productive to negotiate a penalty at this stage.

24 In those materials I handed out behind Tab No. 3  
25 there's a summary of the expenditures to date by

1 Biermann and Turntine and by the Town of West  
2 Sullivan; by totaling those up and there are a couple  
3 of pages that total up the expenditures by each --  
4 the expenditures thus far exceed \$40,000. West  
5 Sullivan is not a wealthy community. To a large  
6 extent Jim Turntine is carrying the town's wastewater  
7 problem on his back. And I'd like the Commission to  
8 stand in his shoes, just for a moment, you got to  
9 imagine this guy, he's a big guy, big shoes and kind  
10 hearted. There are 25 homes within West Sullivan  
11 that have inadequate septic systems. Effluent from  
12 these homes is discharging to a depression, a pecky  
13 hole what's referred to as the lagoon, discharging to  
14 a depression on Biermann and Turntine's property.  
15 There's no money that goes to Biermann and Turntine.  
16 No consideration from these people. All he gets is  
17 their effluent.

18 He could plug -- he could plug the pipe. It  
19 would be cheap. It would be easy, but it doesn't  
20 solve the problem. So instead Biermann and Turntine  
21 have spent thousands and thousands of their own money  
22 to solve the problem. Now, standing in Jim  
23 Turntine's shoes you might think this is unjust to be  
24 talking about negotiating a penalty. And, Jim, he's  
25 like a big warm bear and when he tells me he's -- he

1 feels hurt by the thought of a penalty, I -- he  
2 really is hurt. Its -- the penalty part is counter  
3 production to be talking about a penalty, now, but  
4 not counter productive to be talking about the  
5 remedy.

6         So at this juncture we're asking the Commission  
7 to allow Biermann and Turntine and the town to devote  
8 their money -- to continue to devote their money to  
9 the remedy and not the civil penalty that takes us to  
10 the second issue, the remedy. What about the remedy?  
11 What's going on with the remedy?

12         Page 2 of the concurrence document in your  
13 briefing packet mentions Jim Turntine as the Chair of  
14 the Village Board of West Sullivan. In 2008 he's been  
15 continuing to negotiate with Sullivan for a solution.  
16 Now, if you-all take a peek at Tab No. 2 in the  
17 documents I handed to you, Sullivan and West Sullivan  
18 have been negotiating for years about solving this  
19 problem. In September 2007, that's the first page  
20 behind Tab No. 2 the Town of West Sullivan sued the  
21 City of Sullivan and an adjacent public water supply  
22 district. It went beyond negotiating and thought it  
23 was time to sue. The town's proof is that both  
24 Sullivan and the public water supply district took  
25 public money, made commitments to provide sewer

1 service to these homes with the inadequate septic  
2 tanks, the suit requires Sullivan and the public  
3 water supply district to honor these commitments.  
4 The town and Biermann and Turntine are aggressively  
5 pursuing the remedy through this suit and they're  
6 asking that this Commission, please, don't sidetrack  
7 those efforts with a referral.

8           One last peek at a document, Tab No. 1, that  
9 also bears on the remedy. West Sullivan -- the Town  
10 of West Sullivan and Biermann and Turntine are not  
11 just pinning all of their hope on the outcome of this  
12 suit. There are settlement discussions going back  
13 and forth in this litigation between Sullivan and  
14 West Sullivan. Sometimes these negotiations are not  
15 productive. For example, there's correspondence  
16 there behind Tab No. 2 that shows the City of  
17 Sullivan's last position, which is to the Town of  
18 West Sullivan we will hook up these homes, but we'll  
19 only do it for a period of five years. That's not a  
20 permanent remedy.

21           So that -- that just -- that just came down mid-  
22 February, I think, the letters there are February  
23 12th, 2009, and thereabout. So obviously it's not  
24 productive for the Town of West Sullivan nor for  
25 Biermann and Turntine to pin all of their hopes on

1 this litigation. So instead they are pursuing an  
2 alternative behind Tab No. 1 to take over and expand  
3 an existing wastewater treatment system. That's the  
4 first document there in that packet.

5           So if referral appropriate? If Biermann and  
6 Turntine and the town were mired in an action then,  
7 yes, but here Biermann and Turntine and the town are  
8 aggressively pursuing a remedy. We're asking that  
9 the Commission not refer the matter, at this time,  
10 allow Biermann and Turntine and the Town of West  
11 Sullivan to continue to channel their resources  
12 toward developing the remedy at least for a period of  
13 90 days. If their efforts slow down, if they are not  
14 as aggressive as they are today then make the referral  
15 to the Attorney General, but, please don't do so now  
16 as it would be counter productive.

17           VICE-CHAIR HARDECKE: I've got a couple of  
18 questions.

19           What you said they're considering another waste  
20 treatment; where is that?

21           MR. BRUCE MORRISON: That is on the other side  
22 of Hwy. 44. The details for that alternative are in  
23 that first document from Archer that was presented to  
24 the Department, in fact, two days ago. This is a  
25 facility that is serving some mobile homes. It can

1 be expanded. It is now the recommended alternative  
2 that Biermann and Turntine and the town are  
3 proposing. It is their recommendation that is within  
4 document.

5 Biermann and Turntine and West Sullivan are all  
6 but ready to almost completely abandon trying to get  
7 relief through the City of Sullivan because that  
8 depends on another party. They don't have control  
9 except at the end of the suit if the court will issue  
10 a judgment, enter a judgment requiring the City of  
11 Sullivan to honor the commitment that would be done,  
12 but still there's -- there's the appeal process.

13 So for the sake of getting something done sooner  
14 instead of later this is now another avenue where the  
15 town is putting --

16 VICE-CHAIR HARDECKE: This other treatment plant  
17 is closer. I grew up in Sullivan so I know where  
18 you're talking about but I don't know where the other  
19 treatment plant is.

20 MR. BRUCE MORRISON: And I'm going to be able to  
21 point you to that in probably a minute's time. I  
22 know was reading its precise location just about 20  
23 minutes ago. But you may lose patience with me if I  
24 fumble through the first 26 pages --

25 VICE-CHAIR HARDECKE: No. That's fine.

1           MR. BRUCE MORRISON:  -- to tell you precisely  
2 where that is.

3           CHAIRPERSON PERRY:  I have a map; is this what,  
4 you're looking for?

5           MR. BRUCE MORRISON:  So I'm on Page 12 of the  
6 first document an existing privately owned wastewater  
7 treatment facility located south of Interstate 44.  
8 It's part of the Country Squire Mobile Home Park.  
9 And then the report from Archer goes into detail  
10 about how this system is to be designed and  
11 constructed.

12          COMMISSIONER TUPPER:  Is West Sullivan going to  
13 close the existing lagoon?  I noticed there's a  
14 closure report in here.

15          MR. BRUCE MORRISON:  Yes, sir.

16          COMMISSIONER TUPPER:  But I didn't see a  
17 commitment in there.

18          MR. BRUCE MORRISON:  So this -- this closure  
19 plan was presented to the Department, I believe, in  
20 October of 2008 or thereabouts.  This is the plan to  
21 close the existing lagoon once that alternative  
22 remedy is in place.  And the staff has been most  
23 cooperative and I believe we've gotten along well in  
24 exchanging documents in trying to get this done.  I've got no  
25 grumbles with our counter part Mr. Dickerson nor

1 anybody else from the staff.

2 CHAIRPERSON PERRY: Help me. Isn't this Tom  
3 Herrmann's --

4 VICE-CHAIR HARDECKE: No.

5 CHAIRPERSON PERRY: -- is this the one?

6 VICE-CHAIR HARDECKE: City of Sullivan.

7 CHAIRPERSON PERRY: Oh.

8 VICE-CHAIR HARDECKE: The City of Sullivan is  
9 currently building a new treatment plant, but West  
10 Sullivan is a different entity and they've been  
11 trying to get access to the City of Sullivan's sewer.

12 CHAIRPERSON PERRY: Wouldn't that make sense?

13 VICE-CHAIR HARDECKE: It would make sense. But  
14 apparently they haven't been successful.

15 MR. BRUCE MORRISON: Not successful and I'm  
16 afraid that last proposal from Sullivan was -- you  
17 may have access for five years only.

18 VICE-CHAIR HARDECKE: As he says this has been  
19 going on for what 25 years of trying to get access to  
20 Sullivan?

21 MR. BRUCE MORRISON: I know Jim Turntine has  
22 been shouldering it since about 1997.

23 CHAIRPERSON PERRY: Is this another one of those  
24 personality clashes?

25 MR. BRUCE MORRISON: Apparently so, so I hear.

1           MR. DICKERSON: I don't believe it's a  
2 personality -- we need an enforceable document with a  
3 schedule to address the violations. And this has  
4 been going on -- you know, for at least two years  
5 since the Department did their investigation and  
6 referred it for enforcement action. We've had it  
7 under enforcement for almost nine months. We haven't  
8 been able to reach an enforceable document. We  
9 finally -- we have an engineering report, now -- you  
10 know, we're glad that there's progress and we're  
11 willing to keep the lines of communication open even  
12 with a referral but we need an enforceable document  
13 and we would like to have -- well, what we'd like to  
14 have is a consent judgment.

15           We'd like to be able to sit down -- you know, we  
16 can continue to negotiate the terms -- you know, I  
17 don't envision taking this immediately to court. We  
18 do have something concrete now it looks like we have  
19 an engineering report.

20           VICE-CHAIR HARDECKE: You indicated that in 90  
21 days you could get something worked out.

22           MR. BRUCE MORRISON: There is that alternative  
23 here. What I'm -- what I'm worried about is sending  
24 the wrong message to Jim Turntine, but he's -- he's  
25 going to have to try to get them to live with the

1 message -- whatever the Commission's message is. Jim  
2 Turntine is viewing himself as a fatherly type hero  
3 shouldering a burden and spending his money to solve  
4 the town's problems.

5         An alternative that is better than a referral  
6 now -- I hate to throw this out because you're going  
7 to have to trust me that this was the conversation I  
8 had with Kevin Mohammadi, but maybe he passed it on,  
9 yesterday. And his suggestion was this, that, yes,  
10 it was counter productive to be talking about a  
11 penalty when we should be focusing on the remedy. He  
12 had an understanding of the personality issues. He  
13 called it a "legacy" of -- he used the word "legacy"  
14 of personality issues between Sullivan and West  
15 Sullivan. And his alternative was this, if we  
16 couldn't put off the referral entirely that instead  
17 of having a referral, now, there would be something  
18 self-executing so that if within 90 days Biermann and  
19 Turntine could negotiate an agreement with the  
20 Department there would be no referral. But if there  
21 was no agreement reached within 90 days then that  
22 referral would be self-executing. I think he called  
23 it a contingent referral. Did he say -- mention that  
24 to you?

25         CHAIRPERSON PERRY: And we've done similar

1 things to that.

2 COMMISSIONER TUPPER: It seems to me like we  
3 need to review this engineering report and see if  
4 it's workable before we do anything and it was just  
5 submitted Monday.

6 VICE-CHAIR HARDECKE: Well, I think, if they're  
7 getting this close to a solution that -- are you  
8 their engineer as well as legal?

9 MR. BRUCE MORRISON: Oh, boy! Nobody would want  
10 that.

11 (Laughter.)

12 MR. BRUCE MORRISON: I went to an engineering  
13 school. I'm a Purdue Boilermaker but I'm not the  
14 engineer. So the engineer is Mr. Jeff Meadows with  
15 Archer Engineer. And that's his stamp there on the  
16 front there.

17 CHAIRPERSON PERRY: What a mess.

18 MR. ROB MORRISON: Again, I appreciate the  
19 remarks that Bruce has offered. I think Bruce is  
20 committed to a solution in this case. But the things  
21 that concern me about this, and I haven't talked to  
22 Kevin about the contingent referral issue. But we  
23 have done it has before as Commissioner Perry and  
24 others have noted.

25 The things that concern me in this case are

1 really about the legacy. This is an issue that has  
2 went on between Sullivan and West Sullivan for years.  
3 It's nothing new in terms of the inability to -- to  
4 cooperate on various issues. And I think they would  
5 all -- if they were here, would agree with that.

6       Once again we have a solution that has been put  
7 before us and I -- it sounds like from what's been  
8 submitted to today or yester -- I think, it was maybe  
9 Friday of last week submitted to the regional office  
10 for consideration and for a permit, the engineering  
11 report. We have a solution headed in the right path  
12 although it's not uncommon for us to negotiate in  
13 these cases penalties and solutions. We do it all  
14 the time.

15       That's not -- and while -- while some may  
16 maintain that it is counter productive to be talking  
17 about penalties we have an obligation as stewards of  
18 the environment here to make sure that we're  
19 providing a level playing field. We have a lot of  
20 entities in this state that have spent a lot of money  
21 and a lot of resources to come into compliance in a  
22 timely fashion.

23       The concerns that I have, if we don't do this,  
24 is that we have lost another three months of this  
25 particular effort. We'll be back here, once again,

1 or if we do a contingent referral, we'll be on again  
2 with that. But the issue that I would put before you  
3 is, I would ask that we not dismiss the referral for  
4 the sake of the fact that we now have an application.

5 It could very well be that this -- these talks  
6 of the referral has been perhaps providing motivation  
7 to get towards compliance and that we can continue  
8 that effort if we had this issue before the Attorney  
9 General's Office, which we are going to have to  
10 dispose of the issue of a penalty. And that will  
11 have to be disposed of, at some point.

12 If we cannot reach an agreement on the penalty  
13 we'll be right back here discussing those issues. So  
14 in my mind -- if you want to do a contingent  
15 referral, that's fine. If -- but -- you know, I  
16 think preference one for us would be to go ahead and  
17 put this issue before the Attorney General as in the  
18 case previously we haven't lost anything. We're not  
19 immediately going to hearing on this case. And the  
20 Attorney General can step in and provide perhaps some  
21 mediation services as you -- you talked about before  
22 Commissioner Perry. So that's something to think  
23 about as you make your final decision.

24 COMMISSIONER TUPPER: I'm really not trying to  
25 play games with you. I wanted to make sure that this

1 got reviewed and the comment letter got out and the  
2 response as quickly as possible and so I'm just  
3 trying to put a little pressure on the Department.  
4 And I'm not saying wipe out the penalties, but, I  
5 think, we've got a chance maybe to settle this thing  
6 after all this time. And both sides need to move as  
7 quickly as they can.

8 MR. BRUCE MORRISON: It looks like we have our  
9 preferred positions drawn. Mine was the no referral  
10 at this time and the Departments is the referral now  
11 and, I think, at least an acceptable middle ground is  
12 the contingent referral. I am worried about the  
13 message that the referral sends. I think it's  
14 productive to try to settle this within the confines  
15 of -- at the staff level as opposed to the Attorney  
16 General having it in an enforcement action that it is  
17 biting into.

18 VICE-CHAIR HARDECKE: You had mentioned that  
19 this was a -- these 25 homes all have septic systems  
20 and this lagoon kind of collected them; is that  
21 correct?

22 MR. BRUCE MORRISON: These 25 homes apparently  
23 have by best guess is a septic system that is now not  
24 operating properly. Nobody is going so far as to say  
25 it was designed improperly. These homes are older

1 homes. These began discharging to this depression  
2 before Biermann and Turntine purchased the property  
3 where this depression sits.

4 CHAIRPERSON PERRY: So they purchased it knowing  
5 that?

6 MR. BRUCE MORRISON: They purchased it and there  
7 is some correspondence that I have between DNR and  
8 Jim Turntine, this is '97 when Jim Turntine set about  
9 trying to be the hero. This was his first step. He  
10 was going to solve this problem for the town. He was  
11 going to purchase this property. He set about  
12 efforts trying to annex these properties to the city.  
13 The city wouldn't annex. There was later a letter  
14 from the city, saying, we're sorry we should've  
15 annexed. Next step was for Jim Turntine and others  
16 to incorporate the town so that there would be a  
17 continuing authority to develop their own wastewater  
18 system. And then that began years of discussions,  
19 failed discussions between the town and the city.

20 VICE-CHAIR HARDECKE: Well, I guess my point is,  
21 we talk a lot about putting in treatment package  
22 treatments or such for failing septic systems around  
23 the state and I think that if we're this close to an  
24 opportunity we need to help them obtain that.  
25 Because -- you know, I've lived -- I'd lived in

1 Sullivan all my life and I know that it's -- it's  
2 been a problem for years and there are good people  
3 trying to work it out. And I hope that we can get  
4 this resolved. I would propose --

5 CHAIRPERSON PERRY: So what do you think is the  
6 best way to do that?

7 VICE-CHAIR HARDECKE: -- I would pose the  
8 deferred -- deferral or whatever.

9 COMMISSIONER SHORNEY: Ninety days.

10 VICE-CHAIR HARDECKE: -- ninety days. I'd make  
11 that motion.

12 CHAIRPERSON PERRY: Okay. So you want to make  
13 it?

14 VICE-CHAIR HARDECKE: Yes. Oh, you mean I got  
15 to read all this.

16 CHAIRPERSON PERRY: Well, you got to put it --

17 VICE-CHAIR HARDECKE: What do I call it?

18 CHAIRPERSON PERRY: You can call it a deferred  
19 referral or you could -- well, we can ask counsel.

20 COMMISSIONER SHORNEY: A 90-day contingent  
21 referral, right?

22 VICE-CHAIR HARDECKE: Contingent, that's it.

23 CHAIRPERSON PERRY: I think -- somebody help me?

24 MS. FRAZIER: Sure.

25 CHAIRPERSON PERRY: How we did these before, I

1 think, we said that we move that this -- that we give  
2 the parties 90 days to come to some resolution and if  
3 the parties do not reach a resolution within 90 days  
4 this will automatically be referred to the  
5 Commission.

6 MS. FRAZIER: And you can just add that to the  
7 end of the suggested motion language. Just go ahead  
8 and read it as it is and at the end add --

9 MR. ROB MORRISON: Are we -- just be clear here  
10 before we all have motions and so forth. It's to  
11 reach resolution of the issues, which would mean to  
12 come to an agreement on a settlement agreement within  
13 90 days; is that your -- is that your wishes?

14 CHAIRPERSON PERRY: Is that what you suggest?

15 MR. ROB MORRISON: Because the issue is not -- I  
16 mean, there are a lot here than -- that's at stake  
17 than just getting them to submit the application. We  
18 do have some violations that we need to take care of.  
19 So if that's the case -- I mean, if we're not going  
20 to be able to do the complete package within 90 days  
21 then what have we accomplished. We've already had  
22 the application submitted to the regional office.  
23 That wheel is already in place.

24 The larger issues -- or the other issues then,  
25 the other side of the coin are the penalties for past

1 violations. So if we don't have a complete package  
2 we -- I'm not sure where that leaves us.

3 COMMISSIONER TUPPER: I think a complete package  
4 includes being able to hand them an approved  
5 engineering report at the same time we settle the  
6 violations.

7 MR. ROB MORRISON: Provided they have an  
8 application that's complete.

9 COMMISSIONER TUPPER: Yeah.

10 MR. ROB MORRISON: Yeah.

11 MS. FRAZIER: If I can suggest -- I mean, you  
12 could clarify that there would be signed settlement agreement  
13 resolving all outstanding issues and if that's not  
14 done within 90 days then the matter will be  
15 automatically referred to the Attorney General's  
16 Office. But I think it would be important to clarify  
17 that all outstanding issues have been resolved and  
18 that could include a time schedule for compliance  
19 issues; that settlement agreement could.

20 MR. ROB MORRISON: Yeah. And your point is well  
21 taken. And it may be that we -- that just from the  
22 comments passing back and forth in 90 days we may not  
23 get the permit issued -- I mean, it could be that  
24 there are issues to resolve and so we -- but we can  
25 roll that into an agreement.

1           COMMISSIONER TUPPER: Well, that's what I'm  
2 saying. I think we need to get the permit issued,  
3 whatever we have to do to do it we need to do that.

4           MR. ROB MORRISON: And I understand where you're  
5 coming from. And I hope you appreciate my position  
6 is that it takes two to tango.

7           COMMISSIONER TUPPER: I know. I know.

8           MR. ROB MORRISON: And they do have a reputable,  
9 quality firm so I would agree that there is the  
10 ability there. It's just the matter of whether we  
11 can get all the stars to line up and get everything  
12 done.

13          COMMISSIONER TUPPER: I'm just going to hang the  
14 guillotine on both necks.

15          (Laughter.)

16          MR. BRUCE MORRISON: And I take the language of  
17 all outstanding issues will do it.

18          **VICE-CHAIR HARDECKE: I move the Clean Water**  
19 **Commission request the Missouri Attorney General to**  
20 **institute appropriate legal action against Mr. James**  
21 **Biermann and Mr. James Turntine on behalf of the**  
22 **Clean Water Commission and Missouri Department of**  
23 **Natural Resources to require immediate compliance**  
24 **with the Missouri Clean Water Law and regulation,**  
25 **civil penalties for past violations, and any relief**

1 deemed appropriate by the Missouri Attorney General's  
2 Office. However, --

3 CHAIRPERSON PERRY: However, before this be  
4 turned over to the Attorney General the parties shall  
5 be given 90 days to resolve all issues.

6 VICE-CHAIR HARDECKE: That's good.

7 CHAIRPERSON PERRY: Do we have a motion?

8 VICE-CHAIR HARDECKE: I make that motion.

9 COMMISSIONER EASLEY: Second.

10 VICE-CHAIR HARDECKE: You got that.

11 MS. FRAZIER: Can I make one -- well, you need a  
12 second and then I'd like to make a suggestion.

13 COMMISSIONER EASLEY: I'll second. Now, you can  
14 make the recommendation.

15 MS. FRAZIER: Having a resolution and having a  
16 signed document -- I think it would be -- I would  
17 recommend that you would have a signed document  
18 resolving it just because there may be a disagreement  
19 as to whether or not the resolution has occurred.

20 CHAIRPERSON PERRY: Right. Okay. And we can  
21 add that to that?

22 MS. FRAZIER: You can make a motion to amend it.

23 VICE-CHAIR HARDECKE: Is that all right to add  
24 that to the second?

25 COMMISSIONER EASLEY: With the amendment?

1           CHAIRPERSON PERRY: And with the resolution  
2 thereof shall --  
3           VICE-CHAIR HARDECKE: Sure.  
4           CHAIRPERSON PERRY: -- document it.  
5           MS. FRAZIER: The resolution --  
6           CHAIRPERSON PERRY: **The resolution -- right?**  
7           **MS. FRAZIER: -- by a signed agreement --**  
8           CHAIRPERSON PERRY: -- shall be evident by a  
9 signed -- signed -- signed document.  
10          VICE-CHAIR HARDECKE: Is Malinda writing that  
11 down?  
12          MS. OVERHOFF: I got part of it and it's on  
13 tape.  
14          CHAIRPERSON PERRY: So we vote on the amendment  
15 and then we vote on the motion or do we vote on it  
16 all together?  
17          MS. FRAZIER: I think it would be acceptable to  
18 vote on all, the motion as amended.  
19          **CHAIRPERSON PERRY: I will accept a vote on the**  
20 **motion as amended; would you call for a vote, please?**  
21          **Did we get a second on the amendment?**  
22          COMMISSIONER HUNTER: Who second it? Jan, did  
23 you second --  
24          COMMISSIONER EASLEY: I'll second the amendment.  
25          CHAIRPERSON PERRY: Okay.

1 MS. FRAZIER: I'm sorry can I change my answer.  
2 Can you go ahead and vote on the proposed amendment  
3 and then vote on the motion?

4 COMMISSIONER EASLEY: Okay.

5 CHAIRPERSON PERRY: Okay.

6 MS. FRAZIER: Just to be sure.

7 CHAIRPERSON PERRY: I am calling for a vote on  
8 the proposed amendment that the resolution shall be  
9 defined in a written document, the resolution of all  
10 issues shall be evident by a written document signed  
11 by both DNR and the parties involved. That's the  
12 amendment. We are going to vote on the amendment,  
13 first. Please call for a vote.

14 MS. OVERHOFF: Commissioner Tupper?

15 COMMISSIONER TUPPER: Yes.

16 MS. OVERHOFF: Commissioner Hunter?

17 COMMISSIONER HUNTER: Yes.

18 MS. OVERHOFF: Commissioner Hardecke?

19 VICE-CHAIR HARDECKE: Yes.

20 MS. OVERHOFF: Commissioner Easley?

21 COMMISSIONER EASLEY: Yes

22 MS. OVERHOFF: Commissioner Shorney?

23 COMMISSIONER SHORNEY: Yes.

24 MS. OVERHOFF: Chair Perry?

25 CHAIRPERSON PERRY: Yes.

1 And now we're going to vote on the motion --

2 VICE-CHAIR HARDECKE: As amended.

3 CHAIRPERSON PERRY: -- as amended and the motion  
4 said that we will allow 90 days for resolution of  
5 this issue and then it would be referred to the  
6 Missouri Attorney General. It had more exact wording  
7 but that was just to refer to your memory for that.  
8 Are we ready for a vote?

9 (No response.)

10 CHAIRPERSON PERRY: Please call for it, Malinda.

11 MS. OVERHOFF: Commissioner Hunter?

12 COMMISSIONER HUNTER: Yes.

13 MS. OVERHOFF: Commissioner Hardecke?

14 VICE-CHAIR HARDECKE: Yes.

15 MS. OVERHOFF: Commissioner Easley?

16 COMMISSIONER EASLEY: Yes

17 MS. OVERHOFF: Commissioner Shorney?

18 COMMISSIONER SHORNEY: Yes.

19 MS. OVERHOFF: Commissioner Tupper?

20 COMMISSIONER TUPPER: Yes.

21 MS. OVERHOFF: Chair Perry?

22 CHAIRPERSON PERRY: Yes.

23 You got another tab.

24 MR. DICKERSON: Okay. Tab No. 16, Martin

25 Subdivision. Martin Subdivision is a residential

1 housing development located in Belle, Missouri -- or  
2 outside Belle, Missouri. The wastewater treatment  
3 facility serving the subdivision is an unpermitted  
4 single cell lagoon with one outfall. The receiving  
5 stream for the lagoon's effluent, which is Kline  
6 Branch, in which is a losing tributary to the Dry  
7 Fork Creek.

8         During compliance inspections the lagoon serving  
9 the subdivision staff observed that the lagoon has  
10 not been maintained and is in severe disrepair.  
11 Since February 2005, Department staff have  
12 communicated with the homeowners by written  
13 correspondence and in person recommending that the  
14 homeowners either replace the lagoon or connect to  
15 the City of Belle.

16         Department staff also attended meetings with the  
17 homeowners including a council meeting with the City  
18 of Belle to provide assistance in resolving this  
19 matter. However, the homeowners have not made any  
20 progress towards coming into compliance.

21         Therefore, staff recommends the Clean Water  
22 Commission refer this matter to the Attorney  
23 General's Office for appropriate legal action to  
24 obtain compliance with the Missouri Clean Water Law  
25 and any relief deemed appropriate by the Attorney

1 General's Office.

2 CHAIRPERSON PERRY: Okay. I have a request from  
3 Larry Finn, correct? And thank you for sitting there  
4 attentively all day.

5 MR. FINN: My name is Larry Finn. I'm glad to  
6 be here. I was hoping to get here in time to talk.  
7 Well, I gained an appreciation for the Water  
8 Commission.

9 CHAIRPERSON PERRY: You made it.

10 MR. FINN: We've done everything we could with  
11 Martin Subdivision, mostly me, in my time to work out  
12 this issue. The lagoon was put in place when the  
13 subdivision was first built.

14 CHAIRPERSON PERRY: Would you describe what your  
15 function is?

16 MR. FINN: President of the association that's  
17 now the continuing authority for the subdivision.

18 CHAIRPERSON PERRY: Thank you.

19 MR. FINN: There are 14 family units in the  
20 subdivision. Let's see, where was I? At first, when  
21 the subdivision was built they put the lagoon in and  
22 in 2004 -- I moved in there in '89 -- 1989, in 2004,  
23 February, we received a letter from DNR that we were  
24 in violation of the state laws. I guess the Clean  
25 Water Laws. And until that point I didn't know where

1 our sewer went. So -- you know, it's probably a good  
2 thing that they sent us a letter.

3 I took the letter outside and walked down the  
4 street and, of course, the lagoon was overgrown and  
5 had trees in it growing -- you know, 6 inches or  
6 better in size. So I then called the Department of  
7 Natural Resources and asked if we cleaned this out  
8 and got it all up to working order and whatnot if  
9 that would be acceptable. And they said, that they  
10 couldn't hear anything from me as far as a solution  
11 because we didn't have a continuing authority. So it  
12 took me two years to set up the association and get  
13 it registered with the Secretary of State's Office  
14 and to set up regular meetings and that sort of  
15 thing. So we have that now.

16 And then to jump ahead we were hoping to get  
17 annexed into the City of Belle, which was never a  
18 chance until -- well, last year we've been working on  
19 it. And when I say, I mean, Department of Natural  
20 Resources and the office in Rolla and myself and then  
21 MECO Engineering which gave us our engineered  
22 solution for the problem which we have for.

23 I got a letter from the city January the 20th of  
24 this year. And what it says is our annexation will  
25 be considered a flagpole annexation. And there was

1 litigation against the City of Hillsboro in concerns  
2 with a flagpole annexation so the City of Belle will  
3 no longer consider annexing us.

4 I grew up with the people that are on the city  
5 council in Belle. And the mayor I used to mow his  
6 dad's lawn and that sort of thing. I didn't have any  
7 doubt that we would get annexed. The city didn't  
8 want any part of the cost associated with the  
9 construction of the new facility. It would save us  
10 some money if we connected to the city as opposed to  
11 creating our own facility. But this letter killed  
12 that, but that was January 20th of this year.

13 So with that behind -- you know, when we first  
14 started our meetings before we had a continuing  
15 authority and we're coming back from 2005, I talked  
16 to the people in the subdivision and then it was  
17 Steve Jones from the Department of Natural Resources  
18 we were working with, I believe. And I told him, I  
19 said, well, we're going to have to come up with this  
20 plan and it's going to cost a lot of money and like  
21 the one before we're not a very -- we don't have a  
22 lot of money, the people in the subdivision or  
23 whatever we don't have expensive homes or whatnot.  
24 So they looked at me kind of dumbfounded and they  
25 looked to me to find the solution that was cheaper or

1 some free money, grant money, whatnot for the  
2 solution.

3 Well, at this point, I think, I've done that. I  
4 went through all kinds of stuff trying to get monies  
5 because we're not a city and the county wouldn't  
6 accept us and we don't have -- we'd have to create a  
7 sewer district in order to receive the monies like in  
8 this newspaper article, which my members pointed out  
9 to me where the water and wastewater conference was  
10 held in Columbia recently as to help rural  
11 communities. But we're not eligible for any of that  
12 money.

13 But even irregardless of all those things we're  
14 still, at this point, planning on construction. We  
15 have an approved engineering plan and all I got to do  
16 is tell everybody the bad news that we're going to  
17 have to pay, which is, I figured and I'm not a  
18 banker, but is near \$70.00 a month for each person  
19 for their -- for the construction. The construction  
20 is \$122,200 and I apologize I don't have exactly what  
21 that is. I could get that to you.

22 There has never been a time where we weren't  
23 willing to work with the Department of Natural  
24 Resources and I'm only limited in the time that I  
25 have 'cause I do most of the work. I had to come up

1 with bylaws and I had to write them myself. I don't  
2 have a lawyer. I don't have money for a lawyer, in  
3 fact, a lot of stuff I paid for myself. And, also, I  
4 had to come up with a covenant. I had to figure out  
5 how to record those covenants at the county level.  
6 And to this point I haven't got all the covenants  
7 because some people -- you know, haven't sent them back but  
8 I'd much rather work this out rather than see it --  
9 add someone else to the loop.

10 To bounce to the water side, now, the water side  
11 we were sent t enforcement as well. I worked with  
12 John --

13 CHAIRPERSON PERRY: Your drinking water?

14 MR. FINN: Huh?

15 CHAIRPERSON PERRY: Drinking water?

16 MR. FINN: Yes, ma'am.

17 And on the drinking water side, I talked to John  
18 MacEachen from enforcement and we came to an  
19 agreement. He explained to me what needed to happen  
20 and I've since -- we hired a certified operator, J.D  
21 Fritche, and he's been handling all the upgrades to  
22 meet the requirements. In fact, I've contacted John  
23 MacEachen and tried to get -- enforcement has to  
24 release us in order for us to be permitted by DNR.  
25 And that -- to this point they haven't released us,

1 but I have talked to him it's just a matter of time  
2 before I get in touch with me. We should be done  
3 with that side.

4 And our waters -- we was hoping would annex to  
5 the city and also get rid of the water but that  
6 hasn't happened either.

7 CHAIRPERSON PERRY: What are you drinking, now,  
8 a well?

9 MR. FINN: The water -- the water is passing --  
10 we have monthly monitoring --

11 CHAIRPERSON PERRY: It's a well?

12 MR. FINN: Yes, ma'am.

13 So I mean it's passing all those.

14 VICE-CHAIR HARDECKE: The whole subdivision is  
15 on one well, right?

16 MR. FINN: Um-huh.

17 COMMISSIONER SHORNEY: Larry, the construction  
18 that you mentioned is that rehabilitating the lagoon  
19 is what is that?

20 MR. FINN: No. No, sir. That lagoon was never  
21 permitted and at the time the subdivision was built  
22 they didn't require permitting, but there is no  
23 grandfather provision I was under -- I mean, that's  
24 come up at many, many meetings that there is no way  
25 that we could fix that lagoon. And I was also told,

1 and I don't know who to quote, but -- that any  
2 efforts that we spend on fixing the existing lagoon  
3 would be wasted monies where we could put that toward  
4 a solution that would be permittable, which I  
5 disagree. Five years later -- you know, \$200 or \$300  
6 dollars I could have had a guy with a backhoe come  
7 out there and clean it out and fix up the berms and  
8 for five years it would have operated a little  
9 better.

10 I have spent -- put 200 gallons Gly Star on the  
11 surrounding area and killed everything and all the  
12 trees are dead in that. There is, it looks like  
13 grass growing in the lagoon section, but as summer  
14 comes on that'll turn to fluid, again.

15 CHAIRPERSON PERRY: Were you involved in  
16 building this subdivision at all?

17 MR. FINN: No.

18 CHAIRPERSON PERRY: You just bought one and then  
19 all this happened?

20 MR. FINN: And I paid \$27,000 for my house.

21 MR. DICKERSON: I just want to say. Larry has  
22 been very cooperative. He's worked with the  
23 Department in trying to resolve this issue. I think  
24 the problem comes down to getting the rest of the  
25 members in the homeowners association to participate

1 and reach an agreement amongst themselves to come to  
2 some sort of resolution to resolve this.

3 Now, -- you know, this meeting with the City of  
4 Belle, staff attended and the city had a hearing -- an  
5 annexation hearing for the two annexes areas; the --  
6 it is my understanding from staff that attended the  
7 meeting that the homeowners were unable to reach any  
8 sort of conclusive agreement on whether they really  
9 wanted to annex or not.

10 But I don't think the referral of this has any  
11 reflection on Larry's -- he's been very cooperative.  
12 I don't think he's getting the cooperation he needs  
13 from the rest of the members and we hope that the  
14 referral will bring them on board.

15 CHAIRPERSON PERRY: Are you in favor of the  
16 referral?

17 MR. FINN: No. I'm not -- I don't understand  
18 what the referral is going to get me other than,  
19 like, when we went to enforcement on the water side  
20 they gave me a \$15,400 fine.

21 CHAIRPERSON PERRY: Did anybody pay that?

22 MR. FINN: I just called them right away and I  
23 told him specifically that there's no way that we  
24 could pay that. You know, we don't have enough money  
25 to pay a certified operator; how we going to pay

1 \$15,400. And then John MacEachen, right away, he  
2 said, well -- he said, what needs to happen is this  
3 and he outlined a -- and I tried to do that on this -  
4 - the sewer side it was Elena Seon, I believe. I  
5 called her and she said well, you're being referred  
6 to the Water Commission. So I'm here, today, to talk  
7 to you.

8 The members that he mentioned that don't want to  
9 help, the one that attended the meeting is the oldest  
10 resident and she's retired. She's Spurgeon, no not  
11 Spurgeon. I know her, I can see her face, but I  
12 can't remember her name. But --

13 CHAIRPERSON PERRY: Did they join an  
14 association? They all signed up to join the  
15 association?

16 MR. FINN: Yes, ma'am.

17 CHAIRPERSON PERRY: And they all signed up to  
18 have you speak for them, then?

19 MR. FINN: Yes, ma'am.

20 CHAIRPERSON PERRY: So you can act.

21 MR. FINN: That's the only signed document I  
22 have from everyone in the subdivision.

23 CHAIRPERSON PERRY: Joe, can you help these  
24 people?

25 MR. BOLAND: Our money is only for the public

1 entities. We can't. Unfortunately --

2 MR. FINN: I've been turned down for everything.

3 CHAIRPERSON PERRY: Have you talked to rural  
4 development and the stimulus package?

5 MR. FINN: I don't know about the stimulus  
6 package. I'm sorry. I'll have to take that back. I  
7 did talk to rural development and they said that for,  
8 like, elderly -- like, the lady I was talking to you  
9 about, they may pay some of their cost. But then I  
10 have to somehow structure it, I guess, to where I  
11 send her a bill for her section as opposed -- you  
12 know --

13 CHAIRPERSON PERRY: This sounds like we need --

14 VICE-CHAIR HARDECKE: How can this not be  
15 classed as a public entity?

16 COMMISSIONER HUNTER: It's not incorporated.

17 COMMISSIONER TUPPER: It's a homeowners  
18 association.

19 MR. MORRISON: It's a private entity. I mean, it's  
20 --

21 COMMISSIONER EASLEY: It's a homeowners  
22 association.

23 CHAIRPERSON PERRY: You guys got to become like  
24 the Town of Vera.

25 VICE-CHAIR HARDECKE: Are you Belle north, east

1 or west?

2 MR. FINN: South.

3 VICE-CHAIR HARDECKE: South.

4 COMMISSIONER HUNTER: What if you incorporate  
5 become a village or --

6 (Tape Four, Side B concluded.)

7 MR. FINN: -- and I've had to recreate the wheel  
8 on every thing-- from the bylaw -- well, they did send me  
9 a bylaws model and a covenant model. And in the  
10 covenant it did say that we could refer individuals  
11 in the subdivision to the Commission, that's you  
12 guys; is that right?

13 CHAIRPERSON PERRY: We're the Commission.

14 MR. FINN: Okay.

15 I'll get those people to -- anything I need from  
16 them I can get. We have a second home that's going  
17 go back for sale. The bank is taking it back over.  
18 The last time I took the bank outstanding notice for  
19 fees for that home, I said, because I figured the  
20 bank took it over and maybe they would pay that. And  
21 the president of the bank just laughed at me.

22 CHAIRPERSON PERRY: He's got the first lane.

23 MR. FINN: They ain't -- ain't paying it, which  
24 is fine. But this time -- I got another one that's  
25 coming up. On March the 19th -- well, I probably

1 didn't bring it, it's in my satchel but irregardless  
2 it sales on the courthouse steps the 19th of March.  
3 And I've got a contractor coming on the 16th to dig up  
4 and disconnect their water line so that there's no  
5 way that somebody can buy that without paying me.

6 COMMISSIONER TUPPER: Good.

7 MR. FINN: And also I have sent notices to  
8 anyone that owes any kind of money that it's come to  
9 this point. The city is no longer going to accept  
10 annexation. And while the contractor is there we are  
11 just going to disconnect everybody. I only have to  
12 give them seven days notice is what I understood and  
13 those letters go out -- well, they should've already  
14 went out this week. The treasure takes care of that.

15 CHAIRPERSON PERRY: What happens to you?

16 MR. FINN: To me?

17 CHAIRPERSON PERRY: You're going to stay  
18 connected?

19 MR. FINN: Well, yeah. I mean, I've been paying  
20 my bill so they won't dig mine up.

21 MR. MORRISON: How big are the lots?

22 MR. FINN: Pardon?

23 MR. MORRISON: How big are the lots?

24 MR. FINN: My lot is 125 by -- well, that's like  
25 across the front and 150 across the back and it might

1 be 75 or 100 deep.

2 MR. MORRISON: (Statement inaudible.)

3 MR. FINN: Well, they're small.

4 CHAIRPERSON PERRY: If we refer this is there  
5 somebody that can help this guy? You know, this is  
6 such a fall through the cracks deal.

7 VICE-CHAIR HARDECKE: I don't know why -- I  
8 wouldn't be in favor of referring at this point  
9 because he's made a diligent effort.

10 CHAIRPERSON PERRY: Tremendous effort.

11 VICE-CHAIR HARDECKE: And I -- you know, this is  
12 the kind of situation that we're trying to correct.  
13 And I hate to see us penalize people that are  
14 actually working to correct situations.

15 MR. ROB MORRISON: You know, Ron, I am very  
16 empathetic to this situation, but I go back again  
17 from a -- I would encourage you to look at this from  
18 a public policy perspective as well.

19 You have a lot of homeowners associations that  
20 are in similar situations that have went out there  
21 and spent resources and funds to upgrade their  
22 systems and become compliant.

23 What do we tell these people when they come back  
24 to us and say, well, hey, how come you aren't making  
25 these -- I mean, there are some -- there are some

1 very real issues here. There are some public policy  
2 issues. We're not asking, I don't think, Paul, for  
3 any upfront penalties in this situation. But we have  
4 a group -- a situation here where some of the  
5 homeowners and I appreciate what Larry's comments  
6 were that perhaps aren't as cooperative as they  
7 should be and it may be hindering the group from  
8 reaching an agreement.

9 I don't know what their solution is that they've  
10 put forward in terms of what's there. I guess,  
11 again, once again I don't know what other options, I  
12 think, we have -- we have ridden the horse about as  
13 far as we can ride it. I mean, I don't know, we're  
14 sort of at the end of the road in terms of being able  
15 to get this done.

16 And are you confident Larry that you can get a  
17 system built out there and that you can get agreement  
18 to get fees and keep the system going because that's  
19 another problem that if -- we may all stand around  
20 here and we can see the solution but if there's no  
21 buy in from the members of the homeowners association  
22 nothing compelling them to comply then we're going to be  
23 -- he's going to be left without any support once the  
24 engineering plans are approved and construction needs  
25 to start and it's, like, well, I'm not paying that

1 bill.

2 MR. MORRISON: These are different folks

3 VICE-CHAIR HARDECKE: Yeah. They are.

4 MR. MORRISON: -- situations, and I totally  
5 agree.

6 VICE-CHAIR HARDECKE: Back to the annexation to  
7 Belle what was the reason that they won't consider  
8 that; does anybody know anything about that?

9 CHAIRPERSON PERRY: A flagpole community. They  
10 probably didn't want to go out and --

11 MR. FINN: If -- if I -- if I would pay  
12 everything and agree to pay for everything, which  
13 when I had the engineered solution looked at -- an  
14 engineered what ever with MECO engineering they didn't consider  
15 that we was going to have to go under the highway,  
16 which is city wanted and they didn't consider that we  
17 was going to have to put in a 6 inch main for the  
18 water, which is the new state standard for a fire  
19 hydrant or whatever. And the city also wanted us to  
20 pay for that all the way in to the city and then they gave  
21 us the connection point. So it was like \$8,000 in  
22 that additional piping that we didn't have figured.

23 So, yeah, if -- if we were to pay for  
24 everything, which we are -- you know, either way  
25 we're going to pay. The city would probably still

1 take our sewer and give us water but they couldn't  
2 annex us because it was the City of Hillsboro, and I  
3 didn't bring that document with me, well, yeah, I did  
4 too. It's right here. I'm sorry. The City of Belle  
5 sent it to me, again, I know them so I'll give it to  
6 you if you want.

7 VICE-CHAIR HARDECKE: Well, I was just curious  
8 'cause you know as you look down the road if your  
9 cost you have to pay for hooking up -- you know, it  
10 may be more advantageous to pay that instead of  
11 building your own plant and then be saddle with  
12 operating that forever.

13 MR. FINN: Well, we were hoping to combine  
14 systems. I can throw a rock into the city. There's  
15 a 40 acre tract on my side of the highway between us  
16 and the city and the state highway shed is  
17 cattycornered there 100 yards in the city.

18 VICE-CHAIR HARDECKE: Are you down there behind  
19 the bank? Is that down that street behind the new  
20 bank?

21 MR. FINN: Yeah. See the new bank would be --  
22 where we were planning on connecting to, but see  
23 there's an open field grewed up from there to our  
24 subdivision. And we're on the left hand side of the  
25 road, the same as the bank. Well, they wanted us to

1 connect on the opposite side of the road up in that  
2 new subdivision behind Macy's store there, which is -  
3 - you know, fine with me, but they said they won't  
4 look at it because the city -- it would be a flagpole  
5 annexation. Did you see that?

6 MR. MORRISON: Yeah. Have you  
7 considered -- have you -- have you thought about this  
8 idea of trying to create a contract with the City of  
9 Belle to take your -- your --

10 MR. FINN: I'd love -- you know, to look at  
11 that, but my time's up. You know, I'm being referred  
12 to the Attorney General's Office.

13 VICE-CHAIR HARDECKE: Well, you know, I'm  
14 looking at your long-term; you've got a subdivision  
15 there and it's going to be a tremendous burden on  
16 someone to -- to manage that.

17 CHAIRPERSON PERRY: And then we have a clean up  
18 site.

19 VICE-CHAIR HARDECKE: Right.

20 MR. FINN: The \$122,200 also included shutting  
21 down the existing lagoon and putting the fence up and  
22 all that sort of thing.

23 VICE-CHAIR HARDECKE: And what would the new  
24 treatment be? Would it be a lagoon or --

25 COMMISSIONER TUPPER: Re-circulating sand

1 filter.

2 MR. FINN: It has some kind of big septic tank.

3 MR. MORRISON: It's probably a re-

4 circulating --

5 MR. DICKERSON: In August of 2007, we received  
6 an engineering report. And in the engineering report  
7 they were recommending four different options. There  
8 was a package plant, re-circulating sand filter, no  
9 discharge land application or connection to Belle.  
10 And then the Department responded. We received,  
11 reviewed it, responded and asked them to make a  
12 choice -- to choose an option and submit an  
13 application for a construction permit. And to date  
14 we haven't received an application.

15 CHAIRPERSON PERRY: Well, they don't know what  
16 to do because they don't know how to pay for it.

17 MR. FINN: Last year --

18 MR. DICKERSON: And I think that's the issue.

19 CHAIRPERSON PERRY: Right.

20 MR. FINN: It wasn't necessarily the paying.  
21 Last year whenever the time came to tell -- pick an  
22 option, the City of Belle started entertaining that  
23 they might annex us. And it's taken until the 20th of  
24 January --

25 CHAIRPERSON PERRY: The rejection and you just

1 got that.

2 MR. FINN: -- and it's not going to happen.

3 CHAIRPERSON PERRY: I appreciate that. This man  
4 may have something that would help.

5 MR. BOLAND: Well, I say I have a lot of respect for  
6 your effort and what you've done. And what I might suggest  
7 is if you give us a little time to talk with  
8 enforcement. There may be a way -- we don't have any  
9 grant money available, but if some came available if  
10 we could work with the City of Belle, since they are  
11 a public entity and if this annexation issue could be  
12 worked out we may be able to get the money to Belle  
13 to pay for the connection.

14 CHAIRPERSON PERRY: We gave \$16 million for  
15 planning to MSD.

16 MR. BOLAND: Well, we haven't given them  
17 anything.

18 CHAIRPERSON PERRY: Well, we have the public --

19 MR. BOLAND: And that was loan money, also, by  
20 the way.

21 CHAIRPERSON PERRY: All right. But there was  
22 loans and grants. And all I want to say is come on,  
23 folks, there's got to be something we can do because  
24 there's a real potential for getting into something  
25 terrible and we've got someone we can work with and

1 kind of keep this from developing into a bad, even  
2 worse situation. And there's got to be enough great  
3 minds within --

4 MR. MORRISON: But -- okay, but --

5 COMMISSIONER HUNTER: Look at it this way. You  
6 got two foreclosed houses in the subdivision, right  
7 now, right?

8 MR. FINN: well, there was a guy who bought one  
9 and he fixed it up. But then he didn't realize what  
10 he was getting into.

11 COMMISSIONER HUNTER: That's the problem. You  
12 can't sale those houses.

13 VICE-CHAIR HARDECKE: You're going to have a  
14 whole --

15 MR. FINN: I can't sale my house.

16 COMMISSIONER HUNTER: No.

17 MR. ROB MORRISON: Right.

18 CHAIRPERSON PERRY: Right.

19 MR. ROB MORRISON: And here's the other -- you  
20 know, Commissioner Perry --

21 COMMISSIONER HUNTER: Point that out to them.

22 MR. ROB MORRISON: -- there -- and I appreciate  
23 what Joe was saying there, but if you read Belle's  
24 letter, it's not a cost issue. They don't believe  
25 legally that they can annex because it has to do with

1 annexing property where you go down the right-of-way  
2 to pick up a non-contiguous piece of property that's  
3 not adjacent to the city limits.

4 CHAIRPERSON PERRY: What's in between? If  
5 there's only 40 acres between you and the city is  
6 that person not willing to annexed?

7 COMMISSIONER HUNTER: He's not willing to give  
8 you 50 feet?

9 COMMISSIONER TUPPER: Well, they could -- I  
10 mean, they don't have to annex them to serve them.

11 MR. MORRISON: Well, that was my point.

12 COMMISSIONER TUPPER: You guys told Joplin that  
13 we're going to take Duquesne.

14 MALE SPEAKER: Amen.

15 COMMISSIONER TUPPER: Bingo. And we worked.

16 MR. ROB MORRISON: And that was the whole issue  
17 there is that -- that is what I was asking if you  
18 could get them to agree to an agreement, but, again,  
19 I don't know if we can --

20 MR. FINN: You know, I think Belle would let me  
21 -- you know, anytime that we went toward -- you know,  
22 if the city would try and get these funds and we told  
23 them about probably 90 percent of all the sewer in  
24 the City of Belle was paid for with federal funds,  
25 you know, in the past but they don't want no part of

1 submitting to the -- you know, any kind of payment or  
2 accepting of any -- and I tried it with the county,  
3 too. The county commissioner was there that night  
4 because the county has to relinquish unincorporated  
5 land to be annexed. And they said they're not in the  
6 business of sewer.

7 VICE-CHAIR HARDECKE: No. The county wouldn't  
8 be. But I would certainly like to give him some time  
9 to develop some other options because we've spent a  
10 lot of time listening to people talking about  
11 correcting bad septic systems and other bad  
12 situations, particularly, in southwest Missouri.  
13 We've given a lot of grant money down there. And I  
14 think that we need to work with people that are  
15 willing to work with us because of a big fine or  
16 forcing them into something that's going to cause  
17 long-term problems is not going to benefit DNR or  
18 anybody else.

19 CHAIRPERSON PERRY: I think you need somebody at  
20 the Department who wants to help mentor you through  
21 some of the possibilities, who would know the  
22 possibilities or it's going to fall through the  
23 cracks again.

24 VICE-CHAIR HARDECKE: I would really like to see  
25 somebody help someone in Belle such as what Joe had

1 mentioned. I understand that the people in Belle  
2 might be afraid to get involved, but my goodness  
3 there's no use in creating more problems.

4 MR. FINN: I think I remember what the City of  
5 Belle said. In order for them to be eligible for any  
6 kind of grant money they had to be on a fee basis of,  
7 like, \$35 a piece per month or something like that.  
8 There was -- there was a percentage and they're not  
9 near that. They're at the lowest of 58 communities  
10 and they're fee based.

11 VICE-CHAIR HARDECKE: Well, Joe, do you think  
12 there is any -- I mean, rural --

13 CHAIRPERSON PERRY: Can you find something?

14 VICE-CHAIR HARDECKE: -- who does the rural  
15 development money?

16 MR. BOLAND: Well, that's through the Department  
17 of Ag.

18 CHAIRPERSON PERRY: USDA.

19 MR. BOLAND: Yeah. USDA.

20 CHAIRPERSON PERRY: And we don't have a direct -  
21 -

22 MR. BOLAND: They do have a requirement to give  
23 out any grant money, they require your rates to be at  
24 2 percent of MHI. And that's what Larry's referring,  
25 too.

1           MR. FINN: Now, our rates could be that high,  
2 but the city is not going to accept that kind of  
3 increase.

4           MR. BOLAND: And any of our funding is going to  
5 come with a match, also.

6           CHAIRPERSON PERRY: Of an average income, it has  
7 to be that high?

8           MR. ROB MORRISON: One thing that I heard hear  
9 today that I think may warrant some follow-up is the  
10 -- this group to form a village. And I know there  
11 are some provisions to do that. And I don't know  
12 what that would do for them from an R & D  
13 perspective. But, again, it's going to take some --  
14 it's going to take some momentum from the residents  
15 to get to where they're going to have to sign on the  
16 dotted line for a village, I would suspect. I don't  
17 know what the requirements are to form a village.

18           CHAIRPERSON PERRY: Not be able to sale houses  
19 might be a strong --

20           MR. ROB MORRISON: I would think so, too.

21           Perhaps, a letter from the Attorney General  
22 might have some movement in that way to get some  
23 folks motivated, too. I don't view that -- I don't  
24 view the referral to the Attorney General's Office as  
25 a showstopper. And I don't -- I know -- I understand

1 what you-all's position here is that you look like  
2 you're being too heavy handed but by the same token  
3 we have -- this gentleman here is -- is trying to  
4 work and being the president of the homeowners  
5 association if he is not really getting a lot of  
6 cooperation from his residents, I think, that he  
7 might need the backstop of -- of an enforcement.

8 VICE-CHAIR HARDECKE: Well, I guess the concern  
9 that I have about that Robert is if we refer to the  
10 Attorney General's Office then that's the last time  
11 we hear about these situations. And I feel very  
12 strongly that we need to help people succeed and --  
13 you know, that's my reservation being and saying  
14 well, you know, that's it.

15 MR. PABST: Joe, is there any  
16 opportunity of community development grants?

17 MR. BOLAND: With the City of Belle?

18 MR PABST: Uh-huh.

19 MR. BOLAND: Possibly. I think the biggest  
20 issue is -- is it being a homeowners association.  
21 Those are some of the biggest challenges we see  
22 across the state is -- you know, folks move in and  
23 they have the freedom and the luxury of -- you know,  
24 living in an urban setting but none of the  
25 infrastructure that goes along with that. And to

1 retroactively -- you know, that we have more  
2 stringent requirements and -- it's a tough situation  
3 all over. CDG may be an option; I'm not sure what  
4 all their requirements are either? Whether they can  
5 get any money to --

6 CHAIRPERSON PERRY: Would you be able to check  
7 into this for him?

8 MR. BOLAND: Yeah. We can do that. And I  
9 didn't --

10 CHAIRPERSON PERRY: And can you check you on  
11 that whatever the rural development is going to do if  
12 they have something special. You know, if they  
13 really did get a billion dollars.

14 MR. BOLAND: Well, I can tell you rural  
15 development would --

16 CHAIRPERSON PERRY: They have to build stuff.

17 MR. BOLAND: They can be -- they move very slow  
18 -- you know, I mean, people think SRF moves slow  
19 , but RD moves even slower and they have a loan  
20 requirement. And, like, Larry said it would have to  
21 go to Belle it wouldn't go to the homeowners  
22 association. So, again, RD is looking at a  
23 requirement that their rates would have to be above 2  
24 percent of median household income before they would  
25 --

1           VICE-CHAIR HARDECKE: Two percent of that  
2 entities median household income?

3           MR. BOLAND: Correct. Two percent of the  
4 recipient, which would be Belle.

5           MR. MORRISON: If they were a village,  
6 then they would be a public entity.

7           MR. BOLAND: Yeah. If they were a village, they  
8 would be.

9           CHAIRPERSON PERRY: Well, and that's why could  
10 you help check into some of those things. And I  
11 don't know what's attached -- nobody knows what  
12 strings are attached to the stimulus package and they  
13 may be different. And I also heard they only have 90  
14 days so this is something where somebody with some  
15 knowledge i.e. you, could help do that.

16          MR. BOLAND: Well, I could speak to the stimulus package here  
17 in a little bit, but I think from our experience and our  
18 perspective that their best solution would be to hook  
19 up to Belle somehow. I mean, anything else is -- or  
20 it's going to be a stand alone system that we can't  
21 pay for.

22          CHAIRPERSON PERRY: How did Joplin do that?

23          MR. FINN: I also have a --

24          CHAIRPERSON PERRY: Can they service people just

25 --

1 MALE SPEAKER: (Statement inaudible.)

2 CHAIRPERSON PERRY: Okay. Why -- what was the  
3 problem with Belle can't just contract services with  
4 you?

5 MR. FINN: I never went that route at this point  
6 -- you know, I could go back to them with that.

7 CHAIRPERSON PERRY: And if that were to happen  
8 is there any money available to help do that, because  
9 we're trying to encourage -- didn't we have one of  
10 those rural programs where we were trying to  
11 encourage people to connect? Didn't we fund  
12 something like that?

13 MR. BOLAND: Well, we have our 40 Percent Grant  
14 Program for municipalities that are un-sewered to  
15 become sewerred. But, again, those are public  
16 entities.

17 CHAIRPERSON PERRY: Would that go to a village?

18 MR. BOLAND: I'm sorry?

19 CHAIRPERSON PERRY: Would that go to a village?

20 MR. BOLAND: It certainly could. Again, that's only for 40  
21 Percent of the project and they would still have to  
22 become a public entity.

23 CHAIRPERSON PERRY: Would the city --

24 VICE-CHAIR HARDECKE: At least that -- if that  
25 was available to them if would be 40 percent of the

1 \$122.

2 MR. FINN: Well, to connect to the city was \$85  
3 -- you know with a force main and without the --

4 CHAIRPERSON PERRY: Eight-five hundred?

5 MR. FINN: Eighty-five thousand.

6 (Laughter.)

7 VICE-CHAIR HARDECKE: In your dreams.

8 MR. FINN: But we wouldn't -- we wouldn't --

9 CHAIRPERSON PERRY: Never mind. Well, it was  
10 \$120 to do their thing.

11 MR. FINN: -- we wouldn't have the chemicals and  
12 stuff we have to buy with the system that they're  
13 planning and putting and plus the testing and  
14 whatnot. I have been referred to, like, Midwest  
15 Assistance for the loan and whatnot and on their  
16 application it asks if there's any enforcement  
17 pending so -- you know, if you refer me to the  
18 Attorney General that may -- you know, further  
19 prevent me from getting funded.

20 CHAIRPERSON PERRY: Slow down.

21 MR. FINN: I mean, I don't know.

22 CHAIRPERSON PERRY: I'm not sure I see where  
23 enforcement is really helpful to this situation.

24 VICE-CHAIR HARDECKE: I think we need to give  
25 them some time to explore some more option in

1 whatever part of the Department that - and I strongly --

2 CHAIRPERSON PERRY: And, Joe, needs to --

3 somebody needs to coordinate this or we're going to  
4 loose -- it's going to fall through the cracks again.

5 MR. PABST: We'll follow-up. Yeah.

6 CHAIRPERSON PERRY: So perhaps our motion is to  
7 ask --

8 VICE-CHAIR HARDECKE: You -- we want -- we want  
9 you to --

10 CHAIRPERSON PERRY: -- someone in the Department  
11 --

12 VICE-CHAIR HARDECKE: -- seek these people out  
13 to get some help and if its -- if Belle is cheaper,  
14 do whatever best serves your community.

15 CHAIRPERSON PERRY: And I think it's important  
16 to research this and to find out what we can do  
17 because under the present economic conditions that there  
18 are probably a few others behind it.

19 MR. BOLAND: Can I say one more thing? And it  
20 comes back to the motivation of -- 'cause we see a  
21 lot of small entities like this. And most of the  
22 ones we get involved in with funding -- I mean,  
23 they're 100 or above -- I mean, the affordability for  
24 anything we do is -- is -- becomes very, very  
25 questionable at that level, and when you're talking

1 about 12 especially. We've seen much bigger projects  
2 fall apart because of some of the participation just  
3 isn't there. They don't quite understand the reason  
4 for the end result or -- or they are not motivated.  
5 And I would side with -- with Rob and -- you know,  
6 referring it to the Attorney General may provide the  
7 motivation to some of these -- to some of the other  
8 participants to understand the seriousness of their  
9 situation, now. I mean, I --

10 VICE-CHAIR HARDECKE: Well, but I don't think --

11 MR. BOLAND: That doesn't mean that we can't  
12 coordinate at the same time.

13 VICE-CHAIR HARDECKE: -- I don't -- from what  
14 Larry has told us that he's had some success with  
15 most of the residents in moving along but he's  
16 needing to have --

17 MR. FINN: I have seven signed covenants and  
18 that was notarized copies. So I could report back to  
19 them or provide them with the rest of those seven  
20 within 30 days and if I don't get that then refer  
21 away for those people that haven't given me a  
22 covenant.

23 CHAIRPERSON PERRY: And my concern in the  
24 referral is the cost of legal action and legal fees  
25 that may come with that. We just don't need to put

1 anymore burden on it, at this point. If you can't  
2 get anywhere --

3 MR. FINN: Well, if I said, no, I'm not going to  
4 do anything or --

5 CHAIRPERSON PERRY: -- he'll come back in 30  
6 days but he's not going to not do anything. And you  
7 might also check with the Missouri Bar Association  
8 what sort of pro bono legal help they can offer and  
9 does the Attorney Generals do something in this?

10 MR. FINN: You know why you're talking about  
11 this. If -- I'm not aware of other systems that are  
12 like Martin Subdivision that might be in the  
13 vicinity. If we create a sewer district we might be  
14 able to encompass them as well because I asked for a  
15 model of how to rectify this problem, and I'm sure  
16 I'm not the only one that has this problem -- you  
17 know, maybe we can help out those as well while we're  
18 doing this or at least whenever we're done we'll have  
19 a model that we can give to someone else whenever  
20 they run into this.

21 CHAIRPERSON PERRY: Roger.

22 MR. WALKER: It may help if I can speak out of  
23 turn, I will.

24 Missouri Bar probably could be of some  
25 assistance but I would offer our law firm for

1 assistance. We have attorneys; we have some pro bono  
2 opportunities. I would not say that we would take a  
3 lead on it, but we would certainly be able to help with it's  
4 the village application of some other thing that's a  
5 legal document. We'll work with you.

6 And the other thing I would say is you don't  
7 need to refer this to the Attorney General's Office  
8 and still not be able to take advantage of having  
9 threat of the enforcement, which a nice letter with  
10 threatening enforcement is not such a bad tool  
11 (inaudible).

12 MR. FINN: That worked on the water side for us.

13 CHAIRPERSON PERRY: Give that guy your card.

14 MR. WALKER: Yeah.

15 CHAIRPERSON PERRY: Good. That's what we need.

16 MR. WALKER: Yeah. Give me a call we'll offer  
17 some assistance.

18 CHAIRPERSON PERRY: I think we're very  
19 interested in helping you out. And there's going to  
20 be more of this coming along, I'm just sure. And I  
21 think we better start checking the waters to see what  
22 we can do to save the environment.

23 And those planning -- the Pilot Planning Grants  
24 do you have to be a special entity to plan what you're  
25 going to do.

1           MR. BOLAND: Well, again, those were planning  
2 loans for construction activities --

3           CHAIRPERSON PERRY: Not for planning a --

4           MR. BOLAND: -- just an SRF eligible entity,  
5 normally.

6           MR. FINN: Some of the problem may be -- and  
7 I've been addressed before where the representative  
8 of DNR thought that -- you know, I built this well  
9 and I have this subdivision and I'm making money  
10 here.

11          CHAIRPERSON PERRY: That's was my first  
12 question.

13          MR. FINN: So -- you know, I ask for help but in  
14 the same sense we don't want to free up those type  
15 people to abuse the system.

16          CHAIRPERSON PERRY: That was one of our first  
17 questions. And we realized you won't be making money  
18 from this, we want to help.

19                 So we don't need a motion, right?

20          VICE-CHAIR HARDECKE: Right.

21                 Thank you very much and we don wish you well.

22          MR. ROB MORRISON: We'll follow up.

23          CHAIRPERSON PERRY: Yeah. I would appreciate  
24 that. This is the sort of thing we should keep track  
25 of.

1 CHAIRPERSON PERRY: Do we still have a quorum?

2 COMMISSIONER TUPPER: Yeah.

3 VICE-CHAIR HARDECKE: We've got four.

4 COMMISSIONER TUPPER: I count two.

5 MR. DICKERSON: All right. **Tab No. 17, Summit**

6 **Lake Winery.** Mr. John Ferrier owns and operates a  
7 restaurant known as Summit Lake Winery. It's located  
8 in Callaway County and wastewater generated from the  
9 restaurant is treated by a grease trap septic tank,  
10 re-circulating tank and a re-circulating textile  
11 filter pot and operates pursuant to Missouri State  
12 Operating permit MO-0127213.

13 Since December 26th, 2006, Department staff have  
14 conducted one complaint investigation and two routine  
15 inspections of the wastewater treatment facility.  
16 View of discharged -- or excuse me. A review of  
17 quarterly discharge and monitoring reports has shown  
18 that the facility has had chronic effluent violations  
19 for failure to comply with BOD and total suspended  
20 solids.

21 The Department on -- has on several occasions  
22 requested from the owner a submittal of an  
23 engineering report evaluating the system and to date  
24 the Department has not received an engineering  
25 evaluation.

1           Records indicate that Mr. Ferrier failed to  
2   conduct effluent sampling for the four past years and  
3   has failed to submit several required DMRs. In  
4   September 2008, the Department and Mr. Ferrier  
5   entered into negotiations to resolve the past  
6   violations through an out of court settlement  
7   agreement. And on October 3rd, 2008, and February  
8   11th, 2009, Department staff met with Mr. Ferrier to  
9   discuss the steps that need to be taken to bring the  
10   facility into compliance.

11           The Department and Mr. Ferrier recently reached  
12   an agreement in principle. However, the agreement  
13   has not been finalized. Staff recommends that the  
14   Clean Water Commission refer this matter to the  
15   Attorney General's Office if a final agreement is not  
16   reached by May 4th, 2009.

17           So we are modifying the recommendation because  
18   we have reached an agreement recently -- just  
19   recently with him.

20           Are there any questions?

21           CHAIRPERSON PERRY: You said you're modifying  
22   because you have reached an agreement.

23           MR. DICKERSON: I think in the packet it says  
24   that we are recommending referral.

25           CHAIRPERSON PERRY: Right.

1           MR. DICKERSON: But we're changing -- we're  
2     modifying that to give him 60 days to reach a final  
3     agreement.

4           CHAIRPERSON PERRY: Oh. Okay.

5           MR. DICKERSON: We reached an agreement in  
6     principle on all of the items we need, we just  
7     haven't got the document drafted, approved and sent  
8     to him, yet. So we want to try to get that signed in  
9     60 days and if we can get that, then it wouldn't be  
10    referred.

11          CHAIRPERSON PERRY: I think the term is  
12    contingent referral.

13          MR. DICKERSON: Contingent.

14          CHAIRPERSON PERRY: Any questions? I don't  
15    think I have any other cards.

16          (No response.)

17          MR. DICKERSON: I don't believe he's here,  
18    today.

19          CHAIRPERSON PERRY: So...

20          COMMISSIONER SHORNEY: I've got it down. Do you  
21    want to do?

22          VICE-CHAIR HARDECKE: No. I fumbled the last  
23    one.

24          COMMISSIONER SHORNEY: So we'll do it, just like  
25    we did the last one? However, that is.

1           I move the Missouri Clean Water Commission  
2 request the Missouri Attorney General to institute a  
3 civil action against Mr. John Ferrier, on behalf of  
4 the Missouri Clean Water Commission and the Missouri  
5 Department of Natural Resources, requiring Mr.  
6 Ferrier to comply with the Missouri Clean Water Law;  
7 pay a civil penalty for past violations; and any  
8 relief deemed appropriate by the Attorney General's  
9 Office and this will be further amended to allow a  
10 60-day contingency period to come to an agreement, a  
11 signed agreement by all parties.

12           CHAIRPERSON PERRY: There's the motion. Do we  
13 have a second?

14           VICE-CHAIR HARDECKE: Second.

15           CHAIRPERSON PERRY: Motion and a second, please,  
16 call for the vote?

17           MS. OVERHOFF: Commissioner Shorney?

18           COMMISSIONER SHORNEY: Yes.

19           MS. OVERHOFF: Commissioner Tupper?

20           COMMISSIONER TUPPER: Yes.

21           MS. OVERHOFF: Commissioner Hardecke?

22           VICE-CHAIR HARDECKE: Yes.

23           MS. OVERHOFF: Chair Perry?

24           CHAIRPERSON PERRY: Yes.

25           Do you want to go back to 19? I'm I missing

1 something?

2 MALE SPEAKER: We skipped 11.

3 CHAIRPERSON PERRY: I skipped 11. Do we go back  
4 to 11 or are we going on to 18?

5 VICE-CHAIR HARDECKE: What's 11?

6 MR. ROB MORRISON: **Eleven** is the issue of the  
7 drinking water uses that Commissioners Tupper and  
8 Shorney worked on with Commissioner Witherspoon of the  
9 Safe Drinking Water Commission.

10 You'll recall the issue was brought to our  
11 attention that there may be some issues of designated  
12 uses on water bodies that are not utilized as  
13 drinking water supplies and if that was causing some  
14 unnecessary burden to the permittees. And that's the  
15 issue that we're working through. I don't know if  
16 you-all want to -- want to go -- tackle that today if  
17 you want to go forward.

18 I think really all this is, if you look at this,  
19 this draft position paper is a method by which we  
20 will process and move forward on these water bodies.  
21 There are 31 of these water bodies that have a  
22 drinking water use but they are not in the census of public  
23 water systems. And there are 36 water bodies that  
24 are in the census of public water systems in  
25 Missouri, but they are not in the Water Quality

1 Standards.

2           So all this does is it lays out a plan where we  
3 are going to do some coordination with the Public Drinking  
4 Water Branch to ensure that we are getting the  
5 appropriate level of designated uses placed on those  
6 36 water bodies.

7           And then for the 31 water bodies we're going to  
8 go through an evaluation process to make sure that -- that  
9 it is appropriate for those water bodies to have the  
10 drinking water designated use.

11           So in short what this lays out and what you  
12 would be asked to do, today, is to just approve this  
13 method of performance. We plan to bring these to the  
14 Commission in our 2011 triennial review -- our  
15 2011/2012 triennial review where we're going to  
16 redraft and reevaluate our Water Quality Standards.

17           So that's kind of the thumbnail version of this.  
18 It really is not -- it doesn't -- the decision you  
19 make today is that it is the method of performance  
20 that the Department will utilize in those issues.

21           VICE-CHAIR HARDECKE: On this list there are  
22 some that are -- that the user is blank or  
23 highlighted and not copied; what does that mean?

24           MR. ROB MORRISON: Well, on this list if you  
25 look at the -- some of the -- some of these are

1 listed on here. The bolded ones are those that it  
2 says up at the top that are not listed in the Water  
3 Quality Standards but they are on the census. The  
4 ones that are italicized are listed in the Water  
5 Quality Standards but not in the drinking water  
6 lists, they're shown as inactive. And then the ones  
7 that are in regular font are listed in the Water  
8 Quality Standards but they are not listed in the  
9 census of public water systems.

10 So essentially what the Department plans to do  
11 is to include the 36 in here, the 36 water bodies  
12 that are -- that have water supply systems but they  
13 are not listed in our Water Quality Standards. They  
14 are not designated for drinking water use. We are  
15 going to include those. And then there's, I think,  
16 there's at least 31 in here that are not listed as  
17 having a drinking water supply use in terms of not  
18 having a drinking in the water census but they're in  
19 our Water Quality Standards.

20 And we're going to evaluate those over the next  
21 couple of years to make sure that that is an  
22 appropriate designation for those water bodies.

23 VICE-CHAIR HARDECKE: Are those the ones that  
24 don't have a name in the user column?

25 MR. ROB MORRISON: Yes. I believe that's

1 correct.

2 VICE-CHAIR HARDECKE: So that means they're  
3 listed but nobody is using out of them?

4 MR. ROB MORRISON: I believe that's correct.

5 CHAIRPERSON PERRY: So, basically, they've met  
6 to try to clean up some things that --

7 MR. ROB MORRISON: Yes. We're going -- it's  
8 kind of exercise to clean up. And we may have to use  
9 -- we may have to come up with a criteria to remove  
10 those uses. In other words, is there a quantity  
11 issue? Is this water body capable of attaining the  
12 drinking water use? So, I mean, those are some  
13 things that -- that this little procedure lays out in  
14 here if you go back to the first page; it kind of  
15 lays out the general principles in Nos. 1 and 2. And  
16 then the -- kind of the action items are laid out for  
17 you in Items Nos. 1, 2 and 3.

18 COMMISSIONER TUPPER: And that's -- that's to be  
19 ongoing? I mean, it says must coordinate.

20 CHAIRPERSON PERRY: I would --

21 COMMISSIONER TUPPER: That's kind of how we got  
22 in this problem is, nobody looked at it.

23 CHAIRPERSON PERRY: -- I would like to commend  
24 both of you and Tom Herrmann and I think Ed came  
25 down. I think he put that together because he knew

1 it was a concern. And that's even more volunteer time above  
2 and beyond these meetings. I think it's a great  
3 idea.

4 I guess they want you to make the motion since  
5 they did it.

6 MS. LANDEWE: Can I make a quick comment? I'm  
7 sorry. I didn't submit a card.

8 CHAIRPERSON PERRY: I'm sorry.

9 MS. LANDEWE: I just wanted to say that I -- I  
10 don't have any substantive changes or anything to the  
11 position paper. But I did want to make just a quick  
12 comment just to help set expectations.

13 We had a meeting with the Department not too  
14 long ago and we talked about this. And I appreciate  
15 the ongoing coordination. But the one comment I did  
16 want to make was about those drinking water supplies  
17 that were previously drinking water supplies but  
18 maybe are no longer being used. The federal  
19 regulations are pretty clear about existing uses.  
20 And states can evaluate, as you noted earlier,  
21 attainable uses but where there has been an existing  
22 use, that use cannot be removed.

23 So where there are drinking water uses that  
24 have been designated and never used then, I think, that's  
25 something that we can work with the Department to

1 look at the attainability of and correcting the  
2 regulations where appropriate. But where there is a  
3 -- where there was a drinking water supply that was  
4 an existing use, it was in use, but maybe for -- you  
5 know, whatever reason it's no longer being used,  
6 because it was an existing use the federal  
7 regulations are clear that those existing uses cannot  
8 be removed.

9 VICE-CHAIR HARDECKE: Ever?

10 MS. LANDEWE: Right.

11 And I know that that might not -- you may not  
12 have been --

13 COMMISSIONER TUPPER: And there's a couple in  
14 there.

15 MS. LANDEWE: -- recommending that. You said  
16 that we would be coordinating on that, but I just  
17 wanted to --

18 CHAIRPERSON PERRY: I appreciate that.

19 MS. LANDEWE: -- for the purposes of clarifying  
20 because I know that that existing use language is in  
21 the position paper, but that is a specific definition  
22 in federal regulations and so I just wanted to  
23 clarify that.

24 CHAIRPERSON PERRY: Did that come up in your  
25 discussion?

1 COMMISSIONER SHORNEY: Yeah. Well, yes.

2 CHAIRPERSON PERRY: Okay.

3 COMMISSIONER SHORNEY: Yes. It did.

4 COMMISSIONER TUPPER: There's -- there's some in  
5 there, there are not many.

6 COMMISSIONER SHORNEY: There's a Clean Water Act  
7 definition is that one of the one's you're talking  
8 about the 19 -- everything since 19 -- November 28th -  
9 -

10 MR. ROB MORRISON: If it existed in 1975.

11 COMMISSIONER SHORNEY: -- 1975.

12 COMMISSIONER TUPPER: Seventy five.

13 MR. ROB MORRISON: It passed.

14 COMMISSIONER SHORNEY: Right. And, Rob, this is  
15 -- this is an administrative kind of action and  
16 there's no Regulatory Impact Report or anything like  
17 that needed?

18 MR. ROB MORRISON: Well, Commissioner Shorney,  
19 we're not to that point, yet.

20 COMMISSIONER SHORNEY: That's later -- that's  
21 later on --

22 MR. ROB MORRISON: That's later in the process.

23 COMMISSIONER SHORNEY: -- that's later in the  
24 process.

25 MR. ROB MORRISON: Yeah. This is just strictly

1 a road map to get from Point A to Point B.

2 COMMISSIONER SHORNEY: Right.

3 MR. ROB MORRISON: And I didn't -- I didn't -- I  
4 purposely didn't get into the -- to the details of  
5 it. I just wanted to lay the concepts. There are --  
6 there are some issues that we cannot cross if we have  
7 existing uses and we'll have to determine in our  
8 analysis of those that are designated of whether they  
9 can attain the use. I mean, that's precisely how  
10 we'll kind of have to go through that -- that  
11 exercise.

12 COMMISSIONER SHORNEY: I don't know. To me this  
13 seems something the Department should be coordinating  
14 it's -- you know, we're in the water business and we  
15 should be talking to different commissions.

16 MR. ROB MORRISON: Sure. I agree with that.

17 COMMISSIONER SHORNEY: I would like to move that  
18 we proceed; is that all right?

19 COMMISSIONER TUPPER: Second.

20 VICE-CHAIR HARDECKE: Okay. I'll make the  
21 motion. I move the Clean Water Commission adopt the  
22 position paper on Drinking Water Use Designations in  
23 the Missouri Clean Water Regulations with any  
24 modifications and direct staff to precede with the  
25 action items outlined in it, I guess, any

1 modifications.

2 COMMISSIONER SHORNEY: I think we had a second.

3 COMMISSIONER TUPPER: Second.

4 CHAIRPERSON PERRY: Let's call for the vote,  
5 please.

6 MS. OVERHOFF: Commissioner Tupper?

7 COMMISSIONER TUPPER: Yes.

8 MS. OVERHOFF: Commissioner Hardecke?

9 VICE-CHAIR HARDECKE: Yes.

10 MS. OVERHOFF: Commissioner Shorney?

11 COMMISSIONER SHORNEY: Yes.

12 MS. OVERHOFF: Chair Perry?

13 CHAIRPERSON PERRY: Yes.

14 Yes. I still want to hear about what Joe has to  
15 say about the stimulus. And I'm hoping that maybe  
16 Roger or Phil want to stay for that, but you get to  
17 go first. No. No. They do. I'm sorry.

18 MR. WALKER: You're going to do open session,  
19 then?

20 CHAIRPERSON PERRY: We're going to open session,  
21 right now--

22 MR. WALKER: Well, bless your heart. Thank you.

23 CHAIRPERSON PERRY: -- for the two people  
24 because --

25 MR. WALKER: All right. My name is Roger

1 Walker. You know me I'm with -- the executive  
2 director of REGFORM, Regulatory Environmental Group  
3 for Missouri. You may not have known I'm also of  
4 counsel for Armstrong Teasdale. So we're glad to  
5 lend our services.

6 CHAIRPERSON PERRY: We really appreciate that.

7 MR. WALKER: Yeah. We got smart people in our  
8 firm that will understand this stuff. And we'll help  
9 out however we can. I'm not one of those, but I know  
10 smart people in our firm.

11 The only thing I wanted to bring up in open  
12 session and coming before Earl or the Director's  
13 Report. I thought maybe somebody might comment on  
14 fees. I just want to bring you up to date that there  
15 have Bills filed in the House and Senate for a one-  
16 year extension of the water fees. There maybe some  
17 other amendments that are offered, but my guess is  
18 that it'll go through fairly clean and it will be a  
19 one-year extension and it'll give us some time to  
20 continue the discussion and talk about what's  
21 appropriate.

22 The other thing that came up and Earl was at  
23 this meeting, we had a small group of us from REGFORM  
24 and Associated Industries and RCGA and we met with  
25 their Deputy Director, Joe Bindbeutel -- you know,

1 'cause there's still -- there's a lot of frustration  
2 out there about -- you know, how we do fees and how  
3 much time the Department has to put into the fee  
4 process, how much time the stakeholders have to put  
5 into it. Surely there's a better way of handling  
6 fees and handling -- you know, funding the  
7 Department. And I don't know what the outcome of  
8 that will be.

9 I hope its some higher level discussion where  
10 you get folks involved and you come up with some  
11 solutions and it's a book of support forms that make  
12 sense. You know, because in my view -- although you  
13 -- you still -- you don't want to have some oversight  
14 and -- you know, input in how the Department spends  
15 its money, 90 percent of it, that's not true at all.  
16 I mean, it is just administrative stuff, things that  
17 people have to do and, yet, we have to drag out this  
18 process constantly and just get's a little tiresome.

19 The other thing I wanted to add, today, and I  
20 wasn't going to but you've -- several times that  
21 you've come up -- you know, against this do we refer,  
22 do we not refer to the Attorney General's Office.  
23 And I think every instance is different. Although, I  
24 just wanted to say I -- with all do respect to Rob  
25 Morrison and I mean that. I don't think I have ever

1 heard of the Attorney General's Office referred to as  
2 the "mediator" for disputes.

3       You know you get referred to the Attorney  
4 General's Office, you are bringing in attorneys.  
5 These guys are litigators, they want penalties. They  
6 are talking about your knew people. You guys lose  
7 control. They always want to fine and it adds to the  
8 time and complexity, most of the time. That's not  
9 always true. Lot's of times you're at that point you  
10 got to go to the Attorney's General's Office it  
11 actually brings in a fresh perspective and you get  
12 things resolved, but not always. I think you've made  
13 some very wise decisions, today, in terms of when to  
14 refer and when not to.

15       And if there is folks that are trying hard and  
16 there's any opportunity to resolve that I like this  
17 contingency plan. Give them a chance to do it  
18 because -- you know, in some such you're starting  
19 over. For the right party it's a fresh opportunity.  
20 But everyone's different. I just -- but the mediator  
21 statement kind of --

22       CHAIRPERSON PERRY: I think that came from me.  
23 And I was -- because they said they were the  
24 personality. If lawyers are getting involved and  
25 pushing -- and they're taking over it, it would be

1 more likely to be mediated and get a settlement, I  
2 think.

3 MR. WALKER: And I think that's true in some  
4 situations. And I think that may be one. But I  
5 don't know it always just gives me thoughts, well,  
6 there -- you know, we'll just go to the Attorney  
7 General's Office and we'll work this out.

8 MS. FRAZIER: I think the Attorney General would  
9 agree with you. Yeah.

10 MR. WALKER: That's what your job is. Okay.  
11 You haven't been able to get this done let's -- you  
12 know, that's okay.

13 That's all I had to say. I appreciate it. And  
14 thanks, again, for allowing public comment. And  
15 that's all I have.

16 CHAIRPERSON PERRY: We appreciate your  
17 assistance in sitting here all day long.

18 MR. WALKER: It was very informative. I mean,  
19 you hear about these cases it's unsettling.

20 MR. WALSACK: Good afternoon, Phil Walsack,  
21 Missouri Public Utility Alliance. I'll do my public  
22 comment part, first, and then I had two prepared  
23 questions for Joe regarding the stimulus package.

24 You did not hear anything, today, about the  
25 effluent limitations about what we call the Outfall

1 Elimination Program. That was last meeting. This  
2 meeting is mute on that subject and the next meeting  
3 you will hear quite a bit about that.

4 We have volunteered to DNR through the working  
5 groups and the stakeholder groups to come up with the  
6 costs that Chairman -- or Mr. Tupper wanted to see.  
7 What kind of costs were going to be incurred by  
8 municipal utilities when we eliminate second and  
9 third outfalls from storm water clarifiers and wet  
10 weather devices.

11 We have already been on the path of collecting  
12 letters from our municipalities. We have ten or so  
13 that have already been delivered to the Department  
14 and we will start running numbers with those as well.  
15 We had hoped that the Department, would today have  
16 numbers but in the stakeholder meeting group we found  
17 that that wasn't the case and now we'll all try to  
18 get us those numbers that we're so looking forward to  
19 seeing.

20 They will be big numbers. That's about all I  
21 can say about that, right now, but they will be big  
22 and we will bring as many as we can to the next -- to  
23 the May meeting.

24 I'm going to hold my questions for Joe, if he  
25 doesn't already answer them because I fed him the

1 questions earlier so maybe he'll answer those  
2 questions during the stimulus package discussion.

3 Thank you very much.

4 CHAIRPERSON PERRY: We look forward to hearing  
5 what you have to say at the next meeting. Thank you.

6 Okay. Joe. Right? I'd like to hear about the  
7 stimulus then we could maybe just do a brief touch on  
8 -- on that report. We appreciate the report and it's  
9 in the packet.

10 MR. BOLAND: This means a lot to me to go before  
11 Refaat.

12 (Laughter.)

13 MR. BOLAND: So thank you.

14 CHAIRPERSON PERRY: I think we're quite  
15 interested. Please understand.

16 MR. MEFRAKIS: No. I'm fine.

17 VICE-CHAIR HARDECKE: He doesn't want to get on  
18 the hot seat.

19 MR. BOLAND: Well, just --

20 VICE-CHAIR HARDECKE: He's seen that seat be  
21 hot, today.

22 MR. BOLAND: The -- okay. The first item in  
23 this update is just to give an update on our \$50  
24 million bond sale. Very quickly, that's moving along  
25 quite well. We've awarded about \$19 million to date

1 out of the \$50 and the projects are moving along  
2 pretty quickly. And I think we're -- we have over  
3 \$90 million, \$95 million in applications for that \$50  
4 million pot. So plenty of competition for that and  
5 we met our one-year deadline with no problem. We are  
6 required under IRS rules to distribute 30 percent  
7 within the first -- within the first year, which was  
8 \$15 million. So we hit that, no problem.

9 Now, the big -- the big subject, today, is the  
10 stimulus bill or the American Recovery and  
11 Reinvestment Act. And for the -- the Department will  
12 be receiving several pots of money, but I'll be  
13 speaking specifically to the State Revolving Fund  
14 stimulus for the clean water side we're going to be  
15 receiving an additional \$108 million to distribute.

16 Again, that's through the regular State  
17 Revolving Fund through the normal State Revolving  
18 Fund rules and regulations.

19 CHAIRPERSON PERRY: That's -- and you brought  
20 that up this morning?

21 MR. BOLAND: Right.

22 CHAIRPERSON PERRY: That's not part of the  
23 stimulus?

24 MR. BOLAND: That is the stimulus.

25 CHAIRPERSON PERRY: Oh. The \$108 million.

1 MR. BOLAND: The \$108 million.

2 CHAIRPERSON PERRY: Is that in addition to what  
3 we already have in that?

4 MR. BOLAND: That's addition to what we already  
5 and what we receive.

6 CHAIRPERSON PERRY: Okay. I'm glad you repeated  
7 that. I didn't get that. Thank you.

8 MR. BOLAND: So -- and on -- just for your  
9 information on drinking water side we're getting an  
10 additional \$38 million, so --

11 (Tape Five, Side A concluded.)

12 MR. BOLAND: -- and that, as I mentioned  
13 earlier, that is not something we're set up to do  
14 normally through the SRF. So we're embarking on some  
15 emergency rules and some permanent rule changes to go  
16 along with that to help allow us to give out these  
17 additional subsidies.

18 VICE-CHAIR HARDECKE: Now, that principle  
19 forgiveness is that for new projects or projects that  
20 have been in existence for sometime?

21 MR. BOLAND: Well, that -- that's -- what we're  
22 looking at now is everything we have in the Intended  
23 Use Plans. All the existing projects we have that  
24 are moving through the process as well as the influx  
25 of projects we're getting now because of the stimulus

1 notoriety.

2 CHAIRPERSON PERRY: So who determines how those  
3 funds are allocated?

4 MR. BOLAND: Well, it'll be through our normal  
5 priority point system as well as readiness to  
6 proceed. And in the federal bill that was one of the  
7 major criteria that we are supposed apply is who's  
8 going to be ready to go in -- within that 12 month  
9 period and those are the ones that get additional  
10 priority.

11 So we're going to apply those to our existing  
12 Intended Use Plans. We'll be developing a new  
13 Intended Use Plan with the criteria. We've -- we're  
14 still waiting for a decision from our Director's  
15 Office on how we're going to do these additional  
16 subsidies whether it's principle forgiveness,  
17 negative interest loans or grants, a combination of  
18 grant and loan, that decision has not been made, yet.

19 So the discussions are still ongoing and we're  
20 looking at our universe of applicants -- you know,  
21 everything from population to median household  
22 income, all these things are kind of being thrown  
23 into the pot and we'll see how we're going to cut it  
24 out, in the end, so --

25 But we will be coming back to you for some very

1 important steps in this process and one is a new  
2 Intended Use Plan for the stimulus projects. Another  
3 is the -- all the actions on the rules that we'll  
4 need.

5 CHAIRPERSON PERRY: And if you need us to meet  
6 earlier or to do some of this by conference call to  
7 approve something, I think we're all willing to do so  
8 to keep it moving.

9 MR. BOLAND: Okay. We'll let you know. But as  
10 we anticipate we're trying to get an application to  
11 EPA as soon as possible. There's a lot of pressure  
12 to do so. EPA is under a lot of pressure to make an  
13 award.

14 But what we're seeing in our guidance, right  
15 now, is we need to have -- we need to have a good  
16 Intended Use Plan to submit. We have to show a list  
17 of projects, at least, as long as our allotment.

18 So we have to show, at least, \$108 million in  
19 projects which is no problem. We already have, in  
20 fact, in our '09 Intended Use Plan that's in effect  
21 now we show over \$400 million in projects on our  
22 planning list.

23 So that -- you know, given that perspective I  
24 don't think we'll have any problem getting enough  
25 projects to get this money out the door.

1           The other issue that we're dealing with is we're  
2 expected to get the normal of SRF out the door at the same  
3 time. So that's kind of plugged into the equation as  
4 well. And as you can imagine, everybody I've heard  
5 from wants grants. So everybody is expecting grants.  
6 And as I said the federal bill requires that at least  
7 50 percent be distributed as principle forgiveness,  
8 negative interest loans or grants. So in the  
9 intention of Congress, if you read the -- the notes  
10 from their conference committees their intention is  
11 to get those additional subsidies to smaller  
12 communities. And so we're -- that's another input  
13 into the equation.

14           CHAIRPERSON PERRY: And villages?

15           MR. BOLAND: Perhaps, villages.

16           That -- what is very clear from EPA is all the  
17 SRF requirements still stand, which are all the  
18 environmental clearances. All the --

19           VICE-CHAIR HARDECKE: Not going to get much done  
20 are you?

21           MR. BOLAND: Well, that's where the notice --  
22 readiness to proceed issue really come in to play.  
23 And if -- if -- it would be very, very difficult for  
24 a small community or even a large community for that  
25 matter to start from scratch, right now, to develop a

1 project to fall within that 12 month period. I mean,  
2 infrastructure projects just don't -- you just don't  
3 pull them off the shelf.

4 But we've heard from our metro areas, in fact,  
5 they were here this morning thinking we may have put  
6 some stimulus information in the IUP that was  
7 presented to you this morning, but as I said earlier  
8 we want to maintain that normally IUP process as  
9 things develop and decisions are made in the  
10 Department we'll come to you with a separate IUP for  
11 stimulus activity. And that's when you'll hear more  
12 of the detail of how we're going to divvy it up or  
13 what we propose. So that will be in your approval  
14 process as well.

15 CHAIRPERSON PERRY: That's a good way to work  
16 that.

17 Of the \$108 million is that all to be put into  
18 funding things or is there a percentage of  
19 administrative costs included?

20 MR. BOLAND: We are allowed to -- on the clean  
21 water side we're allowed to pull 4 percent off as  
22 administrative fee and that's with every  
23 capitalization grant we receive. The State of  
24 Missouri chooses not to take that 4 percent. We  
25 usually push that into projects because we have an

1 administrative fee in place already that we pay for  
2 our -- pay for our staff with.

3 So, again, that's a decision that -- that's  
4 being muddled or decided right now as well. I  
5 shouldn't say muddled.

6 CHAIRPERSON PERRY: Do you call these muddling  
7 meetings?

8 COMMISSIONER SHORNEY: Davis didn't hear that.

9 MR. BOLAND: Yeah. We'll have to correct that  
10 in the minutes.

11 (Laughter.)

12 MR. BOLAND: What else? One of the other  
13 federal requirements is 20 percent -- and Doug  
14 mentioned some of this, this morning, but 20 percent  
15 of the projects are -- are supposed to be green  
16 infrastructure projects, which cover everything from  
17 true green infrastructure, energy efficiency, water  
18 efficiency and environmentally innovative projects.  
19 And EPA is coming out with harder definitions of  
20 that.

21 But that may be one of our biggest challenges is  
22 to get hard construction projects that meet those  
23 definitions for green infrastructure. There is an  
24 allowance that if we do not -- if we're not  
25 successful in soliciting 20 percent through green

1 infrastructure we have to prove to EPA that we -- you  
2 know, we solicited that we were -- made an effort to  
3 get those green projects and if we're not successful  
4 in meeting that 20 percent we basically have to  
5 solicit EPA to get -- you know, a waive of -- to get  
6 that requirement waived. And we'll apply that --

7 VICE-CHAIR HARDECKE: And that would be 20  
8 percent of the \$108 million and then 20 percent of  
9 the \$38 on the clean water side, too?

10 MR. BOLAND: Correct; 20 percent on each  
11 drinking water and clean water. It may be even a  
12 bigger challenge for us on the drinking water side --

13 VICE-CHAIR HARDECKE: That's what I was  
14 thinking. Yeah.

15 MR. BOLAND: -- than on the waste water side  
16 because there's -- there is several storm water  
17 projects out there that we could -- I think can  
18 qualify. City of Atlanta that was mentioned earlier,  
19 they are looking to go no discharge so we can roll  
20 that under the umbrella of water efficiency or energy  
21 efficiency.

22 But those are some of the issues that are being  
23 worked out. So needless to say there's been a lot  
24 activity on stimulus. And I know Earl can testify to  
25 that, a lot of interest from every single party out

1 there, and a lot of coordination going on between our  
2 department and other departments, right now.

3           What other details do I need to relay? And I --  
4 your -- the information in your packet was put  
5 together before the Bill was finalized.

6           CHAIRPERSON PERRY: We can tell.

7           MR. BOLAND: So it -- there is some incorrect  
8 information in there. But the numbers are just about  
9 right except clean water did drop down to \$108  
10 million and not \$165, so --

11           Let me see. Some of the bigger challenges for  
12 our communities are going to be, if we decide to go  
13 grants or a grant matching program. The requirements  
14 to receive a grant or similar to the STAG Projects.  
15 If you're familiar with any of the STAG grant  
16 requirements, they're -- it's not exactly the same as  
17 our state grant program. There are quite a few  
18 requirements that are -- have to be met.

19           Davis-Bacon is another one I did not mention.  
20 The Davis-Bacon Act applies to all these funds. So  
21 prevailing wage will be an issue for some of these  
22 projects.

23           Those are really the highlights. What were  
24 your questions, again, Phil?

25           MR. WALSACK: Thank you, Joe. Joe answered one

1 of the questions. The other question was alluded to  
2 this morning and I wanted some clarity from the  
3 Department. Elections come in April. Some  
4 communities are going to pass bond issues and can we  
5 turn those bond issues results back into an IUP for  
6 our next meeting? We're cutting it razor thin on the  
7 time frame to be able to do that. And I'm wondering  
8 if the division -- or the Department can actually  
9 handle that critical time period. You are going to  
10 have about a week to turn the numbers.

11 MR. BOLAND: Well, I'll answer that by saying  
12 we're going to handle this Intended Use Plan like we  
13 do our -- our normal Intended Use Plans. We come to  
14 you with a document with a list of projects in it,  
15 but throughout the year we come to you with revisions to  
16 add projects that come to us through the year. And  
17 I see this as the same issue. If they're not  
18 captured with the formal list we provide, that you  
19 initially vote on, we intend to continue to come to  
20 you with revisions because we need to have a list  
21 deep enough for whoever ends up being in the fundable  
22 pot, if they don't make it -- or if we see in October  
23 they're not making progress, we're going to have to  
24 come to you to start bypassing these projects to get  
25 some that are below that funding line for stimulus

1 that we can push up into that funding pot.

2 And, also, keep in mind that if projects -- if  
3 they do vote bonds we'll still be able to capture  
4 most of those through our normal loan process. Like  
5 I said, earlier, we still have to push out the same  
6 amount of loans we do in a normal year. So EPA is  
7 expecting us to push out all the stimulus as well as the  
8 normal loan amounts.

9 So we're looking at on wastewater about \$220  
10 million that we need to do this year.

11 MR. PABST: Of which, Joe, our emergency rule  
12 would apply to those as well.

13 MR. BOLAND: Correct. But only for the stimulus  
14 --

15 MR. PABST: Right.

16 MR. BOLAND: -- stimulus money.

17 MR. PABST: Right.

18 MR. BOLAND: Right.

19 But what Earl is alluded to is we're looking to  
20 take advantage of some of these subsidies that we  
21 don't now on a permanent basis for -- specifically,  
22 to clean water, the federal Clean Water Act allows us  
23 to lower our interest rate down to zero. We're not  
24 allowed to give grants. We're not allowed to do  
25 negative interest loans through the normal act. But

1 we could go down to zero if we so choose.

2       So we're looking to develop a more disadvantaged  
3 community program for those communities that really  
4 are challenged now to get through the process and  
5 even afford a very highly subsidized loan. We're  
6 looking to drop that interest rate even further for  
7 some of those marginal projects to maybe make it even  
8 -- to make it more affordable for them to get  
9 through.

10       So that's what we are looking to do on a  
11 permanent basis to kind of feather in this stimulus  
12 activity with our normal program but we'll have to go  
13 back to in 12 months.

14       CHAIRPERSON PERRY: Okay.

15       VICE-CHAIR HARDECKE: You said that prevailing  
16 wage applied to all of the stimulus money?

17       MR. BOLAND: That's correct.

18       VICE-CHAIR HARDECKE: That may be a problem for  
19 some of the small towns.

20       MR. BOLAND: It could be.

21       MR. PABST: One other point is, until our IUP is  
22 final, we don't receive our award but the 12 month clock has  
23 already started.

24       MR. BOLAND: The 12 month clock started on the  
25 17th of February when the Bill was signed.

1           And we do expect to develop an application  
2 hopefully by the end of the month is our goal even  
3 with a -- we may submit that with a very, very draft  
4 IUP just to get the process rolling and come to you  
5 with that same draft expecting to make revisions and  
6 moving projects around.

7           Any specific questions on that?

8           (No response.)

9           CHAIRPERSON PERRY: Thank you very much.

10          MR. BOLAND: You're welcome.

11          CHAIRPERSON PERRY: Thanks for going into  
12 overtime.

13          CHAIRPERSON PERRY: Refaat do you got -- you  
14 want to say two minutes and we will have finished our  
15 --

16          MR. MEFRAKIS: All right. I can do that.

17          CHAIRPERSON PERRY: Okay. Don't say we never  
18 finished.

19          MR. MEFRAKIS: I'll make it quick.

20          CHAIRPERSON PERRY: Remember that day everybody  
21 got out at noon.

22          (Laughter.)

23          CHAIRPERSON PERRY: I want you to think about  
24 that.

25          MR. MEFRAKIS: You saved the best to last, so,

1 I'll start. **Tab No. 18**, my name is Refaat Mefrakis.

2 I'm the Chief of Permits and Engineering.

3 Our typical operating permit renewals starts --  
4 begins on Page 604. Again, the first table is a  
5 percent of permits issued on time. When I take you  
6 to the second table is our aging permit report and it  
7 seems like every time we resolve issues and -- such  
8 as lagoons and disinfections and ammonia new issues  
9 come up, like, wet weather issues that Phil alluded  
10 to earlier.

11 I'm chairing a workgroup to come up with some  
12 resolutions so we're able to issue some of these  
13 permits that are under threat, for objection by EPA.

14 The last table in this -- on this page are --  
15 you see a huge number, there are about 597 permits.  
16 They're typically general permits and that's because  
17 we have an expired -- or we had an expired MOG,  
18 which is the Ag-Chem general permits. The bulk of  
19 that, we actually issued that permit -- the general  
20 permits so -- which will reduce that number  
21 tremendously, so --

22 CHAIRPERSON PERRY: Okay. You issued the one --  
23 there were two -- you issued 240 but not 241?

24 MR. MEFRAKIS: Correct. We issued 240; 241  
25 we're discussing that with MOAG. They have some

1 facilities that still would like to discharge so  
2 there are antidegradation issues that we're dealing  
3 with and so we're still hoping to create a general  
4 permit for a new or expanded facility that are  
5 wanting to discharge.

6 CHAIRPERSON PERRY: The 241 is a discharge  
7 permit?

8 MR. MEFRAKIS: Yeah.

9 CHAIRPERSON PERRY: Two-forty is a no discharge?

10 MR. MEFRAKIS: Two-forty is a discharge permit  
11 as well. It's only for existing sources.  
12 Antidegradation rule basically exempts it of all the  
13 existing

14 CHAIRPERSON PERRY: (Statement inaudible.)

15 MR. MEFRAKIS: Right.

16 So we have to deal with the new and expanded  
17 facilities. And we're hoping to come up with a  
18 general permit that addresses -- we didn't want to  
19 wait. We really wanted to get those permits out of -  
20 - out of the doors on review and create a separate  
21 general permit for new or expanded facilities that  
22 are willing to discharge so -- or wanting to  
23 discharge.

24 Okay. On page -- on the second page, Page 606  
25 this is our water quality review sheet for

1 antidegradation. As you know this is a pre-designed  
2 water quality review that we conduct. The things  
3 that I would like to point -- I'd like to point to is  
4 on the 1, 2, 3, 4, 5, 6 -- sixth column is the status  
5 of the application -- or the status of the requests.  
6 As you can see we included all complete or active  
7 permit -- applications.

8         Since I've created this report there are now  
9 five actives above the line. There's a line at the  
10 bottom. That line represents anything -- anything  
11 above that line are projects that have been in-house  
12 for more than two months.

13         So there are currently five active projects.  
14 Three of those are being finalized as I speak now.  
15 Now, below that line are more recent projects. And  
16 there are a total of six projects. There are only  
17 two actives -- active projects currently.

18         Now, the fact that we are being -- the fact that  
19 we are issuing or producing these water quality  
20 review sheets is a really good news and still being  
21 consistent with the procedure that they have adopted  
22 back in May 7th, of 2008.

23         One thing I would like to mention that last year  
24 we had conducted several workshops on  
25 antidegradation. We had well-attended consulting

1 engineers in all of this. So we decided to hold  
2 additional workshop this year, two of them, and we  
3 had -- we have over 140 people signed up. And, in  
4 fact, we only scheduled one and because it was --  
5 because we had so many people request -- signed up we  
6 had to create another workshop. So we will have one  
7 in March, I believe, 6th -- 18th and we'll have another  
8 one in April.

9 The good -- also, the good news is we're able to  
10 fill two engineering positions to handle antideg  
11 review --

12 CHAIRPERSON PERRY: Good.

13 MR. MEFRAKIS: -- reviews. And we'll working  
14 closely with Joe to address all the projects that are  
15 under the stimulus package as well.

16 That's our water quality review sheet. Report,  
17 I'll move on to -- unless you have questions on the  
18 water quality review sheet or antidegradation report.  
19 I'll move on to the next report, which a CAFO for Ag-  
20 Chem construction permit report.

21 It looks like Darrick Steen is doing pretty well  
22 here. And there are a couple projects that are under  
23 hold. That's requested by the applicant. The last  
24 two projects where it denoted "is under review",  
25 those permits were already issued. So we are

1 catching up here.

2 CHAIRPERSON PERRY: Wait a minute. The "under  
3 review" have already been issued?

4 MR. MEFRAKIS: The lost two projects under  
5 review have been issued, correct. The other two  
6 under review we're waiting on information from the  
7 engineer.

8 CHAIRPERSON PERRY: Okay. And the ones that are  
9 on hold all have the same kind of construction?

10 MR. MEFRAKIS: Correct. The same -- the same  
11 client -- or the same facility?

12 CHAIRPERSON PERRY: Oh, they're all PSF?

13 MR. MEFRAKIS: PSF. And it was requested by PSF  
14 to put it on hold.

15 Okay. Move on to the 401 certification, that's  
16 a pretty straight-forward. We are issuing those as  
17 quickly as possible. There's no -- really issues  
18 with that, so --

19 CHAIRPERSON PERRY: And incurring Corps  
20 projects?

21 MR. MORRISON: Recently?

22 CHAIRPERSON PERRY: Yes.

23 MR. MORRISON: Not that I know of. I'm catching my  
24 remarks quickly -- or carefully, I mean.

25 MR. MEFRAKIS: Yeah. I'm trying to think we've

1 issued some general permits a while ago, which is  
2 over care of levies.

3 MR. MORRISON: She doesn't mean that.

4 MR. MEFRAKIS: I know.

5 CHAIRPERSON PERRY: I don't mean that.

6 MR. MEFRAKIS: All right.

7 CHAIRPERSON PERRY: The levies need to be fixed,  
8 but I just want to make sure there's not something  
9 sneaking in -- thank you. Just keep an eye out.

10 MR. MEFRAKIS: On the last page, as you  
11 requested, we included the -- an update on our master  
12 general permits list. And as you can see, in fact,  
13 on the second page of that there are -- oh, I'm  
14 sorry. I have it here. There are three GPs, general  
15 permits that have expired in the last 30 days and  
16 they're either on public notice or are close to being  
17 on public notice. Otherwise, we have -- we already -  
18 - are catching up here.

19 The reason we are kind of a little bit behind  
20 here, we're addressing some of the antidegradation  
21 requirements in these general permits. So it's  
22 taking us a little bit more time as we understand how  
23 to implement this requirement.

24 CHAIRPERSON PERRY: Okay.

25 MR. MEFRAKIS: That concludes my report.

1 CHAIRPERSON PERRY: Now, we -- we have what?  
2 Staff reports. Is there --

3 MR. MEFRAKIS: Thank you.

4 Oh, any other questions?

5 CHAIRPERSON PERRY: Thank you.

6 VICE-CHAIR HARDECKE: What's this one  
7 discharging ground source heat pumps? What is that?  
8 It's on 612.

9 MR. MEFRAKIS: Is it on G or R?

10 VICE-CHAIR HARDECKE: G-251.

11 MR. MEFRAKIS: Oh, G-251. These are for large -  
12 - there is a requirement in the permit rule and --  
13 that requires dischargers of a certain size -- water  
14 from these facilities --

15 VICE-CHAIR HARDECKE: Is that being discharged  
16 back into the ground?

17 MR. MEFRAKIS: I think -- I believe so. Yeah.  
18 I believe so. I can -- I can go back and check, I  
19 think -- we don't have too many sources of those.  
20 There's only a handful.

21 VICE-CHAIR HARDECKE: That's bigger than an  
22 individual home?

23 MR. MEFRAKIS: Oh, correct. There's --

24 VICE-CHAIR HARDECKE: Those have to be  
25 permitted?

1 MR. MEFRAKIS: The more of an industrial type.  
2 The individual, no, they're exempt. There's only a  
3 handful of those facilities, but --

4 Okay. Thank you.

5 CHAIRPERSON PERRY: Thank you. Okay.

6 VICE-CHAIR HARDECKE: Make your motion.

7 CHAIRPERSON PERRY: I want to make sure to do  
8 standing items. Jennifer, did you have anything?

9 MS. FRAZIER: No. I don't. Thank you. I just  
10 look forward to working with you.

11 CHAIRPERSON PERRY: Thank you very much.

12 MS. FRAZIER: Um-huh.

13 CHAIRPERSON PERRY: We appreciate your help with  
14 the Robert chores, today.

15 Do you have something?

16 MR. PABST: No. One housekeeping issue it's in  
17 your blue book. If you're traveling home from the  
18 Commission meeting tonight or other ones, don't  
19 forget when you turn in your meals to Malinda for the expenses  
20 to let her know what time you arrived home. She  
21 needs that information for your expense accounts.  
22 And there's some information in the blue folder on  
23 the travel policy that she put in for you.

24 And I'll -- I had some information on 319, but  
25 I'll send the Commissioners just an e-mail update on

1 that.

2 CHAIRPERSON PERRY: Last year, at this time, we  
3 did the RFP for the 319 at this time.

4 MR. PABST: Yes.

5 CHAIRPERSON PERRY: That wasn't an agenda item.  
6 Will that be in the next meeting agenda?

7 MR. PABST: I -- we hope so. And that's part of  
8 what I wanted to update you-all on. But our plan is  
9 to have an RFP to you at the May meeting.

10 CHAIRPERSON PERRY: Okay. With that,  
11 congratulations all, we hope this isn't going to  
12 happen again. I can't remember the last time it did.  
13 It has. But it's not like every -- you'll never want  
14 to come close to my home, again.

15 (Laughter.)

16 CHAIRPERSON PERRY: I will entertain a motion to  
17 adjourn.

18 COMMISSIONER TUPPER: So moved.

19 COMMISSIONER SHORNEY: Second.

20 CHAIRPERSON PERRY: And when is our next  
21 meeting?

22 MS. OVERHOFF: May 6th.

23 CHAIRPERSON PERRY: And location?

24 MS. OVERHOFF: Jefferson City.

25 CHAIRPERSON PERRY: Okay. Did we get a second?

1 COMMISSIONER SHORNEY: Second.

2 CHAIRPERSON PERRY: Call for the vote.

3 MS. OVERHOFF: Commissioner Hardecke?

4 VICE-CHAIR HARDECKE: Yes.

5 MS. OVERHOFF: Commissioner Shorney?

6 COMMISSIONER SHORNEY: Yes.

7 MS. OVERHOFF: Commissioner Tupper?

8 COMMISSIONER TUPPER: Yes.

9 MS. OVERHOFF: Chair Perry?

10 CHAIRPERSON PERRY: Yes.

11 But I do think we've had meetings where we've  
12 ended up with less people than we have right now.

13 MS. PABST: They're mostly staff.

14

15 (Tape Five, Side B concluded.)

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