

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

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8 AUDIO TRANSCRIPTION OF MEETING
9 MAY 5, 2010

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13 CONDUCTED BY:
14 CHAIRMAN RON HARDECKE

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

2 CHAIRMAN HARDECKE: And I'll begin by introducing the
3 Commission. To my far right is Bill Easley,
4 Commissioner from Cassville, next, is Sam Leake,
5 Commissioner, from Perry, next, is Sam Hunter,
6 Commissioner, from Sikeston the Vice-chair and on the
7 phone we have Jan Tupper, Commissioner, from Joplin
8 and Todd Parnell, Commissioner, from Springfield. On
9 my left is Scott Totten the direc- -- acting director
10 of the program, Jenny Frazier the legal counsel from
11 the Attorney General's office and Malinda Overhoff
12 the secretary to the Commission. And I'm Ron
13 Hardecke the Chairman from Owensville.

14 So we'll begin with **Tab No. 1**, which is the
15 minutes of the last meeting; any comments or
16 corrections?

17 (No response.)

18 **VICE-CHAIR HUNTER: Mr. Chairman, I move the minutes**
19 **be approved.**

20 **COMMISSIONER EASLEY: Second.**

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

22 **MS. MALINDA OVERHOFF: Commissioner Tupper?**

23 (No response.)

24 **MS. MALINDA OVERHOFF: Commissioner Tupper?**

25 **COMMISSIONER TUPPER: Yes.**

1 MS. MALINDA OVERHOFF: Commissioner Parnell?

2 COMMISSIONER PARNELL: Yes.

3 MS. MALINDA OVERHOFF: Commissioner Hunter?

4 VICE-CHAIR HUNTER: Yes.

5 MS. MALINDA OVERHOFF: Commissioner Leake?

6 COMMISSIONER LEAKE: Yes.

7 MS. MALINDA OVERHOFF: Commissioner Easley?

8 COMMISSIONER EASLEY: Yes.

9 MS. MALINDA OVERHOFF: Chair Hardecke?

10 CHAIRMAN HARDECKE: Yes.

11 Okay. Next we'll move to **Tab No. 2** and I'm
12 going to ask Leanne to come to the podium and make a
13 statement.

14 MS. LEANNE TIPPETT MOSBY: Good morning,
15 Commissioners. My name is Leanne Tippet Mosby. I
16 am the acting division director of Division of
17 Environmental Quality.

18 I'm here this morning to ask to withdraw the
19 Department's request for the Commission to act on the
20 finding of necessity at this time, for the Water
21 Quality Standard Stream Classification issue. We've
22 had some discussions with our stakeholders over the
23 last few days, also, received a letter from
24 Washington University. There appears to be universal
25 displeasure with the current drafting of the rule

1 language and so what we intend to do is to reconvene
2 our stakeholders and see if we can hammer out
3 something that we can move forward on.

4 I would like to note that this would not, should
5 not affect our overall schedule because as you are
6 aware we had planned on going forward with the Stream
7 Classification issue in conjunction with our regular
8 triennial Water Quality Standards efforts. And so we
9 were not planning on filing -- or taking our first
10 official action on the rule until next April, which
11 would be the Regulatory Impact Report.

12 So with that I'll conclude my remarks unless you
13 have any questions of me.

14 CHAIRMAN HARDECKE: Any questions for Leanne?

15 (No response.)

16 CHAIRMAN HARDECKE: Okay. Thank you. We may call
17 you back.

18 MS. LEANNE TIPPETT MOSBY: Okay.

19 CHAIRMAN HARDECKE: We have Mark Matthews with EPA.

20 MR. MARK MATTHEWS: Yes. I wasn't going to speak
21 about this agenda item.

22 CHAIRMAN HARDECKE: Okay. I'm sorry.

23 Lorin Crandall.

24 MR. LORIN CRANDALL: No, thank you.

25 CHAIRMAN HARDECKE: Okay.

1 Phil Walsack.

2 MR. PHIL WALSACK: Good morning, Commission. Phil
3 Walsack from Missouri Public Utility Alliance
4 representing municipal governments here and about 1.1
5 million Missourians; I, too, will stand down on my
6 comments, my prepared comments in light of -- of this
7 news.

8 Although I am here to pledge to the Commission,
9 that by the next meeting and certainly through this
10 stakeholder process, I'm going to be working on -- an
11 affordability analysis, a rate analysis here in
12 Missouri. I'm about 200 utilities strong so it will
13 be the second largest rate analysis in the country by
14 the time I'm done. Only the National Association of
15 Clean Water indices is bigger. So over the next six
16 weeks I'll be hitting the phones and -- and trying to
17 figure out what our current status is for water and
18 sewer rates in the state.

19 Right now, after 161 utilities we're at 0.71
20 percent of the median household income. That's what
21 sewer rates are right now in the state, 0.71 percent
22 of the median household income.

23 So I will -- I do pledge to get that to the
24 Department and to the Commission during this process.

25 Thank you very much.

1 CHAIRMAN HARDECKE: Thank you.

2 Terry Satterlee.

3 MS. TERRY SATTERLEE: I'm here representing several
4 municipalities and agricultural interests and we,
5 too, will stand down and participate willingly and
6 hopefully -- we were very concerned with the proposal
7 that was put out because frankly Kansas went through
8 a similar proposal and had a lot of very unfortunate
9 and long -- and a lot of work by KDHE and a lot of
10 work by stakeholders that didn't really have to be
11 done to get the right thing done.

12 So thank you very much.

13 CHAIRMAN HARDECKE: Thank you.

14 Ed Galbraith.

15 MR. ED GALBRAITH: I, too, will stand down unless
16 there's any questions.

17 CHAIRMAN HARDECKE: Thank you.

18 Mary West.

19 MS. MARY WEST: Not to be repetitive, but we'll hold
20 remarks until the next meeting.

21 Thank you.

22 CHAIRMAN HARDECKE: Okay. Thank you.

23 MR. JOHN DeLASHMIT: Good morning, Mr. Chairman.

24 Good morning, Commissioners. I guess I'm bucking the
25 trend. They stood down, I'm standing up.

1 I'm just here to express hope that the folks in
2 Missouri can work this out as soon as possible. This
3 is something that -- that we're under a great deal of
4 pressure to take care of. And we feel is mandated by
5 the Clean Water Act so we encourage the state to --
6 to take care of this as soon as possible we'd really
7 appreciate that.

8 And my name is John DeLashmit. I'm chief of the
9 Water Quality Management Branch at EPA's Region 7
10 office in Kansas City.

11 Thank you very much.

12 CHAIRMAN HARDECKE: Thank you.

13 Any other questions or comments by the
14 Commission?

15 (No response.)

16 CHAIRMAN HARDECKE: I do want to thank the Department
17 for putting some fiscal numbers- -- impact numbers
18 together. I would observe that those costs that are
19 listed in the estimate come to \$95 million and they
20 only include the permitted entities that were
21 evaluated here and I -- I would like to see some
22 analysis of the cost to non-point and other sources
23 that are not necessarily permitted in the future as
24 we go through this process, so --

25 I guess if there's not other comments we'll move

1 forward to **Tab No. 3**, which is the **Ozbun case**.

2 MS. JENNIFER FRAZIER: Good morning, Commissioners.
3 Jennifer Frazier from the Attorney General's office
4 I'm here to present Tab No. 3 to you, which is an
5 Administrative Hearing Commission decision and
6 recommendation to you in the case involving Rodney
7 and Michelle Ozbun.

8 This is an appeal of a construction and
9 operating permit that was issued to the Ozbuns back
10 in 2007. The permit authorized the construction of a
11 Class 1C CAFO for chicken pullets. The Ozbun
12 property is located approximately one mile from
13 Roaring River State Park.

14 On July 25th, 2007, the AHC ordered a stay of
15 the construction permit that had been issued;
16 however, it was later determined that construction
17 was already complete at the time the stay was
18 entered.

19 An operating permit was then issued on August
20 22nd, 2007, which the Petitioners also appealed. The
21 AHC denied the request for the Petitioners stay of
22 operating permit and so the CAFO has been in
23 operation since August 27 -- August 22nd -- excuse me
24 -- 2007.

25 The AHC has made four specific conclusions of

1 law and findings of law for the Commission to adopt.
2 The first is that the Clean Water Commission has no
3 authority to regulate odor, which is under the
4 authority of the Air Conservation Commission. The
5 second finding is that the appeal of the construction
6 permit is moot since construction was complete. The
7 third finding is that the Ozbun CAFO is not in
8 violation of any legally required buffer zone for
9 Roaring River State Park. The current statutory
10 buffer zone is found in Chapter 640 and the Ozbuns
11 were in compliance with that specific buffer zone.

12 The AHC determined that the Cole County Circuit
13 Court's decision in the Arrow Rock case does not
14 apply here and is only applied specifically to Arrow
15 Rock. Moreover, this case as I reported to you
16 earlier has been overturned by the Court of Appeals.

17 The Ozbun family -- I'm sorry -- let's go to
18 number four. The fourth conclusion is the Department
19 issued the operating permit in accordance with the
20 applicable law. There were several specific points
21 that the Petitioners raised with regard to
22 allegations of non-compliance in the permit.

23 Each of those is specifically addressed by the
24 AHC and I won't go into those unless you have any
25 questions. I know that there are representatives

1 here from both the Department and the Petitioners who
2 would like to address you so I'd be happy to come
3 back later if you have any questions.

4 CHAIRMAN HARDECKE: Okay. Thank you.

5 Is there any comments from the Department?

6 MR. TIM DUGGAN: Good morning, Commissioners. I'm
7 Tim Duggan. I'm with the Attorney General's office
8 and I defended the Department's decision to issue the
9 construction permit and the operating permit in this
10 case. And, of course, I recommend that you adopt the
11 recommendation of the Administrative Hearing
12 Commission. I think it is correct on the law.

13 And, I think, the factual record strongly
14 supports their conclusions with respect to the
15 evidence. I did want to say with respect to the so-
16 called Arrow Rock case, which is State of Missouri at
17 the relation of Missouri Parks Association, Village
18 of Arrow Rock and Friends of Arrow Rock versus
19 Missouri Department of Natural Resources, et al., I
20 did want to make a couple comments about that just to
21 clear up any misunderstandings.

22 The cases were close -- close together in time.
23 And as a result of that they sort of refer to each
24 other if you will. There is discussion in the Court
25 of Appeals decision about the argument that we made

1 and that the Court of Appeals agreed with that you
2 have to exhaust your administrative remedies. And in
3 the Arrow Rock case, although, they initially filed
4 an appeal with this Commission through the
5 Administrative Hearing Commission to challenge that
6 permit that case never went any where. And it
7 eventually was dismissed by the Administrative
8 Hearing Commission as moot as I recall.

9 And I don't believe this Commission ever really
10 had anything to deal with there, but that case should
11 have gone forward. The appropriate vehicle was to
12 come to this Commission to have that permit reviewed.
13 And because that did not occur the Court of Appeals
14 cited that as one of its reasons for declaring the
15 Cole County Circuit Court judgment a nullity because
16 a Circuit Court simply doesn't have the authority to
17 hold its own declaratory judgment action about a
18 permit that has not gone through the administrative
19 appeal process.

20 One of the justifications for the lower court
21 judgment was, well, the reason they shouldn't have to
22 go to the Clean Water Commission and the
23 Administrative Hearing Commission is because DNR
24 ignored a stay order that was issued in the Ozbun
25 case. And that was the stay order against the

1 construction permit issued early in that -- that
2 particular appeal.

3 That was not found to be a good enough reason by
4 the Court of Appeals even if it were true to relax
5 the requirement that the Arrow Rock folks should have
6 gone through the Commission process to have that
7 review.

8 But I do want to point out that there's been
9 some misunderstanding about that stay order. The
10 stay order came too late to stop the construction, to
11 put it quite simply. And what was then presented to
12 the Department was the application for the operating
13 permit. And, of course, to get an operating permit
14 your construction has to have already been finished,
15 which it -- it was.

16 The parties who appealed the operating permit
17 for Ozburn as well as the construction permit did ask
18 for a stay of the operating permit. And another
19 hearing was held on whether or not there were grounds
20 to do that. And in that situation the Administrative
21 Hearing Commission decided to deny the request for
22 that stay and allow the chickens to be delivered to
23 the -- the barns and they've been operating ever
24 since.

25 So it's not true the Department ignores or

1 violates or dishonors stay orders by the
2 Administrative Hearing Commission and I want --
3 wanted to clear that up. That's our position.
4 That's always been our position.

5 With respect to the Arrow Rock case, just so you
6 know, in addition to the finding by the Court of
7 Appeals that administrative remedies were not
8 exhausted the lower court judgment was found to be a
9 nullity for three other reasons. One of those was
10 that the CAFO in that case was never built and the
11 construction permit ap- -- construction permit that
12 had been issued expired before the judgment of the
13 court was rendered.

14 Courts in this state are not allowed to issue
15 judgments about non-issues. And it was a non-issue
16 at that point. And to the extent it purported to
17 rule on future permit applications or declare that
18 CAFOs already existing within two miles of Arrow Rock
19 could not be expanded, enlarged and so forth. That
20 was an advisory opinion because it was based on
21 future events or hypothetical events. And just as
22 courts do not rule on moot cases they don't rule on
23 future cases.

24 And the third reason given which are kind of
25 related is the fact that the judgment as issued in

1 the Arrow Rock case affected people who are not even
2 parties to that lawsuit. The persons whose permit
3 had expired, the person who never built the CAFO, but
4 the person who was being told by the Circuit Court
5 had no right to apply for a permit in the future
6 within two miles of Arrow Rock was not even a party
7 to that case.

8 And the folks who are being told by the Circuit
9 Court that they were not allowed to expand their
10 operations they weren't parties to that case either.
11 And the Court of Appeals cited a Supreme Court rule
12 that on its base, says a declaratory judgment cannot
13 be issued against persons who are not parties before
14 the court; plain and simple.

15 So the Court of Appeals, at this point, has
16 thrown out that judgment because it was a nullity, it
17 was invalid from the get-go for four different
18 reasons that have nothing to do specifically with
19 buffer zones and nothing to do with -- how to protect
20 state parks or any of the rest of it.

21 That said that decision is still not final
22 because there are a few more steps to go through in
23 the appellate process. And the folks on the other
24 side of that case have indeed asked for
25 reconsideration of that decision by the Court of

1 Appeals. The Court of Appeals has not ruled on that
2 motion, yet. They've also asked the Court of Appeals
3 to transport it -- transfer it up to the Supreme
4 Court. They haven't ruled on that application, yet.

5 If the motions and application are denied then
6 they still have the opportunity to go directly to the
7 Supreme Court and ask that court to take a look at
8 the decision. So it is not a final mandated decision
9 by the Court of Appeals, but at this point there is
10 no lower court judgment in affect with respect to the
11 Arrow Rock situation.

12 In this particular case, the Ozbun case, Arrow
13 Rock was argued quite extensively by the opponents to
14 the Ozbun permits. And they said-- first of all, it was
15 a controlling court decision. The Administrative
16 Hearing Commission didn't see it that way because it
17 had nothing to do with any state park other than
18 parks or historic sites within the vicinity of Arrow
19 Rock Village, so --

20 Well, it's not binding on us with respect to
21 this case. They also argued, well, even if it's not
22 you should follow the wisdom of the Circuit Court of
23 Cole County in this case. And on that the
24 Administrative Hearing Commission was able to address
25 some issues that the Court of Appeals has never yet

1 gotten to and won't get to in the Arrow Rock case
2 'cause that case is moot.

3 But the Administrative Hearing Commission has
4 taken the position and this is about the fifth time
5 they've taken the position; this is about the fifth
6 appeal that's been in front of you involving a CAFO
7 where the same arguments have been made.

8 And every time the Administrative Hearing
9 Commission has said there is no statute or regulation
10 that compels the Department to deny a permit based on
11 how close it is to a state park. There simply is no
12 authority for the Department to do that.

13 And the Department, as an executive agency, can
14 only comply with the laws passed by the Legislature
15 and those laws specifically address buffer zones with
16 respect to Class 1 CAFOs. And with respect to a
17 Class 1C CAFO the buffer zone is no more than 1,000
18 feet from the nearest occupied residence or public
19 building. That is the statutory standard and Ozbun
20 met that statutory standard. Okay?

21 And neither the Department nor the
22 Administrative Hearing Commission nor the Clean Water
23 Commission can substitute its judgment for that
24 statutory standard and write a new one. That is --
25 that has been the position of the Administrative

1 Hearing Commission and the Clean Water Commission,
2 now, for several years. And we recommend that you
3 not deviate from that in this case.

4 Otherwise, this case was about the technical
5 merits of the permit applications. Much of it came
6 down to a disagreement between Darrick Steen who was
7 the permit writer for this -- for both these permits
8 and a couple of experts brought into the hearing by
9 the folks who opposed the permits. The experts
10 testified about what they perceived to be
11 deficiencies in the applications. They didn't
12 appreciate Mr. Steen's use of Manual 121 for purposes
13 of calculating how much waste might be generated and
14 stored onsite and things like that.

15 But the Administrative Hearing Commission after
16 weighing their testimony against the Department's
17 evidence determined that nothing the Department did
18 in its evaluation was so deficient as to render these
19 permits invalid. Basically, they said Darrick Steen
20 had the right to rely on Manual 121 if he considered
21 it useful. He was not compelled as a matter of law
22 to pick some other formula for calculating how much
23 waste would be stored in the buildings

24 Similarly, to the extent that he relied on the
25 regulations as they have been promulgated by this

1 Commission. He -- he was not out of bounds. If
2 there's something about the regulations that ought to
3 be improved or fixed that's for another day and
4 that's for this Commission to decide in reviewing its
5 own regulations, but as written every thing the
6 Department staff did was fully compliant with the
7 standards established by this Commission, to date.

8 So with that said, the Administrative Hearing
9 Commission found no legal basis to throw the permits
10 out. And I would simply add that this particular
11 operation has been successful since it started in
12 August of 2007. The AHC made the finding that as of
13 the day of the hearing there had been no complaints
14 about this operation.

15 I can tell you that today I am not aware that
16 there have been any complaints whatsoever about the
17 way the Ozbuns have been conducting their business.

18 Michelle Ozbun testified in the hearing as to
19 the constraints she feels are upon her not only
20 because of the permit itself, but because of her
21 contract with George's chickens and also because of
22 her own relationship with her neighbors and her own
23 interest in protecting Roaring River and in her own
24 concerns about having a nice, clean community. She
25 feels she is running this in a responsible manner.

1 And every thing that we've seen so far supports her
2 intention that she is. And I -- I think, that it
3 would be unfortunate for her to continue to have to
4 fight this fight when she has done every thing she
5 was supposed to do to obtain these permits and has
6 been complying with them ever since.

7 So with that is the conclusion. I will stand
8 down.

9 CHAIRMAN HARDECKE: Thank you.

10 Kaye Smith.

11 MS. KAYE SMITH: Good morning.

12 CHAIRMAN HARDECKE: Good morning.

13 MS. KAYE SMITH: I sent a letter earlier outlining
14 some of our views on the Ozbun CAF0. I don't know if
15 it was received or if you've had a chance to look at
16 it.

17 CHAIRMAN HARDECKE: We just got it --

18 MS. KAYE SMITH: You just got it.

19 CHAIRMAN HARDECKE: -- yesterday, so --

20 MS. KAYE SMITH: If it's okay I'm going to give each
21 of you a copy.

22 MS. MALINDA OVERHOFF: They have a copy.

23 VICE-CHAIR HUNTER: I think we have one.

24 CHAIRMAN HARDECKE: We all have a copy.

25 MS. KAYE SMITH: Oh, you made copies?

1 CHAIRMAN HARDECKE: Yeah.

2 MS. KAYE SMITH: Oh, okay. Thank you.

3 Well, first I am not an attorney. Roaring River
4 Parks Alliance cannot afford an attorney. I'm just
5 here as an ordinary citizen trying to -- trying to
6 expound on our concerns about this particular CAFO.

7 I know it's caused a lot of trouble for us as
8 well as inconvenience for -- for the builders and
9 we're sorry about that, but our concerns run really
10 deeply and we have been searching for ever so long
11 obviously since '07 for some place to make our
12 concerns heard. And we hope that this is it.

13 I outlined in the letter that the community
14 hearing that was held in January of '07 over 200
15 people showed up and they were all opposed to this
16 CAFO except for the builders. We maintain that
17 that's where the will of the people should have
18 prevailed and -- and all of this could have been
19 avoided.

20 At any rate, the journeys been a long one and --
21 and a bumpy one. And it is pretty well outlined with
22 the other side of what attorney Duggan just -- just
23 presented to you. It's -- and I won't go into all of
24 that here. You can read it if you're curious about
25 what our side is.

1 I don't believe I could have had a better intro
2 into my remarks than attorney Duggan's remarks
3 explaining to you how these statutes are what they
4 are until they are changed there's nothing anyone can
5 do. Everybody's in compliance with the statutes as
6 they are so nothing's wrong.

7 What our problem is there does not seem to be
8 anyway or any entity with any power that is willing
9 to change any of those statutes. We -- we appealed
10 to the Administrative Hearing Commission, well, what
11 three, four times and they listened to us, but then
12 they said, no, you haven't proven your case. I guess
13 we should have known that -- we should have known,
14 but we didn't know that even if the Administrative
15 Hearing Commission had agreed with us they have no
16 power to enforce it.

17 Now, this blue book says that the Clean Water
18 Commission does have power to promulgate rules and
19 that it has some enforcement authority, but we don't
20 know exactly how much that is or if it's ordinarily
21 used.

22 The DNR, well, hum, okay. I -- I feel sorry for
23 them. I frankly really do. I do not -- I do not
24 object to the fact that they are following the rules
25 as they see them even though I think that they are,

1 okay, this is an ordinary -- ordinary person's word.
2 I think they're sloppy in that application. I think
3 they only look only down their own little narrow
4 tunnel of responsibility and they don't pay any
5 attention to any of the other departments that are
6 under the umbrella of the DNR.

7 And many of these regulations in that thick book
8 they have, have been added piece meal -- piece mail
9 since their creation of DNR and since there -- and
10 before the proliferation of CAFOs became an issue.
11 We would like to see them keep their primary whole
12 mission statement, whole reason for existence as is
13 outlined in this blue book again. We would like to
14 see them keep that paramount.

15 And that mission is, if I can find it here, to
16 preserve, protect and enhance Missouri's natural,
17 cultural and energy resources ensuring clean air to
18 breathe, clean water to drink and recreation and land
19 that sustains a diversity of life. That's word for
20 word from this manual.

21 We could not have written a better description
22 of Roaring River State Park. DNR has had problems.
23 I believe they've been over extended and under funded
24 for some time as we all saw -- I believe that they've
25 been unwieldy for some time. And we all got a good

1 look at that last summer -- or last spring in the
2 Lake of the Ozarks debacle. And add to that the --
3 the budget cuts that have come recently because of
4 the lack of tax revenues we cannot see anyway that
5 they are going to be able to exercise more
6 responsibility over our natural resources. As a
7 matter of fact, we dread that it could be less.

8 So, now, we come to the State Legislature.
9 That's where everybody says any new rule has to come
10 from, it's the State Legislature. This -- this
11 discussion by attorney Duggan about the Arrow Rock
12 case outlined the fact -- a great deal of and frankly
13 my head spun and I didn't understand half of what you
14 said, -- I'm sorry -- but, anyway, all of the various
15 legal aspects of why that -- why our Attorney General
16 decided to appeal that two mile buffer zone. We were
17 encouraged by that two mile buffer zone. It was
18 better than nothing that -- that we already had, but
19 he appealed it, got it revoked. And we were
20 disappointed once again.

21 Saying that the reason for doing it was because
22 any change in the regulations involving our natural
23 resources had to come from the Legislature, well, we
24 have a big problem with that because our State
25 Legislature isn't about to do anything to curtail the

1 effects of CAFOs on our natural resources. They
2 always work in the other direction.

3 Right now, there's a bill -- in your letter it
4 discusses a bill about horse slaughtering and we have
5 nothing against that, but there's been amend- -- an
6 amendment attached to it that we did object to and it
7 took away more local control, what little local
8 control we have left.

9 That's out of date, now, because that particular
10 one has been dropped, but never to quit working. It
11 has, now, been attached to any number of bills in the
12 Senate. One of the most troubling is 795 in case
13 you're interested. And that's not the only one.
14 Evidently the thinking is let's just attach it to
15 everything we can and maybe something will stick and
16 we'll get that in there. It has very harmful affects
17 for any sort of local control. And we are
18 disappointed by that.

19 So all right we -- we -- okay, where can we go?
20 Where can ordinary people, who have concerns, where
21 can we go? The AHC can't do it. I'm not sure what
22 you people can do. The DNR isn't going to do it as
23 matters now stand. And our State Legislature
24 certainly isn't going to do it. So I guess that
25 brings us to the judiciary. The only entity that has

1 shown any inclination to try and help protect
2 Missouri's natural resources, and its water and its
3 air.

4 I know that's not the way things have been done
5 before. We think that should stand. We would like
6 to see it reinstated and stand on its own, two mile
7 buffer zone it's better than nothing. I'll have to
8 say the same -- I'll have to say to that the same
9 thing that the DNR official said when he was asked
10 originally how they can issue an operating permit
11 when a stay on construction was still in effect. And
12 he replied there's no law that says we can't.

13 Well, I have to make that same statement about
14 why we can't let judi- -- the judiciary give us some
15 protection that we can't seem to find any place else.
16 There's no law that says we can't.

17 We believe it is time to get serious about our
18 water along with the air we breathe there is no more
19 meaningful right -- human right than access to clean,
20 fresh water. It is what separates us from struggling
21 third world nations. Some areas of our nation I have
22 already experienced and gone through what we fear for
23 Missouri. There are some of them outlined in -- in
24 your letter there.

25 There is a website for -- that documents -- in

1 your letter there is a website that documents what
2 has happened in the Chesapeake Bay area and it
3 happened because of the same conditions we're seeing
4 develop in Missouri. It happened in Oklahoma. So
5 Oklahoma sued Arkansas and 12 poultry companies for
6 polluting their water and land by the over
7 application of chicken waste.

8 So, now, Arkansas trucks are sending their waste
9 to Missouri as if we needed anymore. Even the --
10 even the Gulf of Mexico is an example. There is a
11 huge dead zone in the Gulf of Mexico right now that
12 has been caused by pollution that has come down the
13 rivers from states upstream. So it's not as though
14 we can't see ahead of us what could happen.

15 For at least two years, now, and now about every
16 week we read in our papers about the coming crisis in
17 our water supply. The officials from the tri-state
18 area are now meeting, I saw their pictures in the
19 paper, about what we can do to address this crisis
20 that everybody says is coming. The very first
21 consideration should be obvious take better care of
22 the water we already have. As Benjamin Franklin
23 noted, "When the well is dry we learn the worth of
24 water."

25 I thank you for your time.

1 CHAIRMAN HARDECKE: Thank you.

2 James Riedel.

3 MR. JAMES RIEDEL: My name is Jim Riedel and I'm
4 president of Roaring River Parks Alliance. As Kaye
5 said here about three and a half years ago when we
6 found out this CAFO was -- had the possibility of
7 going in there was a large meeting that took place in
8 Eagle Rock, Missouri, in a church there. Over 200
9 people were there, the DNR was there. At that time,
10 we found out that the DNR had never turned down a
11 permit. That as long as you filled out the paperwork
12 right, why that permit was going to go in.

13 Barry County has the -- has more chicken CAFOs
14 than the rest of the state put together. More litter
15 is acquired from the chicken industry than from the
16 human population in Barry County. We take the human
17 waste and we run it into septic tanks and septic
18 systems. We take the untreated chicken litter and we
19 spread it along our creeks and along our rivers and
20 let it go into our lakes with no treatment. That
21 doesn't seem to make too much sense.

22 Our version of what took place with the
23 Administrative Hearing Commission is just a little
24 bit different than what you've heard here earlier.
25 The stay was issued for the construction and while

1 that stay was in affect and the construction was
2 still going on at the Administrative Hearing
3 Commission we showed photos that had the time and the
4 dates showing the construction and those -- those
5 were presented at that time.

6 So the DNR issued an operating permit after the
7 construction permit was stayed by the Administrative
8 Hearing Commission. And we were told that the
9 Administrative Hearing Commission did not have any
10 authority to, I guess, back up that stay.

11 I have a question, you know, why issue it if --
12 you know, if you can't do anything about it? But at
13 that hearing there was also one of the members of the
14 DNR and it had to do with the 121 Manual that was
15 talked about earlier. We did have an attorney there
16 with us and he brought up that that manual was
17 outdated. There was testimony by the DNR that that
18 manual was made for the state of Missouri by the
19 people in Missouri. When our attorney got up there
20 he questioned that, had a copy of the manual and it
21 wasn't made for Missouri by the people of Missouri.
22 So there's perjury in the courtroom.

23 And my contention is, you know, where do we go
24 when we know that there's a problem? And the
25 Administrative Hearing Commission, when you go there,

1 they don't have any authority. They can have someone
2 within the DNR that perjures himself at the hearing.
3 They can issue a stay that no one pays any attention
4 to. And so, now, we're going to the Clean Water
5 Commission. I'm not familiar with exactly what you
6 do and where you fit in, but we need to have somebody
7 that supports the people in Missouri and brings
8 justice.

9 Thank you. Appreciate your time.

10 CHAIRMAN HARDECKE: Thank you.

11 Any questions or comments?

12 (No response.)

13 VICE-CHAIR HUNTER: Mr. Chairman, I move that the

14 Commission adopt the staff recommendation.

15 COMMISSIONER EASLEY: Sam, shouldn't that be adopt

16 the Administrative Hearing Commission recommendation

17 --

18 VICE-CHAIR HUNTER: Right.

19 COMMISSIONER EASLEY: -- rather than staff?

20 COMMISSIONER LEAKE: I believe it should.

21 CHAIRMAN HARDECKE: Read this.

22 **VICE-CHAIR HUNTER: All right.**

23 **I move we adopt the Administrative Hearing**

24 **Commission recommended decision on the Rodney and**

25 **Michelle Ozburn Permit CAFO Appeal. That is**

1 Administrative Hearing Commission Appeal No. 07-0318.

2 COMMISSIONER EASLEY: Second the motion.

3 CHAIRMAN HARDECKE: Let's take a vote, Malinda.

4 MS. MALINDA OVERHOFF: Commissioner Parnell?

5 COMMISSIONER PARNELL: Yes.

6 MS. MALINDA OVERHOFF: Commissioner Hunter?

7 VICE-CHAIR HUNTER: Yes.

8 MS. MALINDA OVERHOFF: Commissioner Leake?

9 COMMISSIONER LEAKE: Yes.

10 MS. MALINDA OVERHOFF: Commissioner Easley?

11 COMMISSIONER EASLEY: Yes.

12 MS. MALINDA OVERHOFF: Commissioner Tupper?

13 COMMISSIONER TUPPER: Yes.

14 MS. MALINDA OVERHOFF: Chair Hardecke?

15 CHAIRMAN HARDECKE: Yes.

16 Okay. Tab No. 4 and that's Joe Boland.

17 COMMISSIONER PARNELL: Mr. Chairman, this is Todd

18 Parnell. I'm going to have to leave you for a while

19 now.

20 CHAIRMAN HARDECKE: Okay. Thank you.

21 COMMISSIONER PARNELL: Yeah. Thank you.

22 (Teleconference line disconnected for Todd Parnell.)

23 MR. JOE BOLAND: Good morning, Mr. Chairman, members

24 of the Commission. I just have a few very quick

25 items; three small borrower loan requests for the

1 City of Hayti, the Village of Bethel and the City of
2 New Haven.

3 Hayti is looking to install some UV disinfection
4 to their current treatment facility. They're
5 requesting \$94,163. The Village of Bethel was
6 undergoing some wastewater treatment improvements but
7 their bids came in over their original estimate and
8 they're requesting \$28,670. And the City of New
9 Haven is also installing UV disinfection to their
10 current facility and are requesting \$100,000, the
11 maximum for the small borrower loan.

12 And there is -- you should have attached each
13 of the applications for those -- for those requests.

14 And, at this time, I'll be happy to answer any
15 questions if I could.

16 CHAIRMAN HARDECKE: Any questions for Joe?

17 (No response.)

18 COMMISSIONER EASLEY: Ready for a motion.

19 CHAIRMAN HARDECKE: All right.

20 COMMISSIONER EASLEY: Mr. Chairman, I move the
21 Commission approve the proposed small borrower loans
22 to the City of Hayti for \$94,163; Village of Bethel
23 for \$28,670 and the City of New Haven for \$100,000.

24 VICE-CHAIR HUNTER: Second.

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

1 MS. MALINDA OVERHOFF: Commissioner Hunter?
2 VICE-CHAIR HUNTER: Yes.
3 MS. MALINDA OVERHOFF: Commissioner Leake?
4 COMMISSIONER LEAKE: Yes.
5 MS. MALINDA OVERHOFF: Commissioner Easley?
6 COMMISSIONER EASLEY: Yes.
7 MS. MALINDA OVERHOFF: Commissioner Tupper?
8 COMMISSIONER TUPPER: Yes.
9 MS. MALINDA OVERHOFF: Chair Hardecke?
10 CHAIRMAN HARDECKE: Yes.
11 Thank you, Joe.
12 MR. JOE BOLAND: Thank you.
13 CHAIRMAN HARDECKE: Tab No. 5, John.
14 MR. JOHN RUSTIGE: Morning, Commissioners.
15 CHAIRMAN HARDECKE: Good morning.
16 MR. JOHN RUSTIGE: John Rustige with the Permits and
17 Engineering Section. In January the Center Creek 201
18 Wastewater Treatment Board submitted a complete
19 variance application. They're seeking variance from
20 their permit limits for zinc --
21 (Tape One, Side A concluded.)
22 MR. JOHN RUSTIGE: -- disinfection. They discharge
23 to an unnamed tributary of Center Creek in Jasper
24 County. And the facility and the collection system
25 are all located within the old Lead Belt mining

1 district, which is currently being remediated by EPA
2 under an extensive Superfund action.

3 At the March 3rd Commission meeting Staff
4 presented the preliminary variance to the Commission
5 and that variance was subsequently put on public
6 notice. The public notice was published on March
7 19th. And the notice period closed on April 19th. We
8 -- we did receive a few comments and we've prepared a
9 recommendation as required by statute.

10 We offer the following findings that Center
11 Creek is impaired for zinc. That the collection
12 system drains that large geographic area that has --
13 is historically impacted by -- by lead and zinc
14 mining. And a good deal of their collection system
15 is overlaid or surrounded by contaminated mine waste,
16 soil and ground water. Their application indicates
17 that the collection system is impacted by zinc
18 entering the system during wet weather events as well
19 as dry weather events.

20 The Superfund remediation is expected to be
21 completed within about seven years. The individual
22 cities have only recently begun efforts to reduce
23 Inflow and Infiltration into their systems. The
24 water supply does not appear to be impacted by this
25 historic contamination and so we don't believe that

1 the water supply contributes substantially to the
2 problem.

3 In addition, the Center Creek Board is only
4 aware of one industry that's contributing zinc to the
5 treatment load. The variance application seeks a
6 seven-year schedule of compliance, which essentially
7 corresponds with the EPA Superfund cleanup.

8 So given those findings we recommend approval of
9 the variance with the following set of conditions:

10 Staff recommends that the Commission require the
11 Center Creek Board to conduct an industrial waste
12 survey and headworks analysis just to be certain that
13 they've indentified all their industrial and large
14 commercial sources of zinc. And Staff recommends
15 that that survey and analysis be conducted within
16 one-year of the variance.

17 Staff, also, agrees with a conclusion that zinc
18 is largely the result of I & I and so therefore we
19 recommend the Commission require the Board to provide
20 an I & I reduction plan. The plan would include at a
21 minimum some -- the funding sources and annual budget
22 for I & I reductions, corrective actions to eliminate
23 as many of the I & I sources as economically
24 feasible. A multi-year schedule for implementing
25 those corrective actions and then to prepare periodic

1 progress reports.

2 We recommend that the Commission require the --
3 the Board to submit the I & I reduction plan for
4 Department review and approval within 18 months of
5 the date the variance is granted. Now, language in
6 your briefing document also shows that there's a
7 sentence in there that says 12 months, actually, this
8 is an artifact of a previous draft of this. The
9 intention is to give them 18 months to do this.

10 The I & I reports are to be submitted semi-
11 annually with the first report due one-year from the
12 date the Department approves the I & I plan. And
13 then the I & I plan will also be included as a
14 condition of the state operating permit and that the
15 Center Creek Board agrees not to appeal the permit on
16 basis of this condition.

17 Number 3, Staff recommends that the Commission
18 prohibit the use of any mining waste or tailings and
19 any future construction of their collection system or
20 wastewater system in general. Staff recommends that
21 the term of the variance be five years to correspond
22 with the permit cycle. Now, I do want to note that
23 the Center Creek Board has no direct authority over
24 the collection system. The Board only oversees the
25 treatment plant and the collection systems are

1 maintained by each individual community.

2 And in this unique case the Board's comprised of
3 representatives from each of the community -- from
4 each community. So we have built time into the
5 variance schedule so that the Board can work with
6 each community to develop the necessary agreements
7 between the parties.

8 I also want to note that EPA has informed us
9 that they have concerns about how we implement the
10 conditions of this variance and so we intend to work
11 with them to identify sort of the proper mechanism to
12 implement it.

13 I recommend that the Commission approve this
14 variance with the conditions I've presented.

15 CHAIRMAN HARDECKE: You said that it coincides with
16 the EPA seven-year cleanup, but this is a five-year
17 variance?

18 MR. JOHN RUSTIGE: It's a five-year variance for the
19 period of this permit.

20 CHAIRMAN HARDECKE: Oh, okay.

21 MR. JOHN RUSTIGE: Typical permit cycle.

22 COMMISSIONER TUPPER: Mr. Chairman, Jan Tupper, I
23 move the Commission approve the variance requests for
24 the five-year period with the conditions included in
25 the Staff recommendation and those presented this

1 morning.

2 CHAIRMAN HARDECKE: Jan, could you hold your motion
3 just a moment. We have a couple others that want to
4 speak to this.

5 COMMISSIONER TUPPER: Oh, okay. I'm sorry.

6 CHAIRMAN HARDECKE: That's fine.

7 MR. JOHN RUSTIGE: If you have any questions I'll be
8 glad to take those perhaps afterward.

9 CHAIRMAN HARDECKE: Trent Stober.

10 MR. TRENT STOBER: Good morning members of the
11 Commission, Chairman. My name is Trent Stober with
12 Geosyntec Consultants representing the Center Creek
13 Board. We also have Glen Davidson with Allgeier
14 Martin that -- that also works with the Board. We
15 have a few comments and in working with the
16 Department and -- and also other -- other
17 stakeholders interested in -- in this variance, some
18 minor modifications that will probably clarify things
19 a little bit better to get consensus.

20 John Rustige did bring up one of those issues.
21 And the discrepancy in Paragraph 2 versus Paragraph 3
22 with the compliance schedule associated with
23 submittal of the I & I reduction plan. We ask that
24 that in Paragraph 2 that that be switched to 18
25 months as opposed to one-year.

1 The other condition in -- in three we would --
2 we would request that we further clarify one of the
3 provisions within the submittal of the I & I
4 reduction plan. If you see about a third of the way
5 through the paragraph where we have a condition that
6 says corrective actions to eliminate as many I & I
7 sources as economically feasible. We would request
8 that as economically feasible be replaced with the
9 terms within the financial capabilities of the
10 affected communities, which further clarifies within
11 a more proper context the -- the meaning behind that
12 -- that provision. So, again, that's within the
13 financial capabilities of the affected communities.

14 But, again, this is on behalf of the Board we
15 sincerely appreciate the Department's time and
16 efforts involved with -- with this variance and
17 respectfully request that you approve -- you approve
18 this variance with those conditions.

19 CHAIRMAN HARDECKE: Okay. Any questions for Trent?

20 VICE-CHAIR HUNTER: Who decides about the financial
21 capabilities?

22 MR. TRENT STOBBER: I'm sure that will be a point of
23 discussion through the development of this I & I
24 reduction plan and -- and so forth. I suspect that
25 that'll be a point that will get flushed out fairly

1 well, you know, there -- there are various financial
2 analyses that can be performed to evaluate the
3 affordability of -- of various pollution control
4 measures for -- for abatement of pollution sources,
5 so that's typically a point of contention within
6 various circles on -- on the meaning of those terms,
7 but that, I think, that better reflects the -- the
8 intent than economically feasible.

9 VICE-CHAIR HUNTER: I agree it goes a little farther
10 down the road, but --

11 MR. TRENT STOBER: Sure.

12 COMMISSIONER EASLEY: Could we hear comments from the
13 Department concerning that?

14 MR. JOHN RUSTIGE: The Department has no objections
15 of those changes.

16 CHAIRMAN HARDECKE: Okay.

17 Phil.

18 MR. PHIL WALSACK: Good morning, Phil Walsack, from
19 Missouri Public Utility Alliance. Last Commission
20 meeting we talked about this variance quite a bit.
21 One of our -- one of the municipal governments'
22 issues with this particular variance is that we
23 separate this community from others.

24 This is a very unique situation. They will not
25 be able to hit the 107 parts per billion of zinc in

1 the effluent, period, they can't hit it. Okay?
2 There's too much mine waste. There's too much chat
3 along and around the collection system. The
4 mechanism we get there is a variance, it could be
5 other things, but what we don't want to see happen is
6 this variance get applied to other cities in
7 Missouri, which is the larger legal arm of government
8 be responsible be mandated to tell cities that they
9 have to fix something when they don't have an elected
10 body to do that.

11 That gives us trepidation for Springfield, for
12 Joplin, for lots and lots of Missouri communities who
13 have either separate sanitary sewer collection
14 systems or co-owned or co-funded systems. This is
15 very interesting ground to be walking across and we
16 don't want to see this start being applied broadly
17 throughout the state. That's why we commented on
18 this that we want this unique situation to be just
19 that, unique.

20 Don't apply this to other people who just happen
21 to have a collection system that drain to their
22 wastewater treatment plant. This will be a long
23 project to complete. You don't just knock down I & I
24 in three or four years. This is a multi-year maybe
25 even multi-decade project. And through that period

1 the cities need to -- the effluent may not hit 107
2 for some number of years maybe eight, ten, 12, 15
3 years yet. This is soil that was rich in mining and
4 that's why it's there. That's why these communities
5 exist today.

6 We want to make sure that this situation is
7 unique, keep it unique and help these guys get into
8 compliance and it may be 20 years from now to hit their
9 number, but we've just got to protect them so that
10 they don't become in violation so they can continue
11 to work on a project and a problem without being in
12 constant in violation.

13 Thank you.

14 CHAIRMAN HARDECKE: Thank you.

15 Okay. Any other comments, questions?

16 (No response.)

17 CHAIRMAN HARDECKE: I guess we'd be ready for your
18 motion, Jan.

19 **COMMISSIONER TUPPER:** Ron, this is Jan Tupper.

20 I -- I don't disagree I -- the EPA activities
21 have made a great impact and I agree with what was Phil
22 said. I think this is an opportunity to keep this
23 project moving forward.

24 **And I move the Commission approve the variance**
25 **request for a five-year period with the conditions**

1 included in the Staff recommendations and those
2 presented this morning.

3 COMMISSIONER LEAKE: Second.

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

5 MS. MALINDA OVERHOFF: Commissioner Leake?

6 COMMISSIONER LEAKE: Yes.

7 MS. MALINDA OVERHOFF: Commissioner Easley?

8 COMMISSIONER EASLEY: Yes.

9 MS. MALINDA OVERHOFF: Commissioner Tupper?

10 COMMISSIONER TUPPER: Yes.

11 MS. MALINDA OVERHOFF: Commissioner Hunter?

12 VICE-CHAIR HUNTER: Yes.

13 MS. MALINDA OVERHOFF: Chair Hardecke?

14 CHAIRMAN HARDECKE: Yes.

15 No. 6.

16 MR. JOHN RUSTIGE: Okay. In February the **Empire**
17 **District Electric Company** submitted a complete
18 variance application regarding their Asbury Plant.
19 They're seeking to extend a variance for a period of
20 five years from applicable Water Quality Standards
21 for sulfate and chloride while they work with the
22 Department to establish a site specific standard for
23 these pollutants.

24 The plant's cooling water blow-down and ash pond
25 overflow both discharge to Blackberry Creek which is

1 a tributary to Spring River in Jasper County. The
2 cooling water is supplied from deep wells that
3 contain naturally high levels of chloride and
4 sulfate. The cooling water discharge does frequently
5 exceed the Water Quality Standard of 100 -- I'm sorry
6 -- 1,000 milligrams per liter. Blackberry Creek is
7 impaired for sulfate and chloride and is on the
8 303(d) List.

9 Empire District has conducted an assessment of
10 the aquatic community in Blackberry Creek and their
11 assessment concludes that it compares favorably to
12 communities found in control streams. Empire
13 District has also conducted whole effluent toxicity
14 testing using both fathead minnows and Daphnia. And
15 the tests show that the effluent passes the seven day
16 chronic test. The water has a high level of
17 hardness, which does reduce the toxic effect of these
18 pollutants.

19 The previous variance included a condition that
20 required Empire District to conduct a preliminary
21 review of technical options to address this
22 situation, but they were not able to indentify an
23 approach that was cost affective. So with that
24 background we'd offer the following findings:

25 The water supply that supplies the cooling

1 system does indeed have high natural background
2 levels of sulfates and chlorides. The water that
3 runs over previously mined land on the site further
4 contributes to the sulfate and chloride
5 concentrations.

6 Under the previous variance Empire District has
7 investigated options to meet appropriate effluent
8 concentrations. They have shown that the options are
9 technically feasible, but not cost affective. And we
10 believe that the technical options do come at a
11 significant cost and the resulting benefits do not
12 appear to be cost effective.

13 In addition, under that variance, Empire
14 District has not developed site specific water
15 quality criteria that we could incorporate into the 2012
16 triennial review. We'd also conclude that no adverse
17 affects to the aquatic community have been noted
18 while conducting the whole effluent toxicity tests.

19 So with these findings the Staff would make a
20 preliminary recommendation to issue a variance with
21 the following conditions:

22 That by August 31st of 2010, Empire District will
23 submit a quality assurance project plan for the
24 collection of data and for a detailed method to
25 develop a site specific water quality criteria for

1 Blackberry Creek. The Department shall review these
2 documents within 60 days and make a determination on
3 whether to proceed with the formal development of the
4 site specific criteria.

5 Empire District shall continue to conduct whole
6 effluent toxicity testing as required in the permit.
7 If -- if the Department's review of that project plan
8 indicates that the development of a site specific
9 criteria is feasible and workable then Empire
10 District shall complete that study by March 31st,
11 2011. The Department should then -- shall then
12 include this information in the next triennial review
13 by incorporating this into the rulemaking effort.
14 And that rulemaking effort is scheduled for formal
15 proposal by March 12th, 2012.

16 And then upon the effective date of that rule
17 Empire District will be required to meet the site
18 specific standard and the variance will be
19 terminated. However, if the Department reviews the
20 project plan and determines that the development of a
21 site specific criteria is not feasible, not workable
22 then the Department will notify Empire District and
23 the facility will be required to meet the applicable
24 Water Quality Standards by October 31st, 2013. And
25 that will provide approximately three years for the

1 facility to meet the current standards.

2 With that I'd note that we're not asking the
3 Commission for any action on this variance at this
4 time. This presentation is just for information only
5 and then we intend to take the public notice -- we
6 intend to public notice the variance and then take
7 comments and then bring it back before the Commission
8 for approval at the next meeting.

9 CHAIRMAN HARDECKE: Okay. Thank you.

10 MR. JOHN RUSTIGE: Any questions of what we're doing?

11 (No response.)

12 MR. JOHN RUSTIGE: Okay. Thank you.

13 CHAIRMAN HARDECKE: Trent Stober.

14 MR. TRENT STOBER: Good morning, again, Trent Stober
15 with Geosyntec Consultants, again, representing
16 Empire District Electric. We also have several
17 representatives with Empire in the audience today;
18 two that are available if there's any comments and
19 questions.

20 We have been working with the Department for
21 quite some time on this issue and appreciate all of
22 the efforts that have gone into helping us work
23 through those. We do have a few comments that --
24 we've discussed some with Staff that we can vet out
25 during the public comment period essentially with the

1 schedule that, I think, will still meet the intent
2 that the Department had in drafting their
3 recommendations.

4 And then just to carry on as John mentioned we
5 hope to have a submittal in front of you for the 2012
6 triennial review and plan to work with the
7 Department, U.S. EPA and other agencies to -- to
8 develop appropriate site specific criteria.

9 So with that I'll ask for any questions.

10 CHAIRMAN HARDECKE: Questions?

11 (No response.)

12 MR. TRENT STOBBER: Thank you.

13 CHAIRMAN HARDECKE: Thank you.

14 **No. 7.**

15 MR. REFAAT MEFRAKIS: Good morning,
16 Commission. If it's okay by you Mark Matthews from
17 EPA would like to give you a follow-up on the
18 discussion we had at the last Commission meeting on
19 the short-term E. coli limits and the recent appeal
20 of a permit regarding not having short-term limits
21 for bacteria. So if it's okay with you --

22 CHAIRMAN HARDECKE: Yeah.

23 Why don't we take a short break?

24 MR. REFAAT MEFRAKIS: Okay.

25 CHAIRMAN HARDECKE: We don't want to get done before

1 we get a break in.

2 (Laughter.)

3 MR. REFAAT MEFRAKIS: Sure. Okay.

4 COMMISSIONER LEAKE: I appreciate that.

5 CHAIRMAN HARDECKE: Fifteen minutes.

6 MR. REFAAT MEFRAKIS: No problem. Okay.

7 And it's okay for Mark --

8 CHAIRMAN HARDECKE: Yes, that's fine.

9 MR. REFAAT MEFRAKIS: Okay.

10 (Break in proceedings.)

11 CHAIRMAN HARDECKE: We're going to get started,

12 again.

13 COMMISSIONER TUPPER: Okie-doke.

14 CHAIRMAN HARDECKE: Okay. We'll start with Mark.

15 MR. MARK MATTHEWS: Morning, Commissioners. Mark

16 Matthews, EPA Region 7. You'll remember at the last

17 Commission meeting you-all approved new -- some

18 revisions to the effluent guidelines and one of those

19 being the E. coli limits. And we had a discussion

20 about even though the new regs have monthly limits

21 specified in the regulation. I was pointing out that

22 40 CFR 122.45(d)(2) requires for continuously

23 discharging POTWs that there needs to also be at

24 least weekly bacterial limits.

25 The problem was that we did not have -- there

1 was no EPA recommended method for deriving those
2 limits at that time. You asked me to come back when
3 we did get a method and just last week EPA
4 Headquarters forwarded to Region 7 a method for
5 deriving those weekly limits. And I have a copy here
6 for each of you. I can pass them out or leave them.

7 And I would note that in the cover memo to that
8 method I just would like to point out the last
9 sentence of the first paragraph. It says that
10 permits that contain only seasonal or monthly limits
11 and do not also contain a short-term limit would not
12 be consistent with the federal regulations.

13 So since the last Commission meeting there was a
14 draft permit put on public notice for Lake
15 Tishomingo, which contained only monthly E. coli
16 limits. So it was EPA's duty to object to that
17 permit and we did issue an objection. And I've got a
18 copy of that objection here, also. I should pass
19 that out.

20 So that's what this objection is all about, the
21 fact that the permit contains only a monthly E. coli
22 limit. After we issued this objection just a couple
23 days later we got the final method in. We have
24 forwarded that final method to the Department so that
25 they -- and we have been sending them drafts so that

1 they can be part of the development process.

2 So if you have any questions, I guess, about
3 that I can try to answer those at this time.

4 (No response.)

5 CHAIRMAN HARDECKE: Jan, we'll have Malinda send you
6 a copy of these --

7 COMMISSIONER TUPPER: Okay.

8 CHAIRMAN HARDECKE: -- reports.

9 MR. MARK MATTHEWS: And by the way, the Commission
10 was concerned about what EPA was doing in the other
11 states with respect to this, also, and we have
12 forwarded this method on to -- to other states in our
13 region that -- that need to see it. And we're
14 beginning dialog with them about how they can
15 implement this also.

16 CHAIRMAN HARDECKE: Okay.

17 Any questions?

18 (No response.)

19 CHAIRMAN HARDECKE: Probably not until we read it.

20 MR. MARK MATTHEWS: Okay.

21 CHAIRMAN HARDECKE: Refaat, do you have any further
22 comments?

23 MR. REFAAT MEFRAKIS: Yes.

24 This is Refaat Mefrakis. Just to follow-up on
25 here we are evaluating the new method and we're

1 looking on making a response to the -- the objection
2 -- interim objection here. We -- currently we're not
3 putting permits on hold. We are going to continue to
4 use fecal in the current regulation, in the permit
5 until June 30th. That's when the adopted rule will be
6 effective. E. coli will be effective as of July 1st.
7 So we've got a little time here and I suspect that
8 we'll engage with our stakeholder workgroup and
9 figure out how we -- to proceed to issue permits.

10 If we don't come up with a plan obviously we're
11 going to probably put permits on hold and we're going
12 to have to act -- at the next Commission meeting
13 we'll give you an additional update, so --

14 CHAIRMAN HARDECKE: Okay.

15 MR. REFAAT MEFRAKIS: Okay.

16 The **permit report begins on Tab No. 7.** The
17 first graph obviously the print didn't show when --
18 when we made copies, and -- but it's supposed to show
19 that our backlog is below the 10 percent threshold.
20 That's -- we're -- we're making progress, however, if
21 you look at the next page there's a projected permit
22 expirations. This is our workload over a five-year
23 period and as you can see there will be a spike of
24 permits coming in between July 2010 and end of July
25 2011.

1 There's even a larger spike under general
2 permits and that's because of the general permit for
3 CAFO. MOG will be expired on February 11th, 2011.
4 There are about 500 facilities that will need to get
5 a renewal.

6 If you have any questions on those two, our
7 backlog and workload?

8 (No response.)

9 MR. REFAAT MEFRAKIS: If you flip to the next page
10 the Department is using a new database. We have
11 replaced our existing databases. We have three
12 databases that we keep track of permits and -- and
13 DMR reports. Now, we have one database. So what
14 I've done is; I printed a snapshot of permits that
15 have been issued for the -- during the two weeks of
16 April. And I tried to do that for -- for -- since the
17 -- since the last Commission, but ended up with like
18 38 pages so I didn't want to flood you with paper
19 here so I figure what I'll do is give you a snapshot
20 since we're really going through a transition period
21 right now and I'm trying to formulate a different
22 reporting sys- -- reporting for you.

23 But if you prefer that -- this type of report
24 we'll do that. I understand you're getting that as
25 well in an e-mail. Okay? So, I think, what you'd be

1 interested in is maybe some graphs and numeric
2 projection and statistics on how we're doing
3 with permits. That's -- that's my preferred method
4 so I'll continue to do this.

5 CHAIRMAN HARDECKE: Is everyone getting the e-mail
6 permits?

7 (No response.)

8 MR. REFRAAT MEFRAKIS: Right. And so as I figured
9 out, I went through the training on how to do the
10 reporting, hopefully by the next Commission meeting
11 I'll provide you with more statistics on our
12 permitting production.

13 Moving on, you'll have to flip about six, seven
14 pages. We have a table that represents master
15 general permits. And, I think, we're on top of those
16 general permits, so --

17 Unless you have other questions, I'll move on to
18 the next report is our water quality review sheet
19 assistance --

20 CHAIRMAN HARDECKE: I --

21 MR. REFAAT MEFRAKIS: Okay.

22 CHAIRMAN HARDECKE: -- I have one question --

23 MR. REFAAT MEFRAKIS: Sure.

24 CHAIRMAN HARDECKE: -- on the -- it would be back to
25 the CAFO permits. The -- the increase in fees is --

1 what's -- what's the situation? Or for maybe Davis,
2 I don't know if --

3 MR. REFAAT MEFRAKIS: Okay. Yeah. I'll probably --

4 CHAIRMAN HARDECKE: -- you are commenting on -- I
5 have some questions on --

6 MR. REFAAT MEFRAKIS: Sure. I'll probably defer that
7 -- that to Leanne or to Davis, but --

8 CHAIRMAN HARDECKE: We can do that when you're --
9 when you're done. You can go ahead and finish.

10 MR. REFAAT MEFRAKIS: Okay. After I get done and
11 then he has questions about the CAFO fees and how
12 this will play out in the future, so --

13 On Page 379 if you got lost here. Those are the
14 water quality review sheets/antidegradation reviews.
15 We've -- do to slow construction period we haven't
16 really been getting a lot of requests. Since the
17 last Commission meeting we have gotten about ten
18 requests and currently we have nine active. And two
19 active -- I'm sorry -- four are active -- been active
20 since -- or they -- they've been active for over two
21 months, so --

22 Again, we're moving forward with implementation
23 of antidegradation. We haven't seen a downside yet
24 or a snag in the process. So -- so that -- that's --

25 Now, towards the end on Page 385 there is the

1 CAFO and ag chemical construction permits. The very
2 first -- the very top permit -- construction permit
3 it says there, comes off of public notice on April
4 30th, actually it says 26 and it's actual- -- we're
5 changing that to 30th, so we are expecting to issue
6 those permits in the next week or two here, so --

7 Otherwise, we're doing pretty good on issuing
8 those permits on time. The bottom three they're
9 still in technical review, so --

10 And that concludes my permits and engineering
11 report. Unless you have any other questions?

12 CHAIRMAN HARDECKE: Any other questions for Refaat?
13 (No response.)

14 MR. REFAAT MEFRAKIS: No. Thank you.

15 CHAIRMAN HARDECKE: Okay.

16 You want to make a comment on the per- -- CAFO
17 permit, please.

18 MR. PHIL WALSACK: Let me just make a comment, Phil
19 Walsack, from Missouri Public Utility Alliance. The
20 feds have given you guys some paperwork. We're
21 firing up these Xerox machines so that we too get a
22 copy of that paperwork. So for anybody who wants
23 we're trying to do that immediately so that we have -
24 - we're on the same page.

25 CHAIRMAN HARDECKE: Okay.

1 MR. PHIL WALSHACK: Thank you.

2 MR. DAVIS MINTON: Good morning, Commissioners. It's
3 been a while. What can I --

4 CHAIRMAN HARDECKE: I just had some questions about
5 the situation with the CAFO permit fees and so you
6 got any comments you want to make on that.

7 MR. DAVIS MINTON: I think, I think, probably to
8 address your main concern is the new permit that
9 we'll be developing.

10 It's referred to as a site specific permit. In
11 statute the existing permit level is \$3,500 and, I
12 think, that's where it creates a lot of the concern
13 by -- by the permit holders. It's the Departments
14 position right now and it's my understanding that the
15 course of action that we're pursuing is we're
16 developing a new permit hence there won't be -- we
17 won't be sending out or you won't be applying for the
18 \$3,500 site specific permit that we have in place now.

19 And that \$3,500 fee then will not apply to this
20 new -- to a new permit because we're actually
21 developing a new permit and hence that -- the
22 establishing of that permit fee will be as a result
23 of stakeholder input, the General Assembly's input so
24 the Department would -- well, at this point in time,
25 certainly is not looking at a continuation or the

1 moving forward with the present fee structure that we
2 have in place now.

3 That won't be applicable to the permits that
4 we're developing right now. I think that's probably
5 the main concern that you -- that all permit holders
6 -- and -- and the unfortunate thing or -- is that the
7 permit title as we refer to it in the general public
8 is the same as -- as the same title name that's on
9 the permit that we have now which is causing
10 confusion, but we are in fact developing a new rule
11 hence a new permit fee structure.

12 CHAIRMAN HARDECKE: Is -- is there going to be any
13 communication to those permit holders of how this
14 process will work so that they don't get --

15 MR. DAVIS MINTON: Absolutely. And we'll -- you
16 know, we're going through, I think, I would have to
17 ask Darrick, but, I think, we have a stakeholders
18 meeting up in June -- that starts again in June; is
19 that right, Darrick?

20 (No response.)

21 MR. DAVIS MINTON: And so we'll start educating
22 people at that point in time and do whatever
23 communication that we have to the
24 existing permit holder that we have now.

25 Anything else?

1 (No response.)

2 CHAIRMAN HARDECKE: Thank you.

3 MR. DAVIS MINTON: Thank you.

4 CHAIRMAN HARDECKE: Okay.

5 **Tab No. 8**, Joe.

6 MR. JOE BOLAND: Good morning, again, Joe Boland,
7 with the Financial Assistance Center. This will be very
8 brief, first item, again, is, I'm beginning to sound
9 like a broken record, update on our bond sale. We've received
10 almost 300 applications for this \$50 million in bonds
11 that we sold in 2007. To date, we've gotten about
12 120 million in project applications. And we've
13 awarded almost \$35 million to date.

14 So we have a little under \$20 million to go.
15 That sounds like a lot, but we have a lot of projects
16 in the queue right now that are going to be going this
17 spring and this summer and, in fact, we've given a
18 deadline of August -- August 1st to be in construction
19 or have bids, bids let. So we're communicating with
20 -- with all these applicants and all the folks we've
21 committed funding to, to let them know they really
22 have to start moving and we're seeing a lot of
23 activity right now. So a lot of -- a lot of
24 construction will be going on this summer.

25 Any -- any questions on the bonds on the rural

1 water or rural sewer grants or Forty Percent?

2 COMMISSIONER EASLEY: Of the \$35 million awarded do
3 you know how many different entities that involved?

4 MR. JOE BOLAND: Ooh, that's a good question. Taking
5 a guess -- I can get you that information actually.

6 COMMISSIONER EASLEY: Just a guess is okay.

7 MR. JOE BOLAND: Guessing, boy, it could be anywhere
8 50 to 60 entities. So it's quite a list of different
9 participants in different programs 'cause that --
10 that includes some water facilities, drinking water
11 facilities on the rural water side, rural sewer
12 applicants as well as Forty Percent Grant
13 participants, so -- but we can get you that
14 easily enough.

15 Any other questions on that?

16 (No response.)

17 MR. JOE BOLAND: On the ARRA funding update, again,
18 we met our February 17th deadline to push out 100- --
19 about \$105 million in ARRA funding to the wastewater
20 projects. The important thing to note for us is we
21 added \$115 million in regular program funding to that
22 \$105 million to get all those projects done and
23 funded. So we're very, very proud of that. And,
24 again, that represents a lot of projects and a lot of
25 -- on the wastewater side it was 44 different

1 recipients for multiple projects. Again, that --
2 that represents a lot of construction this summer.
3 It's really starting to gear up.

4 As of the middle of April we had only pushed out
5 \$12 -- about \$13 million in invoices we've received so
6 it will really start ramping up here in the next
7 month or so.

8 Any questions on the stimulus funding on the
9 ARRA projects?

10 VICE-CHAIR HUNTER: Joe, is there a deadline or time
11 schedule when these funds have to be --

12 MR. JOE BOLAND: Expended?

13 VICE-CHAIR HUNTER: Um-huh.

14 MR. JOE BOLAND: The -- yeah, the primary deadline
15 was to have all contracts executed by February 17th.

16 VICE-CHAIR HUNTER: Right.

17 MR. JOE BOLAND: Now, the funding; we have our normal
18 four-year capitalization grant deadline to get the
19 money expended.

20 VICE-CHAIR HUNTER: Okay.

21 MR. JOE BOLAND: And some of these projects will be
22 over three years into construction, some of the large
23 projects. So -- so we -- I have no doubt we'll meet
24 those deadlines whatsoever.

25 All right. Now, a brief update on our 2011

1 Intended Use Plan we're hoping -- we're still having
2 internal discussions on this IUP. If you
3 recall the 2010 federal appropriation that will fund
4 the 2011 IUP comes with some new stipulations, some
5 new requirements that are very similar to the ARRA
6 funding. And that specifically is what we have to have a
7 green project reserve of 20 percent. We have to
8 enforce Davis-Bacon Wage Determination. And the
9 biggest issue for us is the additional subsidization.
10 Similar to ARRA we have to provide some of this as
11 grants or principle forgiveness or negative interest
12 loans.

13 And we're still having internal
14 discussions with our management on exactly how we
15 want to implement that moving forward. So we'll at
16 the next meeting we're hoping to -- we'll have
17 something before you to -- we'll have something on
18 public notice and for your review at our next
19 meeting, so --

20 Any questions on that?

21 (No response.)

22 MR. JOE BOLAND: All right.

23 CHAIRMAN HARDECKE: Good. Thank you.

24 MR. JOE BOLAND: Thank you.

25 CHAIRMAN HARDECKE: Leanne.

1 MS. LEANNE TIPPETT MOSBY: I was not able to be in
2 attendance at the March meeting. I just wanted to
3 take this opportunity to recognize Joe Boland and his
4 staff and the financial and admin staff that worked
5 on implementing the ARRA funds for the state of
6 Missouri for the water and wastewater projects. It
7 was no small task, believe me. I cannot tell you, I
8 cannot overstate the amount of pressure that these
9 people were under and they really rose to the
10 occasion.

11 And it's just a testament to the quality of our
12 Staff that we implemented every dollar for the state
13 of Missouri that we were entitled to and I just
14 wanted you to know that the Department and the
15 Division very much acknowledged their efforts as
16 well.

17 CHAIRMAN HARDECKE: That's good. Thank you. And
18 thank you to you and your staff, Joe.

19 Phil.

20 MR. PHIL WALSACK: Phil Walsack, Missouri Public
21 Utility Alliance. I'm being a little pragmatic here
22 so I think we have \$120 million worth of projects.
23 That means we have \$70 million worth of projects left
24 to fund.

25 If that's the right answer then we got a lot

1 more work to do. We need to stop having internal
2 discussions about the money and get it out there
3 'cause I have a lot of members and I have a lot of
4 cities that want to build something. As you well
5 know the EPA's assessment of needs in Missouri was
6 woefully low based on how many people came forward
7 and wanted projects to be built.

8 So we have \$70 million that's currently in the
9 kitty for 2011 Intended Use Plan and we have got to
10 move on that 'cause some of these folks took the ARRA
11 opportunity, wanted to be ready to go with projects
12 and now we need to build something.

13 We got to move the money so we can build the
14 infrastructure that the feds say we need to have.
15 And I understand the pressure. And we need to not
16 succumb to the pressure and we need to keep the money
17 moving for municipal governments in Missouri. And if
18 anybody was watching the news the last couple of days
19 with the ten-foot water main that busted in -- in
20 Boston with two million people on a boil water
21 notice. This is the real deal. Okay?
22 Infrastructure is important. We need to keep funding
23 it here in Missouri.

24 So I acknowledge the Staff has done an
25 incredible job at rebuilding their funding stream and

1 now this is the pace we keep from hence forth. And I
2 know that hurts, but we have a lot of work to do,
3 yet, and we got to keep the money moving.

4 Thank you.

5 CHAIRMAN HARDECKE: Thank you.

6 Got any reports, Scott?

7 MR. SCOTT TOTTEN: I'd just like to report that the -
8 - that EPA was in since our last meeting reviewing
9 our NPDES Program and that we in general had pretty
10 good comments from them about their review. They
11 will be writing up a formal report. And when we get
12 that we will make sure -- I'll have copies of that.

13 They were also in reviewing the SRF Program and
14 -- and good comments about the efforts there, also.
15 So we'll get you copies of those reports as soon as
16 we get those.

17 CHAIRMAN HARDECKE: Okay.

18 Anything else, Jenny?

19 MS. JENNIFER FRAZIER: Do you want me to report on
20 the NAS Study.

21 CHAIRMAN HARDECKE: Yeah, that'd be good.

22 MS. JENNIFER FRAZIER: Thank you.

23 I just like to report that I had the good
24 fortune of spending last week in Bismarck, North
25 Dakota, at a Missouri River Implementation Committee

1 meeting and I did learn at that meeting that the NAS
2 Study on sediment in the Missouri River is due to be
3 issued hopefully towards the end of August is what
4 they told the Committee, so --

5 CHAIRMAN HARDECKE: Okay. Thank you.

6 Anything else to come before the Commission?

7 (No response.)

8 CHAIRMAN HARDECKE: If not, we'll entertain a motion
9 to adjourn and let the record reflect it's eleven
10 o'clock.

11 (Laughter.)

12 COMMISSIONER LEAKE: So moved, Mr. Chairman.

13 VICE-CHAIR HUNTER: Second.

14 CHAIRMAN HARDECKE: We'll vote on that, Malinda.

15 MS. MALINDA OVERHOFF: Commissioner Easley?

16 COMMISSIONER EASLEY: Yes.

17 MS. MALINDA OVERHOFF: Commissioner Tupper?

18 COMMISSIONER TUPPER: Yes.

19 MS. MALINDA OVERHOFF: Commissioner Hunter?

20 VICE-CHAIR HUNTER: Yes.

21 MS. MALINDA OVERHOFF: Commissioner Leake?

22 COMMISSIONER LEAKE: Yes.

23 MS. MALINDA OVERHOFF: Chair Hardecke?

24 CHAIRMAN HARDECKE: Yes.

25 (Tape One, Side B concluded.)

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Respectfully Submitted,

Scott B. Totten
Acting Director of Staff