

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

4
5 MEETING OF:

6
7 MAY 6, 2009

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10
11 CONDUCTED BY:

12
13 CHAIRPERSON KRISTIN M. PERRY

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18 TRANSCRIBED FROM AUDIOTAPES BY:

19 DANIELLE Y. MOSER

20 MIDWEST LITIGATION SERVICES

21 3432 WEST TRUMAN BOULEVARD

22 SUITE 207

23 JEFFERSON CITY, MISSOURI 65109

24 (573) 636-7551

25 (573) 636-9055 Facsimile

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

2 CHAIRPERSON PERRY: Okay.

3 Let the meeting of the Clean Water
4 Commission come to order.

5 And the first thing I want to point out is
6 there is an amended agenda to this meeting in the
7 back of the room. Do the Commissioners have one?

8 MS. MALINDA OVERHOFF: In the blue packet.

9 CHAIRPERSON PERRY: All right.

10 I'll start with introductions. To my right is
11 Commissioner Ron Hardecke from Owensville, to his
12 right is Commissioner Sam Hunter from Sikeston, next
13 is Commissioner Frank Shorney from Lees Summit and at
14 the end is Bill Easley from Cassville, Missouri.

15 Jan, are you with us?

16 (No response.)

17 CHAIRPERSON PERRY: We will have Commissioner Tupper
18 join us by telephone. To my left is Earl Pabst
19 acting-Director of the staff for the Commission and
20 acting-Director of the Water Protection Program,
21 Deputy Director, Division of Environmental Quality.

22 (Commission proceeds to get connection for
23 Commissioner Tupper to appear by teleconference.)

24 CHAIRPERSON PERRY: Good morning, this is Kirstin.

25 Would the people on the line, please, identify

1 yourselves?

2 COMMISSIONER TUPPER: Good morning, Kristin. Jan
3 Tupper.

4 CHAIRPERSON PERRY: Thank you, Jan, for joining us
5 today.

6 Is there anyone else on the conference call?
7 (No response.)

8 CHAIRPERSON PERRY: So those other two callers must
9 have hung up; is that correct?

10 COMMISSIONER: Jan called more --

11 CHAIRPERSON PERRY: Pardon?

12 COMMISSIONER: Jan called in.

13 CHAIRPERSON PERRY: Jan did you happen to call in
14 three times?

15 COMMISSIONER TUPPER: Are you talking to me?

16 CHAIRPERSON PERRY: Yes. Can you hear me?

17 COMMISSIONER TUPPER: I can just barely hear you.

18 CHAIRPERSON PERRY: Would the microphone make it any
19 louder for him?
20 Can you hear me now?

21 COMMISSIONER TUPPER: That's better. Yes.

22 CHAIRPERSON PERRY: Did you happen to call in three
23 times?

24 COMMISSIONER TUPPER: Yes.

25 CHAIRPERSON PERRY: Okay. That explains it. We were

1 looking for the mystery people on the conference
2 call.

3 I have just introduced --

4 COMMISSIONER TUPPER: I had to leave and so I called
5 back and then I had to leave again.

6 CHAIRPERSON PERRY: I appreciate very
7 much your efforts to participate by conference call.

8 And to the people in the room the person on the
9 line is Commissioner Jan Tupper from Joplin,
10 Missouri.

11 With that we shall proceed.

12 This is a hearing. The Commission will begin
13 it's **public hearing on the proposed amendment to rule**
14 **10 CSR 20-7.031, Water Quality Standards.** These rule
15 changes were published for public comment in the
16 Missouri Register, Volume 34, Number 5 on March 2nd,
17 2009.

18 The purpose of this public hearing is to
19 provide the public an opportunity to comment on the
20 proposed amendment. This public hearing is not a
21 forum for debate or resolution of issues.

22 The Commission asks that testimony be precise
23 and to the point and be as brief as possible. The
24 Commission will first hear from the Department staff.
25 The public will then have an opportunity to comment.

1 We ask that all individuals providing testimony fill
2 out an attendance card so our records are complete.

3 Please remember to show on the card your desire
4 to testify on this proposed rule amendment so that I
5 can tell -- I can call you to the microphone. When
6 you come forward to present testimony, please, speak
7 clearly in to the microphone and begin by identifying
8 yourself to the court reporter.

9 Following the public hearing, today, the
10 Department will review the testimony presented along
11 with any further comments on the proposed rule
12 received during the comment period that ends on May
13 13th, 2009.

14 The Commission plans to review the Department's
15 final recommendation on the proposed rule at the
16 meeting scheduled for July 1st, 2009. The Commission
17 will decide at that meeting whether to accept the
18 Department's recommendation.

19 The court reporter will now swear in anyone
20 wishing to testify at this public hearing before the
21 Clean Water Commission, today. All those wishing to
22 provide testimony, please stand.

23 (Public Hearing heard in regards to Proposed
24 Amendment to 10 CSR 20-7.031, Water Quality
25 Standards, presented by Phil Schroeder, Water Quality

1 Monitoring and Assessment, transcribed by Ms. Monnie
2 VanZant of Midwest Litigation Services, 3432 W.
3 Truman Boulevard, Suite 207, Jefferson City,
4 Missouri, 65109. Transcript of the public hearing
5 proceedings will be found in a separate transcript
6 provided by Ms. Monnie VanZant.)

7 (Tape One, Side A concluded.)

8 CHAIRPERSON PERRY: The Commission will continue to
9 accept written comments on the proposed amendment to
10 rule 10 CSR 20-7.031 until 5 p.m. on May 13th, 2009.

11 Please submit your written comments to Phil
12 Schroeder, Water Protection Program, Missouri
13 Department of Natural Resources, P.O. Box 176,
14 Jefferson City, Missouri, 65102.

15 On behalf of the Commission I thank everyone who
16 has participated in this process. This hearing is
17 now closed.

18 And as one door closes another one opens.

19 The Commission will begin **public hearing on the**
20 **proposed rule changes to the Storm Water Regulations**
21 in Volume 34, Number 5, on March 2nd, 2009.

22 The purpose of this public hearing is to provide
23 the Department an opportunity to present testimony
24 and to provide both the Department and the public the
25 opportunity to comment on this proposed rulemaking.

1 This public hearing is not a forum for debate or
2 resolution of issues.

3 The Commission asks that testimony be precise
4 and to the point. The Commission will first hear
5 from the Department following the Department's
6 testimony the Commission will give the public an
7 opportunity to comment. We ask that all individuals
8 providing testimony fill out an attendance card so
9 our records are complete.

10 If you wish to present verbal testimony,
11 please, indicate that on your attendance card. The
12 Commission is holding this hearing to assist the
13 public in commenting on the proposed rulemaking. The
14 public comment period will close on May 13th, 2009, at
15 5 p.m. When you come forward to present testimony,
16 please, speak into the microphone and begin by identifying
17 yourself to the court reporter.

18 The court reporter will now swear in anyone
19 wishing to testify at this public hearing before the
20 Clean Water Commission, today. All those wishing to
21 provide testimony, please, stand.

22 We'll begin with staff. You still with us,
23 Jan?

24 (No response.)

25 (Public Hearing heard in regards to Proposed

1 Amendment to 10 CSR 20-6.200, Storm Water
2 Regulations, presented by John Rustige, Permits and
3 Engineering, transcribed by Ms. Monnie VanZant of
4 Midwest Litigation Services, 3432 W. Truman
5 Boulevard, Suite 207, Jefferson City, Missouri,
6 65109. Transcript of the public hearing proceedings
7 will be found in a separate transcript provided by
8 Ms. Monnie VanZant.)

9 CHAIRPERSON PERRY: Was there anyone else to testify
10 on this matter?

11 (No response.)

12 CHAIRPERSON PERRY: The Commission will receive
13 written testimony on these proposed rule changes
14 until 5 p.m. on May 13th, 2009. You may submit this
15 written testimony to John Rustige, Missouri
16 Department of Natural Resources, Water Protection
17 Program, P.O. Box 176, Jefferson City, Missouri,
18 65102, prior to that deadline.

19 On behalf of the Commission I thank everyone who
20 participated in this process. This hearing is now
21 closed.

22 Okay.

23 There is a motion being rumbled at this
24 Commission to take a short break. Reiterate the word
25 "short". I see it is 10:30 we will

1 resume speaking at 10:40. So be back in ahead of time.

2 (Break in proceedings.)

3 (Tape One, Side B concluded.)

4 CHAIRPERSON PERRY: -- fired up about a conversation
5 here, I'm the cause of the delay.

6 VICE-CHAIR HARDECKE: You violated your own rule.

7 CHAIRPERSON PERRY: I have violated my own rule.

8 I understand there is some sort of penalty form
9 policy that has been passed somewhere -- I will pay
10 whatever it is.

11 I would like to -- as I'm sure most of you in
12 the room know this is my last Clean Water Commission
13 meeting. After having served nine years plus. The
14 person who has been appointed to be on the Commission so
15 we have a full Commission is Mr. Sam Leake, who is
16 the back of the room.

17 It's my understanding he is waiting full Senate
18 approval tomorrow having been approved by the sub-
19 committee, today, so it's not quite official so I
20 will continue to serve through the meeting today,
21 lucky you. But welcome Sam Leake and we will be
22 happy to answer any questions you may have along the
23 way. Please come up front so you can see and hear
24 everything.

25 MR. SAM LEAKE: (Complete statement inaudible.)

1 CHAIRPERSON PERRY: Thank you very much.

2 And he is from northeast Missouri.

3 MR. SAM LEAKE: Correct.

4 CHAIRPERSON PERRY: So those of us, -- i.e. me, was
5 afraid our part of the state would no longer have
6 representation, that problem has been solved.

7 Thank you again.

8 Okay. Now, we go on. **Tab No. 3 is approval of**
9 the minutes.

10 The Chair will entertain a motion.

11 MS. MALINDA OVERHOFF: She has his card --

12 COMMISSIONER HUNTER: Madam Chair, I --

13 CHAIRPERSON PERRY: Oh. I am so sorry, gentlemen.

14 I do have a card. Robert would like to address
15 us on the minutes. Robert.

16 MR. ROBERT BRUNDAGE: (Complete statement inaudible).

17 CHAIRPERSON PERRY: Okay. Yeah. But you put No. 3.

18 Tab No. 3 is the minutes. There is a thing in the
19 minutes where it says ooh, ooh and its spelled e-w-e,
20 e-w-e.

21 (Laughter.)

22 CHAIRPERSON PERRY: And it is -- unfortunately, it is
23 even quoting me. So maybe that's what I meant. I
24 don't remember. So I didn't --

25 Nothing, Robert? Okay.

1 Now, I will entertain the motion. Sorry for the
2 interruption.

3 COMMISSIONER HUNTER: I move the minutes be accepted.

4 VICE-CHAIR HARDECKE: Second.

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

7 MS. MALINDA OVERHOFF: Commissioner Easley?

8 COMMISSIONER EASLEY: Yes.

9 MS. MALINDA OVERHOFF: Commissioner Shorney?

10 COMMISSIONER SHORNEY: Yes.

11 MS. MALINDA OVERHOFF: Commissioner Tupper?

12 COMMISSIONER TUPPER: Yes.

13 MS. MALINDA OVERHOFF: Commissioner Hunter?

14 COMMISSIONER HUNTER: Yes.

15 MS. MALINDA OVERHOFF: Commissioner Hardecke?

16 VICE-CHAIR HARDECKE: Yes.

17 MS. MALINDA OVERHOFF: Chair Perry?

18 CHAIRPERSON PERRY: Yes.

19 **Tab No. 4**, who will be presenting on this?

20 MS. FRAZIER: Thank you. My name is Jennifer Frazier
21 with the Attorney General's Office. I am the
22 Commission's legal counsel. I'm here to present the
23 hearing -- the recommendation from the Administrative
24 Hearing Commission on a permit appeal. This is an
25 appeal of a CAFO construction permit by the Missouri

1 Parks Association. It's actually substantially
2 similar to the appeal I presented at the last
3 meeting, the Cin-Way Permit Appeal.

4 The summary of the facts are, basically, that on
5 September 8th, 2008, the Department issued a
6 construction permit to Mr. Gary Windmann authorizing
7 the construction of a 4,800 head deep-concrete pit
8 swine finishing building. The permit was appealed to
9 the Administrative -- to the Commission by one
10 private individual. The Missouri Parks Association
11 was allowed to intervene as Petitioner and Mr.
12 Windmann was allowed to intervene as a Respondent.
13 The private individual has since dismissed his
14 appeal.

15 On December 5th, 2008, the Department of Natural
16 Resources filed an Answer and a Motion to Strike. On
17 December 29th, the Department filed a Motion for
18 Sanctions because of the Parks Association's failure
19 to respond to discovery requests. On December 30th, 2008,
20 the Department filed a Motion for Summary
21 Determination and Mr. Windmann filed a Motion to
22 Dismiss.

23 The Missouri Parks Association didn't respond to
24 any of the foregoing motions that I've mentioned.
25 The AHC is recommending that the Commission grant the

1 Department's Motion for Summary Determination and
2 deny the remaining motions as moot.

3 The Parks Association raised two issues in the
4 permit appeal. First they argued that the permit should be
5 denied because air born odors and pollutants from the
6 facility will damage the use of Mark Twain State Park. The
7 facility is located about 13 miles from Mark Twain State
8 Park. In support of its argument MPA relies upon the
9 Department's statutory responsibilities for state
10 parks in Chapter 253.

11 The Administrative Hearing Commission recommends
12 that the Commission reject this argument as a matter
13 of law because this Commission has determined in
14 previous cases such as MOARK Productions decided
15 February 2008 that it does not have the
16 responsibility or authority to enforce any laws other
17 than Clean Water Laws. This would include laws
18 pertaining to state parks.

19 The AHC references State Regulation 10 CSR 20-
20 6.020(1)(H), which states the Department does not
21 have jurisdiction to address zone -- questions of
22 zoning, location, property values or other non-
23 quality -- non-water quality related items in Clean
24 Water Permits.

25 The AHC notes that Chapter 640 does require

1 certain buffer distances and neighbor notification
2 requirements for CAFOs which are intended to consider
3 odor related and nuisance related impacts to persons
4 visiting public buildings or occupied residences.

5 The AHC concludes that these buffer distances
6 already protect park visitors to the extent allowed by law
7 and the Commission does not have the authority to
8 expand the buffer distances as the MPA desires or
9 impose permit conditions concerning air quality
10 issues that the MPA raises.

11 The MPA contends that the county Circuit Court ruling
12 in MPS versus Department of Natural Resources
13 involving a CAFO at Arrow Rock State Park prohibits
14 CAFOs from being located within a 15 mile radius of a
15 state park. However, this order has since been
16 amended by the Cole County Judge reducing that buffer
17 zone to two miles from Arrow Rock State Park and is
18 not applicable here.

19 The MPA's second argument against granting Mr.
20 Windmann's construction permit is that there were
21 seven deficiencies in the permit application. And
22 while I could go through those I -- I'd just like to
23 summarize to say that the Department had established
24 facts refuting all the deficiencies and the MPA
25 presented no evidence disputing those facts.

1 So they determined that the facts as established
2 by the Department and those refuted by MPA entitled
3 the Department to a favorable decision as a matter of
4 law and they're recommending that you grant the
5 Department's Motion for Summary Determination and
6 dismiss the remaining motions as moot.

7 And I'd be happy to answer any questions about
8 the -- the Administrative Hearing Commission's
9 decision.

10 Okay. Thank you.

11 CHAIRPERSON PERRY: Are there any questions?

12 (No response.)

13 CHAIRPERSON PERRY: If not, I will entertain a
14 motion.

15 **VICE-CHAIR HARDECKE: I move that the Commission**
16 **adopt the recommended decision of the**
17 **Administrative Hearing Commission on the Gary**
18 **Windmann CAFO Permit Appeal No. 08-1650-CWC.**

19 **COMMISSIONER EASLEY: Second.**

20 **CHAIRPERSON PERRY: Call for the vote, please.**

21 **MS. MALINDA OVERHOFF: Commissioner Shorney?**

22 **COMMISSIONER SHORNEY: Yes.**

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

24 **COMMISSIONER TUPPER: Yes.**

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

1 COMMISSIONER HUNTER: Yes.

2 MS. MALINDA OVERHOFF: Commissioner Hardecke?

3 VICE-CHAIR HARDECKE: Yes.

4 MS. MALINDA OVERHOFF: Commissioner Easley?

5 COMMISSIONER EASLEY: Yes.

6 MS. MALINDA OVERHOFF: Chair Perry?

7 CHAIRPERSON PERRY: Yes.

8 Can you hear okay, Jan?

9 COMMISSIONER TUPPER: Yes.

10 CHAIRPERSON PERRY: Thank you for hanging in there
11 and voting.

12 COMMISSIONER TUPPER: No problem.

13 CHAIRPERSON PERRY: Excuse me. All right, are we
14 ready --

15 MS. FRAZIER: I've got the next one.

16 CHAIRPERSON PERRY: -- for **Tab No. 5**?

17 MS. FRAZIER: Yes.

18 This is very easy. This was an appeal by **Eleven**
19 **West Condo Owners of a permit issued by the**
20 Department. However, when the Administrative Hearing
21 Commission held a hearing on February 4th, the
22 permittee did not appear and they've since indicated
23 to us that they do not wish to pursue this matter.

24 So the Administrative Hearing Commission is
25 recommending that you dismiss this appeal.

1 COMMISSIONER EASLEY: I move that the Commission
2 dismiss the appeal.

3 COMMISSIONER SHORNEY: Second.

4 CHAIRPERSON PERRY: Call for a vote.

5 MS. MALINDA OVERHOFF: Commissioner Tupper?

6 COMMISSIONER TUPPER: Yes.

7 MS. MALINDA OVERHOFF: Commissioner Hunter?

8 COMMISSIONER HUNTER: Yes.

9 MS. MALINDA OVERHOFF: Commissioner Hardecke?

10 VICE-CHAIR HARDECKE: Yes.

11 MS. MALINDA OVERHOFF: Commissioner Easley?

12 COMMISSIONER EASLEY: Yes.

13 MS. MALINDA OVERHOFF: Commissioner Shorney

14 COMMISSIONER SHORNEY: Yes.

15 MS. MALINDA OVERHOFF: Chair Perry?

16 CHAIRPERSON PERRY: Yes.

17 We will move on to **Tab No. 6**, Joe Boland.

18 Joe. Is he here?

19 MR. PABST: He got called to a meeting.

20 CHAIRPERSON PERRY: Sorry.

21 All right. We are moving on to **Section No. 7**

22 and then we will go back to 6. John Ford. And I

23 have one person who wants to comment. Is there

24 anyone else?

25 (No verbal response.)

1 CHAIRPERSON PERRY: Thank you. Now, I have two.
2 Kevin, you're on the list. Three. Okay.

3 MR. JOHN FORD: Good morning, Commissioners. My name
4 is John Ford. I work in the Monitoring and
5 Assessment Section of the Water Pollution Control
6 Branch. I'm here today to request approval of the
7 2008 Proposed 303(d) Impaired Waters List.

8 The Federal Water Pollution Control Act Section
9 303(d) requires states to biannually submit a list of
10 impaired waters to the Environmental Protection
11 Agency. The Commission approved the 2008 Listing
12 Methodology document in January of 2008. The
13 Department developed and internally reviewed a
14 proposed 2008 list in the spring and summer of '08.
15 That list was placed on public notice in September.
16 And that public notice ran through January 14 of
17 2009.

18 As a result of comments received during the
19 public notice period and because the EPA issued their
20 final 2004/2006 List during this public notice period
21 there were substantial changes made to the proposed
22 2008 list after that public notice ended.

23 Due to the number of these changes at the March
24 4, 2009, Commission meeting the Department placed a
25 revised list on public notice from March 11 to April

1 10. A total of four public meetings on the proposed
2 list were held during these two public notice
3 periods.

4 A few additional changes have been made to the
5 list as a result of this second public notice and
6 these changes appear as bold print in Table 1, which
7 is the proposed list.

8 In general, there is good consensus among
9 stakeholders and the Department on the list. The
10 only major disagreement stems from the interpretation
11 of narrative criteria in the state's Water Quality
12 Standards. The Department has attempted to follow
13 guidance issued by the Commission that any listing
14 for narrative criteria follow a weight of evidence
15 approach and be scientifically defensible.

16 Wherever possible the Department has used
17 calculations of mathematical probability that
18 impairment has occurred or that health risks has been
19 increased by a specific amount.

20 In addition, aside from Mercury and fish tissue
21 two-thirds of all listings based on narrative
22 criteria have been supported by other kinds of data
23 that also indicate impairment. We believe that the
24 use of mathematical probability statements pertaining
25 to impairment or increased health risks and the use

1 of supporting data justify the narrative criteria
2 concerns contained in this list.

3 The list, as shown, as Table 1 and that is on
4 Page 577 in my copy. And one of the stakeholders
5 wanted me to point out that there are two columns in
6 that table for size, one, is called I-size that's the
7 impaired size. The other is called WB-size that's a
8 water body size and we need to make clear that the
9 size that we're proposing to place on the list here
10 is the I-size or the impaired size.

11 The other is the water body size and that's
12 there just to give you a -- to quickly let you
13 see whether or not we're proposing the entire water
14 body to be placed on this list or just a proportion
15 of -- a portion of it.

16 Table 2, which begins on Page 585 is a list of
17 25 water body pollutant pairs that were -- appeared
18 on the 2004/2006 final 303(d) List that we are
19 proposing to d-list this time. And as you can see in
20 the last column for most of these the reason is that
21 the data we now have suggest that these things
22 no longer need to be listed as an impairment, they appear to be
23 meeting Water Quality Standards.

24 On Page 587 is a fact sheet that compares the
25 size of the list from 2004 to 2002 list and it also

1 shows the most common pollutants and sources. I
2 think this is something like this fact sheet was
3 available and we shared that with you at the last
4 meeting -- Commission meeting.

5 And lastly there is a summary of public
6 participation that begins on Page 589 that just
7 basically summarizes who has attending meetings, who
8 has provided us with written comments. And then
9 following that summary are copies of all written
10 comments we've received and the Department's written
11 responses.

12 The Department recommends that the Commission
13 approve the 2008 303(d) List as proposed by the staff
14 or with any changes deemed appropriate by the
15 Commission.

16 That's all I have, at the moment, I'll be happy
17 to entertain any questions if I could.

18 CHAIRPERSON PERRY: What are impaired acres?

19 MR. JOHN FORD: That's surface acres of lakes. I think we had
20 at least one instance where we had a very large
21 reservoir but only a small portion of it we
22 considered to be impaired so it's an important
23 distinction to note the impaired size versus the
24 total size.

25 CHAIRPERSON PERRY: I have one other question. What

1 is inorganic sediment?

2 MR. JOHN FORD: That's mineral material, non-organic,
3 silt, clay and sand.

4 CHAIRPERSON PERRY: Are there any questions on behalf
5 of the Commission to Mr. Ford?

6 (No response.)

7 CHAIRPERSON PERRY: Hearing none. Hang close,
8 please. Are you ready?

9 (No response.)

10 CHAIRPERSON PERRY: You're up.

11 MR. TOM HERRMANN: Who?

12 CHAIRPERSON PERRY: You.

13 Did you want to speak now?

14 MR. TOM HERRMANN: Good morning, its still morning.
15 The first shock that I got in looking at the 303(d)
16 List was seven pages of small type listing. It
17 immediately brought me back to about 1998, I think,
18 when we prepared a list -- when the Commission
19 prepared a list of impaired of waters, EPA said to
20 the then director there were not enough streams on
21 there. They said what do you want us to do? So they
22 added 146 streams to the impaired waters list. For
23 what reason? Only because it was not big enough,
24 they had to have a bigger list. And it appears to me
25 that that may be done, again, to have a bigger list,

1 seven pages of small type. There are 286 listed
2 streams or water bodies, 154 of which are single
3 listings.

4 In other words, 54 percent of the listings are
5 duplicate listings; some of them as many as seven --
6 seven listings. We used to have a table which said
7 to prepare for this or this or this on the second
8 line. Now, we got a separate line for each assumed
9 impairment, I say assumed because there's no testing
10 results. There's no justification for the impairment
11 of that particular stream.

12 Without testing results, without the
13 verification of -- of testing, it brings me back to
14 several instances where the validity of the testing
15 is only as good as the testing itself. And I think
16 back to -- for instance, the -- well, I asked a
17 question about the impairment for chlorides in the
18 streams in the St. Louis Metropolitan area. John
19 Ford gave me a -- a listing of testing results. All
20 of the testing was done on all of those streams in a
21 single day following a rather intense snowstorm. In
22 other words, we all know where the chlorides came
23 from.

24 My questioned an EPA representative and got an
25 answer, like, well, municipalities ought to use

1 something other than de-icing by chlorides either
2 calcium chloride or sodium chloride by using -- I
3 suggested, what? What would you use? Oh, you use an
4 abrasive like sand and cinders. I suggested she go
5 back and ask the municipal operating authorities on
6 sanitary sewer systems what they thought of you going
7 back to something ancient, like, sand and cinders as
8 an abrasive and to hell with public safety.

9 But regardless of that this is not indicative,
10 in my opinion, of the other 362 days of the year. It
11 was indicative of that particular moment.

12 We went down to McDonald County several years
13 ago and looked at some of the chicken operations they
14 were spreading the chicken litter on agricultural
15 lands. And they were -- the stream -- the local
16 stream team was testing the little stream that ran
17 through that area and they were submitting their
18 monthly report and said, no, impairment to the
19 stream.

20 And I asked when they were taking their --
21 their samples and they said, well, on, like, the
22 third Tuesday of every month. So what happens when
23 it rains? We don't take it then. Hum? We take it
24 the following Tuesday. Well, was that representative
25 of the flow of the stream? No. No. It was

1 representative of dry weather flow in that stream and
2 not when you produce runoff into the stream. So
3 you're not getting representative results in those
4 kinds of -- of operations, those kinds of
5 testings.

6 I did some work for Fort Bragg, North Carolina,
7 quite a few years ago. A Fort Bragg facility
8 engineer was required to submit an NPDES Report on
9 vehicle wash racks for all of the reserve facilities
10 in the -- in the area, thirty-some-odd wash racks.
11 They fire hose washed vehicles, track vehicles and
12 wheeled vehicles after training sessions of the
13 reserve outfits. Well, they had a contractor of the
14 testing outfit to do testing and they did testing on
15 Tuesday, Wednesday, Thursday of every identified week
16 during the month. And I reviewed several years worth
17 of reports which all said no discharge, no discharge,
18 no discharge. It was rather obvious because reserve
19 outfits only trained on weekends. So during the week
20 you had no -- no discharge. So was that
21 representative of the discharge? No. It wasn't.

22 And I submit that a lot of the so-called
23 testing on these streams is not representative of the
24 flow in the stream and that many of them should not
25 be listed as impaired but perhaps occasion- --

1 occasionally, very un-occasionally impaired and not
2 formed by -- or not verified by good testing results.
3 Without good testing results, I say, you can't verify
4 and validate the listing -- the listing of 254 -- 286
5 different instances of impairment.

6 CHAIRPERSON PERRY: Any questions?

7 (No response.)

8 CHAIRPERSON PERRY: Tom I don't think I put your name
9 on the record. I called you, "you" when you came up.
10 And so I'd like the record to indicate and that
11 wasn't "ewe" by the way.

12 I'd like the record to indicate that the speaker
13 who just spoke is Tom Herrmann and former Chair.

14 MR. TOM HERRMANN: Yeah. Buck not ewe.

15 CHAIRPERSON PERRY: Thank you very much.

16 Next we have Kevin Perry.

17 MR. KEVIN PERRY: I had a comment on methodology.

18 CHAIRPERSON PERRY: Oh. I'm sorry.

19 Robert Brundage.

20 (No response.)

21 CHAIRPERSON PERRY: Are there any further comments on
22 this?

23 (No response.)

24 CHAIRPERSON PERRY: We keep running in to this
25 problem. Okay. We're close. Okay. While we're

1 waiting for Robert to approach, I would like to point
2 out some other distinguished people in the room.

3 In the back is Deputy Department Director, Joe
4 Bindbeutel, Agricultural -- thank you -- Agricultural
5 Liaison, Davis Minton and Department Communications
6 Director, Susanne Medley. Suzanne, thank you very
7 much. So we all get to know who we're looking at.

8 Thank you.

9 When we run out of people to introduce, we'll
10 start telling jokes. I see that we're about to see a
11 survey of legal actions in other states; is that
12 correct?

13 MR. ROBERT BRUNDAGE: That is partially correct.

14 Yes.

15 CHAIRPERSON PERRY: So that's to give us cause of
16 what we might be concerned about, but could you also
17 be specific since we're talking about --

18 MR. ROBERT BRUNDAGE: We're talking about specific
19 legal --

20 CHAIRPERSON PERRY: -- the 303(d) List.

21 MR. ROBERT BRUNDAGE: Madam Chair, I'm -- just for
22 the record, my name is Robert Brundage with the law
23 firm Newman, Comley & Ruth. And the purpose of the
24 presentation I'm about to give is to not only talk
25 specifically about a specific 303(d) listing but you

1 have to have an understanding of the legal foundation
2 that we're -- that the Clean Water Commission is
3 implementing this list and understanding the Listing
4 Methodology and legal restraints on the Listing
5 Methodology and so it all goes hand-in-hand. And
6 therefore part of this is refreshing the Commission's
7 recollection about the Listing Methodology and some
8 of these other aspects that I have put in the written
9 record but it's been maybe a year-and-a-half -- well,
10 maybe not that long since there's been discussion in
11 written correspondence to the Commission about the
12 legal constraints.

13 CHAIRPERSON PERRY: I don't understand. Are you not
14 talking about the 303(d) List?

15 MR. ROBERT BRUNDAGE: Yes. We are.

16 CHAIRPERSON PERRY: What I'm looking at says Listing
17 Methodology all over it. Am I looking --

18 MR. ROBERT BRUNDAGE: That's because the 303(d) List
19 is based upon the Listing Methodology.

20 CHAIRPERSON PERRY: Wouldn't those comments be
21 inclined toward our next tab?

22 MR. ROBERT BRUNDAGE: Some of these will -- will carry
23 over and I won't need to reiterate some of these
24 comments.

25 CHAIRPERSON PERRY: We'll proceed.

1 MR. ROBERT BRUNDAGE: Madam Chair and Commissioners,
2 first, I wanted to talk about the process that we've
3 gone through to get to this point on the 303(d) List.

4 I can't recall, John, but I think it may have
5 been last June that the draft list was first put on
6 public notice. But its -- whatever it's been, it's
7 been on public notice a number of times and I want to
8 say that the level of public notice and the level of
9 availability the Department has had to constituents
10 and stakeholders on this list has, in my opinion,
11 been unprecedented.

12 And I'd like to thank the Department of Natural
13 Resources for that because if there's been an issue,
14 they've been there to listen. And, I think, we've
15 fully aired a number of discussions and -- and when
16 it comes down to the list, today, now's the time for
17 the hard decisions to be made.

18 And in a few areas I have become, basically,
19 I'll just call it a -- a -- I guess, come to a
20 disagreement on how to list a few of these things.
21 And it's an honest disagreement. I have the highest
22 respect for John Ford. He is one of the most polite
23 individuals. One of the most scientifically estude
24 individuals I've come across, but in certain areas, I
25 think, John and I have just come to a -- we just

1 simply don't agree on a few things. And those are --
2 those are some things that I'm going to go through,
3 today. And I just wanted to say that for the record
4 because I do appreciate the process we've gone
5 through and -- but here we are, today.

6 One of the things that I wanted to first talk
7 about is the Listing Methodology because everything
8 that -- that John works on when he prepares a draft
9 list he looks at data and he looks at the Water
10 Quality Standards and he looks at the Listing
11 Methodology.

12 And so in large part the decis- -- the
13 recommendations that he and the Department of Natural
14 Resources are making are based on the Listing
15 Methodology. And if you recall back in November 2007
16 the Listing Methodology for this list, the 2008
17 Listing Methodology was before you to be approved at
18 that meeting. And at that meeting I brought up some
19 concerns about how the Listing Methodology was put
20 together. And I'll go through those concerns in a
21 minute.

22 But they were based largely on two cases out of
23 the state of Florida that discussed how EPA approved
24 Florida's 303(d) List and how Florida had a Listing
25 Methodology -- they call it something else, but it was a

1 Listing Methodology just like the state of Missouri
2 has. So at that November 7th, meeting this Commission
3 tabled approval of that Listing Methodology because
4 of those concerns, maybe not 100 percent, but largely
5 in response to the concerns that I raised about how
6 the Listing Methodology is put together.

7 At that point in time there were Water Quality
8 Standards and there were numeric translators that
9 were numbers that said if it exceeded this number, it
10 would be on the list but no where in the Water
11 Quality Standards did you find these certain numeric
12 translators. And I think we've all collectively
13 decided to use the word "trans- -- numeric
14 translator" instead of numeric criteria. A
15 "criteria" implies that it is in the Water Quality
16 Standards.

17 So I had raised these concerns back in November
18 before the Commission meeting and at that Commission
19 meeting I discussed the Sierra Club versus Leavitt,
20 488 F.3d 904 (11 Cir. 2007) case and that dealt with
21 Florida's 303(d) List that was prepared based upon a
22 Listing Methodology. The holding in that case is
23 that the Sierra Club was complaining about the 303(d)
24 List, but the holding in the case said that while the
25 listing methodologies may be useful tools for the

1 state to use in identifying impaired waters because
2 they have not been used before and they are not part
3 of the state's Water Quality Standards EPA did not
4 rely on the methodology in reviewing Florida's list.

5 So as a matter of law, EPA understood that they
6 were bound by looking at the state's Water Quality
7 Standards. There was a sister case that was a few
8 years earlier. The Florida Public Research -- or --
9 excuse me -- the Florida Public Interest Research
10 Group Citizen Lobby, Inc., versus EPA, 386 F.3d 1070
11 (11th Cir. 2004). In that case and I'll call them
12 FPIRG, objected to Florida's Listing Methodology
13 because they thought it relaxed the Water Quality
14 Standards.

15 They claimed that the Listing Methodology had
16 these numeric translators in the list and they were
17 acting just like Water Quality Standards so that
18 should, in their opinion, have triggered EPA to
19 review those numeric translators as Water Quality
20 Standards.

21 Well, the Court of Appeals held that the
22 Listing Methodology may include them but they didn't
23 know what to do with these numeric translators so
24 they remanded to the case to the
25 District Court to hold a hearing about what are these

1 numeric translators. Are they Water Quality
2 Standards or are they not?

3 And so the District -- EPA submitted a report
4 to the District Court in that they said that if a
5 Listing Methodology includes one of these numeric
6 translators that's based on magnitude duration of
7 frequency, those type of things, then it is a Water
8 Quality Standard, if it affects magnitude, duration
9 and frequency.

10 But before there could be any final ruling by
11 the District Court the case was basically settled
12 because Florida decided to go back and take a look at
13 their Water Quality Standards, readjust their Listing
14 Methodology and decide to -- what parts of those
15 numeric translators should be promulgated as Water
16 Quality Standards and which ones should not.

17 Next slide. So after that was presented to the
18 Commission in November of 2007 the Department said
19 they would take a look at it. There was various
20 stakeholder meetings during that point in time. And
21 I participated in those stakeholder meetings. And, I
22 think, I and some others suggested that numeric
23 translators should be separated out, separate and
24 apart from the Water Quality Standards. So the
25 Department did that. They created two tables in the

1 2008 Listing Methodology, Table 1.1, which had Water
2 Quality Standards and Table 1.2, which had non-Water
3 Quality Standards, which are these numeric
4 translators.

5 So the question is; what do you do with a water
6 body that exceeds a numeric translator? Should it be
7 on the 303(d) List or should it go somewhere else?
8 For example, Category 3(b), which is not the 303(d)
9 List but just a -- a category for streams that may
10 have water quality issues and warrants further study.

11 So during that stakeholder process there was
12 discussions about, well, should the DNR be able to
13 list is there's an exceedance of a numeric
14 translator. Some people thought, well, maybe -- only
15 if there was additional testing that included
16 biological monitoring. And in my thought that meant
17 you had to a do a full-blown macro-invertebrate study
18 based upon the -- the biological monitoring that was
19 already referenced. And, I think, even the previous
20 Listing Methodology that the Department has done over
21 a number of years.

22 Next slide. So we came back to the -- we all
23 came back, the Commission had a meeting on January
24 8th, 2009, during that meeting you adopted this 2008
25 Listing Methodology. And during that meeting the

1 Department had come up with some language to
2 interpret what -- what you should do with these
3 numeric translators in Table 1.2. And we'll call
4 that the Department proposed in that methodology the
5 weight of evidence analysis for all numeric criteria.
6 Okay. Next slide. It says in the Listing
7 Methodology exceedances of these translators in Table
8 1.2 will trigger a weight of analysis -- weight of
9 evidence analysis to determine the existence or
10 likelihood of a use impairment. If the weight of
11 evidence analysis suggests but does not provide
12 strong evidence of impairment the water body will be
13 placed in Category 2(b) or 3(b). Other than that, at
14 that meeting, there was a lot of discussion back in
15 the hallways about -- about this language. We didn't
16 really know what it meant at the time.

17 At the time, I don't think I really got any
18 type of thorough explanation of what weight of
19 evidence means, but if it did not provide strong
20 evidence of impairment, at the time, it sounded
21 reasonable but when you really don't know what weight
22 of evidence means its -- I guess, you're -- you're
23 walking in the dark to a certain extent so for
24 whatever reason we all -- excuse me. I shouldn't say
25 that. The Commission decided to adopt the language

1 that day in the weight of evidence approach in the
2 Listing Methodology.

3 So how is the Department going to implement the
4 weight of evidence approach? Since there was,
5 basically, only a couple of sentences in the Listing
6 Methodology that talked about it. Well, about six
7 months later in June the Department released a
8 memorandum, it was about two-and-a-half pages, single
9 spaced that discussed the weight of evidence approach
10 for about seven different parameters that were in Table 1.2
11 these numeric translators. Just two of the seven,
12 included lead in the fish tissue for -- to protect human
13 health on fish consumption. Another one was sediment
14 chemistry that included, I put PECs, and I should
15 have spelled that out. That stands for Probable
16 Effect Concentrations.

17 It said -- go back, please -- in that memorandum if the
18 sediment of a water body, you exceed a PEC value by
19 150 percent it could go on the 303(d) List. That's
20 basically what the memorandum said.

21 Next slide. The listing meth- -- or in the
22 Listing Methodology there is reference in Table 1.2
23 to these Probable Effect Concentrations, there's a
24 footnote in there. And in that footnote it says
25 there are numeric thresholds for various metals in

1 the benthic sediment. And that these sediments were
2 based upon a paper titled Development of Evaluation
3 of Consensus Based Sediment Quality Guidelines for Fresh
4 Water Eco-Systems. That is the -- I guess, I'll call
5 it a scientific foundation that the Department of
6 Natural Resources is relying on to put on this list
7 before you, today, certain streams that are violating
8 the 150 percent rule of Probable Effect
9 Concentrations.

10 Next slide. Now, I would submit to the
11 Commission that based upon consultants that I have
12 discussed this matter with they do not believe that
13 Probable Effect Concentration is an appropriate
14 numeric threshold even if the 150 percent level to
15 use as a basis for listing streams on the 303(d)
16 List. Typically, these values were used as numeric
17 values for screening ecological risk assessments at
18 contaminated sites. These -- I guess, it's obvious,
19 at this point in time, these Probable Effect
20 Concentrations are not in our Water Quality Standards

21 These PECs in this paper that looked at other
22 studies interpreted the data sets from a number of
23 studies where adverse affects to aquatic marine
24 organisms were reported. And, again, I think, that
25 the title of this thing is Probable Effect

1 Concentrations. Probable is not a certainty but it's
2 nonetheless in our Listing Methodology. There was a
3 discussion in the Listing Methodology that this paper
4 provided a consensus approach. But the paper did not
5 take into account all scientific methods of looking
6 at -- at metals and other things that are in the
7 sediments. There are other ways to assess sediment
8 quality that were not incorporated into these PECs.

9 Next. If you look at these Probable Effect
10 Concentrations I would submit to you that the
11 concentrations are not really an accurate sergeant of
12 the toxicological dose at the site of action in
13 aquatic species. And I'll get to what that really
14 means. EPA's Science Advisory Board looked at PECs
15 but did not endorse them.

16 They said that the PECs are inconsistent with
17 EPA's current approach. I shouldn't say current, but
18 what EPA has been looking at over in the number of
19 years to developing sediment quality criteria. To
20 date, EPA has never prepared 304(a) Criteria Document
21 for PECs.

22 EPA has been looking at the criteria in the
23 sediment core water. That is the water that's in the
24 space between the granules and the sediment. EPA
25 suggests that the core water concentrations may be a

1 better sergeant for the toxicological dose, which is a
2 different approach that the PECs use.

3 Next. In response to some of these comments
4 EPA sent a letter to John Ford in September of 2007
5 and this is what EPA said about PECs. They said EPA
6 is unable to review and provide comment on whether or
7 not each individual PEC is appropriate for assessing
8 attainment with Missouri's Water Quality Standards.

9 EPA recommended -- or recommends that the state
10 work with EPA to evaluate the appropriateness of
11 adopting these values into the Water Quality
12 Standards. So those statements there is not really a
13 ringing endorsement of PECs.

14 CHAIRPERSON PERRY: Robert, I wasn't at the January
15 meeting. Did you present -- because it still seems
16 to me, so far, we're talking about specifics about a
17 methodology that has been passed, but now you're
18 saying isn't working very well.

19 Was this information presented at the January
20 meeting?

21 And are we not out of the development period?

22 MR. ROBERT BRUNDAGE: I don't know if it was -- it
23 was in the -- it was in -- it was in writing that
24 would have been submitted to the Department and, I
25 think, the Commission. Is that right, John? I think

1 it was.

2 CHAIRPERSON PERRY: Yeah. So -- so I guess I offer
3 it to the Commission --

4 MR. ROBERT BRUNDAGE: John doesn't know.

5 CHAIRPERSON PERRY: -- you know, I think, you're
6 presenting some very good information and if you
7 would like to proceed that's fine with me. But on
8 the other hand this seems, like, sort of comments
9 outside the comment period on a methodology that
10 we've already passed.

11 MR. ROBERT BRUNDAGE: I understand what you're
12 saying. But when I get to, about four streams that
13 rely on PECs, you're going to vote, today, whether or
14 not you want to rely on PECs in a weight of evidence
15 approach because is 2008 -- January of 2008 you
16 adopted the weight of evidence approach as a Listing
17 Methodology. And it's -- you make the final
18 determination of what weight of evidence really
19 means. This rests with you.

20 And to make that decision on the 303(d) List on
21 a few of the streams that I'm going to bring up,
22 you've got to decide when I make this decision,
23 today, using the weight of evidence approach; do I
24 rely on PECs?

25 So with that, that's why I felt it was necessary

1 to -- to show you this information so you can
2 understand where we were and when the weight of
3 evidence was -- was adopted. I don't think we --
4 nobody really knew what that meant. And we're to a
5 point now where some of these numeric thresh- --
6 translators are basically being treated exactly like
7 Water Quality Standards.

8 And I'm telling you, Number One, I don't think
9 that's appropriate legally based on the two Florida
10 cases and, Number Two, from a scientific standpoint,
11 I'm not convinced PECs are the appropriate translator
12 that we should be relying on and nor -- and I've
13 shown that EPA hasn't endorsed it, yet, either.

14 So that's why I -- I thought it was -- even
15 though this really looks like it could be beyond the
16 scope. It is so intertwined and so intractable to your
17 decision, today, on this 303(d) List, I wanted to
18 make sure that you understand -- understood that. So
19 I hope I haven't gone on too far with -- with -- you
20 know, what's happened in the past. But --

21 CHAIRPERSON PERRY: If we spend one minute on each
22 slide we've got 48 minutes. That's --

23 MR. ROBERT BRUNDAGE: I'm going to --

24 (Tape Two, Side A concluded.)

25 MR. ROBERT BRUNDAGE: -- there was another -- since

1 the public notice and John Ford talked to you about
2 this, there has been extensive public comment. John
3 has seen data and comments. And this list from what
4 was, I think, first put out in June has -- it's gone
5 through two or three changes at least. I can't
6 remember, John, but anyway it's gone through a number
7 of different changes. And in the middle of the
8 process after the initial public notice of it -- I
9 think that's correct. John, you always correct me,
10 if I say something wrong.

11 MR. JOHN FORD: Where do you want me to start?

12 (Laughter.)

13 MR. ROBERT BRUNDAGE: Good one, John.

14 Here -- here -- what I wanted -- I want to bring
15 up Microtox testing. I had never, I guess this is
16 one of my failings, but I've never heard of Microtox
17 testing ever. But I've been told that it's been
18 around for a while.

19 And, now, in the document and in the data sheets
20 supporting some of these listings there's Microtox
21 testing. So what is Microtox testing? First of all,
22 I wanted to point out that it was not -- it was not
23 referenced as a numeric translator in Table 1.2 of
24 the Listing Methodology nor is it in the Water
25 Quality Standards. But Microtox testing takes

1 saltwater bacteria that is bio-luminescent, meaning
2 it glows. And if it is stressed it doesn't glow as
3 much. So depending on -- on the extent to which it's
4 glowing or not glowing, you can tell whether it's
5 stressed. And if it's stressed that implies there's
6 some kind of toxicity going on.

7 In some of the data sheets the Department
8 correctly points out that Microtox testing is not a
9 definitive -- is not definitive, not as definitive of
10 a toxicity testing procedure as the common species
11 of the Ceriodaphnia dubia and the fathead minnow.
12 That is -- that is in a lot of discharge permits,
13 it's called wet-testing. So that's a very widely
14 accepted test for toxicity.

15 But Microtox testing as we've pointed out in
16 these data sheets is easier, quicker and less
17 expensive than the traditional bio-assay toxicity
18 test for the water flea and fathead minnow.

19 Due to the differences in the sensitivity
20 Microtox testing -- you know, I -- is not a
21 definitive test for the presence or absence of
22 toxicity. EPA had a rulemaking several years ago
23 where they were going to consider Microtox testing
24 but in the final rule they didn't promulgate Microtox
25 testing as a -- as an approved method.

1 I would submit that Microtox testing is not an
2 appropriate because the required salinity adjustment
3 to -- of the -- you know, could affect the toxicity
4 of the sample and salinity of the adjusted sample
5 would not represent either the effluent or the
6 receiving waters - next.

7 The bottom line is; does this Microtox testing
8 tell us that the beneficial use has been impaired. I
9 think I've demonstrated that its -- it may be a quick
10 and dirty test to let us know that there might be a
11 problem out there, but it's not telling us there's an
12 impairment of a beneficial use on the stream.

13 CHAIRPERSON PERRY: Robert, I'm curious to know your
14 source of information here.

15 MR. ROBERT BRUNDAGE: Well, I was quoting from some
16 of the data sheets --

17 CHAIRPERSON PERRY: Well, the -- where you say fresh
18 water Microtox testing is not appropriate.

19 MR. ROBERT BRUNDAGE: That's an opinion.

20 CHAIRPERSON PERRY: Your opinion?

21 MR. ROBERT BRUNDAGE: Well, it -- I've talked to
22 people -- I've talked to people who know a lot more
23 than me and that's their opinion.

24 CHAIRPERSON PERRY: Are they scientist?

25 MR. ROBERT BRUNDAGE: Yes.

1 CHAIRPERSON PERRY: Just wondering. I -- you know,
2 I'm just curious as to you're challenging a
3 scientific fact. I don't know of your scientific
4 background and that's why I'm asking what the source
5 is.

6 MR. ROBERT BRUNDAGE: And, you know, a question --
7 when you ask a question of me like that that's --
8 that's an excellent question to ask and it points out
9 why our Listing Methodology relying on these non-
10 Water Quality Standards is not a good idea. When you
11 promulgate a Water Quality Standard you have to go
12 through a Regulatory Impact Report process, the
13 Department has to prove that it is a valid and
14 scientifically accepted testing procedure and that is
15 some how tied to beneficial uses.

16 And these things have not gone through that
17 process. You have never seen this come before you.
18 So you have me up here and you're having to ask me
19 questions. Is Microtox testing a reliable method or
20 not? You don't know because it's not in our Water
21 Quality Standards and it's never been scientifically
22 proven one way or the other to you to put in our
23 regulations.

24 Now, -- now, I'm ready to get into some of the
25 specific streams and I wanted to -- just put together

1 that there's one stream on the list called Bee Fork. And
2 I put together a little chart here about water
3 concentrations. We have Water Quality Standards for
4 metals and according to the -- the water testing the
5 Department concluded that it's unimpaired. The
6 sediment chemistry is the Probable Effect
7 Concentrations. The Department thought some
8 additional monitoring could be done.

9 There's Microtox testing, this is what came up
10 during kind of, I'll say the middle, of the public
11 notice process in one of revised notices in the data
12 sheets in there. That DNRs conclusion was that they
13 thought it was impaired based on Microtox testing but
14 -- but my concerns with -- these are my concerns over
15 in this column, that two of these test show the non-
16 toxic and two of the other types of Microtox testing
17 indicated potential toxicity. So I don't think
18 that's strong enough evidence.

19 CHAIRPERSON PERRY: Is that all of the tests that
20 we're dealing with?

21 MR. ROBERT BRUNDAGE: Well, right here, are some
22 Department -- or -- excuse me. I think it was the
23 USGS --

24 CHAIRPERSON PERRY: We have 50/30 and then 20/30
25 test. Were there any more of those samples than

1 those two that you're --

2 MR. ROBERT BRUNDAGE: I -- I'd have to look at the
3 data sheets to see how many there were. I don't
4 think there was -- I -- I don't know. I would have
5 to pull it out. John will tell us in a few minutes,
6 unless you want me to pull them out, now.

7 Anyway, there was some other invertebrate
8 toxicity tests that were done by the U.S. Geological
9 Survey. The DNR reviewed this data and they saw some
10 possible toxicity to HA as *Hyalella azteca* and it's
11 an amphipod. There was some tox- -- toxicity found
12 for *Ceriodaphnia dubia*, water flea. My concerns is
13 the more recent amphipod testing indicated that's not
14 toxic and only one *Ceriodaphnia dubia* test was
15 conducted in 2002 but it was later, I think, dropped
16 from the testing because *Ceriodaphnia dubia* were
17 dying left and right in the reference streams, also.

18 Next. Here are some of the amphipod testing.
19 Up and down Bee Fork and in 2002 the level was here,
20 but in 2004 it was back up -- up here and here's
21 reference site data up here for the survivability for
22 these amphipods.

23 Next slide. The *Ceriodaphnia dubia*, the water
24 flea, in the references sites they were getting 80
25 percent survivability. Here's survivability over

1 here. And they were getting all the way down to 20
2 percent. So 80 percent of the Ceriodaphnia in some
3 of the test were dying off. In the Bee Fork area
4 very few Ceriodaphnia survived there. I think they
5 dropped the test in 2004. And this is just
6 conjecture. Maybe they dropped it because it wasn't
7 providing very useful information because they were -
8 - they were dying in the reference streams because
9 they're extremely sensitive organisms.

10 So that's one of the streams that I'm concerned
11 with that I would submit that should not be on the
12 list. The next one is Strother Creek, again, this
13 weight of evidence approach.

14 The water concentrations were un-impaired the
15 sediment chemistry for using PECs. The Department says it's
16 impaired. I say it's not justified. The USGS did
17 some work on the amphipods and some other things.
18 They said it was impaired. I looked at the data there are
19 significant differences between the two years that the USGS did
20 the testing and we got differences in there within those two
21 years.

22 Back to the Microtox testing the Department
23 thought it was impaired due to the Microtox testing.
24 I say the sampling was not -- it's not even a
25 reliable test in the first place, but the results, in

1 my opinion, were not -- were somewhat inconclusive.
2 So the Department thought it was impaired, I think,
3 it should go in Category 3(b) for some additional
4 monitoring.

5 Next slide. Here's the Strother Creek amphipod
6 test, both survivability one year, the next year 80
7 percent. Down here it was a high survivability.

8 Next slide. So that's the second stream. I've
9 got about four or five so we're getting to the end.
10 West Fork Black River, back in -- and Tom Herrmann
11 brought this up, the first list we had back in 1998
12 and forever is when you adopted the 303(d) List, West
13 Fork Black River got listed for nutrients and it was
14 based on some people complaining that there was too
15 much algae on the rocks.

16 I don't think it was -- I think some of you
17 know how things went back in 1998, but I don't -- I
18 don't think there was an measurable on how much algae
19 was there but anyway it's on the list. So what --
20 what is EPA doing about -- and the DNR is doing about
21 a TMDL on that stream?

22 EPA is currently doing more monitoring out at
23 the site. And what that tells me is that when you --
24 when you -- when the Commission would put a stream on
25 the list based upon a -- the general water quality

1 criteria because somebody thought there was too much
2 algae on the rocks. Here we are -- we got EPA out
3 there doing more testing probably because they really
4 don't know how to write a TMDL for that. So we're
5 doing more testing.

6 On the back side of that, if you, today, wanted
7 to d-list this for algae; how would you do that? Its
8 -- you know, things get put on the list but then you
9 don't know how to take 'em off. So it kind of -- it
10 kind of brings my point out in some of these numeric
11 translators, on the back side, I'm not sure how to
12 take some of these off the list.

13 Next slide. So back to West Fork Black River;
14 what's going to happen this year? The Department is
15 proposing two new listings for lead and nickel in the
16 sediments. They're proposing lead and nickel because
17 they are suspecting toxicants in that situation.

18 Next slide. Again, the water concentration of -
19 - of metals in the water as un-impaired, the PECs the
20 Department said were impaired. They thought there
21 was an impairment based on some toxicity testing,
22 again, I think, that's the USGS work. The Microtox
23 testing the Department thought it was toxic.

24 Some of the same concerns I have over here. I
25 don't think that PECs should be relied upon. The

1 USGS work only -- in 2002 the Ceriodaphnia test
2 show toxicity only in 2002. There was also some
3 crayfish studies, the Department thought some of it
4 showed an impairment other parts of the crayfish
5 studies were inconclusive. This is the first time
6 I've ever seen the Department rely upon a crayfish
7 study, you will not find that anywhere in our Listing
8 Methodology that there is -- that there is a protocol
9 to study crayfish in streams. You won't find it.
10 And I put over here there is no criteria to determine
11 impairment.

12 Next slide. West Fork Black River, invertebrate
13 studies on the amphipod, the 2004 testing, in the
14 red, shows very high levels.

15 Next slide. But, again, back to the PECs in the
16 West Fork Black River, they showed an impairment.
17 So, finally, -- I don't know if this is finally, but
18 the Meramec River. This is one where the Department
19 relied on Microtox testing, which indicated some
20 toxicity and the PECs show an impairment. So this is
21 a situation that they're basically relying on PECs to
22 list the Meramec River and I don't think it's
23 justified.

24 Next slide. So I went through four or five
25 streams that I have -- and I'm going to get to the

1 very end slide and I -- at the very end of your
2 presentation, I've kind of summarized what type of
3 motions I would like you to make. So I just want to
4 let you know we're coming back to that just in
5 summary.

6 One thing that John Ford said is that in the
7 303(d) List he is recommending that you adopt the
8 list using just the impaired segments that -- that
9 the Department has recommended. That means if there
10 is a water body ID number with 20 miles of stream but
11 the Department only thought that five were impaired,
12 the Department is only proposing those five miles on
13 the list, today. And I wanted to bring -- bring that
14 to your attention.

15 EPA does not accept that approach. In the
16 2004/2006 List --

17 CHAIRPERSON PERRY: Go ahead.

18 MR. ROBERT BRUNDAGE: -- EPA -- the letter that EPA
19 sent to DNR on January 16th, 2009, they said until
20 such time as DNR develops a comprehensive system for
21 better defining the extent to which data is to be
22 extrapolated for the purpose of assessing attainment
23 with water quality criteria, EPA is relying upon
24 classified waters as described in the state's Water
25 Quality Standards for identifying waters.

1 Interpretation, that means if our -- if our
2 standards list -- and Tom Herrmann always used to say
3 that, like, the

4 MR. TOM HERRMANN: Bourbeuse River, 132 miles.

5 MR. ROBERT BRUNDAGE: Bourbeuse River, 132 miles. If
6 the Department found five miles of that, the
7 Department -- EPA is going to put on all 132 miles
8 until they're satisfied the DNR or the Commission has
9 come up with a comprehensive system for defining
10 that. I don't know if there's an opportunity to do
11 that in this list or you have that Water Quality
12 Standards Rule, in front you, where the whole Table H
13 is in there. I don't know if there's an opportunity
14 to do something there, but I would -- I would like
15 the Department and the Commission to think about
16 that, if there's some way to try to roll that into
17 this rulemaking to allow sub-segments of streams to
18 be listed. Because on some of the streams that I
19 listed, I think, the only portions of those water
20 body IDs are the segments in our standards would be
21 proposed for listing. So it's an important point.

22 Next slide. One thing that John Ford has done
23 in this list, is that he is describing the impairment
24 with a latitude and longitude using very detailed GPS
25 portions. And I would -- I think, I made this in a

1 comment to EPA that how more specific can you be when
2 you give the GPS coordinates of an impairment to
3 exactly describe which part of that water body ID or
4 132 mile stretch or whatever is -- is impaired, but
5 apparently that's not good enough so we might have to
6 consider something else.

7 Next slide. This is a comment about -- on the
8 tale end -- on the tale end of the 2004/2006 being
9 adopted, EPA, as you know, put a bunch of streams
10 back on the list including the --

11 CHAIRPERSON PERRY: Are those the ones for DO and
12 Mercury?

13 MR. ROBERT BRUNDAGE: Lots of DO streams and Mercury
14 and other things.

15 The question is; should you adopt a list, today,
16 that has those EPA streams on it? I would submit to
17 you that you don't do that just based on the fact
18 that EPA did it the last time. This is a Clean Water
19 Commission recommendation to EPA and so I -- I would
20 say that -- that if you voted on this list today,
21 which incorporates these EPA, I call them EPA only
22 streams, then are you endorsing EPAs list because you
23 just adopted it yourself? I'd say, exclude those
24 streams, submit it to EPA, they're just going to put
25 them back on anyway, but you're on the record that

1 you don't agree with their -- with their list.

2 Formally, they're still going to be on
3 Missouri's former list because EPA approved them, but
4 you are not under an obligation as far as a legal
5 obligation as far as I know to adopt that list with
6 all these EPA only streams on there.

7 Next slide. One example of that is East Fork
8 Locust Creek. I testified earlier today about the
9 site specific standard on East Fork Locust Creek
10 because it has very low levels of DO. EPA put that
11 on the 303(d) List this last time and so now most of
12 that segment of East Fork Locust Creek is on -- on
13 the recommended list, I think, John Ford has decided
14 a portion of that is not appropriate, but nonetheless
15 the rest of it is on the list, on the proposed list
16 before you today. So it's one example of where an
17 EPA DO stream is on the list and it shouldn't be on
18 there. And should the Commission put East Fork
19 Locust Creek on the 303(d) List, today, when you have
20 before you a rule that would implement a site
21 specific Water Quality Standard for DO that it would
22 no longer be impaired. So I would say there's good
23 reason not to include East Fork Locust Creek on the -
24 - on the list today.

25 Next slide. Just a summary of the proposed

1 actions to try to summarize all the words I've
2 brought to you, today. I just talked about the EPA
3 only streams. I would not include the EPA only water
4 bodies on the list as one recommendation I have to
5 you, today.

6 The second recommendation is when this list is
7 submitted, clarify that only sub-segments of the
8 listed water bodies are being proposed for the list
9 and try to justify the segmentation the best you can.

10 And then when the Water Quality Standards are
11 being amended, at your next meeting, you'll -- when
12 you'll vote on those maybe there's an opportunity to
13 amend the -- the classified water body tables to
14 somehow identify or allow segmentation of those water
15 bodies.

16 Next slide. East Fork Locust Creek, I just
17 suggested not putting that on the list. And then
18 just to tick off the streams that I've talked about,
19 today, West Fork Black River, Bee Fork.

20 Next stream --. Next stream? Next slide.
21 Strother Creek and the Meramec River are the ones
22 that I suggested are not included in the 303(d) List.

23 Thank you for allowing me to have the
24 opportunity to -- to go through some of the history
25 here and maybe talk longer than --

1 CHAIRPERSON PERRY: And I appreciate you abbreviating
2 it. You got the major points and I thank you.

3 MR. ROBERT BRUNDAGE: Thank you.

4 CHAIRPERSON PERRY: Yeah. Let's let John --

5 So, John, could you primarily address the
6 segmentation and his actual recommendations here.

7 MR. ROB MORRISON: Well, Commissioner Perry, this is
8 Rob Morrison, Chief of Water Pollution Control Branch
9 before John comes back up to respond to some of these
10 questions, I -- I think, a lot of the discussion
11 regarding the Listing Methodology can be summarized
12 if you'll -- if you turn your attention over to Page
13 -- what's the Page, Marty? 869?

14 CHAIRPERSON PERRY: What?

15 MR. ROB MORRISON: No. It's in tab -- it's in Tab
16 No. 8 and it's Page 869. So the many of the things
17 that Robert is -- is discussing regarding PECs being
18 handled as water quality criteria are encapsulated in
19 a response letter that we sent -- we sent to him and
20 that's on Page 869, is our -- is our response letter.

21 Now, one of the things that I -- that I want to
22 make very clear is that we are not treating the PEC
23 values in these numeric translators as Water Quality
24 Standards. In order to treat them as Water Quality
25 Standards we would have to apply the concept of

1 independent applicability, meaning that if the value
2 was exceeded that was listed in the document or in
3 the Standard then we would have no choice but to list
4 that water body. So in other words, if it was for
5 lead -- if it exceeded the criteria for lead then we
6 would have no choice but to list.

7 In the weight of evidence approach we use the
8 numeric translator as -- as simply a value -- it's a
9 threshold value. It's a value that we -- we've -- we
10 have built in some conservatism to. It's 150 percent
11 of the concentration of the PEC, but what we've said
12 in the weight of evidence approach that if that value
13 is supplemented with additional data, if there is
14 some biological monitoring data that that biological
15 monitoring data could show that the water body is not
16 impaired. And that's how we would treat that. And
17 that's why we are not treating this as a Water
18 Quality Standard contrary to what Mr. Brundage is
19 claiming.

20 Now, he -- he claims that no one should use any
21 sort of numerical translator that's not promulgated
22 into Water Quality Standards and, I believe, our
23 colleagues from EPA could come up to the podium and -
24 - and give us some very clear guidance that other
25 states do use numeric translators and it is a very

1 common practice in order to be able to manage our
2 list in terms of the narrative criteria, which is
3 what this represents.

4 So I won't belabor the point. I do want John to
5 -- to respond to those. There's a number of
6 questions in here regarding -- and there's a number
7 of issues that are covered in this letter that we
8 have sent back to Mr. Brundage on the 2010 Listing
9 Methodology which is a kin to the 2008 Methodology
10 and I wanted to -- to point that out as -- as we go
11 through here.

12 But sufficed it to say one of the things that he --
13 he points out in here and I'll respond and John can -
14 - can fill in the -- or Phil can fill in the details.
15 One of the questions is about segment length in our
16 list. The problem that we have with our -- our
17 segment length in the current list and in comparing
18 the entire segment to what's listed is a problem with
19 our assessment database. And it has -- it has to do
20 with our ability to report that information to EPA in
21 a manner that they can keep track of it and -- and
22 take it forward.

23 Well, what we are doing is we are working
24 diligently with EPA to develop a database, they are
25 working very closely with us, and I am confident that

1 by the 2010 List we won't be in this same boat. It's
2 not a Standards problem. It has nothing to do with
3 our Water Quality Standards. It has to do with our
4 ability to transmit that assessment data to EPA in a
5 manner that they can track and -- and report and
6 follow.

7 CHAIRPERSON PERRY: We have a computer problem --

8 MR. ROB MORRISON: We have a computer problem.

9 CHAIRPERSON PERRY: -- between DNR and EPA?

10 MR. ROB MORRISON: Yes. We do.

11 And that's translated into a list problem. So
12 that's why we're working real hard to get --

13 CHAIRPERSON PERRY: We are going to wind up doing
14 TMDLs on things that don't need TMDLs because of a
15 computer problem?

16 MR. ROB MORRISON: No. I'm -- I don't -- I don't
17 think that'll be the case, Commissioner Perry. I
18 think that we can identify the impaired segments and
19 we can work on the issues that -- that make sense to
20 work on. I don't believe that this compels us to do
21 a TMDL for an entire segment when there's no
22 impairment been identified in those segments. I
23 think that's part of the TMDL process is to identify
24 the sources in impairments and work on the portions
25 of those water bodies that need to be worked on.

1 CHAIRPERSON PERRY: Is there a problem with GPS
2 segments on some?

3 MR. ROB MORRISON: No. It really hasn't -- and I --
4 John and -- well, I just let John explain what more of the
5 problem -- or EPA can explain. It has to do with our
6 ability to keep track of these sub-segments
7 separately in our database, in our assessment
8 database that we submit to EPA.

9 VICE-CHAIR HARDECKE: But you do have them sub-
10 segmented already? It's just a problem of getting it
11 to EPA.

12 MR. ROB MORRISON: Yes. Yes.

13 CHAIRPERSON PERRY: EPA can't --

14 VICE-CHAIR HARDECKE: So the -- the longitude and
15 latitude is a part of your identification of those
16 segments?

17 MR. ROB MORRISON: Correct. Of the sub-segments, but
18 the problem, again, is -- is in the transmission of
19 the data to EPA.

20 VICE-CHAIR HARDECKE: They're not willing to
21 accommodate you until they have those?

22 MR. ROB MORRISON: Well, I don't as they're willing -
23 - I don't know -- I mean, it's kind of hard to say
24 that, I guess, the short answer is that their
25 preference is to be able to have a system in place

1 where they can track and -- and -- and report that
2 information in a -- in a manner that -- that they
3 don't lose track of water bodies. I think that's
4 kind of the bottom line for them is that they don't
5 want to lose track of impaired segments.

6 And they -- they tell us that they have trouble
7 keeping track of the segments that we have given
8 them. It doesn't fit into their database that they
9 use on a more regional and national scale.

10 VICE-CHAIR HARDECKE: How long are we talking about
11 to solve this problem?

12 MR. ROB MORRISON: Well, as I mentioned Commissioner,
13 I can have this problem done by -- my goal is to have
14 it done for the 2010 List that we won't be faced with
15 this same -- same problem.

16 So with that, John, did you want to talk a
17 little bit about --

18 MR. JOHN FORD: I want to apologize to Robert.
19 Actually, everything that he said today where he was
20 discussing facts were factual and accurate.

21 It's just where the facts end and the
22 interpretation begins that he and I tend to differ a
23 little bit. Just a very quick words about PECs, which
24 Robert doesn't like, they're not perfect. They're
25 sediment guidelines. Hopefully, we'll get something

1 better in the future, but the fact is they're what we
2 have right now and they're actually pretty good.

3 In the paper that we used, they referenced their
4 own testing of their guidelines. And in 90 percent
5 of the cases where they had values that exceeded
6 these PEC values when they actually did toxicity test
7 on those sediments they had toxicity. So they're
8 actually pretty good at predicting things.

9 The only places in Missouri that we've actually
10 listed things based upon PECs where PECs were above
11 these values that we've used are in our heavy metal
12 mining areas and the Meramec River, unfortunately,
13 which is downstream from the -- the metal mining area
14 that has the largest amount of erosion. So we think
15 they're actually very good tools for measuring real
16 problems that we need to be looking at.

17 The other thing in Robert's -- when he talked
18 about the -- the three streams that he would like you
19 to consider d-listing was that not only do we have
20 PEC data but we have several other kinds of data so that --
21 that weight of analysis approach is applicable there.
22 And the reason we have so much data there is because
23 it's -- you know, we're back in the old -- new Lead
24 Belt. It's a mining area. That's where there is a
25 lot of concern.

1 Actually, most of the data was pretty
2 supportive, discounting the Microtox data, which we
3 can do, we still -- evidence from the *Hyaella azteca*
4 data -- data at all of these sites that indicated
5 impairment. The *Ceriodaphnia dubia* data also
6 indicated impairment, but as Robert said, it's highly
7 sensitive to metals and so we kind of discounted it
8 because some of the reference streams had toxicity also.
9 But we had -- we have real concerns because it
10 appears that crayfish are very sensitive to metals.

11 We had a study below the Glover Smelter that
12 indicated that crayfish were virtually gone from the
13 first few miles below the smelter. When they were
14 upstream there were very healthy crayfish
15 communities. And in these studies that they
16 performed on these streams down here in the new Lead
17 Belt on Bee Fork and West Fork and Strother Creek, in
18 the portions of those streams that were closest to
19 the mines, again, they saw the same thing. They saw
20 a great reduction in the number of crayfish that were
21 there. They even put in some studies of caged
22 crayfish. They brought them in, put them in cages,
23 sat them in the creek, left them for a particular
24 amount of time and substantial numbers of those also
25 died during that time.

1 So apparently this is a real concern. So, I
2 think, -- I think, these are legitimate listings and
3 things we need to keep on the list.

4 I -- I don't know if it's helpful to go into
5 much more discussion about the segmentation issue.
6 Basically, the problem is EPA has kind of an
7 assessment database structure they want the states to
8 use and, basically, it -- they say whatever you
9 define as your basic unit for each segment of stream,
10 whenever you say you have an impairment in that
11 segment that whole thing is going to be rated as
12 impaired.

13 For us to comply with that, I guess, and still
14 keep our list accurate in terms of where we have
15 impaired waters and where we don't. Every listing
16 cycle we would be having to change the length of our
17 seg- -- segments. They wouldn't correspond to our
18 Water Quality Standards. They'd be just kind of
19 little things that changed every year. It would be a
20 terrible mess that no one could understand.

21 So for right now, the best we can do is using
22 our data we have define the precise segment that's
23 impaired and transmit that data to EPA. I'm just not
24 enough of a computer person to know if there's an
25 easy way around this or not. But, basically, we're

1 in the position where we want to put in our 303(d)
2 List what the exact impairment -- impaired segment is
3 as close as we can define it by the data.

4 And this is just not going -- going to match up
5 with the entire water body as it's listed in Table H
6 in our Standards, often it's just a very small part
7 of that and -- and it -- and it also -- it also
8 varies by pollutant. In other words we may list one
9 portion of that segment for one pollutant and a
10 slightly different portion for another pollutant.

11 We need to track those differently for purposes
12 of TMDLs and just -- just for being able to -- to
13 write permits and so on. But it's -- it's difficult
14 for EPA to take that information and drop it into
15 their national system and have it make sense. They
16 just -- they kind of have their own way. They've got
17 50 states and several territories that are putting
18 data into that national system and they can't -- they
19 just don't have the resources, I guess, if every
20 state presents data in a different way. They just
21 kind of have to force the square pegs in their --
22 their round holes.

23 CHAIRPERSON PERRY: So in the alternative we have 100
24 -- we can call a whole 132 miles impaired. We
25 wouldn't want to do that either, would we?

1 MR. JOHN FORD: No. One of -- one of the things
2 we're looking at, we've actually got a project in
3 process now were we're updating our database, our big
4 databases, our raw databases and also the assessment
5 database that we send to EPA as part of our 303(d)
6 and 305(b) submittal. So we're maybe a year or two away from
7 having that depending upon how and when we get the
8 funds. But there may be an improved way of tracking
9 that where we actually go to smaller segments.

10 There's a national hydrographic database,
11 very small segments. There may be -- as something as
12 long as the Bourbeuse River, which is 130-sum-miles
13 long water body there may be a couple 100 of these
14 sub-segments. So it's possible that we can
15 reconfigure our database and actually track things by
16 these small segments. It would be a lot more work
17 for the folks in our section but it might end up
18 being something that -- that would be easier for EPA
19 to use.

20 MR. ROB MORRISON: I just wanted to say one thing,
21 Commissioner Perry, we're not asking you today to
22 approve entire segments.

23 I think what we've said is we've identified in
24 the list, in your columns there are impaired
25 stretches of which we are identifying. We have put

1 as a companion document that the entire water body
2 size. So we're not -- we're not asking you to
3 approve --

4 CHAIRPERSON PERRY: Oh. And I'm aware of that.

5 MR. ROB MORRISON: Yes. Okay.

6 CHAIRPERSON PERRY: And we're commenting on this
7 frustration and this disconnect --

8 MR. ROB MORRISON: Well, I agree.

9 CHAIRPERSON PERRY: -- that -- that a problem to us.

10 MR. ROB MORRISON: I agree. And I -- I'm very
11 hopeful we can get this taken care of in the future,
12 so -- as I mentioned.

13 CHAIRPERSON PERRY: And while we're talking bigger
14 segments; would you comment on the water bodies that
15 EPA put back on?

16 MR. JOHN FORD: There's 80 of them.

17 CHAIRPERSON PERRY: How many total miles, do you
18 know?

19 MR. JOHN FORD: I couldn't tell you -- I can crunch
20 some numbers --

21 CHAIRPERSON PERRY: It could be in the neighborhood
22 of, like, 2,000?

23 MR. JOHN FORD: I have no idea. I can crunch some
24 numbers this afternoon and get those back to you.

25 CHAIRPERSON PERRY: I'm just looking for a ballpark

1 figure. It -- it seemed to me it was quite
2 extensive.

3 MR. JOHN FORD: Well, if it was 80 segments -- if you
4 figure even 5 miles long that's what? 400 miles.

5 CHAIRPERSON PERRY: Four thousand miles. Yeah.

6 Well, --

7 MR. JOHN FORD: Four hundred.

8 CHAIRPERSON PERRY: And these are water bodies that
9 have a problem with Dissolved Oxygen and it goes back
10 to when we did the last Water Quality Standards, EPA
11 told us we had to have a 5.0 Dissolved Oxygen
12 Standard. Well, low and behold what is it 80, 90
13 percent of this state natural background doesn't
14 comply with that Standard. And therein we have a
15 problem.

16 And the other segments are from Mercury that
17 they've added about which we can do nothing, correct?

18 Well, this is why, because I think everybody and
19 besides I'm getting off the Commission so I'm going
20 to clear some laundry here. But I was invited to a
21 meeting with John Askew who no longer has his job,
22 where he said, would you, please, change the E.Coli
23 Standard? He had a difficult political bind where he
24 felt our E.Coli Standard needed to be raised to 205 -

25 -

1 MALE SPEAKER: 206.

2 CHAIRPERSON PERRY: 206, I'm close. And it was 540,
3 ah, so they -- we were cutting it in half. We came
4 back, we talked to all the stakeholders and we said,
5 what do you think about this E.Coli? And we did not
6 get much opposition. And so we went ahead and
7 changed that E.Coli Standard.

8 Well, the part that people don't know about that
9 meeting is John Askew also brought up when he was
10 trying to encourage us to do something, here's the
11 list of additional water segments that we think you
12 ought to have on your list. And it was pretty clear
13 to the two of us there that there was some sort of,
14 we're gong to put this on the list if you don't
15 comply

16 Well, we didn't really take that -- I'm not
17 ready to say that was a threat but it was pretty
18 close. And low and behold we did comply and low and
19 behold EPA put them on the list, 4,000 miles of
20 potential TMDLs, and think about the cost, and thing
21 about the effort to do those TMDLs, to end up with
22 what, something that was based on an erroneous
23 standard or something about which we can do nothing.

24 So how much resources are we wasting in a time
25 -- in a state that doesn't have a whole lot of

1 resources? And I will encourage the Commission to
2 take that -- to follow Robert's suggestion, at least
3 in that part, that if EPA is going to put them on,
4 it's going to be EPA doing it and not a vote of this
5 Commission.

6 COMMISSIONER SHORNEY: John?

7 MR. JOHN FORD: Yeah.

8 COMMISSIONER SHORNEY: Could you comment on the --
9 Robert's comment on the East Fork Locust Creek
10 Dissolved Oxygen issue? Can you comment on that,
11 also?

12 MR. JOHN FORD: Okay. That's -- that's the one where
13 we had data at two locations, one, further upstream
14 and one at the downstream end of the segment. The
15 data at the downstream end of the segment indicated
16 that it was fine. There wasn't a problem with
17 meeting the DO Standard, but the upstream data
18 indicated the problem.

19 I think previously we had lumped those two
20 together and listed the whole segment. Robert asked
21 us to -- to look at that again, and when I did, I
22 decided it was appropriate to -- to delete the
23 downstream portion of that stream from the list. And
24 then what I did was I just looked at the map and
25 figured out where the -- the major break was between

1 the upper and lower part in terms of new water coming
2 in. And that would have been that Elmwood Branch
3 that serves a large lake and coincidentally it's where
4 Farmland Foods also has their discharge.

5 But -- so we deleted that lower portion, like,
6 four or five-tenths of a mile just because the data
7 in that section indicated there wasn't a problem.

8 COMMISSIONER SHORNEY: So you stand by that that
9 portion of being on the list -- should still be on
10 the list?

11 MR. JOHN FORD: Of the upper portion. Yes.

12 COMMISSIONER SHORNEY: Okay.

13 MR. JOHN FORD: Um-huh.

14 And other questions?

15 (No response.)

16 CHAIRPERSON PERRY: Okay. Rebecca, did you want to
17 speak?

18 MS. REBECCA LANDEWE: (Complete statement inaudible.)

19 CHAIRPERSON PERRY: I'm sorry. I had my head down, I
20 didn't see what was happening. I'm sorry. Did you
21 want to address the group?

22 (No response.)

23 CHAIRPERSON PERRY: Please do. And identify your
24 name, please.

25 MR. TOM HERRMANN: Charlie McCarthy already told me.

1 My name is Tom Herrmann from St. Louis.

2 I can understand the -- the difficulty in trying
3 to cut down segments of -- of streams. One good
4 example in your backyard, Commissioner Hardecke, is
5 Red Oak Creek. We've talked about it before. Red
6 Oak Creek has on the list two branches of Red Oak
7 Creek, which separate and go around the Owensville
8 Wastewater Treatment Facility. The Impaired Waters
9 List lists the wrong branch as receiving the
10 discharge from the Owensville Wastewater Treatment
11 Facility. So the wrong branch of the creek, which
12 receives no discharge, is listed in the Impaired
13 Waters List. The one that receives discharge is not
14 listed.

15 There's many, many, many examples of the same
16 thing of misidentification or lack of identification,
17 but the main thing I wanted to tell the Commission
18 was in amplifying Robert's remarks about the
19 difficulty. Once something appears on the list
20 either put there by EPA or not it never gets taken
21 off. It just maintains itself on the list forever.
22 I call to your attention, seven years ago, I
23 presented a -- a list of streams in the state, which
24 verified by the State Water, Drinking Water -- State
25 Drinking Water people and records have never had

1 drinking water withdrawn from those streams but, yet,
2 they're listed as a drinking water source in our
3 Commission report.

4 There were 30 of them. I prepared a second list
5 of lakes, which either have never nor have, to this
6 date, had drinking water drawn from them and there's
7 32 of those. How many do you think have been
8 withdrawn from the list after seven years? Not a
9 damn one. Not a damn one.

10 And it's -- that verifies what I'm telling you,
11 is that once it appears on the list there is a great
12 reluctance to allow this Commission to remove
13 anything whether justified or not.

14 CHAIRPERSON PERRY: And you can refresh my memory
15 with the 2002 List or 2004 List where EPA put
16 them on. We didn't put them on. And then -- and
17 then we couldn't get -- there were 20 of them that we
18 couldn't get back off. I'm not sure they're off,
19 now.

20 MR. TOM HERRMANN: There were 30 -- 30 streams and 32
21 lakes. And, no, I think they -- that was an error
22 that was carried from way back. But I had the
23 drinking water records back as far as 1964 in my
24 personal possession. I went back and checked and
25 verified that there is no -- no source of drinking

1 water supply taken from those -- those streams.

2 And I gave the complete list to Martha Steinkamp
3 and to this Commission and to the staff and there
4 hadn't been a one in seven years removed from the
5 list.

6 Thank you.

7 CHAIRPERSON PERRY: I think that effectively points
8 out and your -- come on up, Rebecca.

9 You can see our hesitancy to put something on
10 unless we are truly convinced that it deserves to be
11 there because of all these other things that have
12 just been said.

13 MS. REBECCA LANDEWE: Good afternoon, I think, it is
14 and so I'll try to make my comments brief because I
15 have a feeling that I'm standing between this and
16 lunch. My name is Rebecca Landewe for those of you
17 who don't know me. I serve as the Missouri Water
18 Quality Standards Coordinator with Region 7 in EPA
19 and I've worked very closely with the Department on
20 the 303(d) List and during the 303(d) List review.

21 And I would like to respond, actually, to that
22 most immediate comment about waters getting on
23 the list and having a hard time getting them off.
24 And we do have regulations about needing good cause
25 to d-list waters. But I was also interested in how -

1 - how does the list change from one cycle to the
2 next.

3 And so I looked at the number of waters that
4 were on the 2002 List and compared that to the
5 2004/'06 List and actually most of the 2002 List has
6 come off the list, which I think is a credit to the
7 amount of work that has been done in additional
8 assessment and the TMDLs that the Department has
9 developed.

10 So there are waters changing but -- although the
11 list may stay the same size, the waters that are on
12 the list are not the same, which means that there's
13 restoration going on or additional assessment showing
14 that maybe it wasn't correctly listed to begin with.
15 So I think that's an important point to bring up.

16 I would like also to respond to a couple of
17 other things that were brought up. Robert Brundage
18 brought up the fact that you -- you have a decision
19 to approve the list and disregard the EPA additions.
20 I just would like to bring up that the EPA final list
21 is the list for Missouri so while you can make that
22 decision to not include those waters that EPA added
23 to the list, once EPA takes an action on that list
24 that becomes the Impaired Waters List for Missouri.

25 There are -- there are a couple of other things

1 that I'll just --

2 CHAIRPERSON PERRY: (Complete statement inaudible.)

3 MS. REBECCA LANDEWE: I'm sorry.

4 CHAIRPERSON PERRY: I'm sorry. I said, it's a small
5 statement, but a statement nonetheless.

6 MS. REBECCA LANDEWE: Yeah. There are a couple of
7 other things that I just want to point out with -- in
8 response to some of the comments that were made
9 earlier. And, again, in response to some of the
10 things that we're --

11 (Tape Two, Side B concluded.)

12 MS. REBECCA LANDEWE: -- about EPA's vision on these
13 as Quality Standards and how we hadn't approved those
14 as Water Quality Standards and the intent of that
15 comment was really to distinguish between the 303(d)
16 listing process as separate from the Water Quality
17 Standards review process.

18 And so while there are examples in other states,
19 of states using numeric translators to list waters
20 based on narrative criteria that is not acting on a
21 listing decision based on those numeric translators -- is not the
22 same as acting on those numeric translators as Water
23 Quality Standards. And what the intent of that
24 comment was is to say to the Department, if you want
25 to adopt those as Water Quality Standards, we're

1 willing to work with you but we would like to
2 coordinate on -- on that to be sure that they are
3 appropriate for Water Quality Standards during -- to
4 -- to be sure that we have all of that information
5 for the review process, which is separate from the
6 303(d) listing process.

7 And, also, just to comment on the use of numeric
8 translators. I'll just cite a couple of examples
9 from, first of all, our regulations state that the
10 applicable Water Quality Standards established under
11 section 303(d) of the Clean Water Act include numeric
12 criteria, narrative criteria, water body uses and
13 Antideg requirements. And those are the things that
14 the state is supposed to consider when identifying
15 waters for the 303(d) List. So it's pretty clear in
16 our regs that narrative criteria are to be
17 considered.

18 And then in our guidance we talk about when
19 deciding whether to indentify a segment as impaired
20 states need to determine whether there are
21 impairments of designated uses and narrative as well
22 as the numeric criteria.

23 We also talk about developing appropriate
24 numeric water quality targets when -- when a water
25 body is listed based on narrative criteria. And so,

1 I think, Robert brought up the fact that -- you know,
2 during a TMDL or -- I think, specifically, in West
3 Fork Black River it was listed based on a narrative
4 criteria and there's additional sampling occurring.
5 Because when we develop the TMDL or when the state
6 develops the TMDL they need to have a numeric water
7 quality crit- -- target in that TMDL even if it was
8 listed on the narrative- -- based on a narrative criteria.

9 And then, finally, like, I said before there are
10 examples of other states using numeric translators to
11 base their decisions for listing violations of
12 narrative criteria.

13 Let me just check my notes here because there
14 were a lot of comments made. I want to be sure I
15 respond to all of them.

16 I think those are the important ones. Did you
17 have any other questions for me?

18 CHAIRPERSON PERRY: Yeah. Well, you know, and it
19 seems to me like narrative criteria or these
20 indicators, it's a matter of degree. And you see our
21 hesitancy because once you -- once we commit we have
22 a difficult time with some of these waters being on
23 the 303(d) List if -- if it turns out down the road
24 that they didn't belong.

25 We used to have a sub-category that didn't quite

1 qualify for 303(d). In the old days it was 503(b).

2 MS. REBECCA LANDEWE: I think -- well, I think, the
3 category that you would probably use, right now, is
4 Category 3(b) where you have some information but
5 it's not enough to make an assessment.

6 CHAIRPERSON PERRY: Right.

7 Is it possible that these waters that we're
8 talking about would be more appropriate on that list?

9 MR. JOHN FORD: We use the Listing Methodology and we
10 follow that so if -- if the methodology decides
11 that's -- that's -- it's an impaired water then our
12 choice is either Category 4 or Category 5, 5 being
13 the 303(d) List.

14 VICE-CHAIR HARDECKE: In a couple years -- sometime
15 in not too distant past we talked about these water
16 bodies listed for Mercury and putting them in that
17 other category because there isn't anything we can do
18 about it. Whatever happened to that idea?

19 CHAIRPERSON PERRY: That's EPA's decision because
20 they're the one who put them on.

21 MS. REBECCA LANDEWE: I mean, I think, the problem
22 there is that you do have information indicating that
23 the water body is impaired and in that case it -- the
24 water body needs to be on the list. Yes. It is
25 difficult to develop a TMDL for Mercury and EPA

1 realizes that. Other states have done it. Other
2 states have comprehensive Mercury reduction programs.
3 We have some additional guidance on trying to address the
4 Mercury issue. We understand it's a very difficult one.

5 I did -- I did neglect to mention one thing
6 about Microtox testing because that's been a subject
7 of discussion. And Robert is correct. We do not
8 have an EPA approved method for wet-testing. It was
9 evaluated as -- to see whether it would be
10 appropriate for wet-testing and we responded to the
11 company that developed the test that for wet -testing
12 -- you know, we have a certain level of -- a certain
13 standard that those tests need to meet. And if -- we
14 didn't quite have the information in order to approve
15 that.

16 But for our -- it's -- we've also used it and
17 recommended using it as a screening level sort of
18 test to identify toxic conditions in our Assessment
19 and Remediation of Contaminated Sediments Program.
20 There's a 1994 report and I can give you the citation
21 if you would like, where we talk about Microtox as a
22 useful tool for looking for toxicity. And so while it
23 isn't approved for wet-testing it can be a helpful
24 indicator.

25 And so I just did want to respond and to clarify

1 that Robert was correct, we don't have it approved
2 for wet-testing but have -- have noted its usefulness
3 in other programs.

4 COMMISSIONER SHORNEY: Rebecca, one more time. If
5 the 80 so-called EPA water bodies were deleted --

6 MS. REBECCA LANDEWE: Um-huh.

7 COMMISSIONER SHORNEY: -- what would be the
8 ramifications of that and what would EPA do about
9 that on the next go around?

10 MS. REBECCA LANDEWE: So, basically, during the two -
11 - when we received the 2006 List there were a number
12 of water bodies that had been identified as having
13 information indicating impairment but were not
14 included on the list. And those were, as mentioned
15 before, the D- -- Dissolved Oxygen waters and Mercury
16 waters and a few others. And so we reviewed the
17 information, the water quality data that Missouri
18 submits with their lists to see whether or not those
19 were in fact impaired and we added them back on to
20 the list, so unless there's good cause to d-list
21 them, which is what we would need, we would have to
22 review that same information and list those waters
23 that were impaired.

24 So we review the list -- Missouri's list to be
25 sure its developed in a manner that's consistent with

1 the Water Quality Standards. And if there's data
2 showing that the Standards have been violated in the
3 water body it has to be on the list.

4 CHAIRPERSON PERRY: What do you do in the case where
5 you know the Water Quality Standard is --

6 MS. REBECCA LANDEWE: In the case of these narrative
7 -- these narrative criteria --

8 CHAIRPERSON PERRY: Well, in the Dissolved Oxygen?

9 MS. REBECCA LANDEWE: -- and the numeric translators?

10 I'm sorry.

11 CHAIRPERSON PERRY: In the case of Dissolved Oxygen?
12 You know, much of this -- these 80 waters being added
13 on is an erroneous Water Quality Standard and -- you
14 know, we're having -- we're working on all sorts of
15 studies to make this a more, true Standard.

16 MS. REBECCA LANDEWE: Yes. And we have been coordinating
17 with the Department on that. And I think there are
18 some -- some ways that -- that that can be handled.
19 Just because a water body goes on the list doesn't
20 mean you have to develop a TMDL tomorrow. You can --
21 the Department submits with their list a priority
22 list of the -- when they're going to develop a TMDL
23 for impaired waters.

24 And so these waters that have -- show -- that
25 are showing violations of your regulations, right

1 now, the Water Quality Standards as they are on the
2 books right now can be put on a lower priority while
3 we work on developing --

4 CHAIRPERSON PERRY: And that was our idea to keep
5 them on a lower priority by not putting them on the
6 list.

7 (Laughter.)

8 MR. ROB MORRISON: And I'll just kind of hearken. My
9 chain got pulled over here a little bit, so --

10 The -- as you know the DO waters -- you know, I
11 have personally and Phil Schroeder has appeared
12 before you, several of us have appeared before you on
13 many occasions and talked about low DO and -- and
14 natural contributions and things. We still believe
15 that. And we still believe there is enough of an
16 issue that we need to pursue it, but it's a -- it
17 needs to be pursued in terms of a criteria change.

18 What EPA has done, is they've made it very clear
19 that -- that for waters that exceed the criteria, in
20 other words, for those waters that are below the 5
21 milligrams per liter that we must list them on our
22 303(d) List. They've made that very clear. And --
23 and that's the process. And as Rebecca rightly
24 pointed out, they have agreed and we have done so. I
25 believe that information is on our webpage for our

1 TMDLs that for the '04/'06 waters that were low DO
2 that EPA added back we have prioritized those to be -
3 - you know, for the TMDL to be conducted in -- in
4 years 10 to 13. We're looking at a longer window in
5 order to prepare that.

6 No the back story is that we are going to
7 continue to gather information for criteria
8 development. And that continues, this summer -- it
9 continues. Really we hope to have some substantial
10 work completed on DO criteria by 2012 for our next
11 Water Quality Standards triennial review package for
12 you. We hope we can have a large group of this taken
13 care of at that time.

14 And Commissioner Shorney, you asked about
15 consequences. You know, if -- if we chose to not put
16 those waters back on that EPA had added back to the
17 list in '04/'06 we -- we would not be fulfilling the
18 requirements of the federal regulations. I think we
19 would -- we would -- we would not have the data to
20 show cause to remove them from the list.

21 So I don't know how -- ramifications, I guess,
22 we -- we could be in danger of being in violation of
23 federal -- federal regulations, so -- I don't -- are
24 there consequences, I don't know. But the point of
25 it is -- you know, we have a means. We have a method

1 to deal with those.

2 Commissioner Hardecke, your comment about
3 Mercury is a good one. But we understand there is a
4 process. There are a lot of states that are going
5 through the development of statewide Mercury TMDLs.
6 And it requires us to do certain things as a state.
7 Not only to do just atmospheric deposition but to
8 make sure we inventory the sources of Mercury in
9 Missouri and that we're minimizing them and
10 appropriately.

11 And -- and that's -- so that's some things that
12 we're working on. And hopefully in the next few
13 years, we'll have a statewide Mercury TMDL developed,
14 so -- so with that I'll -- I'll conclude.

15 VICE-CHAIR HARDECKE: So if they get a statewide
16 Mercury TMDL then all of these Mercury water bodies
17 would be subject to d-listing?

18 MR. ROB MORRISON: Well, they would move into
19 Category 4 in terms of once the TMDL is completed and
20 then once they have been restored, if they're ever are
21 restored, then they would move off the list as -- as
22 the restoration occurs.

23 MS. REBECCA LANDEWE: Did you have any other
24 questions for me?

25 (No response.)

1 MS. REBECCA LANDEWE: Thank you very much.

2 VICE-CHAIR HARDECKE: Oh. I had one.

3 MS. REBECCA LANDEWE: Okay.

4 VICE-CHAIR HARDECKE: If I understood you in your
5 comments --

6 MS. REBECCA LANDEWE: Um-huh.

7 VICE-CHAIR HARDECKE: -- you said you need to have --
8 you were talking about the narrative data and I
9 thought I understood you to say you needed to have
10 numeric data to back up the -- numeric data to back
11 up the narrative is --

12 MS. REBECCA LANDEWE: So in our guidance we talk
13 about if -- if a water body has been listed based on
14 narrative criteria, when you d-list that water body,
15 for example, by developing a TMDL or if there's a
16 permit that -- that can be modified to incorporate
17 more stringent limits to remedy the problem
18 then that permit needs to have numeric water quality
19 targets. And -- and so that's where our guidance
20 talks about the appropriateness of developing numeric
21 water quality targets if -- if there is a narrative
22 listing.

23 VICE-CHAIR HARDECKE: Okay.

24 MS. REBECCA LANDEWE: And that -- the same thing
25 would be true for -- for developing a TMDL. The TMDL

1 like my counterpart at work likes to say its math.
2 You have to do the calculations. So you need some
3 numbers.

4 VICE-CHAIR HARDECKE: Tom Herrmann brought up the Red
5 Oak Creek and it's listed for low DO. Owensville is
6 in the process of building a new waste treatment
7 plant; is that going to solve that?

8 MS. REBECCA LANDEWE: Well, I would have to look at
9 the data, but one of the things that the state can
10 consider when they evaluate their data is if their
11 older data is not representative of current
12 conditions, for example, if -- if a treatment plant
13 has gone through a significant upgrade that could
14 change the problem -- that could change the operation
15 and their discharge, the quality of their discharge,
16 then if there's older data indicating impairment that
17 data might not be representative and that might be a
18 good reason not to consider that.

19 MR. ROB MORRISON: Yeah. And, specifically,
20 Commissioner Hardecke, on Red Oak Creek and staff,
21 please, correct me if I'm wrong. I believe what's
22 happened there is we have a permit in lieu of TMDL
23 and they are in the process of upgrading that
24 wastewater treatment facility, which, I believe, is
25 listed as the source of the -- of the impairment. So

1 that should, in the next cycle, you should see that -
2 - once the permits is effective and the upgrades are
3 made you should see that go into Category 4.

4 VICE-CHAIR HARDECKE: Even though a lot of the time
5 it's dry upstream from that?

6 (Laughter.)

7 MR. ROB MORRISON: I don't know what time you want to
8 eat lunch, Commissioner Hardecke, we can debate the
9 merits of low DO --

10 (Laughter.)

11 VICE-CHAIR HARDECKE: I'm not trying to debate it.

12 I'm just --

13 CHAIRPERSON PERRY: I give it --

14 MR. ROB MORRISON: I understand. Look -- I
15 understand.

16 VICE-CHAIR HARDECKE: I'm just trying to get a
17 feeling of how you would d-list something 'cause I
18 know we've talked about that before.

19 MR. ROB MORRISON: Well, again, its -- this is where
20 we come off of Category 5 and we come into Category 4
21 once the permit in lieu of which is the other
22 mechanism. It would move into another category of
23 Category 4 and then it would just -- it would be
24 monitored and then once it attained the Water Quality
25 Standard again then it would come off -- off the list

1 completely.

2 CHAIRPERSON PERRY: So if you have a permit in lieu
3 of TMDL does that permit have a DO Standard?

4 MR. ROB MORRISON: The permit wouldn't have
5 necessarily a DO Standard, it could but it might not.
6 But it would have a BOD and TSS Limit --

7 CHAIRPERSON PERRY: Right.

8 MR. ROB MORRISON: -- that would be designed to be
9 protective of the Dissolved Oxygen in the stream. So
10 it would be based on a waste load allocation from a
11 model.

12 CHAIRPERSON PERRY: And those few -- you know, TSS
13 and those I understand, but my concern is if the
14 permit, now, in lieu of TMDL has a DO Standard, which
15 we've all discussed could be a little higher than it
16 should be then if it's now in a permit that'll never
17 come out because of the backsliding.

18 MR. ROB MORRISON: Well, certainly -- yeah. That's a
19 good comment. And a good question. And that's what
20 we -- we do have -- the permits are designed to be
21 protective of water quality. And that's where we're
22 at, today.

23 Now, there are some instances where we have
24 effluent dominated situations or effluent dependent
25 which can be a little -- a little different. And

1 that's kind of the case of the Sni-a-Bar in Blue
2 Springs.

3 So -- so there's -- there are some differences,
4 but in large part the permits are designed to be
5 protective of the Water Quality Standard.

6 CHAIRPERSON PERRY: And -- but it runs us into
7 trouble as I hope I've made clear that if the permit
8 is based on a standard that isn't a good standard, we
9 can't get it out of there.

10 MR. ROB MORRISON: And you're -- yes. And I
11 understand what you're saying, Commissioner Perry.

12 CHAIRPERSON PERRY: And that's somewhat related to
13 what we put -- that is related to those that we put
14 on the list because then that becomes per- -- because
15 if it's on the list, if it's on the TMDL list when
16 that permit is given it's based on that.

17 MR. ROB MORRISON: That's correct.

18 And that needs to be very clear that -- that you
19 understand that is what we are permitting, today, for
20 those streams that are on small flowing water bodies
21 that we do have a Water Quality Standard. It is on
22 the books, today.

23 So that, I think, it also raises the question
24 that we need to be vigilant in trying to get
25 appropriate standards applied. We need to be very

1 careful about we look at effluent dominated
2 situations meaning that when the flow of the stream
3 is dependent upon the effluent what is the correct
4 standard, which is what we're struggling with for
5 Sni-a-Bar and the Blue Springs Treatment Facility.

6 So I understand your concern.

7 MR. TOM HERRMANN: I'd like to point out Commissioner
8 Hardecke, that the branch that's identified -- the
9 branch of Red Oak Creek that's identified as
10 impaired, it's always dry because they've identified
11 the wrong branch as impaired by --

12 VICE-CHAIR HARDECKE: Well, Red Oak Creek, itself,
13 gets dry.

14 MR. TOM HERRMANN: Well, Red Oak Creek is
15 unclassified downstream from the discharge. There's
16 nothing about Red Oak Creek that makes any sense.

17 Now, we've been arguing DO for most of my life,
18 I think.

19 (Laughter.)

20 CHAIRPERSON PERRY: Never mind.

21 MR. TOM HERRMANN: That's a long time.

22 CHAIRPERSON PERRY: You said it.

23 MR. TOM HERRMANN: Nobody invented DO when I was
24 young.

25 According to EPA or at least Region 7 of EPA the

1 DO in the Snake River in Yakima, Washington, should
2 be the same as Ditch No. 1 down in Stoddard County in
3 Missouri and that don't make a hell of a lot of
4 sense. Never has, never will.

5 CHAIRPERSON PERRY: Exactly. Okay. I -- we --
6 whoever speaks --

7 COMMISSIONER HUNTER: I think I would rather have the
8 Snake River than Ditch No. 1.

9 CHAIRPERSON PERRY: Do you have a follow-up comment?

10 MS. REBECCA LANDEWE: No. I just wanted to see if
11 you had any other questions?

12 CHAIRPERSON PERRY: No.

13 VICE-CHAIR HARDECKE: We better stop.

14 MS. REBECCA LANDEWE: Okay.

15 CHAIRPERSON PERRY: Do we have any further questions?
16 (No response.)

17 MS. REBECCA LANDEWE: Thank you.

18 CHAIRPERSON PERRY: I would like to -- are you ready
19 to make a motion and vote? We really -- we can't
20 discuss this in closed session; it's not a closed
21 session item. But if you want to think about it, I
22 would be happy to put the vote when we come back.

23 COMMISSIONER HUNTER: I'm ready.

24 CHAIRPERSON PERRY: But that -- I want to admonish
25 you that that is to think about and not to discuss

1 'cause it's not a closed session item.

2 MS. JENNIFER FRAZIER: No. It's not.

3 CHAIRPERSON PERRY: Right. So everybody knows that
4 we're just thinking.

5 With that --

6 (Director and Chair held discussion off record
7 regarding agenda.)

8 CHAIRPERSON PERRY: And it would be good to do, right
9 now.

10 Okay. Everybody tell your grumbling tummies to
11 be quiet. Mr. Bindbeutel I understand you're here to
12 talk about --

13 MR. EARL PABST: Joe wants to speak first.

14 MR. BINDBEUTEL: No, I'm available for questions.

15 CHAIRPERSON PERRY: Oh. Joe's going to speak first
16 and then you want to talk about that, too.

17 MR. BINDBEUTEL: I just want to be available if there
18 are any questions.

19 CHAIRPERSON PERRY: And he wants to be available,
20 now, so could you --

21 MR. JOE BOLAND: Yes.

22 CHAIRPERSON PERRY: Remember the grumbling tummies.

23 MR. JOE BOLAND: I hear them quite loudly in the back
24 there.

25 My name is Joe Boland. I'm with the Financial

1 Assistance Center.

2 MS. JENNIFER FRAZIER: Are you postponing action on
3 this?

4 CHAIRPERSON PERRY: On the rule?

5 MS. JENNIFER FRAZIER: On the rule.

6 CHAIRPERSON PERRY: I am postponing action on that
7 until after lunch.

8 MS. JENNIFER FRAZIER: Okay. I just wanted to make
9 that clear. I don't --

10 CHAIRPERSON PERRY: Right. No. We're going to come
11 back and vote and we're also going back to the 6.

12 MR. JOE BOLAND: Okay. I apologize. Again, my name
13 is Joe Boland. I'm with the Financial Assistance
14 Center within the Water Protection Program.

15 And let me say I have certainly learned my
16 lessons from being out of the room when my agenda item
17 came up before this last item. Although, I do have a
18 valid excuse, we were doing a presentation for the
19 Local Government Advisory Counsel, so it was
20 legitimate.

21 I'm before you, today, to ask you to move
22 forward with an **Emergency Rule on our General**
23 **Assistance Regulation**, which will allow us to provide
24 additional subsidies through our SRF Program.
25 Basically, to implement the stimulus funding that

1 we've received through the American Recovery and
2 Reinvestment Act.

3 Currently, this Emergency Rule is needed quite
4 frankly because our current regulations do not allow
5 us to do anything but loans. And through the
6 Stimulus Bill we are allowed to do negative interest
7 loans, principle forgiveness or grants and we've
8 chosen to provide grants through the SRF for the
9 stimulus funding.

10 And, again, the -- we tried to take a very,
11 very simple approach in this emergency regulation, a
12 very surgical approach, it's a couple very broad
13 changes in there, specifically, on Page 555 is what's
14 going to allow us to provide additional subsidies to
15 our applicants.

16 And I don't mean to rush through this, but I
17 know everybody's in a hurry to break for lunch. If
18 you want me to go through line-by-line the changes in
19 this regulation, I certainly can, otherwise I was
20 just going to summarize by saying the changes in this
21 -- this emergency regulation allow us to give out
22 grants. That's quite frankly our main goal here is
23 to provide the grants along with the loans -- I'll be
24 talking more about our Program for implementing ARRA
25 here in a little bit, I think on Tab No. 10.

1 But this regulation is required since our
2 current regulations do not allow us to do grants.
3 And we -- our intent is to follow-up with permanent
4 regulation changes to take full advantage of any
5 additional subsidies or -- whatever the federal --
6 federal laws allow us to do in the future. Whether
7 that is 0 percent interest on the Clean Water side or
8 even principle forgiveness on the Drinking Water
9 side. So we want to position ourselves to take full
10 advantage of the flexibilities within those two acts.

11 So let's see. Concurrently with this rule
12 we've also -- we've also undergone a statutory change
13 as well. We've -- Senate Bill 539, well it started
14 out as 539 and now it's been rolled into 661, I
15 believe, which has been truly agreed to and finally passed and is
16 going to the Governor, right now, for signature.

17 That -- that Bill will widen our statutory authority
18 as well to provide these additional subsidies. So,
19 now, we will be in a position to provide grants even
20 into the future if this opportunity comes up again.
21 So I just wanted to let you know that.

22 Are there any questions on this? I know I'm
23 flying through here, but our -- again, our intent is
24 just to have the ability to provide grants along with
25 our loans for the American Recovery and Reinvestment

1 Act funding that we will be receiving, so --

2 And the agenda, I apologize, the agenda says
3 that we would be asking you for permission to move
4 forward with those permanent rules as well, but we
5 did not get far enough along in the short time that
6 we've had here to get things prepared. So we -- we
7 are not ready to ask you for permission to move with
8 those permanent rules at this time. We're just
9 asking for action on the Emergency Rule.

10 So with that, can I answer any questions?

11 (No response.)

12 COMMISSIONER SHORNEY: Is it intended that all this
13 money would be under contract by February 17, 2010?
14 Is that --

15 MR. JOE BOLAND: Correct.

16 COMMISSIONER SHORNEY: -- expect -- the expectation?

17 MR. JOE BOLAND: That's the -- the -- that's the
18 requirement we will have once we accept the
19 capitalization grant from EPA. We have until
20 February 17th, 2010. At that point in time, EPA is
21 required through the Stimulus Bill to take a look at
22 every state, whoever has not spent their money, they
23 take that back from that state and reallocate it to
24 the states that have deep fundable lists and that
25 have projects that can use that money.

1 COMMISSIONER SHORNEY: And this looks likely that
2 we can do this?

3 MR. JOE BOLAND: Correct.

4 And we, I think, in your blue packets we
5 provided our draft IUP, which I'll be talking about
6 under Tab No. 10, but we have some pretty deep lists.
7 So I think we have every expectation that we'll be
8 using all this funding, so --

9 MR. BINDBEUTEL: If I could just add a couple of
10 quick comments. Thank you, Joe.

11 First of all, Joe and his staff are to be
12 commended for the tremendous amount of work it has
13 taken to keep up with these rolling federal mandates
14 and guidance documents that have been coming down and
15 the very difficult amount of work and technical
16 analysis that we've asked him to do to come up with
17 the response to our opportunities under the Stimulus
18 Bill. His entire staff has pitched in that and spent
19 a lot of time.

20 And this Emergency Rule is just a small part of
21 that, but I wanted to take this opportunity to thank
22 him and his staff.

23 The reason why this is an Emergency Rule is we
24 need to get some legal authority in place to get
25 money out. In response, Commissioner, there are not

1 only deadlines on the backend. There's -- there's a
2 real value all through the federal act that suggests
3 shovel ready and this is truly supposed to be a
4 stimulus effort. So we're going to try to get that
5 money out on the street. There are -- there are
6 projects ready and this -- this Emergency Rule allows
7 us to process that money as quickly as possible.

8 And then, finally, as Joe alluded the
9 opportunity to do grants under the Stimulus Act, in
10 fact, the Act suggests that a minimum of 50 percent
11 has to go out as either grants or loan forgiveness or
12 negative interest or some of these other things.

13 So -- so the entire foundation of our SRF
14 Program has changed with a stroke of a pen in
15 Washington and -- and grants are a whole new
16 ballgame. You'll be hearing more about it in terms
17 of the IUP. But this was not an opportunity to do
18 grants, this was essentially mandate. If we wanted
19 to use this money half of it had to go out as grants.

20 And -- and in terms of those clawback provisions
21 so we would certainly hope and we're working very,
22 very hard to not be penalized by those but in fact be
23 in a position to clawback some of Kansas' money and
24 put it into to Missouri.

25 That's certainly my goal.

1 (Laughter.)

2 MR. BINDBEUTEL: Are there any other questions?

3 (No response.)

4 MR. BINDBEUTEL: Again, I want to commend the staff.

5 We have -- we have been very demanding on them with

6 respect to options and timelines and the federal

7 government is still giving us guidance on some of

8 these areas that we are having to -- to respond to.

9 Joe's done a wonderful job.

10 Thank you.

11 CHAIRPERSON PERRY: And we appreciate your comments.

12 MR. JOE BOLAND: And I appreciate what Joe said and -

13 - and he reminded me the -- the reason it's rather

14 vague in this Emergency Rule is because we have not

15 gotten final guidance from EPA and there are a lot of

16 fine points to this that have not been -- you know,

17 completely thought out, yet, from the federal level.

18 So we -- we're not exactly sure what the final

19 product is going to look like so we kind of wanted to

20 have a little general authority.

21 And I did -- forgot to mention the -- the reason

22 we need this Emergency Rule, obviously, is as Joe

23 mentioned the very short timeline and we need to get

24 moving right now to be able to provide these grants,

25 so --

1 Any other questions?

2 (No response.)

3 CHAIRPERSON PERRY: The Chair would be happy to
4 entertain a motion.

5 MR. JOE BOLAND: Okay.

6 MR. EARL PABST: We have one card.

7 CHAIRPERSON PERRY: Oh. We do.

8 COMMISSIONER EASLEY: I'll make the --

9 CHAIRPERSON PERRY: Oh. I'm sorry.

10 COMMISSIONER EASLEY: You ready?

11 MR. PHIL WALSACK: My name is Phil Walsack, Missouri
12 Public Utility Alliance. I will stand down on Item
13 No. 6 and move to Item No. 10 and 18.

14 Thank you.

15 CHAIRPERSON PERRY: Put you down for 10 and 18.

16 Okay. With that the Chair will entertain a
17 motion.

18 **COMMISSIONER EASLEY: Okay. I move the Commission**
19 **approve the request to file the Emergency Rule in the**
20 **Proposed Amendment to 10 CSR 20-4.040 State Revolving**
21 **Fund General Assistant Regulation with the Secretary**
22 **of State's Office for the publication in the Missouri**
23 **Register.**

24 **COMMISSIONER SHORNEY: Second.**

25 **CHAIRPERSON PERRY: We have a first and a second,**

1 please, call for the vote.

2 VICE-CHAIR HARDECKE: I'll second.

3 MS. MALINDA OVERHOFF: Commissioner Hardecke?

4 VICE-CHAIR HARDECKE: Yes.

5 MS. MALINDA OVERHOFF: Commissioner Easley?

6 COMMISSIONER EASLEY: Yes.

7 MS. MALINDA OVERHOFF: Commissioner Shorney?

8 COMMISSIONER SHORNEY: Yes.

9 MS. MALINDA OVERHOFF: Commissioner Tupper?

10 COMMISSIONER TUPPER: Yes.

11 MS. MALINDA OVERHOFF: Commissioner Hunter?

12 COMMISSIONER HUNTER: Yes.

13 MS. MALINDA OVERHOFF: Chair Perry?

14 (No response.)

15 MS. MALINDA OVERHOFF: Chair Perry?

16 CHAIRPERSON PERRY: Yes.

17 I was just admiring Jan's tenacity of sticking
18 with us.

19 MR. JOE BOLAND: Thank you very much.

20 CHAIRPERSON PERRY: Do we have a motion to go to
21 session?

22 (No response.)

23 CHAIRPERSON PERRY: Thank you. And thank you for
24 all your dedication on that.

25 VICE-CHAIR HARDECKE: I move the Clean Water

1 Commission go into closed session to discuss legal,
2 confidential or privileged matters under Section
3 610.021(1); personnel actions under Section 61- --
4 10.021(3); personnel records or applications under
5 Section 610.021(13).

6 CHAIRPERSON PERRY: Do we have a second?

7 COMMISSIONER HUNTER: Second.

8 CHAIRPERSON PERRY: Call for the vote.

9 MS. MALINDA OVERHOFF: Commissioner Easley?

10 COMMISSIONER EASLEY: Yes.

11 MS. MALINDA OVERHOFF: Commissioner Shorney?

12 COMMISSIONER SHORNEY: Yes.

13 MS. MALINDA OVERHOFF: Commissioner Tupper?

14 COMMISSIONER TUPPER: Yes.

15 MS. MALINDA OVERHOFF: Commissioner Hunter?

16 COMMISSIONER HUNTER: Yes.

17 MS. MALINDA OVERHOFF: Commissioner Hardecke?

18 VICE-CHAIR HARDECKE: Yes.

19 MS. MALINDA OVERHOFF: Chair Perry?

20 CHAIRPERSON PERRY: Yes.

21 Okay. It is ten till one. I have learned that
22 our lunch session will not be long. So do you think
23 we can be back here at 1:30?

24 (No response.)

25 CHAIRPERSON PERRY: All right. 1:30.

1 (Break in proceedings.)

2 CHAIRPERSON PERRY: Thank you-all very much. And
3 thank you Jan. It's incredible. He makes all the
4 big decisions and I make all the -- he makes all the
5 big ones, I make all the little ones and so far there
6 have been no big ones.

7 So this is one of my -- this is one of my last
8 executive decisions. First thing is we're going to
9 have a vote 'cause everybody's had a chance to think
10 about it. And we're going to talk about -- we're
11 going to vote -- have a motion on the **303(d) List**
12 then we have Tab No. 8, which is the new methodology.
13 I have asked -- Robert has some presentation to make.
14 I'm not bound to let him have to present it although
15 I think he has some points that need to be made,
16 today. He promised me to shorten it extremely and to
17 give you the handout of it. But we will let him make
18 his few points. That would give the other person who
19 wanted to speak i.e. Kevin.

20 Hello and good-bye.

21 MR. PERRY: Two seconds.

22 CHAIRPERSON PERRY: Okay. That's what we'll do.

23 We already voted to go out, so we're here.

24 Who would like to proceed?

25 (No response.)

1 CHAIRPERSON PERRY: Okay. Back on the 303(d) List.
2 Ooh. Where's Sam?
3 (No response.)
4 CHAIRPERSON PERRY: Not that Sam. Sorry.
5 COMMISSIONER EASLEY: We're missing one.
6 CHAIRPERSON PERRY: That would be Sam I am. Can you
7 tell I've had a child under the age of 7 in my home
8 for 30 years?
9 (No response.)
10 CHAIRPERSON PERRY: Where is Mr. Hunter?
11 MR. EARL PABST: My guess is he went to the restroom.
12 CHAIRPERSON PERRY: Robert, you might start getting
13 ready so we don't have to wait.
14 And can anybody be formulating a motion?
15 COMMISSIONER EASLEY: It's coming as soon as Sam gets
16 back.
17 (Discussions with Commission members held off
18 record.)
19 CHAIRPERSON PERRY: Okay. Are we ready?
20 COMMISSIONER SHORNEY: Madam Chair?
21 CHAIRPERSON PERRY: We are back on Tab No. -- is that
22 7? Yep.
23 COMMISSIONER SHORNEY: Madam Chair?
24 CHAIRPERSON PERRY: Yes, sir.
25 **COMMISSIONER SHORNEY: I move the Commission approve the**

1 2008 303(d) List as presented by staff.

2 COMMISSIONER EASLEY: Second.

3 CHAIRPERSON PERRY: Okay. Any comment -- any --

4 anything further to say? Any discussion?

5 (No response.)

6 CHAIRPERSON PERRY: Call for the vote, please.

7 MS. MALINDA OVERHOFF: Commissioner Tupper?

8 COMMISSIONER TUPPER: Yes.

9 MS. MALINDA OVERHOFF: Commissioner Hunter?

10 COMMISSIONER HUNTER: Yes.

11 MS. MALINDA OVERHOFF: Commissioner Hardecke?

12 VICE-CHAIR HARDECKE: Yes.

13 MS. MALINDA OVERHOFF: Commissioner Easley?

14 COMMISSIONER EASLEY: Yes.

15 MS. MALINDA OVERHOFF: Commissioner Shorney?

16 COMMISSIONER SHORNEY: Yes.

17 MS. MALINDA OVERHOFF: Chair Perry?

18 CHAIRPERSON PERRY: No.

19 I don't think we should approve the 20 segments

20 so that's my reason for my no. I don't think we

21 should have approved what the EPA put on.

22 All right. Moving on to Tab No. 9. Oh. I'm

23 sorry.

24 MS. JENNIFER FRAZIER: **Eight.**

25 CHAIRPERSON PERRY: Robert be ready.

1 MR. JOHN FORD: Good morning. I'm John Ford with the
2 Water Pollution Control Program, Monitoring and
3 Assessment Unit. I'm here this afternoon to request
4 approval of the **2010 303(d) Listing Methodology**
5 **document.**

6 The Department will present a request to the
7 Commission for approval of this list at this meeting.
8 The Department began discussions with stakeholders on
9 the 2010 Listing Methodology document in June of
10 2008. We've held four public meetings to discuss the
11 proposed LMD between November 2008 and March 2009.
12 There was a 60-day public notice that ended in
13 February of 2009.

14 The major difference from the 2008 Listing
15 Methodology approved by the Commission is the
16 addition of a separate set of statistical rules for
17 removing waters from the list.

18 Previously, statistic procedures required very
19 little proof that a water had returned to compliance
20 with Water Quality Standards for some types of data.
21 The proposed revision will require a higher standard
22 of proof that the water is no longer impaired. Other
23 substantive changes made to the 2010 LMD are noted in
24 an attachment.

25 We have obtained consensus from stakeholders on

1 the acceptability of most of this document. There
2 has been some disagreement between stakeholders or
3 between stakeholders and the Department on specific
4 thresholds for certain narrative criteria. During
5 the public participation process we have tried to
6 minimize these but some remain.

7 We believe as more kinds of monitoring data are
8 brought to bear on a specific water body these
9 agreements will become much less important because of
10 the availability of supporting data of another kind.
11 The most important area of disagreement is that some
12 stakeholders still reject the use of numeric
13 threshold values not specifically promulgated in
14 state Water Quality Standards.

15 Other stakeholders agree with the Department and
16 the EPA that narrative criteria must be used in
17 performing assessments and that waters must be listed
18 if sufficient evidence shows narrative criteria are
19 exceeded.

20 There's a clean copy or -- a mostly clean copy of
21 the proposed LMD on Page 793. I would direct your
22 attention to Page 822 that is Table B.2 there is one
23 error there that we just caught today. That's at
24 Table B.2 at the bottom right hand corner where it
25 says whole body contact and secondary contact

1 recreation in that row and in the next to the last
2 column where it says criteria used, instead of the
3 phrase 60 percent UCL that should read geometric
4 mean. That was just an error that was made when we
5 edited this document.

6 CHAIRPERSON PERRY: We cross out 60 percent --

7 MR. JOHN FORD: Cross out 60 percent UCL and
8 substitute geometric mean.

9 Following this table or -- the Listing
10 Methodology document there are copies of all the
11 written comments we received and our Department
12 responses.

13 So the Department recommends that the
14 Commission approve the proposed 2010 Listing
15 Methodology document as written with that one change
16 that I noted or -- with any changes deemed
17 appropriate by the Commission.

18 Any questions that you have for me now?

19 (No response.)

20 MR. PHIL SCHROEDER: (Complete statement inaudible.)

21 MR. JOHN FORD: Phil just caught another one on the
22 same -- the same page that we made that one
23 correction. The next cell of the table over, where
24 it says significance level, this will no longer be a
25 hypothesis test so we would cross out that 0.4. It

1 would just be a comparison of the geometric mean to
2 the criterion value. So that would -- that cell of
3 the table would be blank or it would say not-
4 applicable.

5 CHAIRPERSON PERRY: We had no questions. Okay. Yes.

6 MR. ROBERT BRUNDAGE: Madam --

7 CHAIRPERSON PERRY: As much as we cannot repeat.

8 MR. ROBERT BRUNDAGE: Yes, ma'am.

9 Madam Commissioner, members of the Commission,
10 Robert Brundage. I'm here to talk about the 2010
11 Listing Methodology. And fortunately you've seen a
12 lot of my complaints about the weight of evidence
13 approach. And the purpose of my being here, today,
14 is to suggest to you that the weight of evidence
15 approach should be modified today and should be
16 changed whereby anything that violates a numeric
17 threshold that's not in the Water Quality Standard is
18 placed in Category 3(b).

19 Some of the slides that I skipped earlier, I
20 hope will help bring home the point where some of
21 these numeric thresholds are not appropriate and are
22 not contained in the Water Quality Standards. One
23 such numeric threshold has to do with the amount of
24 lead and fish tissue to protect human health from
25 fish consumption. Currently in the Listing

1 Methodology there's a numeric threshold where there's
2 0.3 milligrams per kilogram in the fish fillets.
3 That's found in Table 1.2 and referenced in Footnote
4 16, that's where you'll find that. Again, this is
5 not -- you won't find that under the Water Quality
6 Standards.

7 Where does this number come from? There is --
8 as referenced in the footnote there's a study
9 somewhere and part of the study is based upon a
10 computer model and the computer model takes into
11 account land-based sources of lead. Where a human
12 beings encountered lead and -- I won't say their
13 diet, it is usually just from ingestion of dirt or
14 other ways it gets into the body.

15 And the -- the people that I've consulted on
16 this who are -- who are experts in the area have
17 problems with that model. They don't think that,
18 some of the model results, they can't be replicated.

19 Next slide. Just to make a point about this
20 model and the number 0.3 milligrams per kilogram. As
21 John stated that -- in a letter to -- I think, it was
22 to me, the model includes terrestrial sources of lead
23 because, quote, A great majority of lead exposure in
24 many areas in Missouri is from terrestrial sources.
25 And he rightly stated that, note, that because of

1 high levels in lead and soil and dust in areas in
2 Missouri eliminating lead from fish tissue would
3 still not protect 95 percent of the high risk
4 population.

5 So other words if people didn't even eat fish
6 according to this recommending level out there it
7 wouldn't protect 95 percent of this high risk
8 population.

9 Next slide. The Missouri Department of Health
10 and -- The Missouri Department of Health and Senior Services
11 they currently issue fish consumption warnings. I'm
12 not sure if that's the right title. But they warn
13 people in these certain areas who are -- may be more
14 at risk than others, Be Careful How Much Fish You
15 Eat. So I wanted to point out that that is something
16 that Missouri State Government does to protect our
17 citizens, right now.

18 One of the points that I had -- that I made in
19 my written comments was, like, lead and fish tissues.
20 This is a situation where -- when you deal with a
21 Water Quality Standard, I think, you should deal with
22 a Standard, whereby, if people ate fish, at what
23 point in time would they become ill? This is a
24 situation where your -- it's mainly based on
25 terrestrial sources and it penalizes and -- it

1 penalizes sources who have -- have people in their
2 areas that are susceptible to lead and where they've
3 ingested from all these terrestrial sources. So, I
4 think, the Water Quality Standard should look at what
5 -- what is the problem with the water not put
6 something on the 303(d) List because of terrestrial
7 sources of lead. These are Water Quality Standards
8 and they should -- should only look at water quality
9 issues.

10 I put down here that if a water body gets on
11 there because of violating this numeric threshold I
12 don't know how they're ever come off of the 303(d)
13 List if, as stated, in John's letter that it won't
14 protect 95 percent of the population, these are going
15 to be on there forever so long as there's -- there's
16 lead in Missouri, which there is in the Lead Belt.

17 Next slide. Again, EPA in their letter to John
18 Ford in September 2007 talked about this standard.
19 They didn't bless the numeric threshold, but instead
20 they said, Missouri should demonstrate and include
21 the supporting documentation a detailed explanation
22 of how each of the selected fish tissue thresholds
23 relate to Missouri's current water quality criteria.
24 And discuss why they're appropriate levels for
25 assessing attainment with the Water Quality

1 Standards.

2 Next slide. EPA, also, continued in that letter
3 to say that they recommend the state work with EPA to
4 evaluate the appropriateness of adopting these into
5 the Water Quality Standards.

6 Next slide. So just to -- just to summarize
7 this. The -- the 0.3 milligrams per kilogram, it's
8 not a Water Quality Standard. It's never been before
9 the Clean Water Commission and received the scrutiny
10 of a Regulatory Impact Report or been otherwise
11 justified as a Water Quality Standard. It relies
12 heavily on terrestrial sources of lead. My experts
13 think that the model is flawed and some of the
14 results can not replicated or duplicated. EPA has --
15 (Tape Three, Side A concluded.)

16 MR. ROBERT BRUNDAGE: -- that's the end of those
17 slides on that part.

18 I wanted to show you those slides just --
19 (Inaudible portion, Audio Malfunction on Tape Three,
20 Side B.)
21 -- waters are available that it -- and that
22 exceedances of the guidelines or threshold values to
23 Table 1.2 will likely result in a decision to list a
24 water on the 303(d) List. The letter said that
25 promulgation of some of these numeric thresholds in to

1 state standards remains a goal of the Department where
2 appropriate and necessary however, more information is needed
3 about how threshold values are
4 affective at protecting beneficial uses in
5 waters across the state before we convert thresholds
6 to a numeric value in our Standards. That sentence
7 right there, kind of summarizes my beef with these
8 numeric thresholds is that these are not Water
9 Quality Standards and that before the DNR would bring
10 these to you that they need to take a better look at
11 these things. And they need to determine how are
12 these values affective at protecting beneficial uses
13 because that's what it's all about when you have
14 Water Quality Standards. They're protecting the
15 beneficial uses.

16 One of the things that's proposed in the 2010
17 Listing Methodology regarding Probable Effect
18 Concentrations is in Table B.2 and I probably should
19 have brought this up earlier but it's -- I guess,
20 it's not pertinent until today. But, today, you
21 voted to list on the 303(d) List a number of streams
22 that exceeded the Probable Effect Concentrations.
23 Now, in Table 1 -- B.2 this is going to be according
24 to the Department's proposal --
25 CHAIRPERSON PERRY: Would you tell us what page

1 that's on?

2 MR. ROBERT BRUNDAGE: My copy doesn't have a page
3 number and I don't have a copy of that.

4 COMMISSIONER HUNTER: B.2 is 822.

5 CHAIRPERSON PERRY: Okay.

6 MR. ROBERT BRUNDAGE: And I was looking at the -- if
7 you look on the left hand column there's a column
8 that's titled Aquatic Life. And then in the bottom
9 row of that column -- I'll show you where I
10 highlighted this just so you can kind of get a sense of
11 where I put this. Now, according to this proposed
12 Listing Methodology in B.2 for -- in regards to
13 Probable Effect -- this says PEL but it's the same
14 thing as Probable Effect Concentration. Water is
15 judged to unimpaired if the sample mean does not exceed
16 100 percent of the PEL. So, now, we've gone from 150
17 percent rule but now to take it off the list it's
18 dropped down to 100 percent. So, now, the Department
19 is treating a PEL or Probable Effect Concentration --
20 PEL is Probable Effect Level, they changed the name,
21 but -- it probably should read PEC, I suppose, but,
22 now, to take it off the list it's 100 percent of the
23 numeric threshold. What is the difference between
24 this numeric threshold and the Water Quality Standard
25 at that point in time? It's being treated exactly

1 the same. And they're not exactly the same. They're
2 -- it's not a Water Quality Standard.

3 If you look at the footnote at the bottom of the
4 page it says, where -- and this is the footnote on
5 that box where it has the 100 percent of PEL, it
6 says, where there is convincing evidence of a healthy
7 biological community or convincing evidence of a lack
8 of toxicity sediment PEL data will not be used as a
9 sole justification.

10 So, now, we have to not only meet 100 percent of
11 the PEC, we have to provide convincing evidence of
12 the lack of toxicity in the stream. So if you look
13 at that Standard to take something off, the action of
14 putting these streams on based upon these numeric
15 thresholds, I don't really know how they're --
16 they're going to be able to come off the list.

17 With that I'll just -- I had the handout that I
18 provided to you. This was part of comments and if
19 you flip it on the backside, I highlighted in grey --
20 this is the -- this is the language that I would
21 submit that be inserted in the weight of evidence
22 approach that was put in the 2008 Listing
23 Methodology. And, as I said, in a nutshell it
24 basically says if you exceed a numeric threshold in
25 Table 1.2 it goes on to Category 3(b). That's what

1 it says in a nutshell.

2 CHAIRPERSON PERRY: But you said Category 2(b) or
3 3(b)?

4 MR. ROBERT BRUNDAGE: They're very similar
5 categories.

6 CHAIRPERSON PERRY: Thank you.

7 Any questions for Robert?

8 (No response.)

9 CHAIRPERSON PERRY: Kevin. And give your whole name.

10 MR. KEVIN PERRY: I'm sorry?

11 CHAIRPERSON PERRY: I would -- please, state your
12 whole name for the record.

13 MR. KEVIN PERRY: I sure will.

14 Thank you, Madam Chair. And thank you,
15 Commissioners, for this opportunity to speak, today,
16 on the 303(d) Listing Methodology. My name is Kevin
17 Perry.

18 I'm here, today, at the request of my colleague,
19 Roger Walker, who is the Executive Director of
20 REGFORM to speak on behalf of REGFORM members about
21 the Listing Methodology that you are considering
22 today. So thank you.

23 And I will take a moment to acknowledge your
24 significant contribution to this Commission and the
25 duration it should not go unnoted. Thank you.

1 As you know REGFORM is an industry and utility
2 group that has to comply with environmental
3 regulations in Missouri and has a long track record
4 of being participants in the public process.

5 To put a real fine point on this, we've
6 cooperated with Robert -- consulted with Robert and
7 want to incorporate and refer to his comments and his
8 recommendations, today.

9 In particular, we have two comments and that
10 is, first of all, we request, as Robert requested,
11 that the references to the weight of the evidence
12 approach that are in this document be eliminated.
13 And the reasons for that are, two, specifically we
14 believe that, as Robert has said, the weight of the
15 evidence approach really lacks the substantial
16 scientific certainty that's needed in order to
17 require -- to prove that a stream or a water body
18 should be listed on this important list.

19 And maybe to put an even more fine point on it,
20 we see this weight of the evidence process as being
21 too subjective; not formal, not predicted --
22 predictable.

23 Further, we are concerned about these numeric
24 triggers that the -- Robert has spoken about and in
25 particular the numbers that the triggers rely on.

1 How are the trigger numbers developed? Will they
2 rely on these concentration numbers that are
3 extracted from a different report or a study?

4 And just in general REGFORM members oppose the
5 use of these triggers in this way. The perception of
6 our group and the perception of our members is that
7 the use of these numbers has sort of a misdirecting
8 affect of lending more certainty to the -- the weight
9 of the evidence approach than really is there. So,
10 again, we ask that this weight of the evidence
11 approach be eliminated here.

12 Our second comment is just, again, very direct.
13 We think the thing that makes sense is, where you're
14 going to rely on these trigger numbers -- where you
15 are going to rely on these underlying concentrations
16 that are questionable or at least under disagreement?

17 They haven't been through the formal process of
18 rulemaking. They haven't been through public comment
19 period. They've haven't been through Regulatory
20 Impact Report process. If you are going to rely on
21 them then it should only be sufficient not to list
22 them as impaired waters, but as Robert has suggested,
23 if you are going to rely on them use them only to put
24 a water body in either Category 2(b) or 3(b).

25 Just to wrap up in summary, Chairman Perry,

1 you've done an eloquent job, today, of talking about
2 in other parts of this meeting; what is the impact of
3 listing a water? It is significant. It is a
4 significant obligation to the Department. It is a
5 significant obligation to the local people in the
6 area. It is a significant obligation to the state.
7 And our members believe that before that decision is
8 made, it should be made based on something that has a
9 strong degree of scientific certainty and reliability
10 and predictability. And we appreciate your
11 consideration of our comments, today, and appreciate
12 you making the time available.

13 I'm happy to answer any questions that you
14 might have.

15 CHAIRPERSON PERRY: Are there any questions?

16 (No response.)

17 MR. KEVIN PERRY: Thank you very much.

18 CHAIRPERSON PERRY: Thank you.

19 Trent. I should say Trent Stober. So we'll
20 have your whole name of the record.

21 MR. TRENT STOBER: I'm Trent Stober with MEC Water
22 Resources and I'm making comments on behalf of the
23 St. Louis Home Builders' Association.

24 We -- we have a few comments particularly with
25 the numeric thresholds. We've heard a lot about

1 those, today, I believe, and so forth. But in
2 particular the sediment numeric thresholds, the earlier
3 document that was out on public notice referred or --
4 included a 20 percent difference between a test
5 stream and a control stream or a reference stream
6 with regards to bottom sediments. And that was
7 changed in between the public notice and this
8 document that's out.

9 Those measurements are inherently variable and
10 we've been working with the Department on evaluating
11 more quantitative measures of -- of bottom deposits
12 and -- and so forth. But, regardless, we're just
13 trying to -- right now, getting a sense of the
14 variability in those data and so forth. And think
15 that the 10 percent is much more -- much too precise
16 to evaluate the differences between streams. And
17 that a more realistic value is probably something on
18 the order of 20 percent.

19 There's also been comments, back and forth,
20 between various Department staff on -- in this
21 regard. And I think there is some question -- you
22 know, particularly if you look at a stream with --
23 you know, the controlled streams with very little
24 amount of sediment so maybe something that you might
25 see in the Ozarks and so forth. That it wouldn't

1 take very much to get a 10 percent increase. And
2 there's a good likelihood that -- that that doesn't
3 have a biological significance to that. So we just
4 recommend strongly that the -- that the criteria be
5 changed back to 20 percent as it was public noticed.

6 And we've heard a lot about weight of evidence
7 and so forth, but I think it's particularly important
8 for -- for sediment in -- and sediment as it applies
9 to narrative criteria to use some -- some other
10 metrics such as biologic data and so forth. And
11 we've been collaborating with the Department to work
12 through that process in -- in one circumstance.

13 We'd also like to recommend in Table -- well,
14 the 20 percent difference applies to both Tables 1 --
15 or -- 1.2 and B.1, but also in B.2 that's the table
16 that refers to how a water is removed from the list.
17 We suggest there that the sediment criteria be
18 applied -- I'm talking about the sediment quantity
19 for the narrative -- the narrative criteria for
20 objectionable bottom deposits that that also refer to
21 Table B.1 rather than the statistical test that's
22 recommended. That's -- that would handle it much
23 more similar to nutrients and so forth.

24 So to summarize that our recommendation -- our
25 specific recommendation is to change the relative

1 percent difference to 20 percent for sediment in
2 Tables 1.2 and Table B -- B.1 and then also in B.2 to
3 refer to the same statistical test as listed in B.1.

4 Lastly, with regards to habitat and the use of
5 biologic data we -- we made comments to the effect
6 that -- that if biologic comparisons are made that
7 those should only be made between streams that have
8 similar habitat quality. Otherwise, there's -- and
9 we're comparing apples to oranges with the respect to
10 the potential for the biologic resource to meet its
11 use.

12 And that was acknowledged by Department staff on
13 Page 809 or 16 in the Listing Methodology, itself.
14 The -- there's a statement that says that essentially
15 only or -- streams that are significantly different
16 in habitat quality should not be judged for the
17 303(d) or Category 5 purposes but rather be moved to
18 Category, I think, it's 4(c) and the term statistic
19 or -- significance implies a statistical test and so
20 forth it's probably not warranted for habitat data.
21 So we suggest using a 75 percent difference or that
22 the -- the two streams have to have at least 75
23 percent similarity in their habitat scores, which is
24 the -- as we understand it, is the -- the current
25 procedure that the Environmental Services Program

1 uses to judge whether habitats are similar or not.

2 So those are my -- my recommendations. Any
3 questions or comments?

4 VICE-CHAIR HARDECKE: You said to change 10 percent
5 to 20 that only refers to the bottom deposits, right?

6 MR. TRENT STOBBER: Right.

7 VICE-CHAIR HARDECKE: And that'd be on Page 812?

8 MR. TRENT STOBBER: Yeah. It's several places. Yeah.
9 Let's see 8 -- you know, to be honest with you it
10 probably -- it's probably in enough places that I'd
11 ask John Ford if -- if that's -- if that is a
12 recommendation that's accepted to -- to make sure
13 that he agrees at what places that applies. Because
14 if you -- as you've probably seen there's multiple
15 tables and it can get kind of confusing.

16 But, specifically, on -- yeah, 812 where if you
17 got use protection, narrative criteria, objectionable
18 bottom deposits, so it's like the -- let's see --
19 down below color that is one place where it should --
20 we assert that it should be changed to 20 percent.

21 On B.1, Page 819, I believe it is. There's a
22 table there that has it two places. And then I -- I
23 believe, Table B.2 rather than using the upper
24 confidence limit we suggest that that -- what is that
25 one, two, three, four -- fifth column under the

1 criterion use for decision rule -- with the decision
2 rule that'd be changed to just to refer to the same
3 as Table B.1.

4 MR. JOHN FORD: What page is that, Trent?

5 MR. TRENT STOBBER: I think that's in -- on 822.

6 CHAIRPERSON PERRY: It is.

7 MR. TRENT STOBBER: And it wouldn't surprise me if
8 it's somewhere else within the document.

9 CHAIRPERSON PERRY: Are there any questions for
10 Trent?

11 (No response.)

12 MR. TRENT STOBBER: Thank you. And I, again, express
13 our appreciation for the service that you've made to
14 the state.

15 CHAIRPERSON PERRY: Thank you.

16 MR. JOHN FORD: We have no objection to Trent's
17 proposed changes, both of those changes.

18 CHAIRPERSON PERRY: To both the 20 percent change --

19 MR. JOHN FORD: To change the 20 percent and to
20 change the wording on the habitat assessment from
21 significant to 75 percent of reference.

22 COMMISSIONER SHORNEY: What page was that on, again,
23 John? That 75 percent -- I mean, reference to that
24 change.

25 MR. JOHN FORD: 809.

1 CHAIRPERSON PERRY: It's one of the --

2 MR. JOHN FORD: Yes. Yes. The second -- second
3 sentence on 809 it says, for interpretation of
4 biological data where habitat assessment data
5 indicates habitat scores are, strike significant and
6 say probably something like no less than 75 percent of the
7 referenced or controlled streams.

8 (Audience communication held off record.)

9 MR. JOHN FORD: It says we're going to place them in
10 Category 4.c if they're less than 75 percent.

11 MR. TRENT STOBBER: 75 percent.

12 MR. JOHN FORD: Right. Okay. Yes.

13 Scores less than 75 percent of reference or control streams.

14 (Inaudible) all of the narrative criteria in the
15 Water Quality Standards and as the Department has
16 said and as EPA has said, today, clearly Section
17 303(d) of the Clean Water Act requires -- requires us
18 to consider all portions of the state's Water Quality
19 Standards when compiling the 303(d) List. So that
20 would mean we need to bring the narrative criteria
21 into the 303(d) process.

22 Robert's recommendation would shunt that to
23 another category and would make it impossible for us
24 to put those waters on the list.

25 CHAIRPERSON PERRY: Any further comments or

1 questions?

2 (No response.)

3 CHAIRPERSON PERRY: Could someone read to me the
4 exact wording for Page 809? That added part about
5 the 75 percent.

6 MR. JOHN FORD: Let's try this and see if everybody
7 agrees, starting at the top of the page. For the
8 interpretation of biological data where habitat
9 assessment data indicates habitat scores are less
10 than 75 percent of referenced or appropriate
11 controlled streams.

12 CHAIRPERSON PERRY: Oh. There it is.

13 Actually gives us a numeric instead of giving
14 significantly it is giving it a numeric value.

15 COMMISSIONER SHORNEY: John, could you comment on Kevin
16 Perry's discussion about eliminating the weight of
17 evidence approach -- I mean, that kind of drives a
18 nail or -- a knife in the heart of our whole
19 narrative process doesn't it?

20 MR. JOHN FORD: Right. I think -- I think, Kevin was
21 echoing Robert's concerns that -- you know, the
22 weight of evidence approach shouldn't be used in the
23 303(d) process. And that anytime that we rely on the
24 weight of evidence to evaluate a narrative criteria
25 or -- I guess, anytime we try to evaluate a narrative

1 criteria in our Standards the most we can say is that
2 we need to do further work. We can't -- we can't
3 judge it to be impaired.

4 The problem with using this approach was as I
5 mentioned before the places where we've seen a
6 complete disappearance of crayfish below a point
7 source. We don't have anything in our numeric
8 standards saying how many crayfish have to be alive
9 in a particular place. So we really need to
10 flexibility of our narrative criteria to help us deal
11 with obvious problems.

12 COMMISSIONER SHORNEY: To get a water off of the
13 impaired list that was put on there for lead,
14 wouldn't you use the toxicity method, again, to prove
15 that there was no toxicity, to get it off?

16 MR. JOHN FORD: Yes. Most of the streams, now, that
17 we're listing for lead have one concern or another.
18 We're getting multiple types of data, now. So we
19 have evidence on several places that we have evidence
20 on several places that we have levels of lead in the
21 sediments that are exceeding our PELs or PEC values.
22 And usually for most of these streams because of work
23 done by our Department or the U.S. Geological Survey
24 we're starting to get biological data as well that's
25 confirming that problem, so --

1 And as I said, as we go on the next few years
2 these streams that seem to be most contentious about
3 these narrative criteria listings, we're going to
4 continue to focus monitoring efforts there to make
5 sure that we have enough data so that we can make a
6 strong case that we have a problem.

7 COMMISSIONER SHORNEY: And once a water gets on an
8 impaired list, I think, I read some of your comments
9 that there is a driving force to look at evidence to
10 get it off the impaired list; is that correct?

11 MR. JOHN FORD: Well, certainly -- I mean, the
12 mission at the Department is to -- is to rehabilitate
13 waters and make them meet Water Quality Standards, so
14 -- you know, and within the 303(d) process that EPA
15 has, you know, we're only given a certain amount of
16 time to -- to get a TMDL going and then we're
17 expected to -- to start implementing that TMDL, so --
18 yeah. There's -- once something gets on the list
19 there's kind of a mechanism that should start moving
20 it forward that eventually carries it off the list
21 and gets it fixed.

22 MR. ROBERT BRUNDAGE: May I make a comment?

23 CHAIRPERSON PERRY: Yes. You may.

24 MR. ROBERT BRUNDAGE: You know, throughout my
25 comments, one of my concerns has been is that some of

1 the -- the data that's been relied on may show --
2 have some tendency to show some toxicity is going on
3 out there. But on the backside of that there --
4 there isn't anything to tell us when it can come off
5 the list.

6 What's the Microtox number to -- to take
7 something off the list? There are some Probable
8 Effect Levels of 150 percent or more where the
9 biological data didn't match up exactly. So this is
10 not an exact science.

11 So, basically, we're -- we're going to come back
12 and somebody is going -- will try to exercise some
13 kind of judgment to take off it and we don't know
14 what the Standard is. And when I talked to you early
15 in my comments a few minutes ago and about PECs that
16 in the 2008 List there was no mention about what the
17 level was of PECs and then six months later there was
18 the memo that came out, Oh. We're going to interpret
19 weight of evidence as 150 percent. Now, in this
20 document, before you, to get it off the list it has to be 100
21 percent so to that got ratcheted down.

22 We are we going to be at on some of these other
23 type of data where there aren't any -- aren't any
24 Standards and certain things are relative out there.
25 And that's where I have a great deal of concern that

1 things are going to be on the list and they're just
2 stuck on the list.

3 And -- and then somebody's got to go out and
4 write a TMDL based upon -- on a conglomeration of
5 these thresholds. So that means in the TMDL they're
6 going to have to make up -- I think, Rebecca -- you
7 still here? Rebecca told us earlier when EPA does a
8 TMDL when there's no Water Quality Standard they've
9 got to -- they've got to make up some kind of number
10 that you've got to meet. I've seen sediment TMDLs
11 written where they come up with a sediment number.
12 Well, there's no sediment number in our Water Quality
13 Standards. So they came up with something. And, you
14 know, who knows if it's right or not.

15 So when we had discussions a year-and-a-half
16 ago about the Listing Methodology I wanted to be
17 open-minded about some of these numeric thresholds.
18 I was under the assumption that if there was an
19 exceedance of a numeric threshold that to confirm
20 that there would be thorough biological monitoring of
21 the stream to confirm that 'cause when -- if you have
22 biological monitoring then you are going to confirm
23 that you're not meeting -- you're probably not
24 meeting a beneficial use. But in most all of these
25 instances that monitoring -- that type of monitoring

1 has not been done.

2 Do you remember the -- four -- you do
3 biological monitoring of a stream and the 14 and the
4 16, I don't know if you'll even recall that, but --
5 you know, that's some in depth work to try to approve
6 about whether or not beneficial uses are likely being
7 or not being met, so -- you know, I'm not for
8 throwing all the narrative criteria out, but when you
9 have a situation where you get on the list and then
10 you're really not sure how you're going to get off
11 the list. That's what causes me concern.

12 VICE-CHAIR HARDECKE: John, can you tell us about the
13 150 percent versus 100 percent and why that changed?

14 MR. JOHN FORD: The purpose of Table B.2 was to
15 provide us a little more assurance that when we took
16 something off the 303(d) List and said it was -- the
17 water was no longer impaired that we were sure of
18 that.

19 For some of the things, like, the biological
20 data in the Table B.1 that's the statistics we use to
21 put something on the list.

22 For things, like, biological data and for
23 Dissolved Oxygen and a few others we were using a 90
24 percent confidence limit that meant we needed to be
25 90 percent sure that we were violating a criterion or

1 90 percent sure we had an altered biological
2 community or something before we could list it.

3 And in 2008 to get off the list, all you had to
4 do was be on the other side of that 90 percent, in
5 other words, if we were 88 -- only 88 percent sure
6 that we had a problem that would be reason for d-
7 listing. So when you think about it we are d-listing
8 a water and saying it's no longer a problem but
9 there's still an 88 percent chance that it's
10 impaired. That -- those two things don't quite go
11 together. So we thought about, well, what can we do
12 to kind of -- to give ourselves a little more
13 assurance that when we take something off it really
14 is no longer a problem. So that was the reason we
15 created this Table B.2 so that we changed some of the
16 statistical assumptions and the end points of those
17 statistical test so that, now, in general we're more
18 -- more like about 40 or 50 percent sure when we d-
19 list something and say it's okay that it actually is
20 okay.

21 We can't go the other way to be 90 percent sure
22 because just the way the statistical test work it
23 might be impossible to get something off the list.
24 Just because something would have to be better than -
25 - in the case of biological data it would have to be

1 better than typical data or normal data to get off
2 the list. So that's why we get back down to Table
3 B.2 to being 50 percent competent.

4 Now, to get back to your question, Ron, to get
5 something on the list the threshold value we look for
6 sediment contamination is 150 percent of the PEC. If
7 we -- as -- as I -- as I said before the PEC values,
8 themselves, are about 90 percent reliable in
9 determining toxicity. So if we go up to a threshold
10 value of 150 percent we're considerably more than 90
11 percent sure we have a problem before we list
12 something.

13 We -- we prefer not to use that -- whatever
14 that is, whether we're 95 or 98 percent sure at that
15 150 percent level. We'd rather not just back down on
16 the other side of that to d-list something because
17 that still might mean we're -- we're 92 or 93 percent
18 sure that we've got a problem. So we'd like to go
19 back down below the actual PEC value itself.

20 And that's still saying -- there is still close
21 to a 90 percent likelihood that we've got a toxic
22 affect there, but it's -- but it's a better -- it's a
23 better alternative than -- than just coming below the
24 150 percent PEC and saying it's all right if it's
25 below that because that -- in that case, I think,

1 that's still leaving us 95 percent chance that we may
2 have a toxic affect there.

3 VICE-CHAIR HARDECKE: Does that help any?

4 MR. ROBERT BRUNDAGE: You know when -- when -- when,
5 I think, this is -- when John says, well, there's a
6 90 percent chance for sure we have a problem, I
7 think, he means based upon the number of samples and
8 the results we got on the number. If you would
9 crunch statistics on it we -- we're 90 percent sure
10 it exceeded that numeric threshold, but does that
11 translate to a problem in the stream? So I wanted to
12 make sure that we talk about one problem doesn't
13 constitute another problem because I -- I dispute the
14 fact that if you exceed one of these PELs that there
15 is an impairment of the beneficial use in the stream.

16 MR. JOHN FORD: Well, I said 90 percent. What I
17 meant was that the test is about the PEC values are --
18 -- appear to be about 90 percent accurate in
19 determining toxicity.

20 In other words, if you exceed a PEC value about
21 90 percent of the time it -- it results in tox- -- in
22 a toxic affect based upon toxicity test that have
23 been performed.

24 MR. ROBERT BRUNDAGE: I guess we'll agree to disagree
25 on that point.

1 CHAIRPERSON PERRY: Any other thoughts on the part of
2 the Commission?
3 (No response.)
4 CHAIRPERSON PERRY: Mr. Tupper, everybody is thinking
5 if you're wondering about the quiet.
6 COMMISSIONER TUPPER: I'm just listening.
7 CHAIRPERSON PERRY: Do you have any questions or any
8 thoughts?
9 COMMISSIONER TUPPER: I don't have any questions.
10 (Discussion by Commission held off record.)
11 CHAIRPERSON PERRY: Does someone have thoughts?
12 (No response.)
13 CHAIRPERSON PERRY: Well, maybe we should go in
14 steps. The Department agreed with Trent's proposals.
15 COMMISSIONER EASLEY: Right. But we have to approve
16 those.
17 CHAIRPERSON PERRY: Pardon?
18 COMMISSIONER EASLEY: But we still have to approve
19 that --
20 CHAIRPERSON PERRY: Right.
21 COMMISSIONER EASLEY: -- those changes.
22 CHAIRPERSON PERRY: Yeah. We would have to mention -
23 - we would have to amend this to reflect that. That
24 seems like the easy step. The next question is, do -
25 - how far do you want to go on the other issues here.

1 COMMISSIONER EASLEY: The next question is what?

2 CHAIRPERSON PERRY: How far you want to go beyond
3 that or if you do.

4 (Discussion by Commission held off record.)

5 CHAIRPERSON PERRY: So make a motion and see how it
6 goes.

7 Would you like to say some of that out loud so
8 everybody can hear what you're saying? That's why
9 it's an open meeting.

10 COMMISSIONER SHORNEY: I guess the thought I have if
11 you would probably talk to the Missouri Coalition of
12 the Environment they probably would say that these
13 regs are not stiff enough, yet, we got industry
14 saying that they're too stiff, too -- so I -- you
15 know, it's a compromise. I think we're in a
16 compromised situation here and still protecting the
17 environment and looking out for business that has to
18 take place. So my thought would be to approve it
19 with those two -- two changes.

20 CHAIRPERSON PERRY: Well, do you want to make a
21 motion to that affect and see if --

22 COMMISSIONER SHORNEY: I was hoping Sam was going --

23 CHAIRPERSON PERRY: Pardon?

24 COMMISSIONER HUNTER: I'll have to get Trent back up
25 here and ask him exactly --

1 CHAIRPERSON PERRY: Okay. I think he had two. One,
2 was that he would like to change it to the 20 percent
3 difference between the referenced stream and all
4 references to that, correct, Trent?
5 MR. TRENT STOBBER: Right.
6 CHAIRPERSON PERRY: And the second point was --
7 VICE-CHAIR HARDECKE: It's on page 809.
8 COMMISSIONER SHORNEY: Page 809.
9 CHAIRPERSON PERRY: -- was on Page 809.
10 COMMISSIONER EASLEY: Now, could you condense that
11 down.
12 MR. TRENT STOBBER: You can't just make a motion to do
13 what he said.
14 COMMISSIONER HUNTER: Do what Trent said?
15 MR. TRENT STOBBER: Yeah. No. That's all right.
16 MR. ROB MORRISON: We don't want to do that.
17 VICE-CHAIR HARDECKE: The (inaudible) as presented by
18 --
19 MR. ROB MORRISON: No. I'm just kidding. I
20 apologize. That was --
21 CHAIRPERSON PERRY: And it says when -- when I --
22 when things exceed the amount in the referenced or
23 controlled streams by more than 20 percent and
24 wherever it references that you would like that
25 number to -- I mean, by -- where it says 10 percent

1 you want to change it to 20.

2 MR. TRENT STOBBER: You can suggest -- yes. That's my
3 suggestion. And I would go back to -- and
4 corroborate or -- bring out the corroboration there
5 with DNR technical staff, if you look through the
6 comments back and forth from the Environmental
7 Services Program and so forth. So it's not just an
8 industry and environmental type deal.

9 CHAIRPERSON PERRY: I think they're -- I think
10 they're looking for wording so they can --

11 MR. TRENT STOBBER: Right. Right. Right. Right.

12 You know -- and, again, John and I just
13 discussed it but there's -- it seems like there's
14 always little places -- I would -- I would assert
15 just some specific changes but in concept it's
16 changing the difference threshold, if you will, from
17 10 percent to 20 percent for objectionable bottom
18 deposits and then also on Table B.2 for a switch in
19 the or -- change in the statistical test for d-
20 listing streams to be the same as for listing
21 streams.

22 CHAIRPERSON PERRY: Okay. And that's what Robert is
23 proposing that gets back to the 150 and 100.

24 MR. TRENT STOBBER: No. No. No. No. Just for -- my
25 -- my assertion is just for bottom deposits in -- in

1 Table B.2. So, specifically, there it's changing the
2 fifth column over under criterion used with the
3 decision rule. And the second box down to -- just
4 change that to say, same as Table B.1.

5 COMMISSIONER HUNTER: What -- what page are you on
6 there?

7 MR. TRENT STOBBER: I am on 8 -- 822.

8 CHAIRPERSON PERRY: Okay. That's where I was.

9 COMMISSIONER HUNTER: Oh. Bottom deposits.

10 CHAIRPERSON PERRY: Okay.

11 MR. TRENT STOBBER: Right. Instead of reject null
12 hypothesis if -- CHAIRPERSON PERRY: The third box
13 down.

14 MR. TRENT STOBBER: -- if 60 percent UCL, just change
15 that the same as B.1.

16 CHAIRPERSON PERRY: The same as B.1.

17 MR. TRENT STOBBER: And, I believe, too, as John
18 recommended, you could use that same language, same
19 as B.1 on the next to last box up under whole body
20 contact and secondary contact recreation --

21 CHAIRPERSON PERRY: Where -- where you were saying
22 that it should be a geometric mean --

23 MR. TRENT STOBBER: Yeah.

24 CHAIRPERSON PERRY: -- and change the other one to --
25 okay.

1 MR. TRENT STOBBER: Yeah. You could just use -- you
2 could just say same as B -- Table B.1 or -- or the
3 language that John proposed.

4 CHAIRPERSON PERRY: Okay. Then we're making that
5 change on B.1 third -- oh. That's not B.1.

6 MR. TRENT STOBBER: Yeah. There's --

7 COMMISSIONER HUNTER: B.1 is already correct, right?

8 MR. TRENT STOBBER: Under bacteria or sediment?

9 COMMISSIONER HUNTER: Under whole body contact.

10 MR. TRENT STOBBER: Yeah. That -- that's correct.

11 So, if -- if you will, John and correct me if
12 I'm wrong but your -- your thought was to change the
13 reject null hypothesis to either the geometric mean
14 or same as B.1 and then under the significance level
15 that would be non -- not-applicable.

16 CHAIRPERSON PERRY: Oh. So you want both? The
17 geometric or B.1.

18 MR. TRENT STOBBER: Yeah. It -- it would be the same
19 thing. Right, John?

20 MR. JOHN FORD: Yes.

21 MR. TRENT STOBBER: So -- all the others refer to just
22 same as B.1 so that's probably --

23 CHAIRPERSON PERRY: Okay. And back to the -- the 20
24 percent difference in the reference stream.

25 MR. TRENT STOBBER: Right.

1 MR. JOHN FORD: I think the first was on Page 812
2 (inaudible).

3 CHAIRPERSON PERRY: Okay. And is that under
4 objectionable bottom deposit?

5 MR. JOHN FORD: Yes.

6 CHAIRPERSON PERRY: It's the last line.

7 MR. JOHN FORD: (Inaudible) that will be changed to
8 20 percent.

9 COMMISSIONER HUNTER: And where is this on 812?

10 CHAIRPERSON PERRY: Page 812. And the chart says
11 1.2.

12 MR. JOHN FORD: Yes.

13 CHAIRPERSON PERRY: ON the fourth paragraph down
14 where it says objectionable bottom deposits --

15 COMMISSIONER HUNTER: Oh. Here.

16 CHAIRPERSON PERRY: -- the very last line. So I'm
17 counting one there, two on --

18 MR. JOHN FORD: The next should be on Page 819
19 labeled B.1, it says the bottom deposits (inaudible)
20 decision (inaudible) --

21 MR. TRENT STOBBER: As well as the column that says
22 decision rule/hypothesis, right?

23 MR. JOHN FORD: Yes.

24 MR. TRENT STOBBER: So there's two 10 percents in that
25 row?

1 CHAIRPERSON PERRY: Right.

2 John, we're going to need you to come up so we
3 get you in the microphone so to make sure we have
4 everything.

5 Okay. And you said there was a second one on
6 Page 819?

7 MR. TRENT STOBBER: Yeah. Those two.

8 CHAIRPERSON PERRY: There's two that say 10 percent.

9 MR. JOHN FORD: Yes. Both of those would change to
10 20 percent.

11 CHAIRPERSON PERRY: There's one in the column that
12 says decision rule/hypothesis and another in the
13 criterion use with the decision rule, right?

14 MR. JOHN FORD: Right.

15 And then over on Page 822.

16 CHAIRPERSON PERRY: Okay. And I have -- there are
17 two on that page. So we have a total of five
18 changes; is that correct?

19 MR. JOHN FORD: Yes.

20 MR. TRENT STOBBER: And then the habitat one.

21 CHAIRPERSON PERRY: Okay. You want me to repeat
22 those?

23 (No response.)

24 **CHAIRPERSON PERRY: Change No. 1 is on Page 812,**

25 **Table 1.2 under the column that says compliance with**

1 Water Quality Standards, fourth paragraph down under
2 objectionable bottom deposits. That last line should
3 be amount in reference or control streams by more
4 than 20 percent.

5 Change No. 2 and 3 appear on Page 819 on Table
6 B.1 under the column that says decision
7 rule/hypothesis in the second box from the top where
8 it says no hypothesis solid of anthropogenic origin
9 cover less than 20 percent of the stream bottom; is
10 that correct?

11 MR. JOHN FORD: Yes. Yes.

12 CHAIRPERSON PERRY: And then in the next column in the
13 bottom box a little over half way down the sum of the
14 PFSD in the control and 20 percent more of the stream
15 bottom.

16 MR. TRENT STOBBER: And -- yeah. And then what's next
17 to it. Does that need to be changed?

18 MR. JOHN FORD: Yes.

19 And at the bottom the number in paren- --
20 parenthesis at the bottom of that box, also, needs to
21 be changed.

22 CHAIRPERSON PERRY: Okay. And at the very, very last
23 where it says point .10 should say .20?

24 MR. TRENT STOBBER: Right.

25 CHAIRPERSON PERRY: And, finally, Changes No. 5 and 6

1 are on page --

2 (Tape Three, Side B concluded.)

3 CHAIRPERSON PERRY: -- decision rule the lower of the
4 boxes under narrative criteria, where it says reject
5 null hypothesis of 60 percent upper confidence limit.
6 The last part of that paragraph where it says then 10
7 percent, should say then 20 percent.

8 MR. TRENT STOBBER: I think it would be cleaner if we
9 just made that same as Table B.1.

10 CHAIRPERSON PERRY: Oh. Okay. I'm sorry. And I had
11 that right.

12 So that would be Change No. 5 would say in that box
13 as Table B.1 (Inaudible portion, Audio Malfunction on Tape Four,
14 Side A.)

15 And No. 6 where it says, is at the second to the
16 last bottom box, it says whole body contact and
17 secondary contact rule and criterion used with
18 decision rule should say geometric mean or same as
19 Table B.1.

20 MR. TRENT STOBBER: And the next column over should --

21 CHAIRPERSON PERRY: And the next column where it says
22 .40 should say not-applicable or N/A.

23 MR. TRENT STOBBER: And, lastly, there was the 809 --
24 Page 809, first paragraph --

25 CHAIRPERSON PERRY: At the top of that paragraph. I

1 forgot. And that -- so that would make Change No. 7
2 in the second line the word significantly is crossed
3 out. That's the second line of Page 809. It says
4 scores are less than 75 percent --

5 MR. JOHN FORD: Of --

6 CHAIRPERSON PERRY: Of reference or appropriate
7 control streams.

8 MR. TRENT STOBBER: Scores or something like that.

9 CHAIRPERSON PERRY: Scores. Okay.

10 Now, I think, you could make your motion in
11 terms of --

12 COMMISSIONER EASLEY: Okay. I'll make a motion --

13 MS. JENNIFER FRAZIER: Did we get the other two --

14 VICE-CHAIR HARDECKE: Robert, is there -- is there
15 anything that -- I think, what you were trying to say
16 was that you want something more -- less objective in
17 these narrative criteria in the evaluation. Now, is
18 there anywhere that we can come between what you
19 proposed here and where we are that would -- would
20 help that situation?

21 MR. ROBERT BRUNDAGE: If you were to compromise in
22 someway that 100 percent of PECs in that Table B.2, I
23 think, should be at least 150 percent. That's --
24 that's one area.

25 CHAIRPERSON PERRY: Table what?

1 MR. ROBERT BRUNDAGE: B.2. About in the middle under
2 aquatic life.

3 CHAIRPERSON PERRY: I see it.

4 VICE-CHAIR HARDECKE: Where's it at?

5 CHAIRPERSON PERRY: It's right here. It's the sixth
6 box down. I'm sorry. It's the -- one, two, three,
7 four -- fifth box down under aquatic life where it
8 says water is judged to be unimpaired if sample mean
9 does not exceed 100 percent of PEL. And then that's
10 explained in the footnote, down below.

11 There's also a footnote that says, where there
12 is convincing evidence of a healthy biological
13 community or convincing evidence of lack of toxicity,
14 sediment data will not be used as a justification for
15 listing a water as impaired.

16 Did you want to address that?

17 MR. ROB MORRISON: I'd be happy to, Commissioner
18 Perry.

19 CHAIRPERSON PERRY: Put your name on the record,
20 please.

21 MR. ROB MORRISON: It's Rob Morrison. We kind of
22 huddled there. I think we would be okay in Table B.2
23 to go to 150 percent from 100 percent for the PEC
24 values.

25 CHAIRPERSON PERRY: One hundred and fifty.

1 Okay. Now, I think, that makes Change No. 8.

2 **COMMISSIONER EASLEY:** Right.

3 **CHAIRPERSON PERRY:** Is that right?

4 **COMMISSIONER EASLEY:** Yes.

5 **CHAIRPERSON PERRY:** And that Change No. 8 would be to

6 change that box under aquatic life of Table B.2 on

7 Page 822, fifth box down in the fourth column under

8 aquatic life to read water is judged to be unimpaired

9 if sample mean does not exceed 150 percent of PEL.

10 **COMMISSIONER EASLEY:** All right.

11 **CHAIRPERSON PERRY:** I think you could make your

12 motion to reflect eight changes as put into the

13 record.

14 **COMMISSIONER EASLEY:** Okay. You ready for a motion.

15 **COMMISSIONER HUNTER:** Yeah.

16 **COMMISSIONER EASLEY:** I move that the Commission

17 approve the 2010 303(d) Listing Methodology document

18 as presented by staff with the following

19 modifications and list those eight modifications.

20 **CHAIRPERSON PERRY:** Or I -- what I was suggesting is

21 to say the eight that we've just put into the record.

22 **COMMISSIONER EASLEY:** Yes.

23 **CHAIRPERSON PERRY:** Do you want me to list them,

24 again? Is that what you're suggesting?

25 **COMMISSIONER EASLEY:** It needs to be part of the

1 motion; does it not?

2 MR. JENNIFER FRAZIER: I think the reference to the

3 record would be fine since we did --

4 COMMISSIONER EASLEY: Okay. Of reference -- okay.

5 COMMISSIONER SHORNEY: **Second.**

6 CHAIRPERSON PERRY: **Call for the vote, please.**

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

8 COMMISSIONER TUPPER: **Yes.**

9 COMMISSIONER HUNTER: **Yes.**

10 MS. MALINDA OVERHOFF: **Commissioner Hardecke?**

11 VICE-CHAIR HARDECKE: **Yes.**

12 MS. MALINDA OVERHOFF: **Commissioner Easley?**

13 COMMISSIONER EASLEY: **Yes**

14 MS. MALINDA OVERHOFF: **Commissioner Shorney?**

15 COMMISSIONER SHORNEY: **Yes.**

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

17 COMMISSIONER TUPPER: **Yes.**

18 MS. MALINDA OVERHOFF: **Chair Perry?**

19 CHAIRPERSON PERRY: **Yes.**

20 All right. Moving right along **Tab No. 9.**

21 Do you-all remember the first meeting I was

22 Chair we were done by noon?

23 (Laughter.)

24 COMMISSIONER HUNTER: You're backsliding.

25 CHAIRPERSON PERRY: I was.

1 MR. JOHN RUSTIGE: At this point, 3:30 would be a
2 good goal.

3 CHAIRPERSON PERRY: Excuse me. I'm sorry.

4 MR. JOHN RUSTIGE: That's okay.

5 John Rustige, Permits and Engineering Section.
6 Back in -- at the January meeting I spoke with you
7 about some regulatory development related to the
8 Effluent Regulations which is 10 CSR 20-7.015. And
9 at that meeting we asked the Commission for approval to
10 publish an RIR for that rule. It was approved and
11 subsequently we published that RIR on February 13th.
12 And it was open for comment for the 60 days, closed
13 on April 14th.

14 But during that presentation, back in January,
15 the Commission asked the staff to look at a couple of
16 things. One, was to confirm some E. Coli monitoring
17 costs that were in the RIR and, also, although it
18 wasn't required the Commission asked that we estimate
19 some costs associated with the removal of the portion of
20 that rule that provided effluent limits for POTWs,
21 for non-continuous weather discharges that only
22 receive primary treatment. You may remember that EPA
23 considers these bypasses and therefore you can no
24 longer permit them.

25 As far as the E. Coli costs we went back and confirmed

1 those numbers. The \$50 per sample number, we looked
2 at that, the lab -- lab prices range considerably.
3 The \$50 per sample is sort of on the high-end of that
4 range over time we would kind of expect that price to
5 be stable or it may even drop a little bit. There is
6 an IDEX System available for about 4,000 --
7 \$4,000 --
8 where operators could then
9 -- could then do their own analysis. So to
10 give you -- give you an idea of those costs.
11 Back to the question on the costs associated
12 with removal of those -- those discharges. We took
13 at look at our database and we identified there are
14 53 POTWs that would be affected by this change. But
15 in looking at it and examining the question of how
16 much this would cost there's really quite a few --
17 quite a number of variables involved -- you know,
18 what is the current capacity of those plants? How
19 are they designed? Do they have any flexibility in
20 their design capacity? What's the condition of their
21 collection systems? How old are their systems?
22 And then once you sort of figure out how big the
23 problem is then you kind of have to cost things up as
24 well. And so it's very -- really quite variable,
25 each community can be quite different. Some of them

1 may have a discharge maybe once every five years and
2 some of them discharge essentially every time there's
3 a rain event.

4 So what we decided to do with this is kind of
5 take a completely different approach sort of, instead
6 of a bottom up kind of look at a top down cost
7 analysis. The Missouri Public Utility Alliance
8 provided some sewer rates for many of these affected
9 communities and so we took a look at what these
10 communities are collecting in their sewer rates in
11 relation to medium -- median household incomes. And
12 what we found was that on average the affected
13 communities' sewer rates were about 0.59 percent of
14 the median household income.

15 Now, depending on what you believe the, sort of,
16 limits of affordability are for these communities, we
17 then sort of calculated how much money could be
18 collected if the fees were raised from that .59
19 percent of median household income up to 1.7 or 2
20 percent of median household income. Now, to be clear
21 -- you know, this really only represents sort of a
22 worst case type of -- type of analysis. You know,
23 some communities certainly may be able to get there
24 without spending that much money, but -- but we
25 thought that would be the -- sort of provide a

1 boundary or worst case.

2 So to document all that we put together a -- a
3 white paper and you'll find that white paper on Page
4 887 of the briefing document. And about three pages
5 in, past that, in that document, the table presents
6 what those statewide costs are and we estimate they
7 would -- they would range between \$120.6 and \$153.2
8 million per year.

9 So while the RIR was out on public comment we
10 did receive comments from the Missouri Public Utility
11 Alliance on behalf -- behalf of some of their member
12 cities, Carl Junction, Ava, Aurora, Bethany, Fulton
13 and Carthage. And all these letters, essentially,
14 just recognize a significant financial burden
15 associated with the rule change and -- and all them
16 noted that they would remain interested in any of the
17 implementation and procedures that will need to be
18 followed up as we kind of work through this change.

19 We, also, got a comment from the City of Trenton
20 who had similar concerns, shared similar information.
21 Those comments and our responses were then published
22 and put on our website.

23 Now, since the January meeting of the Commission
24 we've held a couple meetings of the wet weather
25 workgroup and we've discussed the issue at some

1 length. At the last meeting which was April 20th, I
2 presented to the group sort of how we came up with
3 the numbers and we talked about how those costs were
4 developed. And then in light of that meeting the
5 Missouri Public Utilities Allowance -- Alliance
6 forwarded us a letter and provided some comments on
7 that white paper in our approach and we're in the
8 process of reviewing those. And we'll prepare
9 written response to them.

10 In that letter the MPUA asked us to include
11 some sewer rates for communities that we didn't have
12 in their original data and we intend to go ahead and
13 do that in the final fiscal note that we put
14 together.

15 I, also, understand that they -- they intend to
16 provide some comments, today, so I don't really want
17 to step on their points. But I would like to note
18 that they've been really helpful in trying to put
19 these numbers together, working with us to
20 figure out what this is going to cost everybody.

21 I'll take any questions.

22 CHAIRPERSON PERRY: Did you say it could go up to 2
23 percent of household income?

24 MR. JOHN RUSTIGE: That was what the analysis was, right.

25 CHAIRPERSON PERRY: I was just putting that in

1 perspective that the average American uses 9 percent of
2 some people, sometimes 8 percent of their income for
3 food.

4 MR. JOHN RUSTIGE: Yes.

5 CHAIRPERSON PERRY: That seems like one-fourth of
6 what you pay to go in you, you pay to come out.

7 (Laughter.)

8 MR. JOHN RUSTIGE: Well, you have to pay one way or
9 the other, I guess.

10 CHAIRPERSON PERRY: It just strikes as a significant
11 number --

12 MR. JOHN RUSTIGE: It is a huge number.

13 CHAIRPERSON PERRY: -- when you're talking of the --

14 MR. JOHN RUSTIGE: And by the way --

15 CHAIRPERSON PERRY: -- a half of a percent --

16 MR. JOHN RUSTIGE: -- we talked --

17 CHAIRPERSON PERRY: -- a half of a percent to 2

18 percent is a huge up. That's four times.

19 MR. JOHN RUSTIGE: Earlier there was mention about
20 capital costs and how much that -- how significant
21 that was, this \$120 to \$150 million is actual an annual cost.

22 COMMISSIONER EASLEY: Is it what?

23 MR. JOHN RUSTIGE: An annual cost. It will be ongoing the way --
24 the way we did -- the way we did the analysis.

25 CHAIRPERSON PERRY: It includes capital but you're

1 advertising capitalization overtime or --

2 MR. JOHN RUSTIGE: It's just the total cost of going
3 to that 2 percent.

4 Now, at some point we'll -- you know, you would
5 think that you would meet that, but it's the
6 difference of living under a .59 median household
7 income to 2 percent -- you know, out into the future.

8 CHAIRPERSON PERRY: That's a huge chunk.

9 MR. JOHN RUSTIGE: Yes.

10 COMMISSIONER TUPPER: I appreciate the response.

11 (Inaudible) I appreciate about what was said about
12 reducing INI but if they had money to reduce I&I,
13 they would.

14 CHAIRPERSON PERRY: Did that get on the record?

15 MALE SPEAKER: Yeah.

16 MR. JOHN RUSTIGE: Yeah.

17 CHAIRPERSON PERRY: All right.

18 CHAIRPERSON PERRY: Thank you, Jan, we got that.

19 MR. JOHN RUSTIGE: Thanks.

20 CHAIRPERSON PERRY: Thank you.

21 We'll you're standing up ready to go. Mary is
22 sitting down so I guess you get to go.

23 This is -- please, put your name on the record.

24 MR. PHIL WALSACK: Good afternoon. My name is Phil
25 Walsack from the Missouri Public Utility Alliance.

1 Thank you, Chairwoman, first for your dedicated
2 service for nearly a decade.

3 You will see that the Department's memo is four
4 pages long and mine is seven. That must mean that I
5 have something to say about this particular subject
6 matter.

7 Mr. Tupper, I miss your gravelly voice here
8 today, and rest assured, you will get a copy of the
9 two-page, 11 by 17 spreadsheet that I just handed
10 out, along with the seven-page memo. And I would
11 like to talk about it with you today.

12 If I could be half as eloquent as Mr. Brundage,
13 then this will go very quickly. I have had the
14 opportunity, while sitting here today, to highlight
15 some things from the seven-page memo so you don't - I
16 borrowed a DNR highlighter and I -- sorry, I used it
17 all, Rob. You can charge me for it later. I'll put
18 it right here.

19 That lists some of the key points that we're
20 talking about right here. Number one, we are unique.
21 Almost every state is. You will see on the first
22 page there of the memo that there is one little
23 highlight. And that is the Number 734. Seven
24 hundred and thirty four is the number of
25 municipalities in Missouri that are a thousand people

1 and more. So we have a lot of communities in this
2 state that are small. The list shows that, in the
3 break-out of those communities, one of the things
4 used by the feds, and by the state to address
5 infrastructures needs is a document that the feds
6 prepare called the 2004 Clean Watersheds Needs
7 Analysis.

8 You'll see on Page 2 of my memo that we talk
9 about Missouri as having the 12th largest needs
10 overall for wastewater in the United States, and yet
11 we have the 17th highest or lowest population. So our
12 needs are high. That's what that's talking about.

13 The needs analysis, however, does not address
14 smaller communities in Missouri. And that's that
15 next highlight you'll see on Page 2. It says that if
16 you were to use the needs analysis to look at I&I,
17 for example, I&I needs here in Missouri, then you
18 have 373 municipal wastewater utilities serving less
19 than a thousand people. And from that needs
20 assessment, you would see that we dedicate a \$1,334
21 per municipality to solve the I&I issue. I am here
22 to tell you that is not enough money.

23 The reason this is important is because the SRF
24 Program, the State Revolving Loan Fund Program is
25 predicated on having, allow me, a hundred dollars in

1 the kitty. Every state in the union gets a buck.
2 Then the next \$50 is divided up amongst the states,
3 based on need. So if we say our need is 4.83 billion
4 -- 84 billion dollars. And we're undershooting that
5 number that means we get less money from the federal
6 government to solve our wastewater issues.

7 I will bet my salary, and it's a pretty decent
8 salary, that the \$4.84 billion is way low. The
9 future needs assessment has to be better. It has to
10 be more inclusive of smaller communities and
11 municipalities in Missouri.

12 On Page 3 of the document, I summarized that
13 spreadsheet that I just handed to you. And I'm sorry
14 it's so big but I have reading glasses too, and I
15 cannot stand font of ten. We took a look at all 53
16 municipalities that are going to be affected by this
17 rule, each one, not just the 30 some odd numbers from
18 MPUA, but all of them. Called them all, figured out
19 what their Median Household Income is, figured out
20 what their sewer rates are, and on the bottom of the
21 second page of the big spreadsheet, you will see that
22 number down there on the bottom. I think it's 0.69
23 percent of the Median Household Income is dedicated
24 to sewer rates for those 53 communities.

25 Now, one of my points is that everybody says

1 lets get to the two that Missouri is just some
2 backwoods place where we're just not at two. That's
3 not true. The National Association of Clean Water
4 Agencies last month came out with some statistics for
5 the nation that suggests sewer bills for the year
6 2007 are \$304 annually, which is 0.61 percent of the
7 MHI. That's everybody in the union. So we're above
8 the national average.

9 We are currently above the national average and
10 we're going to get higher with regulatory changes.
11 Because we did the full analysis, got all of the data
12 points, we have a new table in -- on Page 4 of our
13 analysis that puts that Median Household Income at
14 0.71 for the affected communities, the affected 53.

15 And then I want to -- if you get nothing else
16 from my presentation in the next couple of moments,
17 that next thing that's highlighted on Page 4, it's
18 only two sentences long. It's a sentence that is a
19 paragraph. And I will read, interestingly, if you
20 use the DNR numbers, which we do, with \$3.47 billion
21 over 20 years, that that \$3.47 billion value for only
22 53 municipalities, uses a significant portion, 72
23 percent of the \$4.84 billion that the state says we
24 need over the next 20 years. 72 percent of the money
25 is spent on one regulatory issue in 53 communities,

1 not the 734 communities statewide.

2 Understand that the number that DNR is working
3 with right now, and we're supportive of working with
4 a number, pick some, is not an analysis of engineer
5 cost. It's a rate increase window. It's an
6 affordability window. Let's see if we can get the
7 rates up to 2 percent, and work backwards. It is a
8 top-down analysis. It is not an engineered analysis
9 for cost because John is, in fact, right. There are
10 lots of communities who will spend nothing on this
11 project, or program, nothing. They'll spend zero
12 dollars because they don't see the environmental
13 benefit. There are other communities who will have
14 to spend quite a bit to get to the bottom.

15 One of -- and the 2 percent -- a lot of people
16 ask where that comes from. That's that federal
17 number. That's an EPA affordability threshold
18 number. I direct you to Page 6, and I think there's
19 some brackets on your, on your page here that asks
20 the question. Let's say we get to 2 percent of the
21 Median Household Income. Poplar Bluff is one of
22 those. Now, what does that mean when we have a new
23 regulation that says, hey, you need to put some more
24 money into the system? Can Poplar Bluff walk back up
25 here and say, huh, you know what, we're at 2 percent

1 of the MHI? We're at the affordability threshold.
2 What does that do for you? Is that a nice little pat
3 on the back, and you still have to put some
4 infrastructure in the ground? Is that a, hum, we
5 didn't realize that? Do we need to back off on some
6 regulations? That's a great question. And it's one
7 we have been asking. We, industry professionals,
8 have been asking the feds for some number of years,
9 like ten or eleven. I personally, have been asking
10 you for 12. I don't have an answer to that question
11 yet, and I'd like one at some point.

12 You'll see that we have asked DNR to come up
13 with -- we have nine items that we'd like to have
14 looked at. And you can understand our point of view,
15 we're willing to come get some of these numbers, and
16 get some of these things figured out with DNR to
17 support the arguments of municipals.

18 We ask that DNR incorporate the new costs that we
19 have received from municipals, and John has been more
20 than happy to do that. We need to get to some place
21 where there's an implementation policy about proposed
22 rules. We have a lot of other things coming.

23 I'm going to switch to Page 9, and the gauntlet
24 is in the air currently. I am asking, I am pressing,
25 I am doing more than that behind closed door, the EPA

1 come to the table with us, with our other agencies,
2 our other federal associations, and start working on
3 this problem. From the the National Association of Clean Water
4 to the Association of Metropolitan Sewer Districts to
5 groups, like, mine we need to address the
6 accumulative affect of all these regulation changes,
7 not just RIR, by RIR, one at a time.

8 They have to be looked at in the accumulative
9 fashion so the communities can decide how best to
10 spend their limited resources to solve their
11 environmental problems. Not just sewer, but what
12 about air, what about potable water, what about storm
13 water, all these issues that are facing
14 municipalities, we need to deal with them all
15 holistically rather than one RIR -- IR, at a time.

16 This concept that we are doing the individual
17 rate payer's ability to pay, should be, and has been
18 requested to be re-analyzed so that we can start to
19 determine a community's fiscal capacity, supported
20 data, to yield a value or a model that illustrates
21 the highest environmental return for their
22 investment.

23 In closing, I have a one-sentence from the
24 National Association of Clean Water, and this was written
25 almost three years ago. It says: For permittees,

1 municipal government, our reluctance to commit to
2 certain environmental investments that yield limited
3 environmental benefit per dollar of expenditure is
4 not a matter of recalcitrance, it's a matter of
5 responsibility, if you share responsibility the
6 cities have to spend the money wisely.

7 Any questions of me?

8 (No response.)

9 I thank you for the opportunity.

10 CHAIRPERSON PERRY: Thank you. Mary? State your
11 whole name, Mary, for the record.

12 MS. MARY WEST: My name is Mary West. I live in St.
13 Louis, Missouri. I work for Jacob's Engineering.
14 I've attended a number of the wet weather stakeholder
15 group meetings over the last several years. And this
16 really is still a work in progress in my opinion.
17 The target is still moving at the EPA level. And
18 there is really no answer yet about what is going to
19 be acceptable or not at the federal level.

20 Some issues that I wanted to address,
21 specifically, that pertain to the white paper.
22 Utilizing a percent of the Median Household Income
23 for sewer rates and assuming that affordability will
24 be a defense for non-compliance is unwise. There is
25 no guarantee at the federal level that once a

1 community reaches the 2 percent or Median Household
2 Income, that you will not be forced to comply with
3 regulations.

4 I've been in meetings with EPA Region 7, where
5 the enforcement officer responsible for sanitary
6 sewer overflows, which is what this is talking about,
7 has said that if the cost is really high, you get 15
8 years to comply. If it's really, really high, we'll
9 give you 20. There is never a discussion that you
10 don't have to comply. It's merely a question of
11 when.

12 So going to 2 percent of Median Household Income
13 is no guarantee that you will not be forced to do
14 more. That's an important point. The rule language
15 still talks about requirements for combined sewer
16 systems. If you read the description provided in
17 your packet, Paragraph 2, it still really references
18 combined sewer overflows and combined sewer systems.

19 The 45/45 limit while it pertains to the
20 handful of combined sewer communities in the state.
21 We're talking about 53 communities. These 53
22 communities are not in the majority combined sewer
23 systems. They are systems that have high influent
24 infiltration. So I would like to see that language
25 clarified so that all the communities that have peak

1 wet weather issues understand that this may affect
2 them as some point in the future.

3 This language change that DNR is trying to implement
4 under much federal pressure comes about due to
5 federal assertions that bypassing at wastewater
6 treatment facilities during peak flows is illegal.
7 During recent stakeholder meetings, EPA Region 7's
8 permitting person stated that the definition of
9 bypassing currently in use by EPA is based on the
10 draft blending policy that was worked out between the
11 National Association of Clean Water Agencies and the
12 Natural Resources Defense Counsel, and presented to
13 EPA as a compromise.

14 However, EPA did not finalize that policy. So
15 it is still in draft form. So EPA is telling us that
16 they are using a definition from a draft policy that
17 they have never finalized. However, for facilities
18 who wish to blend, based on that draft blending
19 policy and I believe you're aware of the permit
20 objection, or interim objection, by EPA Region 7 on
21 the Atherton plant for Little Blue Valley. They're
22 saying that blending is not permitted, even though
23 that draft policy perhaps would have allowed that.
24 Because they're saying that rule or that policy was
25 never finalized. So they're using the definition in

1 the draft but they're not letting people use the
2 whole draft. It's rather frustrating.

3 And I would point out that in many cases; this
4 blended effluent meets the permit limit. So if you
5 have an effluent limit for BOD or suspended solids,
6 the blended effluent has to meet those numeric
7 limits. So it's not necessarily an issue of water
8 quality, it's more an issue of technical treatment,
9 in my opinion.

10 Communities facing a reduction of peak wet
11 weather flow and construction of increased capacity
12 for treatment have many issues to deal with. As Phil
13 Walsack said, you know, it's not just the high I&I
14 flow. There's ammonia disinfection, metals limits,
15 nutrients, all of the things that we've been talking
16 about today, and in previous meetings. Additionally,
17 for those of you who have never run a system, 50 to
18 60 percent of the influent infiltration that gets
19 into the line that causes these bypasses results from
20 private sources.

21 Municipalities are forbidden to spend public
22 dollars on private property. So even if you go out
23 and you fix all of the cities main lines, you take
24 care of all of the manholes, there's a real
25 possibility that you'll only get to 40 or 50 percent

1 of a reduction in flow, so that means you have to
2 increase the capacity of your treatment facility.

3 The DNR white paper did not base its
4 assumptions, as Phil said, on case studies. It was
5 not based on a review of SRF Engineering reports for
6 systems who have been doing I&I work or other data.
7 It would seem with the number of communities in
8 Missouri who have either begun addressing these
9 issues or have completed projects that DNR staff
10 should be able to find real world data to base these
11 numbers on, rather than just pushing the issue of
12 affordability and develop the cost estimate from
13 there.

14 When I looked at the 52 communities, you know,
15 it's -- and you look at the size of those
16 communities, of the 53, eight are under 1500
17 population. When you consider even a two-and-a-half
18 persons per household that means that those
19 communities don't have very many customers. You can
20 raise rates to \$50 a month, or \$70 a month, and you
21 just don't raise much money. And so the ability of
22 those very small communities to raise enough funding
23 to address the issues, whether it's a Fredericktown,
24 or Buffalo, or some of these other communities who
25 were facing EPA enforcement several years ago, those

1 communities, I think Buffalo is under 3000
2 population, they just passed a \$3 million bond issue,
3 that's a lot of money for those folks to pay back.

4 Phil Walsack has dedicated a significant amount
5 of time to this, and I admire his work ethic. I want
6 to point out though that the income, the Median
7 Household Income numbers, and the spreadsheet are
8 based on city data, not census data. So CityData is
9 a website that lists all kinds of information about
10 communities across the country.

11 I'm not sure how they calculate that Median
12 Household Income because, you know, they adjust it.
13 I don't know if it's annually based on consumer price
14 index, or whatever. But my concern is, in this
15 economy, until we know how that Median Household
16 Income was calculated, that we should probably use
17 census data, the latest census data instead of some
18 other number, until we know more. Because I have a
19 sneaky feeling that income levels in many of our
20 communities across Missouri are going to go down for
21 the next couple of years and not up.

22 The use of cities' resources to address I&I
23 issues alone limit the cities' ability to address
24 other potentially more important issues, and the
25 impact on water quality may be minimal at best. In

1 some communities, you're talking about a handful of
2 bypasses per year, some communities admittedly more.
3 But when asked if the communities would be able to
4 monitor water quality in the stream to determine what
5 impact these bypasses were having actual in stream,
6 we were told that that doesn't matter. It's illegal
7 to bypass, and water quality is not the issue.

8 So, as Phil said, it makes much more sense to
9 sit down with everyone around the table, figure out
10 what our most important environmental issues are, and
11 spend our valuable resources addressing those. You
12 know, if you have ammonia issues, if you need to do
13 disinfection year round, or for the full recreation
14 season, instead of addressing a few bypasses when the
15 creek is all ready out of its banks, that makes more
16 sense.

17 Also I would like to ask, it was -- I saw the
18 response to comments that were submitted on the RIR
19 in writing during the public comment period, but I
20 believe that there were comments submitted during the
21 public hearing as well. I don't believe that those
22 comments were addressed in the response. So I just
23 didn't know if that was policy or not.

24 And that's all I have. And if you have any
25 questions, I'd be happy to answer questions. Thank

1 you.

2 CHAIRPERSON PERRY: Are there any questions?

3 (No response.)

4 CHAIRPERSON PERRY: Anything further?

5 (No. response.)

6 CHAIRPERSON PERRY: Do you feel now informed?

7 Another chance for information, **Tab No. 10**, and

8 there's also a copy of the IUP in your blue binder.

9 This is the 10 we were looking forward to earlier.

10 MR. JOE BOLAND: Yes. Good afternoon, again. My

11 name is Joe Boland. I'm with the Financial

12 Assistance Center, in the Water Protection Program.

13 And what I'd like to do today is just kind of catch

14 you up a little bit on our activities under the

15 American Recovery and Reinvestment Act.

16 As you know, we will be receiving approximately

17 \$108 million in federal stimulus money through the

18 Clean Water SRF. And part of our responsibility will

19 be a -- to develop an intended use plan for that

20 funding, which you do have a draft. You've been

21 provided a draft in your blue packets. That draft

22 went on public notice April 27th. It will remain on

23 public notice for 30 days. And we will be before you

24 on May 27th for a public hearing on that IUP. One

25 week more of public notice after that and then we'll

1 be back to you on June 10th for another Commission
2 meeting to formally adopt that final IUP.

3 CHAIRPERSON PERRY: And there's a special meeting of
4 the Commission on the 27th.

5 MR. JOE BOLAND: That is correct, to conduct that
6 public hearing. So we -- we ask your indulgence for
7 all the special meetings. We know it's a great
8 inconvenience for you but it's a requirement to meet
9 all the very strict timelines we have to get this
10 money under construction by February 17th of 2010.

11 And I just want to discuss in very general terms
12 what we're dealing with here, and then I'd like to
13 recognize our Department Director, Mark Templeton, to
14 discuss some of the details of the IUP.

15 First of all, the ARRA has -- I'd like to
16 shorten the American Recovery and Reinvestment Act,
17 if I could. The ARRA requirements dictate that we
18 provide 50 percent of this funding as grants. That
19 could be as principle forgiveness or negative
20 interest loans but the State of Missouri chose grants
21 for a variety of reasons. I won't bother to go into
22 that but it has to do with Hancock and burning very
23 precious, bond authorization at the community level
24 if we did loan forgiveness, so that's a whole other
25 discussion, if you'd like to have it.

1 But we chose to do grants just for that reason.
2 20 percent has to be for green projects. What EPA is
3 defining as green, consists of three main categories.
4 One, is water efficiency, one, is energy efficiency,
5 and the other is environmental innovation. And then,
6 of course, under those main categories, there's quite
7 a list of what's considered green under those three
8 main criteria.

9 So we have to insure that 20 percent of that \$108
10 million goes towards these green projects, and EPA
11 has provided pretty lengthy guidance on what is
12 green. So as we pile through the engineering on all
13 these projects, we'll be making sure what is claiming
14 to be green and certainly meet those criteria,
15 because that will be one of the highly audited
16 components of this funding from the -- at the federal
17 level. They've promised us they will look very
18 closely at what is considered green and buy American
19 as the other highly auditable component.

20 Again, we -- the IUP considered, number one; whether
21 it's got a green component, 20 percent green. We --
22 the stimulus act, or the intent of congress was to
23 look at, or give preference to small communities, and
24 we have a disadvantaged component in there as well.
25 And then of course, the Bill itself required that we

1 give additional priority to projects that will be
2 ready to go as soon as possible, so construction
3 start date will be a very, very important criteria
4 for any of these projects.

5 So with that as a general introduction, I'd like
6 to recognize our Department Director, Mark Templeton.

7 CHAIRPERSON PERRY: And would you state your name
8 again, please, so that the record will pick it up?

9 MR. MARK TEMPLETON: Yes, yes, I'm Mark Templeton.
10 I'm the new Director of the Department of the Natural
11 Resources, started on March 2nd.

12 And this is my first time addressing the
13 Commission, so I first wanted to thank you all for
14 your service. I know that this takes a lot of time
15 and a lot of devotion from you all to the public.
16 And so I really appreciate that and very much look
17 forward to working with you on the difficult issues
18 that come before the Commission and the Department.

19 Anything that has to do with Natural Resources
20 and resources in general, of course, has different
21 perspectives involved about how those resources
22 should be allocated, while looking out for
23 environmental protection as well as the economic well
24 being of the state. So again, I look forward to
25 working with you.

1 I just want to talk very briefly about the IUP.
2 I know there'll be subsequent discussions as well. I
3 want to just underscore a couple of points, which Joe
4 made.

5 First, the principles that you see were
6 discussed -- some of them are sort of given to us by
7 the ARRA legislation. Other principles were
8 discussed with the Governor's Office and reflect the
9 input of the Governor's Office and this Department in
10 terms of the Intended Use Plan. The ARRA
11 restrictions that you see here, that Joe talked
12 about, are the 20 percent of money for the green
13 projects. And Joe and the team have looked very
14 diligently at the projects that are out there to make
15 sure that we can fulfill that requirement and assist
16 those projects.

17 Another point, which Joe made, was that ARRA
18 does indicate that there should be a tip for
19 economically disadvantaged communities. So we use
20 the 2 percent approach as we are looking at the
21 percentage between grants and loans under the
22 Program. As Joe said, the ARRA does require 50
23 percent of that funding to go out in the form of
24 grants.

25 Our general approach to this was to try to

1 touch as many communities and projects as we could.
2 So we stuck with the 50 percent grant portion rather
3 than going higher than that, and we had a cap, a cap
4 of \$3 million per applicant for these projects,
5 again, trying to make sure that the benefits, the
6 financial benefits of the ARRA Program were
7 distributed to different projects and systems as much
8 as possible throughout the state.

9 The ARRA is about getting shovels in the ground
10 and starting projects. And so, a key aspect for the
11 state and for all the projects that we're looking at
12 is the start date. I realize that we also have the
13 priority point system, which is incredibly important,
14 but given the amount of money that needs to go out,
15 how quickly the projects need to start, that was a
16 key determining factor for us, as you actually looked
17 at the IUP. These were the factors; these were the
18 neutral criteria, which we applied, when we were
19 looking at the list of projects, both projects that
20 were in the sort of pipeline already, as well as
21 those that came through the Transform Missouri
22 website.

23 What you see is a list of the projects based
24 upon the application of these neutral principles, and
25 that's what we have brought to you. There is a

1 contingency list such that if any of the projects
2 that are on the IUP don't get started with sufficient
3 time, or have other issues, we would move to the
4 contingency list.

5 I recognize that, as I said at the beginning,
6 any time that there are resources, there are
7 discussions about how resources should be allocated,
8 I wanted to come here today, specifically, to talk
9 about the principles which we used to go through the
10 applications that we had and we are committed to
11 making sure that Missouri captures and uses the full
12 amount of money for these purposes so that we can be
13 in such a place that when other states lapse their
14 money, that we can come and try and get more money
15 for the State of Missouri in the projects that will
16 help our citizens here.

17 So that's pretty much what I had to say.
18 Again, there are some requirements through ARRA in
19 terms of transparency and accountability, the buy
20 American provision and others that we're going to
21 have to work hard through. And again, with all of
22 the folks, we're going to help, it's going to be a
23 big task for us, but we're committed to having as
24 many --

25 (Tape Four, Side A concluded.)

1 CHAIRPERSON PERRY: Any questions you have for the
2 Commission?

3 (No response.)

4 I very much appreciate the chance to meet you
5 and to have you come down and see. Be aware too,
6 that there's a group that comes to all of these
7 meetings and spends hours and hours sitting and
8 sitting and sitting and not being able to speak.
9 It's a good group and they work well, and we look
10 forward to working with you.

11 MR. MARK TEMPLETON: Good, I appreciate the efforts
12 of the Commission and all those who are interested to
13 make sure we have the best policies and practices in
14 the state. So thank you, and thank you very much.

15 CHAIRPERSON PERRY: Thank you.

16 MR. JOE BOLAND: If I could add one more thing, at
17 this meeting, we were scheduled to bring the base
18 program 2010 IUP to you for adoption. However, we're
19 postponing that until after the adoption of the
20 stimulus IUP in order to more accurately reflect the
21 projects that don't fall on stimulus. We'll capture
22 them on the base program IUP, and those that are on
23 the base program IUP that come on to stimulus that
24 will allow us to know where the final cut is and move
25 those to the appropriate list. So just to let you

1 know, we were scheduled to do that, however, we're
2 going to be postponing that to July.

3 Yes, sir?

4 VICE-CHAIR HARDECKE: Is this fundable list in
5 priority order in any way or is it -- is there an
6 order to it?

7 MR. JOE BOLAND: If you -- yes, the fundable list is,
8 which is looking at, is pretty much those projects
9 that are ready to go. And if you'll look at their
10 construction start date, most of those will be in
11 order. There's a few that -- a few special cases in
12 there, for lack of a better term, that we know.
13 We've been dealing with those projects. We have the
14 engineering. We know they've met all the criteria
15 but their construction start date may be a little bit
16 further down the line.

17 Some of those on the contingency list that,
18 basically, we just ranked everybody in order of when
19 they're ready to go, or their construction start
20 date, if they've got their bonds passed, if they've
21 got their facility plan complete, the ones we know
22 we've been working with, we know they're getting
23 there, those kind of -- you know, move up to the
24 fundable list.

25 Then, everybody else that indicates they're

1 ready to go, they have their bonds voted, and their
2 construction start date is up there, that's when you
3 start seeing on the contingency list, they're in
4 order of date in most cases.

5 We just ran out of money where that contingency
6 list starts. So, in reality, everybody on that
7 fundable list may not be able to make it. So we know
8 that there are some that may fall off. There are
9 some that may go with a different funding agency.
10 They may be courting Rural Development right now and
11 decide to go with them. They may get a better cut of
12 grant. So we know some of those may fall off. And
13 that's where the contingency list becomes extremely
14 important for us. And we're encouraging everybody on
15 that contingency to keep moving with their project to
16 be in the best position to take advantage of any
17 funds that become freed up from that fundable list.

18 One other issue I wanted to bring to your
19 attention is as we move forward with this it's going
20 to be very important for us to keep an eye on these
21 projects and their progress. Because even though
22 they may say they have a July 1 construction date, if
23 they're not making progress towards that, we will be
24 coming to you to bypass those projects, as we get
25 into late summer, early fall, we just can't let those

1 projects go on and on and on and delay, tying up this
2 money, and you know, putting us in jeopardy of
3 perhaps lapsing any of it. So we're going to be have
4 to making some very hard decisions, bringing some
5 decisions to you, recommending bypass in some cases
6 if necessary. It's not going to be very popular but
7 we don't have any other choice.

8 So other than that, can I answer any other
9 questions on detail or -- there is a lot of thought
10 that went into those lists. Every question brings up
11 -- you know, a lot of other questions on how things
12 fell out.

13 And one other issue I'd like to bring up is that the
14 definition of shovel ready is very, very broad in
15 perspective. To some people, it means, you know,
16 they have a project, a preliminary engineering report
17 on the shelf, and all they need to do is call their
18 engineer and you know, that's not what we're looking
19 at. We're looking at projects that already have
20 their bonds voted. They've got permits in place.
21 They've been through Antideg. Literally, some of
22 these projects have been waiting for us, for us,
23 since fall. They knew the stimulus was coming, they
24 decided to postpone it. That's why you see
25 construction start dates of January, February of

1 2009. They're delaying their projects to take
2 advantage of some of this money.

3 So it -- there's going to be a lot of
4 jockeying, I believe, for those that are on the
5 bubble, on that fundable list, and the beginning of
6 the contingency list. And we're beginning to get a
7 lot of comments. This went on public notice April
8 27th so we are getting a lot of comments. A lot of
9 people on the contingency list are obviously very
10 disappointed but we're encouraging them to submit us
11 written comments to, you know, plead their case. And
12 so there'll be some communities going back and forth
13 from one list to the other based on new facts that we
14 come across.

15 Other than that, any -- any questions? I know
16 that there's a lot to absorb there. That is our
17 first cut. And you know, at -- the public hearing
18 should be very interesting. We expected a few of you
19 folks to comment or at least to add to comments today
20 but this obviously was not an avenue for -- to take
21 comments on this. It was just for your information,
22 and to let you know the methodology behind it.

23 CHAIRPERSON PERRY: It's a big project to be thrown
24 in your lap. And --

25 MR. JOE BOLAND: It certainly was.

1 CHAIRPERSON PERRY: We can see a lot of dedication
2 and --

3 MR. JOE BOLAND: A lot of staff of --

4 CHAIRPERSON PERRY: -- that you really focused on
5 certain priority. I understand that some communities
6 may try lobbying around this list, and I certainly
7 hope that this Commission holds strong. Because as
8 citizens, we want what's fair to all communities.

9 MR. JOE BOLAND: And we appreciate that. And we
10 think this methodology is very defensible. It's in
11 our view, very logical, so as we apply it, if we do
12 come across facts that we were not aware of for some
13 of those contingency projects, we'll have to deal
14 with that. And some folks may fall off the fundable
15 list. And that's a very, very hard thing for them to
16 deal with. But, you know, we have to apply this in a
17 logical fashion and move forward. So I hope for the best.

18 But I do, I appreciate all our staff's effort,
19 and there was a lot of time that has gone into this.
20 And it's very much appreciated, all of the support we
21 have received from our own Department and everyone
22 else.

23 Any other questions?

24 (No response.)

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

1 CHAIRPERSON PERRY: No further comments.

2 VICE-CHAIR HARDECKE: Thank you.

3 CHAIRPERSON PERRY: I am very sorry. I didn't see --

4 I had it from last time and it was right here. I'm

5 sorry, Kevin.

6 MR. PHIL WALSACK: (Inaudible.)

7 CHAIRPERSON PERRY: You'd think you guys would've

8 trained me better.

9 (Laughter.)

10 MR. PHIL WALSACK: (Inaudible) could probably take the

11 questions, if Joe hasn't vanished all ready. I had

12 (inaudible).

13 First, how was the \$3 million number coming to?

14 This is really just information. I'm just trying to

15 seek how the three million grant was determined?

16 CHAIRPERSON PERRY: Joe's right there. He really

17 didn't leave.

18 MR. PHIL WALSACK: I'm going to stand right beside you

19 so we can do this quickly.

20 MR. JOE BOLAND: It's a good question, actually. The

21 three million -- we had every scenario thrown on the

22 table from a 100 percent grant to literally 50/50

23 with no cap. And quite frankly, the money just ran

24 out so quickly doing that, that only a handful of

25 projects were touched by the stimulus money.

1 So we played around with different scenarios.
2 We started with one million, two million, three
3 million, up to five million. And some of those
4 scenarios, we literally ran out of our normal SRF
5 money to match the grant money. We just didn't have
6 enough to, if we ran - just as an example, under a
7 million dollar scenario, a million dollar grant cap
8 scenario, it would've required about 300 or 400
9 million in SRF loans to touch that many projects. So
10 we know we didn't have that much funding available so
11 we kind of backed it down.

12 And the construction start dates were way into
13 next year. So we can't do that. So we started
14 playing with that grant dollar and we went to five
15 million. Well, that, you know, we didn't touch near
16 as many and we ran out of, you know, grant dollars
17 much quicker. So three million dollars turned out to be right at
18 that equilibrium point where we could get the money
19 out timely and we reached many projects without
20 running out of SRF money.

21 And that brings up another point that there are
22 obviously more loans in this scenario than grant
23 dollars. And so we're having to tap our normal SRF
24 pool to the tune of about 90 million extra to get
25 this amount of grants out. So that's -- does that

1 make sense?

2 MR. PHIL WALSAK: Phil Walsack, again, for the
3 record. And when does the first public comment,
4 public -- public comment date start?

5 MR. JOE BOLAND: Both IUPs, clean water
6 and drinking water, stimulus IUPs went on
7 public notice April 27th. And that public notice
8 period ends one week after the special Commission
9 meeting on May 27th. So the public notice period ends
10 June 3rd. And we'll be wrapping all that up in a week
11 somehow, and bringing it back to you, the Commission,
12 on June 10th for a final adoption.

13 MR. PHIL WALSAK: And my last question, if you
14 would, describe the difference between an ARRA --
15 sorry, that's the new

16 CHAIRPERSON PERRY: I understand.

17 MR. PHIL WALSAK: -- most of us call it ARRA by now.
18 Just, you know, the federal government on this kind
19 of a program trying to stimulate us this fast, what's
20 the difference between an ARRA loan and an SRF loan
21 at this point?

22 MR. JOE BOLAND: In terms of the fundable list, we,
23 like I said earlier, we have the ARRA grant column,
24 and the ARRA loan column, and then an SRF column.
25 All that really reflects is when we run out of the

1 ARRA loan portion, we have to start tapping the
2 base program SRF dollars to match the remaining grant
3 allocations.

4 And for all intents and purposes, there is no
5 difference between the ARRA loan portion and our
6 normal SRF loan. The -- anybody touching the ARRA
7 grant will have to meet the terms and conditions of
8 that federal -- the federal requirements for the
9 stimulus funding, which means buy American,
10 prevailing wage and all the additional reporting
11 required.

12 Even if we give them half or even if the loan
13 portion they receive from us comes from base program
14 SRF funding, EPA and the federal government's
15 interpretation is if a project is touched with
16 stimulus money, that entire project has to meet the
17 requirements of the stimulus reporting and all the
18 other conditions of that funding, such as buy
19 American and prevailing wage.

20 MR. PHIL WALSHACK: I don't have any more questions.
21 I just want to thank staff. I know Joe and Doug have
22 worked their tails off on this. It's like building a
23 Program from scratch in 60 days. This is a very
24 arduous Program coming from a long way away, and
25 they've done a heck of a job to get money into the

1 Missouri, and we really appreciate it.

2 VICE-CHAIR HARDECKE: Joe's chart makes your chart
3 look better, Phil.

4 (Laughter.)

5 CHAIRPERSON PERRY: Mary?

6 MS. MARY WEST: Mary West, Jacobs Engineering. I do
7 have a question. Since there was no application
8 deadline because the -- all of this was kind of fluid
9 for a long time, the question is for those
10 communities who have not yet gotten their application
11 in, is the Department still accepting applications?

12 MR. JOE BOLAND: That's an excellent question. And
13 what we -- how we're dealing with that is, any -- any
14 application we're receiving after that public notice
15 date of April 27th, we are scoring it. We're
16 processing it. But at this point, we can only put it
17 on the contingency list. And it will compete with
18 the others on that contingency list. And that doesn't
19 sound fair, but we had to draw a line somewhere to
20 prepare this Intended Use Plan to get it ready to get
21 it through the public review process. As is, it
22 won't be, until June if all things go right that
23 we'll get our money from EPA.

24 EPA will not award us a capitalization grant
25 until we have a final Intended Use Plan. So we

1 wanted to get on this as quickly as we could. We're
2 already somewhat behind from some of the Region 7
3 states but we think ours is, you know, a little bit
4 better thought out.

5 Our approach is logical, like I've said, but
6 the question is a very good one and a very difficult
7 one for us to deal with because there are folks out
8 there that were not aware of any deadline. We did
9 not publish a deadline but, again, we have to move
10 forward at some point. And it is very important for
11 us to keep in communication with some of those
12 contingency project lists. And the importance of
13 them, to continue to move towards -- you know, the end
14 of their project -- or to get it funded.

15 Some on those lists -- some of the projects on
16 the fundable list may not go. And even some of the
17 metro areas' may decide to come off and just deal with
18 the regular IUP -- SRF Program. So there's going to
19 be some dynamics in that list, and that's why it's
20 important for those contingency projects to keep
21 moving. And that's the message we're still trying to
22 get to them.

23 Thank you.

24 CHAIRPERSON PERRY: Thank you, Joe.

25 Doug, were you wanting to speak on this?

1 (No response.)

2 CHAIRPERSON PERRY: You had that look.

3 MR. DOUG GARRETT: One further note that Joe didn't
4 mention, we -- we do realize that with all the
5 projects on the list, there will be some that will
6 ultimately not be funded with stimulus funds, and we
7 will afford those communities the opportunity to
8 participate in the regular SRF Program down the road.
9 So as they move forward with projects that -- you
10 know, at some point we do hope to fund them.

11 CHAIRPERSON PERRY: All right. Thank you. Anything
12 on the part of the Commission?

13 (No response.)

14 CHAIRPERSON PERRY: Okay. Kevin, here's your next
15 chance to sail through.

16 MR. KEVIN MOHAMMADI: Yes, ma'am. Good afternoon,
17 Chair, members of the Commission.

18 VICE-CHAIR HARDECKE: You got ten minutes.

19 CHAIRPERSON PERRY: You got ten minutes. That's what
20 everybody else had.

21 MR. KEVIN MOHAMMADI: Okay. We have several items
22 we're going to be recommending for referral to the
23 Office of Attorney General's office. The first item
24 is **Mr. George Gerth and Gerth Camper Park**. Mr.
25 George Gerth owns the camper park, known as Gerth

1 Camper Park, located in Taney County, Missouri.
2 Gerth Camper Park consists of 100 recreational vehicles,
3 pads, and tent, permanent mobile home sites.
4 Currently, wastewater generated from the camp park
5 and Mr. Gerth's home is treated by an extended
6 aeration basin and septic tanks and operates pursuant
7 to the Missouri State Operating Permit.

8 Since December 1999, Department staff conducted
9 one complaint investigation, one environmental
10 assistance visit, and one routine inspection of the
11 wastewater treatment facility. During these
12 inspections, and review of the quarterly discharge
13 monitoring reports submitted to the Department, staff
14 documented operation and maintenance problem with the
15 facility and found Gerth Camper Park has chronically
16 failed to comply with it's permitted effluent limits for
17 bacteria.

18 In addition, staff have observed that system
19 discharges to an unnamed underground to -- an
20 underground hard fields, which is not approved by the
21 Department. And there is no sampling reports from
22 which samples can be collected between the
23 (inaudible) chamber and hard field.

24 In November 2008, staff and Mr. Gerth entered
25 into negotiations to resolve the violations through

1 an out-of-court settlement agreement. On December
2 2008, Department staff met with Mr. Gerth in
3 Springfield Regional office to discuss steps to be
4 taken to bring the facility to compliance with the
5 Missouri Clean Water Law.

6 Despite several letters and this meeting
7 between Mr. Gerth and staff, we have not been able to
8 reach an agreement. Therefore, staff has recommended
9 this matter to be referred to the Office of Attorney
10 General for appropriate legal action.

11 CHAIRPERSON PERRY: Do you want to ask questions?

12 VICE-CHAIR HARDECKE: Were you done?

13 MR. KEVIN MOHAMMADI: Yes.

14 VICE-CHAIR HARDECKE: I was just curious if that -- I
15 can't remember the name of the group that Dave
16 Casseletto was with. Would they be available to help
17 him with the system or something?

18 MR. KEVIN MOHAMMADI: No. The only solution for this
19 facility is actually through Taney County Regional
20 Sewer District, connect to the City of Branson.
21 Actually, there are two other developments very close
22 to this development. One is called Hillbilly Motel,
23 and the other one is Damsite Subdivision. And Taney
24 County Sewer District is planning to bring gravity
25 sewer line to them and then there's going to be a

1 lift station or pump station that will pump into the
2 City of Branson's collection system.

3 VICE-CHAIR HARDECKE: How far away is that, or how
4 time wise?

5 MR. KEVIN MOHAMMADI: It's not that far. That's
6 actually the most economical solution.

7 VICE-CHAIR HARDECKE: Was he willing to do that?

8 MR. KEVIN MOHAMMADI: He has started talking to Taney
9 County and there was -- his attorney was over here
10 earlier, and he left because he couldn't wait this
11 long. And by the way, Madam Chair, that's very good
12 strategy to push attorneys out.

13 (Laughter.)

14 Wait until the last minute. Anyway, and he had
15 a letter from Taney County Regional sewer district
16 that they have passed a resolution and they will put
17 the line in place for all mistreated development to
18 connect to them, and work to an agreement with the
19 City of Branson. And City of Branson is willing to
20 accept the sewage.

21 COMMISSIONER EASLEY: Now, who will have to pay for
22 that lift station?

23 MR. KEVIN MOHAMMADI: I think everything is going to
24 paid for by Taney County and then there's going to be a
25 connection fee that Taney County Regional Sewer

1 District requires for anybody who connects to their
2 collection system.

3 COMMISSIONER EASLEY: So the cost isn't going to be
4 that great?

5 MR. KEVIN MOHAMMADI: No. It's won't be. Basically,
6 typical connection fee that Taney County requires for
7 commercial --

8 COMMISSIONER EASLEY: But a lift station could run
9 anywhere from \$50 to \$100,000 and that could be a
10 stumbling block.

11 MR. KEVIN MOHAMMADI: Not necessarily, because that
12 lift station can be used for other properties. It
13 won't be exclusively for these three.

14 VICE-CHAIR HARDECKE: So do you feel like through
15 this negotiation, you'll get him hooked on there?

16 MR. KEVIN MOHAMMADI: I'm pretty confident. He
17 already has started discussion with Taney County and as
18 I said, his situation is similar to his two neighbors
19 next to him, and those two have agreed to connect to
20 the City of Branson through Taney County Sewer
21 District line.

22 CHAIRPERSON PERRY: Any further questions?

23 (No response.)

24 CHAIRPERSON PERRY: Hearing none, the Chair will
25 entertain a motion.

1 I'm assuming there is no one here to speak on
2 behalf of Mr. Gerth?

3 MS. MALINDA OVERHOFF: He was here earlier and left.

4 MR. KEVIN MOHAMMADI: Motion passed.

5 CHAIRPERSON PERRY: They said he was here before.

6 Did you speak to him? Did he say -

7 MR. KEVIN MOHAMMADI: Yes. He came to me and talked
8 to me and, as I mentioned, he gave me the letter that
9 he received from Taney County that is Taney County's
10 committed to install a gravity line.

11 COMMISSIONER EASLEY: Is it still your recommendation
12 to refer?

13 MR. KEVIN MOHAMMADI: Yes. We have a couple
14 outstanding issues in addition to connection, and we
15 have penalty for past violation, and between now and
16 the time that physical connection takes place, we
17 like for him to pump and haul.

18 **COMMISSIONER EASLEY: Okay. I move that the Missouri**
19 **Clean Water Commission request the Missouri Attorney**
20 **General to take appropriate legal action against Mr.**
21 **George Gerth on behalf of the Missouri Clean Water**
22 **Commission and the Missouri Department of Natural**
23 **Resources requiring Mr. Gerth to obtain compliance**
24 **with the Missouri Clean Water Law and it's**
25 **implementing legal regulations, collect payment of**

1 the civil penalty for past violation, and any relief
2 deemed appropriate by the Attorney General's Office.
3 COMMISSIONER HUNTER: Second.
4 CHAIRPERSON PERRY: We have a motion and a second.
5 Please, call for the vote, Malinda.
6 MS. MALINDA OVERHOFF: Commissioner Easley?
7 COMMISSIONER EASLEY: Yes.
8 MS. MALINDA OVERHOFF: Commissioner Shorney?
9 COMMISSIONER SHORNEY: Yes.
10 MS. MALINDA OVERHOFF: Commissioner Tupper?
11 COMMISSIONER TUPPER: Yes.
12 MS. MALINDA OVERHOFF: Commissioner Hunter?
13 COMMISSIONER HUNTER: Yes.
14 MS. MALINDA OVERHOFF: Commissioner Hardecke?
15 VICE-CHAIR HARDECKE: Yes.
16 MS. MALINDA OVERHOFF: Chair Perry?
17 CHAIRPERSON PERRY: Yes.
18 MR. KEVIN MOHAMMADI: The next item is **Old Plank**
19 **Estates Development, Incorporated.** Old Plank Estates
20 Development, Incorporated owns and is currently
21 developing property known as Eastland Hills Estate
22 located in Boone County. Eastland Hill is planned
23 for 42 privately owned residential lots that the
24 Department of Natural Resources issued Missouri State
25 Operating Permit to Eastland Estates on December

1 2006, which expired on April 2007. On May 2007, the
2 Department issued another new Missouri State
3 Operating Permit to Old Plank Estates Development,
4 Incorporated authorizing discharge of storm water to
5 Hominy Branch.

6 Since March 2007, the Department conducted two
7 complaint investigations and one follow-up inspection
8 of land disturbance activities occurring at Eastland
9 Hills. During these investigations, the staff has
10 observed that best management practices were not
11 adequate to prevent sediment from eroding offsite.
12 Staff also has observed deep erosion gullies on
13 protected storm water inlets and heavy sediment
14 deposit and cut trees laying in the receiving stream.

15 On October 2008, the Department sent a letter to
16 Mr. Russell Anderson offering to resolve the past
17 violation through an out-of-court settlement
18 agreement. On January 2009, Mr. Anderson contacted
19 Department staff after receiving the letter. During
20 this conversation, staff informed Mr. Anderson that
21 the Department has been trying to send a letter to
22 him for the past three months. Mr. Anderson stated
23 he's a builder and recently moved twice. During this
24 conversation, Mr. Anderson verbally provided staff
25 with best address to reach him.

1 On January 2009, Department staff met with Mr.
2 Anderson and Mr. Brian Schultz of Magnus Enterprise
3 to discuss Department's requirement to resolve this
4 matter. Mr. Anderson told the staff he intended to
5 meet with an engineer and submit his response to
6 Department by February 2009.

7 Department did not receive a response on
8 February 2009. The Department sent a second letter
9 to Mr. Anderson at the address he provided, offering
10 to resolve the past violation through out-of-court
11 settlement agreement, according to United States
12 Postal Services, this letter was unclaimed and
13 returned to the Department on March 2009.

14 On March 16, 2009, the Department sent a third
15 letter to Mr. Anderson at the same address. This
16 letter was also unclaimed and returned. To date, Mr.
17 Anderson has failed to respond to the Department's
18 offer, therefore, staff recommend the matter to be
19 deferred to the Office of Attorney General for
20 appropriate legal action.

21 CHAIRPERSON PERRY: What does Hominy Branch run into?

22 MR. KEVIN MOHAMMADI: To Hominy Creek.

23 CHAIRPERSON PERRY: Does it run into the Missouri
24 River?

25 MR. KEVIN MOHAMMADI: I'm not certain, Commissioner.

1 CHAIRPERSON PERRY: Okay. I was just wondering if it
2 happened to be close. I wasn't looking for a far out
3 detail. I just wanted to know -- back to another
4 subject.

5 MR. KEVIN MOHAMMADI: If I had to guess, I would say,
6 yes. I understand where you are coming from.

7 CHAIRPERSON PERRY: So it's not that close. Just
8 wondering. In forcing some dirt going into the river.

9 MR. MALE SPEAKER: (Inaudible.)

10 CHAIRPERSON PERRY: The Corps might condone this.
11 Are there any further questions on behalf of the
12 Commission?
13 (No response.)

14 MR. MALE SPEAKER: (Inaudible.)

15 CHAIRPERSON PERRY: Pardon? What's within 20
16 percent?

17 MR. MALE SPEAKER: (Inaudible.)

18 CHAIRPERSON PERRY: What's within 20 percent?
19 Oh. The runoff. The bottom sediment deposit.

20 VICE-CHAIR HARDECKE: We've got this in here about
21 the cut trees in the stream. That's not necessarily
22 a water issue, right?

23 MR. KEVIN MOHAMMADI: No. But that's what was
24 observed that he is very reckless and just goes out
25 to remove the vegetation and has no regard for

1 protecting the stream.

2 CHAIRPERSON PERRY: And 42 lots is not just a little

3 --

4 MR. KEVIN MOHAMMADI: No.

5 CHAIRPERSON PERRY: -- semi-circle. Do we have a

6 motion?

7 COMMISSIONER SHORNEY: Madam Chair, I move the

8 Missouri Clean Water Commission request the Missouri

9 Attorney General to take appropriate action against

10 Mr. Russell Anderson, Eastland Hills Estates, LLC,

11 and Old Plank Estates Development, Inc., in a court

12 of competent -- of competent jurisdiction on behalf

13 of the Missouri Clean Water Commission and the

14 Missouri Department of Natural Resources to require

15 compliance with the Missouri Clean Water Law, and its

16 implementing regulations, payment of civil penalties

17 for past violations, and any relief deemed

18 appropriate by the Attorney General's Office.

19 CHAIRPERSON PERRY: Do we have a second?

20 COMMISSIONER TUPPER: Second.

21 CHAIRPERSON PERRY: The phone speaks. We have a

22 motion and a second. Would you call for a vote?

23 MS. MALINDA OVERHOFF: Commissioner Shorney?

24 COMMISSIONER SHORNEY: Yes.

25 MS. MALINDA OVERHOFF: Commissioner Tupper?

1 COMMISSIONER TUPPER: Yes.

2 MS. MALINDA OVERHOFF: Commissioner Hunter?

3 COMMISSIONER HUNTER: Yes.

4 MS. MALINDA OVERHOFF: Commissioner Hardecke?

5 VICE-CHAIR HARDECKE: Yes.

6 MS. MALINDA OVERHOFF: Commissioner Easley?

7 COMMISSIONER EASLEY: Yes.

8 MS. MALINDA OVERHOFF: Chair Perry?

9 CHAIRPERSON PERRY: Yes.

10 MR. KEVIN MOHAMMADI: Next item is **Shady Gator,**

11 **Camden County.** Mr. Gary Pruitt owns a restaurant

12 known as Shady Gator, which is located on Sweet

13 William Rose in Horseshoe Bend area of the Lake of

14 the Ozarks in Camden County.

15 The restaurant is served by an extended aeration

16 wastewater treatment facility with the designed

17 population of 122 and design flow of 5,200 gallons

18 per day. The facility operates pursuant to Missouri

19 State Operating Permit and discharges into Lake of

20 the Ozarks.

21 Between January 2007 and July 2008, Department

22 sent nine letters to Shady Gator for failure to

23 submit monthly discharge monitoring report as

24 required by Missouri State Operating Permit. On June

25 2008, Department staff conducted a complaint

1 investigation, and observed evidence that raw sewage
2 was bypassing the pump station.

3 On July 30, 2008, Department staff sent an
4 inspection report and a letter of warning for
5 violation observed on -- by staff on June 2008. On
6 August 30th, 2008, Department issued a notice of
7 violation to Shady Gator for violation observed in
8 follow-up inspection conducted by staff on June 23rd,
9 2008, for not complying with the condition of the
10 Missouri State Operating Permit.

11 The accompanying letter informed Mr. Pruitt that
12 matter was deferred for enforcement. On January
13 2009, Department sent Mr. Pruitt a letter offering to
14 resolve the past violations through an out-of-court
15 settlement. Mr. Pruitt responded by phone on February
16 2009. During this conversation, Mr. Pruitt informed
17 the staff that he would not -- he would contact his
18 attorney to prepare a response to the Department
19 offer. But no response has been received.

20 On March 2009, Department sent Mr. Pruitt a
21 second letter offering to resolve the past violation
22 through out-of-court settlement. On March 2009 and
23 April 20, 2009, Mr. Pruitt spoke to staff by phone
24 regarding the violations but did not provide a
25 response to Department offer. Therefore, staff

1 recommend the matter to be deferred to the Office of
2 Attorney General for appropriate legal action.

3 CHAIRPERSON PERRY: Is there anybody here from the
4 Shady Gator Bar and Grill?

5 (No response.)

6 CHAIRPERSON PERRY: Any discussion on the part of the
7 Commission?

8 (No response.)

9 CHAIRPERSON PERRY: Is there a motion on the part of
10 the Commission?

11 **COMMISSIONER HUNTER: Madam Chair, I move that the**
12 **Missouri Clean Water Commission request the Missouri**
13 **Attorney General to take appropriate legal action**
14 **against Mr. Gary Pruitt on behalf of the Missouri**
15 **Clean Water Commission and the Missouri Department of**
16 **Natural Resources to require compliance and civil**
17 **penalties for past violations and obtain any relief**
18 **deemed necessary by the Office of the Attorney**
19 **General.**

20 **COMMISSIONER SHORNEY: Second.**

21 **CHAIRPERSON PERRY: Please call for the vote.**

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

23 **COMMISSIONER TUPPER: Yes.**

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

25 **COMMISSIONER HUNTER: Yes.**

1 **MS. MALINDA OVERHOFF: Commissioner Hardecke?**

2 **VICE-CHAIR HARDECKE: Yes.**

3 **MS. MALINDA OVERHOFF: Commissioner Easley?**

4 **COMMISSIONER EASLEY: Yes.**

5 **MS. MALINDA OVERHOFF: Commissioner Shorney?**

6 **COMMISSIONER SHORNEY: Yes.**

7 **MS. MALINDA OVERHOFF: Chair Perry?**

8 **CHAIRPERSON PERRY: Yes.**

9 MR. KEVIN MOHAMMADI: The next item is **East Missouri**
10 **Development Limited Liability Company.** East Missouri
11 Development is a limited liability company that owns
12 eight lots. The Cuivre Valley Subdivision is located
13 in Lincoln County. Storm water discharges from the
14 lots to a tributary of Cuivre River.

15 During complaint investigation of the lots
16 owned by East Missouri Development, staff observed
17 that best management practices were not adequate to
18 control erosion. Staff also observed sediment
19 deposit in the receiving stream, and samples and
20 notices of storm water discharge from the lots
21 exceeded permit limits for several solids by a 1,000
22 percent. Staff also found that East Missouri Development did
23 not obtain a permit prior to beginning land service
24 activities.

25 Since July 2007, staff has issued two letters of

1 warning and one notice of violation to Mr. Walter
2 Wright of East Missouri Development informing him of
3 the violations and recommending corrective action to
4 bring lots into compliance.

5 Mr. Wright did not take the corrective action to
6 bring the lots into compliance and the matter was
7 referred to enforcement action. On September 2008,
8 Department sent a letter to Mr. Wright offering to
9 resolve the past violation through an out-of-court
10 settlement agreement. Staff spoke to Mr. Wright and explained
11 the process to resolve this matter.

12 On December 2008, the Department sent a follow-
13 up letter to Mr. Wright requesting a response to the
14 Department. On February 2009, staff spoke to Mr.
15 Wright by phone and requested that he submit a
16 response to the Department. During this
17 conversation, Mr. Wright said that he would submit a
18 response by February 11, 2009.

19 Mr. Wright did not submit a response and on
20 February 20, 2009, staff left a message on his
21 answering machine requesting a response. To date, we
22 have not received any response from Mr. Wright;
23 therefore, staff recommends matters to be deferred to
24 the Attorney General Office for appropriate legal
25 action.

1 CHAIRPERSON PERRY: Any questions on the part of the
2 Commission?
3 (No response.)
4 CHAIRPERSON PERRY: Any motions?
5 VICE-CHAIR HARDECKE: Are you ready for a motion?
6 COMMISSIONER EASLEY: When -- just a minute. Let me
7 get the right one here. Are we on that one?
8 CHAIRPERSON PERRY: Page 296.
9 COMMISSIONER EASLEY: Page 296?
10 COMMISSIONER SHORNEY: Two ninety six.
11 COMMISSIONER EASLEY: East Missouri; is that the one
12 I want?
13 COMMISSIONER SHORNEY: Yes.
14 **COMMISSIONER EASLEY: Okay. I move that the Missouri**
15 **Clean Water Commission request the Missouri Attorney**
16 **General to institute appropriate legal action against**
17 **East Missouri on behalf of the Missouri Clean Water**
18 **Commission and the Missouri Department of Natural**
19 **Resources to require compliance with the Missouri**
20 **Clean Water Law and it's implementing regulation,**
21 **civil penalties for past violation, and any relief**
22 **deemed appropriate by the Attorney General's Office.**
23 **COMMISSIONER SHORNEY: Second.**
24 **CHAIRPERSON PERRY: We have a motion and a second.**
25 **Please call for the vote.**

1 MS. MALINDA OVERHOFF: Commissioner Hunter?
2 COMMISSIONER HUNTER: Yes.
3 MS. MALINDA OVERHOFF: Commissioner Hardecke?
4 VICE-CHAIR HARDECKE: Yes.
5 MS. MALINDA OVERHOFF: Commissioner Easley?
6 COMMISSIONER EASLEY: Yes.
7 MS. MALINDA OVERHOFF: Commissioner Shorney?
8 COMMISSIONER SHORNEY: Yes.
9 MS. MALINDA OVERHOFF: Commissioner Tupper?
10 COMMISSIONER TUPPER: Yes.
11 MS. MALINDA OVERHOFF: Chair Perry?
12 CHAIRPERSON PERRY: Yes.
13 MR. KEVIN MOHAMMADI: The next item is **Old Plantation**
14 **Motel**. Mr. John Maggard owns the Old Plantation
15 Motel and Restaurant located on State Highway 13
16 outside of Osceola, St. Clair County. The business
17 is served by an unpermitted two cell, unpermitted
18 lagoon that discharges partially treated wastewater
19 into an unnamed losing tributary that flows to
20 Gallinipper Creek and then to Truman Lake within 1
21 mile.
22 On July 25th, 2006, Department issued a notice of
23 violation to the Old Plantation Motel for violation
24 observed during May 2006 complaint investigation. On
25 January 23rd, 2007, Mr. Maggard met with the staff at

1 the Department Springfield Regional Office to discuss
2 option to bring his wastewater treatment facility to
3 compliance with Missouri Clean Water Law.

4 On November 2007, Department sent a letter to
5 Mr. Maggard informing him that because he had failed
6 to take any action to correct the violations, the
7 matter has been referred for the enforcement.

8 On June 2008, staff sent certified
9 correspondence to Mr. Maggard offering to resolve the
10 violation through an out-of-court settlement
11 agreement. Correspondence was returned unclaimed.
12 That was sent by regular mail on June, July 2008.

13 On August 12, 2008, staff was contacted by an
14 engineer representing Mr. Maggard to discuss options
15 to bring the facility in to compliance. The staff
16 was unsuccessful in two attempts to contact Mr.
17 Maggard by phone, and on October 2008, the Department
18 again sent certified correspondence to Mr. Maggard
19 offering to resolve the violations through out-of-
20 court agreement.

21 The correspondence was returned unclaimed on
22 November 12th, 2008, and sent by regular mail on
23 January 3rd, 2009. To date, we have not received any
24 response from Mr. Maggard; therefore, the staff
25 recommends the matter to be referred to the Office of

1 Attorney General for appropriate legal action.

2 COMMISSIONER EASLEY: Kevin, it indicates in here, in
3 January, he indicated that it was a seasonal business
4 and he wasn't sure if he was even going to open it up
5 again. Has it been utilized since then?

6 MR. KEVIN MOHAMMADI: I don't have, Commissioner
7 Easley, any -- it is seasonal. That's -- that's
8 correct but we have not inspected it since to see if
9 he's still operating or closed. But if that was the
10 case, he could submit something to us that he's no
11 longer in operation and he could provide closure plan
12 for closing the lagoon, and, of course, and the
13 Department had something for past violation for
14 punitive damages that we incurred, were cut.
15 But the fact that he's not responding, he's not
16 communicating, has brought us to this point.

17 And he's not accepting any correspondence from
18 the Department.

19 CHAIRPERSON PERRY: Any questions?

20 (No response.)

21 COMMISSIONER SHORNEY: Madam Chair?

22 CHAIRPERSON PERRY: Yes.

23 **COMMISSIONER SHORNEY: I move the Missouri Clean**

24 **Water Commission request the Missouri Attorney**

25 **General to take appropriate legal action against Mr.**

1 Victor Maggard on behalf of the Missouri Clean Water
2 Commission and the Missouri Department of Natural
3 Resources to require compliance and civil penalties
4 for past violations and obtain any relief deemed
5 necessary by the Office of Attorney General.
6 COMMISSIONER EASLEY: Second.
7 COMMISSIONER TUPPER: Second.
8 CHAIRPERSON PERRY: We have two seconds. Go with Mr.
9 Tupper. Call for the vote, please.
10 MS. MALINDA OVERHOFF: Commissioner Hunter?
11 COMMISSIONER HUNTER: Yes.
12 MS. MALINDA OVERHOFF: Commissioner Hardecke?
13 VICE-CHAIR HARDECKE: Yes.
14 MS. MALINDA OVERHOFF: Commissioner Easley?
15 COMMISSIONER EASLEY: Yes.
16 MS. MALINDA OVERHOFF: Commissioner Shorney?
17 COMMISSIONER SHORNEY: Yes.
18 MS. MALINDA OVERHOFF: Commissioner Tupper?
19 COMMISSIONER TUPPER: Yes.
20 MS. MALINDA OVERHOFF: Chair Perry?
21 CHAIRPERSON PERRY: Yes.
22 MR. KEVIN MOHAMMADI: The last item is the **Branson**
23 **Mountain Village, Stone County**. Mr. Marion Dodson is
24 the owner and developer of Branson Mountain Village,
25 a subdivision located in Stone County.

1 The subdivision is served by a re-circulating
2 sand filter wastewater treatment facility with a
3 design flow of 20,160 gallons per day that discharges
4 effluent to Aunt's Creek Arm of Table Rock Lake. The
5 wastewater treatment facility was constructed under a
6 construction permit issued by the Department on April
7 8, 1999. Mr. Dodson has not applied for Missouri
8 State Operating Permit for the facility.

9 After sending numerous letters and several phone
10 conversations, the Department issued a notice of
11 violation to Mr. Dodson for operating the wastewater
12 treatment facility without the Missouri State
13 Operating Permit. And referred the matter for
14 enforcement action.

15 On June 6th, 2007, legal counsel for the
16 Department sent a letter to Mr. Dodson, explaining
17 that pursuant to the Missouri Clean Water Law, he is
18 required to apply for the Missouri State Operating
19 Permit. The letter also stated that the Department
20 had elected to withhold enforcement action under
21 condition that he submit a complete application for
22 Missouri State Operating Permit.

23 On September 4th, 2007, an engineer working for
24 Mr. Dodson contacted Department staff and stated that
25 he was preparing an application for the operating

1 permit. Staff contacted Mr. Dodson on three
2 subsequent occasions to determine the application
3 status. And he informed the staff that an
4 application for operating permit had been submitted.

5 To date, the Department has not received the
6 application. On October 16th, 2008, the Department
7 sent an offer to Mr. Dodson offering to resolve the
8 violation through an out-of-court settlement
9 agreement. Mr. Dodson has spoken to staff by phone
10 on several occasions and stated that an application
11 was submitted or should have been submitted. Mr.
12 Dodson has not responded to the Department's offer,
13 nor has the Department received an application for
14 the operating permit. Therefore, staff recommend the
15 matters to be referred to the Office of the Attorney
16 General Office for appropriate legal action.

17 I understand Mr. Dodson is here.

18 CHAIRPERSON PERRY: Okay. Sir? Do we have card?

19 (No response.)

20 CHAIRPERSON PERRY: No.

21 MR. MARION DODSON: We had in deed applied for a
22 permit and it got lost in the mail, sort to say type
23 thing. Okay. And I think Mr. Arter does have a
24 copy of the those. I do have a new application here.

25 Our plant is not discharging no where. Our plant was over built

1 in size. We do not have enough effluent water coming
2 into it for it to discharge. So they basically just
3 evaporate there in the system.

4 I'd like to sit here and say that I've got a
5 bunch of excuses, but I don't. The only thing I can
6 say is that we are doing everything we can humanly
7 possible to make this happen. This is our
8 applications and here is the check with it for the
9 application. I just received this and, in fact, this
10 one's scared me. And I showed these to Mr.
11 Arter and he said this one was in line so okay,
12 so at this point, I'd like to say here I am not here
13 to beg mercy, but I am. We have the -- we have
14 beautiful water on our property. We've got lots of
15 springs and lots of creeks coming through it and we
16 don't want to do anything to disturb that.

17 That's the reason we chose this re-circulating
18 sand filter to begin with. And with that being said,
19 I really don't know what else to say but we've done
20 everything humanly possible to meet this criteria.

21 COMMISSIONER EASLEY: Why has it taken a year-and-a-
22 half to get around to doing this?

23 MR. MARION DODSON: Well, it didn't take us a year-
24 and-a-half. It actually, I think, a little over a
25 year ago, we submitted a -- one in there. Prior to

1 that, I will say this, when we built the plant, I was
2 under the understanding because it was a re-
3 circulating sand filter, once we built it and it
4 passed engineering, that was the end of it. I really
5 didn't know we had to submit anything else. And so it had not
6 been discharging any water, and we did check it a time or
7 two to make sure the computer worked. And we still
8 do, we found a way to do that without any water in
9 it.

10 The creek runs about 3 to 500 foot from us,
11 where the plant sets. And I'd like to say that I've
12 got a bunch of excuses but I just don't. I mean, the
13 truth is that it's been over a year ago since we
14 submitted that first one, after we seen that we was
15 doing something wrong. And when I say doing
16 something wrong with it, I just simply didn't have
17 the paperwork. And so we tried to do everything
18 right and make that right. I've been on many, many
19 calls with Mr. Arter and submitting him with
20 applications. I just needed to -- I don't know -- I
21 wish I had a better answer to your question.

22 But the fact is we did submit it. The wrong
23 numbers or something was put on the application and
24 it never made it through the Office apparently
25 We stopped payment on that check and had

1 the engineers back at it again. And I've had -- I
2 got this on the 29th and I really didn't know whether
3 to take it there. It got lost there one. And I
4 thought just to bring it -- when I found out I was
5 coming here, maybe I should bring it here so that's
6 why I've got it here with me today. And so I'd like
7 to make a bunch of excuses but I just -- I tried to
8 do everything properly. The plant's a wonderful
9 plant and it's not polluting anything. The original
10 things that were found as a discrepancy on it, when
11 we first built the plant, we built a little building
12 beside it, and the electric came out of the main over
13 to it, and became a rattlesnake, copperhead nest. So
14 we removed that and the girl came out to inspect it
15 and there were some wires hanging loose there that
16 had not been removed yet, and they called that, this
17 electricity wasn't complete but it was indeed
18 complete. And so as far the only other charge we've
19 had with it was there was grass growing --

20 (Tape Four, Side B concluded.)

21 MR. MARION DODSON: -- as far as, I think, doing
22 something wrong, I just don't feel like that we are,
23 other than we did not understand the system, and we
24 have worked at it the best we possibly can except
25 since that time. That's my explanation.

1 CHAIRPERSON PERRY: Have you spoken with Mr.
2 Mohammadi?

3 MR. MARION DODSON: I have not. No.

4 CHAIRPERSON PERRY: What are your thoughts?

5 MR. KEVIN MOHAMMADI: Commission, this has been going
6 on since 1999. We informed Mr. Dodson he needs to
7 get application. Time after time, at regional level,
8 our Springfield Regional Office wasn't successful to
9 get application from Mr. Dodson. They sent to us. I
10 looked at the case. I said, you know, something; I'm
11 going to give Mr. Dodson an opportunity to apply for
12 the permit. We asked our legal counsel to write a
13 letter and send a letter to Mr. Dodson. Mr. Dodson,
14 we have elected to withhold enforcement action. We
15 are not seeking any penalty. The only thing we are
16 asking of you, which is something we are entitled to,
17 to apply for permit. Mr. Dodson didn't respond to
18 that.

19 And then we started enforcement action. My
20 staff contacted him several times, and we never
21 received application from Mr. Dodson. Till Mr.
22 Dodson received the letter from the Department, on
23 May 6th, 2009, you're going to be referred to the
24 Attorney General Office. Mr. Dodson gets in his car,
25 drive all the way from Stone County, from Branson to

1 here, bring application and check. Why he didn't do
2 that ten years ago? Why didn't he do that in 2007,
3 when he received the letter from our legal counsel?
4 That's number one.

5 Number two, Mr. Dodson has gained economic benefit
6 by not having that permit and not paying any of the
7 permit fees. Where there are people complying with
8 law and they renew their permit, they get their
9 permit, they have operator to operate and maintain
10 the facilities, submit discharge monitoring report.
11 So in addition to Mr. Dodson applying for a permit,
12 he needs to pay back the benefit he has gained for
13 violating the law, not having the permit and also not
14 taking the environmental loss seriously till he's
15 informed that it's going to be referred. We have
16 penalty claims. We have economic benefit that he has
17 gained he needs to pay back and of course comply with the law.
18 Those are my thoughts.

19 MR. MARION DODSON: May I have redirection?

20 CHAIRPERSON PERRY: Yes.

21 MR. MARION DODSON: What he just said is beyond my
22 knowledge. There being by, maybe, a year and a half
23 or so of about 2004, 2005, I haven't responded to
24 anything. My wife and my grandson was killed in a
25 car wreck and I kind of lost contact with things.

1 But I got back in the saddle and I've kept going.
2 This has went on -- every time I have gotten
3 something from this Department, it's went straight to
4 my engineer, absolutely straight to my engineer. I
5 say that and give oath to God that that is the truth.

6 In 2004, 2005, I wouldn't swear to nothing. But
7 as soon as we found out we legally had to have this
8 permit, up until I think it was 2002, there was not a
9 house connected to it. In fact, there was, I think
10 it was -- as he said, it's went on too long, but I
11 can't tell you exactly when the power went to it.

12 Quite frankly, I feel like a fool standing here,
13 not having dates. But we are trying to do what's
14 right. I have not shunt my duties in no way. And
15 the first person here I've ever really truly talked
16 to has been Mr. Arter. And I have, and I think
17 he'll tell you, that everything I've -- that he's
18 asked me to do, I have done, and I've done everything
19 I told him I would do, and that's exactly what I've
20 done. And that's where I am now. I don't know what
21 else to say.

22 CHAIRPERSON PERRY: Mr. Mohammadi mentioned that
23 there would be some fines involved because there was
24 not a permit in place and said that anyone competing
25 with you who is law abiding would have done so. And

1 there are some penalties involved. Our decision is
2 whether we turn it to the Attorney General's Office
3 to have that enforced and to come to a resolution of
4 this with you, power of the court behind them.

5 MR. MARION DODSON: Well, there's been no financial
6 gain with us.

7 CHAIRPERSON PERRY: Pardon?

8 MR. MARION DODSON: You're saying we had financial
9 gain. It's cost us money -- every month, I've had an
10 electric bill on the plant that does not work. I pay
11 insurance on something that does not work. We're not
12 polluting the water. There has been no gain. I'm
13 paying engineering fees. What he just said there,
14 there, is no way in God's creation that I have a
15 financial gain here. None. And so if that's -- I
16 wish that there was a profit to it.

17 CHAIRPERSON PERRY: But we sort of have an A, B
18 choice to make here. Choice A is; you and Kevin are
19 going to work this out.

20 MR. MARION DODSON: Oh. I do want to work it out.

21 CHAIRPERSON PERRY: And you'll get your permit and
22 you'll be on your way. But involved in that will be
23 some penalties. And some things that Mr. Mohammadi
24 does when he deals directly with people. If that
25 doesn't work, or usually when we have come to that

1 point, which is why he's brought it to us today, is
2 he's felt that it hasn't worked. For ten years, he's
3 been trying to contact you and to get this matter
4 resolved.

5 So then, we say, okay, it goes to the court. My
6 question for you is: why should this not go on to
7 the next step?

8 MR. MARION DODSON: Maybe it should. I don't know
9 nothing about the law here.

10 CHAIRPERSON PERRY: And can it be resolved?

11 MR. MARION DODSON: I just don't. The only thing I
12 can say is as far as engineering documents goes, and
13 the things that I thought I had to provide has indeed
14 been done. And so if there's civil penalties
15 involved with this, please, have mercy on me. This
16 thing has been a dead horse for us, a big, big dollar
17 dead horse. And we want, for the future, -- we want
18 to have a good system. And we've got it but when we
19 get enough influent water to make the system operate
20 --

21 CHAIRPERSON PERRY: Well, do you two think you can
22 work this out? Should we table it for a few months
23 till -- what's our next meeting, July 1st?

24 MR. KEVIN MOHAMMADI: Well, I think, Madam Chair, you
25 explain it very clearly, if Mr. Dodson wants to work

1 with us, you can refer this case to the Office of
2 Attorney General office contingent upon, we don't
3 reach --

4 CHAIRPERSON PERRY: An agreement.

5 MR. KEVIN MOHAMMADI: -- agreement within 60 days,
6 and you have made it clear there is going to be a
7 penalty associated with this and there's going to be
8 a commitment for Mr. Dodson to comply with
9 environmental law in any of his future development
10 and including the one that he has.

11 So if he's not under allusion that all he has to
12 do is to submit this to us and everything is taken
13 care of.

14 MR. MARION DODSON: I am trying not to be
15 argumentative. (Inaudible). It's not just me showing
16 up here with this permit. I didn't know what else to do We had
17 already put one in before --

18 CHAIRPERSON PERRY: We understand.

19 MR. MARION DODSON: -- and it didn't make it through,
20 then it tells me we've got a problem. And what is
21 that problem? And why didn't it go through? And why
22 didn't the thing get processed? That bothers me a
23 great deal.

24 CHAIRPERSON PERRY: Well, we think if -- go ahead.

25 We could save you the cost of the lawyer if it

1 doesn't go on to --

2 MR. MARION DODSON: Well, I have no reason to sue.

3 I'm not looking for something like that. I want to -

4 -

5 CHAIRPERSON PERRY: So giving you --

6 COMMISSIONER HARDECKE: I'm just curious. Are there

7 any homes hooked to this system?

8 MR. MARION DODSON: There is. There is. There is

9 eight houses in the subdivision. Seven are hooked to

10 it. And an eighth one will be hooked to it. I think

11 it's going to take 12 to 15 houses to make the plant

12 work. With the economic times it is, we thought we

13 wasn't going to see anything for a long time because

14 we basically have been kind of stale. But it's kind

15 of looking like this year, we might not get those

16 houses. And so it's -- we're involved heavily with

17 Energy Star Homes, and but I haven't been in this

18 subdivision there. We do it around the country.

19 That's how I make my living. But this is -- this I

20 do want it to settle. I want to be honorable about

21 it. I want to be treated fair. I don't want to play

22 ignorance because there's no excuse for ignorance.

23 That's kind of where I'm at.

24 CHAIRPERSON PERRY: Pardon? Put that in your motion

25 if within 60 days if the matter is not resolved.

1 COMMISSIONER HUNTER: Table it for 60 days.

2 CHAIRPERSON PERRY: Well, not table. Give them -- we
3 will defer it to the Attorney General's Office in 60
4 days from today. So if the matter is worked out in
5 60 days, then it doesn't go to the Attorney General's
6 Office.

7 MR. MARION DODSON: I will indeed work -- I don't
8 have a problem.

9 MR. KEVIN MOHAMMADI: Madam Chair, basically, matters
10 will be referred to the office of -- you are
11 referring the matter to the office of the Attorney
12 General's Office, contingent upon no agreement is
13 reached within 60 days.

14 COMMISSIONER HUNTER: Yeah.

15 CHAIRPERSON PERRY: Well put. Would somebody like to
16 make that a motion?

17 COMMISSIONER EASLEY: Sam, it is your turn.

18 (Laughter)

19 COMMISSIONER HUNTER: All right. Let's see. You ready
20 for a motion?

21 CHAIRPERSON PERRY: Yes.

22 COMMISSIONER HUNTER: Now, Kevin, repeat that how you
23 want this motion to be --

24 MR. KEVIN MOHAMMADI: You can sit down and relax.

25 (Laughter.)

1 MR. MARION DODSON: I'm not relaxed.

2 CHAIRPERSON PERRY: Thank you, sir, for coming. It
3 went better because you came.

4 MR. KEVIN MOHAMMADI: The motion would be --
5 Commissioner Hunter; that you make the motion matters
6 to be referred to the Office of Attorney General
7 Office contingent upon no final agreement is reached
8 within 60 days of today.

9 COMMISSIONER HUNTER: Are we ready?
10 (No response.)

11 **COMMISSIONER HUNTER: I move that the Missouri Clean**
12 **Water Commission refer this matter to the Missouri**
13 **Attorney General's Office to take appropriate legal**
14 **action against Mr. Dodson, contingent upon if an**
15 **agreement is not reached within 60 days --**

16 MR. KEVIN MOHAMMADI: Of today.

17 COMMISSIONER HUNTER: -- of today.

18 CHAIRPERSON PERRY: Do we have a second?

19 VICE-CHAIR HARDECKE: Second.

20 COMMISSIONER EASLEY: Second.

21 CHAIRPERSON PERRY: We all have -- didn't you -- Ron,
22 win?. **Call for the vote, please.**

23 **MS. MALINDA OVERHOFF: Commissioner Hardecke?**

24 **VICE-CHAIR HARDECKE: Yes.**

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

1 COMMISSIONER EASLEY: Yes.

2 MS. MALINDA OVERHOFF: Commissioner Shorney?

3 COMMISSIONER SHORNEY: Yes.

4 MS. MALINDA OVERHOFF: Commissioner Tupper?

5 COMMISSIONER TUPPER: Yes.

6 MS. MALINDA OVERHOFF: Commissioner Hunter?

7 COMMISSIONER HUNTER: Yes.

8 MS. MALINDA OVERHOFF: Chair Perry?

9 CHAIRPERSON PERRY: Yes.

10 MR. KEVIN MOHAMMADI: Thank you.

11 CHAIRPERSON PERRY: Thank you, Mr. Dodson.

12 MR. EARL PABST: Kevin, could you just very briefly

13 give the commission an update on Martin subdivision?

14 We owe you a follow-up on that.

15 MR. KEVIN MOHAMMADI: Sure.

16 MR. EARL PABST: There's a letter in your blue

17 packet.

18 CHAIRPERSON PERRY: That dear man.

19 MR. KEVIN MOHAMMADI: We met with -- staff met with

20 Mr. Finn in January -- March, I believe it was March

21 30 or March 31st. We went through options available

22 with Mr. Finn. And Mr. Finn understood which one is

23 more cost effective. One of the issues that Mr.

24 Martin was going to pursue was contact City of

25 Columbia to see if there -- an extension agreement

1 works.

2 City of Columbia has this process that you sign
3 up, what they call it, an extension agreement, even
4 though your property's outside the city limit, and
5 there is still another property between yours and
6 City of Columbia. At the point that City of Columbia
7 boundary reaches your property then you have to
8 annex. But you will have this extension agreement in
9 place in advance.

10 He was going to pursue that. And then, he also
11 was going to contact an attorney about to form a non-
12 profit continuing authority that they can deal with
13 City of Belle. He was going to come over here to
14 give update to the Commission and we informed him
15 there is no need for him to spend the time to drive
16 down here. We gave him additional 60 days to see
17 what he can work out forming, organizing the
18 homeowners and also get all the template reduction
19 from the City of Columbia to look at their extension
20 agreement and work with the City of Belle.

21 So additional 60 days has been given to Mr.
22 Finn to iron those out.

23 CHAIRPERSON PERRY: Thank you for the update.

24 VICE-CHAIR HARDECKE: The other one was West
25 Sullivan, and I noticed they were on the fundable

1 list. We've given them, I think, 90 days, or
2 something. Have we heard from them?

3 MR. ROB MORRISON: We, Ron, Commissioner Hardecke, I
4 don't know the status of the settlement agreement. I
5 can let Kevin do that. But I just want to tell you;
6 the path that West Sullivan is on at this point is
7 they are trying to purchase a separate wastewater
8 treatment system that's adjacent to their property.
9 I think it's actually across the road from I-44 or
10 across I-44. But the technical solution there is
11 that they're going to be pursuing their own purchase
12 of a wastewater treatment facility. And I'll have to
13 defer to Kevin. I don't know what the status of the
14 settlement agreement is.

15 CHAIRPERSON PERRY: It doesn't have anything to do
16 with what was on that plan -- the IUP?

17 MR. MALE SPEAKER: (Inaudible.)

18 CHAIRPERSON PERRY: Okay.

19 MR. MALE SPEAKER: (Inaudible.)

20 MR. KEVIN MOHAMMADI: They do have the draft
21 settlement agreement, that we sent them a few months
22 ago that, excuse me, compliance (inaudible).

23 Any other questions?

24 (No response.)

25 MR. KEVIN MOHAMMADI: Okay. Thank you.

1 CHAIRPERSON PERRY: Thank you. Okay. Guys, we're
2 going to table your election till to the 27th. That
3 way I won't influence you and that'll save us some
4 time. Are you good with that? Give everybody a
5 chance to campaign. And I'll give Sam a chance to be
6 an official voting member.

7 Okay. We have -- can we go over the permits
8 real quick? Is that what we have -- yeah, we've been
9 waiting for that. I got a few questions.

10 MR. REFAAT MEFRAKIS: I'm all about quick here, so.
11 Well, obviously, good afternoon. My name is Refaat
12 Mefrakis. I'm a Chief of Permits and Engineering.

13 The permit report begins on Tab 17. All the
14 discussion you've been hearing and making decisions
15 on affects our permits production, one way or
16 another. And I have four reports for you here in an
17 attachment.

18 The first report begins on Page 942. It's the
19 operating permit, NPDES permit report. I have three
20 tables, as you can see, you've been familiar with
21 that. The first table represents our ability to
22 issue permits on time. We've been consistent with a
23 73 percent on operating permits and 93 percent on
24 construction permits.

25 The last two tables are the aging report of

1 permits where these are permits that have been
2 received by the Department and being worked on.
3 They've either been pulled or being worked on for
4 some reason or another. Obviously, wet weather issue
5 is one on them. We have received an objection from
6 EPA if these permits are on public notice.

7 Obviously, there was other compliance issues
8 with them. As you can see the site specific permits
9 are -- indicates that we have approximately 342 as of
10 April 2009. That's consistent with the previous
11 months. The last report is our -- mostly general
12 permits and you've seen the numbers drop from 500 to
13 345. We expect this number to drop again in the next
14 Commission meeting, since we have issued a couple of
15 general permits.

16 Any questions on the NPDES or state operating
17 permit?

18 CHAIRPERSON PERRY: I have two questions.

19 MR. REFAAT MEFRAKIS: Sure.

20 CHAIRPERSON PERRY: First of all, on the general
21 permits, if I remembered from last meeting, the R-240

22 --

23 MR. REFAAT MEFRAKIS: One.

24 CHAIRPERSON PERRY: There were two of them. And now,
25 I see one.

1 MR. REFAAT MEFRAKIS: Yes. Because you see one on
2 the list, on the very last list? Okay.

3 CHAIRPERSON PERRY: Yeah.

4 MR. REFAAT MEFRAKIS: At the end of this report?

5 CHAIRPERSON PERRY: Uh-huh.

6 MR. REFAAT MEFRAKIS: Okay. We took that out. We're
7 still discussing that with MO-AG on drafting a no
8 discharge permit. They expressed some interest to
9 continue with that general permit. They feel that
10 our situation may have a potential discharge that
11 there are no other feasible alternative other than to discharge.
12 So they want a permit to cover them if that occurred.

13 CHAIRPERSON PERRY: Okay. And how are those
14 negotiations going?

15 MR. REFAAT MEFRAKIS: I think that what they've been
16 wanting to do is they want to come to our workshop and understand
17 the process a little bit more before they can come back to us
18 with a proposal. Now, we don't have any application
19 right now that's pending Antideg Review. I'll make
20 some corrections when get to the CAFO report here.

21 CHAIRPERSON PERRY: Okay. I'm sorry. You were
22 saying general permits. I thought we were more like
23 to those. Sorry.

24 MR. REFAAT MEFRAKIS: Yeah. So there's nothing
25 really awaiting this general permit so there's no --

1 not to be in a hurry. There's no hurry about getting
2 it out so -- but we're waiting for MO-AG --

3 CHAIRPERSON PERRY: Sounds like you're waiting for
4 MO-AG to submit the --

5 MR. REFAAT MEFRAKIS: To submit -- yeah, alternative
6 analysis, a proposal to draft a general permit.

7 CHAIRPERSON PERRY: Okay.

8 MR. REFAAT MEFRAKIS: Did you want to say something?

9 CHAIRPERSON PERRY: I don't know if it's gone to your
10 ballpark yet. I think it might still be at MO-AG.

11 MR. ROBERT BRUNDAGE: Just to say briefly that we've
12 been in discussions, when we've, I guess, we're the
13 unfortunate first to come across the Antidegradation
14 Review policy with a general permit in certain
15 challenges that we've been talking about, and we
16 haven't come to a solution.

17 We're, you know, we -- our membership has
18 secondary containments that just receive storm water,
19 and is there an opportunity to release that storm
20 water in compliance with previous effluent limitations in the
21 permit for a new facility, to get a new general
22 permit. Well, not a new one but just a general
23 permit.

24 And so Refaat has the challenge of trying to
25 implement the Antidegradation policy. We have the

1 challenge to try to figure out how to convince him
2 that we're satisfying the policy with these very
3 minimal flows. And is there an issue there? So
4 we've been struggling with that and we'll continue to
5 collaborate on that.

6 CHAIRPERSON PERRY: Okay. Just wondering.

7 MR. REFAAT MEFRAKIS: Yeah. That's good.

8 CHAIRPERSON PERRY: Obviously, I didn't check on MO-
9 AG's end of it either. I'm just curious.

10 MR. REFAAT MEFRAKIS: Mr. (inaudible) -- we had a
11 discussion with Mr. (inaudible). John Rustige and I
12 had discussion with him about the possibility of
13 maybe conducting a general permit or an alternative
14 analysis for these, and allow some of these
15 discharges to happen when there are no other
16 feasible, but that remains to be seen. We'll
17 continue communicating with them and get that
18 resolved so.

19 CHAIRPERSON PERRY: Okay.

20 MR. REFAAT MEFRAKIS: Just right now, there are no
21 applications we have in-house that is waiting on a
22 decision from us.

23 Go back to -- okay. If no other questions on
24 the operating permit, I can move on to the
25 Antidegradation Water Quality Review Sheet Report.

1 That's on Page 944. We have a currently --
2 well, as of the date that I generated this report, we
3 have about 13 requests active. Since then, we have
4 completed four or five so we probably have about nine
5 plus any additional application requests. We have
6 completed six as of April 2009. So that's an
7 indication that the process is working and we have
8 been actively educating the community on how to
9 prepare an Antideg Review request.

10 We held a couple of workshops in the last two
11 months. They were well attended. We decided to hold
12 another one this May. We get approximately 70 people
13 attending these workshops. And we hear community
14 asking us to continue to have these workshops in the
15 future and we are committed to do that. And it's
16 really paying off. It's making our process a lot
17 easier. It's a win-win situation. We'll spend more
18 time out there, but it pays off. The results is
19 really paying off.

20 CHAIRPERSON PERRY: Less fighting later.

21 MR. REFAAT MEFRAKIS: We see application really --
22 more improved applications in and so. So we're
23 really proud of that and John Rustige is handling
24 that in his team, Antideg team.

25 If you have an opportunity to come -- to be here

1 in Jeff City on May 18th, that's when the next
2 workshop will be held so we welcome the visit.

3 Any questions on the Antideg Review report here?
4 We have an entire list. Actually, right now, we have
5 a final and complete and active. Final, meaning that
6 applicants received -- had the application -- the --
7 the review has been finished and the applicant has
8 the opportunity to appeal that permit -- or past the
9 30-day appeal date. Complete, meaning it's within
10 the 30-day that the applicant can still appeal that
11 permit or that review.

12 If you don't have any other questions, I'll move
13 on to the next report, which is the CAFO Ag-Chem
14 construction permit. Now on the review comments,
15 there were a couple notes referencing the Antideg
16 Review. Actually, we're scratching those out. In
17 fact, there is no exposure and the Antidegradation
18 Review is not required. And I think those permits
19 have been issued already.

20 The PSF are still in discussion with us and they
21 have their application on hold. They requested to
22 have their applications on hold.

23 The 401 certification report on Page 948, and
24 we're processing those -- these certifications on
25 time.

1 CHAIRPERSON PERRY: Yeah. That's the one I want to
2 complain about. I believe that this one issued on
3 April '06 is in violation of the order issued
4 by this Commission. And it didn't seem to me it
5 needs to be even issued. This is the public notice
6 of the Army Corps of Engineers. It went out February
7 6th.

8 And in it, it says, all of the project impacts
9 are within the Kerr's Levy and Drainage District.
10 The confluence point mitigation project does not
11 involve the construction within or on the banks of
12 the Mississippi or Missouri rivers and does not
13 involve discharge of material into the rivers. But
14 we've issued them and on this line, it says is it for
15 storm water only, an they checked, no. And back
16 here, under the permit itself, applicability, permit
17 authorizes a discharge of return water and storm
18 water from dredge material deposition sites, bank
19 notching, shoot excavation to allow the river to
20 actively scour and widen and other disturbances
21 resulting from habitat construction projects along
22 the Missouri and Mississippi River for fish and
23 wildlife mitigation projects and shallow water
24 habitat, blah, blah, blah.

25 I think that says that they're allowed to put

1 dirt in the river. And I think that this Commission
2 made it abundantly clear that we didn't think it was
3 proper for dirt to be dumped in the river. Now, I
4 understand they asked for this kind of permit, but I
5 don't see any reason that we had to give it to them.

6 MR. EARL PABST: Madam Chair, if I could clarify
7 before, just a little bit before Rob does because he
8 don't work directly with the Commission.

9 CHAIRPERSON PERRY: Sure.

10 MR. EARL PABST: The reason -- the reason I sent you
11 all a heads-up on this was just because of the
12 Commission's directive a year or however long ago
13 it's been. And I think you're right in the sense we
14 believe that they only needed a land disturbance
15 permit because there wasn't any excavation. There
16 was no planned erosion similar to the other projects
17 you all were dealing with.

18 I believe, and Rob can correct me if I'm wrong,
19 it was at the Corps insistence that we went ahead and
20 issued the general permit but we also had the plan
21 laid out in the public notice. This is the way they
22 were going to remove the material. It was going to be
23 put behind the levy. It was going to be spread an
24 seeded and stabilized so in a way, it was nothing
25 like the other projects that we --

1 CHAIRPERSON PERRY: Right. And I completely see
2 that.

3 MR. ROB MORRISON: And I just want to be clear. This
4 project does not involve the direct discharge or
5 dumping of any soil of any kind, and no scouring, no
6 anything into the Mississippi or Missouri rivers.
7 Now, we -- I have spoke at detail with the St. Louis
8 District who is the technical lead for the project
9 but the actual project owner, if you will, is the
10 Kansas City District. It's their overall Missouri
11 River Habitat Project Development. So the St. Louis
12 District was comfortable with the land disturbance
13 permit.

14 I had talked at detail with them and they were
15 comfortable with that. But it was felt by the Kansas
16 City District that they felt like that these permits
17 were for habitat projects and they felt more
18 comfortable and they were insistent upon a G-699
19 permit. So that's why, at that point, Earl and I
20 conferred and discussed it and felt that at that
21 point, that since they were requesting a G-699, we
22 had no reason, given the particulars of the project,
23 it involved no direct discharge, no scouring, we
24 elected to go ahead and issue the permit.

25 VICE-CHAIR HARDECKE: Well, let me ask you this. Why

1 does that paragraph appear in there? Is that in all
2 of those -

3 MR. ROB MORRISON: It's in that G-699 template.

4 CHAIRPERSON PERRY: These permits were designed and I
5 didn't even realize it myself until recently, that
6 the only people that get this G-699 is the Army Corps
7 of Engineers for the shute projects. So somewhere
8 along the line, I think it would be appropriate for
9 us to not issue these permits. Because I believe
10 issuing permits is a power within the Missouri Clean
11 Water Commission. And I think we've also --

12 MR. ROB MORRISON: It's a shared responsibility. I
13 would agree with you. But I think we have a --

14 CHAIRPERSON PERRY: I think we've made it very clear
15 by our order that we don't want dirt dumped in the
16 river.

17 MR. ROB MORRISON: And I think we have operated
18 within the boundaries of your order completely.

19 CHAIRPERSON PERRY: Except -- okay. And that's where
20 you and I disagree because I think this order takes
21 it a step beyond what we have agreed.

22 MR. ROB MORRISON: Well, the -- I don't have the
23 order in front of me and perhaps you have looked at
24 it recently but I do not recall, specifically, that
25 the order did not -- it did not restrict us from

1 issuing these permits. It restricted the disposal of
2 sediment into water bottoms.

3 CHAIRPERSON PERRY: Right.

4 MR. ROB MORRISON: Okay. So there's -

5 CHAIRPERSON PERRY: Except this permit is permitting
6 that activity.

7 MR. ROB MORRISON: So you understand -- yes -- and I
8 just you to make sure you understand our thought
9 process behind that was that since there was no
10 planned dumping or erosion in this permit, we were --
11 we felt comfortable to go ahead with the issuance of
12 this permit particularly.

13 MR. EARL PABST: And ultimately, it is my
14 responsibility -- Rob and I talked about it and we
15 knew the directive of the Commission but because of
16 this is the way this one was planned, we proceeded
17 and then, just so the Commission knew, again, we sent
18 out an e-mail to --

19 CHAIRPERSON PERRY: And I really appreciate that. My
20 problem with this is if they change their project.
21 They have a permit to allow them to do an activity,
22 which we have forbidden.

23 MR. EARL PABST: But they also have to have -- it's
24 not only that permit. I think they have to have
25 their own 404 permit as well. They'd have to go --

1 CHAIRPERSON PERRY: Which they issue themselves.

2 MR. EARL PABST: But they'd have to go back and make
3 modifications.

4 MR. DRU BUNTIN: (Inaudible) application from us.

5 MR. ROB MORRISON: And I think -- yeah, and the other
6 part of this equation is that the Department owns the
7 property. I mean, we own the State Park of which this
8 activity is occurring. Is that -- okay. Dru is
9 shaking his head. So we ultimately have control over
10 some -- I guess, we have some control over this
11 project. You know, I would presume as the landowner
12 we could say, hey, wait a minute, we don't like what
13 you're proposing to do. I understand it is somewhat
14 of a dilemma. I mean, it's a kind of a dichotomy.
15 And we had -- we've tried to do what we thought was
16 correct and right and ultimately, the Corps was
17 insistent that we issue the permit. We had no -- and
18 I understand their reasoning and their rationale. I
19 don't believe it was so that they could come along
20 and later change the limits of this project or change
21 the type of -- this is not what this project is
22 about. So I understand your angst but I --

23 CHAIRPERSON PERRY: I understand why they say, yeah,
24 but we want that. Oh. Okay. Here. It's not what
25 they need but it is -- yeah.

1 MR. TOM HERRMANN: That wording is the origin of that
2 originally starting the whole damn thing. And that
3 was sediment deposit (inaudible) dredged discharge.
4 MR. EARL PABST: But Tom, this was not to dredge
5 within -- this was not to put material in the river.
6 It's behind the levy. That was the difference.
7 MR. TOM HERRMANN: That's what it is supposed to be,
8 but that's not what it says.
9 MR. DRU BUNTIN: Could I clarify one thing? It's my,
10 in direct conversation with the Corps, it's my
11 understanding that their impression is that they're
12 required to get G-699 permits, not for just shute
13 projects, and I think we've issued them for things --
14 CHAIRPERSON PERRY: You've only issued eight so I
15 don't think so --
16 MR. DRU BUNTIN: -- other than shute projects.
17 CHAIRPERSON PERRY: This number -- is it eight?
18 MR. ROB MORRISON: I think its number eight -- eight
19 or nine. We have issued --
20 CHAIRPERSON PERRY: And I believe those are all for
21 shute projects. I went back and I checked your --
22 MR. ROB MORRISON: All the shute projects do have
23 those but I think what Dru is trying to say, there
24 may be one or two of those that are not designed
25 erosional projects.

1 MR. DRU BUNTIN: Okay. Well, I think the reason that
2 the Corp was saying that my understanding of what the
3 Corps was saying was that they were under the
4 impression that for all of these Habitat Restoration
5 Projects under the recovery -- the Missouri River Recovery
6 Program, they had to apply for a 699. That that was
7 what the Commission's intention was.

8 Now, certainly, the project, it's on park land,
9 we control that.

10 CHAIRPERSON PERRY: Sure.

11 MR. DRU BUNTIN: There are adjacent landowners inside
12 that levy. There's no intention of any of that type
13 of project going on in here and we've discussed this
14 project before. I mean, it's more micro-typography
15 behind the levy on State property.

16 CHAIRPERSON PERRY: But this one's different, too,
17 because it says, not for storm water. The other ones
18 all were checking storm water only, the very first
19 line of the permit.

20 MR. ROB MORRISON: Well, I mean, the G-699 is a bit
21 of a different animal. I mean, admittedly, it has
22 some -- it has some bank notching. It has some
23 designed erosional elements in the permit, but on the
24 whole, it is for habitat development projects. We
25 have to admit that's what the design of the project -

1 - that the permit's for. Now, having said that, I
2 understand this project is different. My thought and
3 it continues to be that a land disturbance permit was
4 sufficient. And it continues to be sufficient. The
5 St. Louis District agreed with that but sufficed to
6 say, the project owner, manager, whatever is there
7 with the Kansas City District, who's in charge of
8 those habitat projects felt like that they were
9 required --

10 CHAIRPERSON PERRY: And who is that?

11 MR. ROB MORRISON: -- the Kansas City district --

12 CHAIRPERSON PERRY: Ah.

13 MR. ROB MORRISON: -- is who is in charge of those
14 projects. So having said all that, they felt like it
15 was their need, they were required to get one of
16 those projects for a habitat project. So I think
17 it's as simple as that.

18 VICE-CHAIR HARDECKE: Well, how about if we change
19 this facility description on this permit? I mean,
20 that's where you -- it states the return storm --
21 return water and storm water runoff from dredge
22 material deposition sites, bank notching, shute
23 excavation to allow the river to actively scour and
24 widen. I mean, I understand what you're saying but
25 this -- how is that wording implemented into the

1 permit?

2 MR. ROB MORRISON: We would have to -- we certainly
3 could do that. We'd have to change the template and
4 go through our public process but we could certainly
5 -- we can certainly do that.

6 CHAIRPERSON PERRY: Well, this is a part -- this is
7 part -- do you mean the facility description is part
8 of your template?

9 MR. ROB MORRISON: Yes. That is part of the template
10 permit.

11 CHAIRPERSON PERRY: I mean, for the general permit
12 they all have to have the same facility?

13 MR. ROB MORRISON: Yes. That is the description that
14 is on the template for that permit.

15 CHAIRPERSON PERRY: Well, I certainly would like to
16 suggest that A: if there's to be anymore of these
17 applications that the Commission be made aware of it
18 prior to the issuance so that you can check to see
19 that these permits are in compliance with your order.
20 Now, I don't know what kind of direction you want to
21 give them. It's your baby now.

22 COMMISSIONER EASLEY: Let this one stand?

23 CHAIRPERSON PERRY: Pardon?

24 COMMISSIONER EASLEY: Let this one stand as is?

25 CHAIRPERSON PERRY: Well, that, too, is up to you.

1 It's, you know, here, read it.

2 MR. DRU BUNTIN: Madam Chair?

3 MR. EARL PABST: Dru, do we not have the opportunity
4 as the parks and monitoring this project as it
5 progresses?

6 CHAIRPERSON PERRY: I'm not worried about any of
7 that. But I am worried about --

8 MR. DRU BUNTIN: Again, Dru Buntin, with the
9 Department of Natural Resources, Director's Office.
10 My impression of the G-699 permit, I'll let any of
11 the technical staff correct me, is that it's
12 essentially a combination of a dredging permit and a
13 land disturbance permit where some aspects of each of
14 those were incorporated into that G-699 permit, the
15 general permit. I would submit that there are
16 different types of projects as you're aware under
17 this Program. Some that are like this one behind,
18 they're levy protected, that maybe we should consider
19 developing different general permits for the
20 different types of projects.

21 CHAIRPERSON PERRY: Why not just give them a site
22 specific permit, which is what we did with Barney
23 Bend and Rush Bottoms?

24 MR. ROB MORRISON: But what we had there was we
25 required them to get an individual certification for

1 their 401. We were not going to give them a
2 nationwide certification. So we required them to get
3 a individual --

4 CHAIRPERSON PERRY: Did you require that on this?

5 MR. ROB MORRISON: Well, they're not -- they did not
6 get -- I don't believe they got a - did they get a
7 404 permit for this project? I don't think they did.

8 CHAIRPERSON PERRY: I thought you just said that they
9 did.

10 MR. ROB MORRISON: I don't know if they -- off the
11 top of my head, I don't know if they got a 404 permit
12 for this project. I don't know if they're required
13 to because they're not doing anything at or below the
14 ordinary high water mark. I don't -- I'd have to go
15 back and look, Madam Chair, I don't know that.

16 MR. REFAAT MEFRAKIS: And if they do (inaudible)
17 certification from us. At that time, we would deny
18 it.

19 CHAIRPERSON PERRY: We don't have to deny a
20 certification but you could have a site specific one
21 that would keep in the --

22 MR. ROB MORRISON: But we could certainly look at
23 revising those templates if that is your all's wish,
24 and understand previously we did not do that. We
25 were not directed to do so by you on --

1 CHAIRPERSON PERRY: Well, because we weren't going to
2 issue any more permits without the Commission knowing
3 about it.

4 MR. ROB MORRISON: That's correct. And we --

5 CHAIRPERSON PERRY: Specifically, on the shute
6 projects. I mean, we're not talking about 5,000
7 permits. We're talking about 13 projects in the
8 state.

9 MR. ROB MORRISON: Right. And understand, this was
10 not a shute project as you have rightly, you know,
11 noted.

12 CHAIRPERSON PERRY: It's not. They got what was
13 point of controversy before pretty routinely given
14 and what really bugs me about this is it's a Kansas
15 City Corps. Now, they're going to use that. You
16 know, we have learned. This Commission has learned
17 to distrust some of the things they say in
18 negotiations for good cause. And it has me
19 concerned, seriously concerned and I wanted to bring
20 it to all of your attention. I think perhaps, and
21 what I'm suggesting you do, is some sort of directive
22 to staff that when these permits come up that the
23 Commission be alerted on the front side so they can
24 also approve that the requested project complies with
25 their project or something along that nature.

1 I have personally heard that the colonel of the
2 Kansas City Corps stated, oh, I didn't know that was
3 the deal anymore because it hasn't been brought up.
4 That's my concern.

5 COMMISSIONER HARDECKE: I suggest that we take that
6 portion out of the format, of the template if that's
7 the way you --

8 CHAIRPERSON PERRY: It's both in the template in the
9 description and it's in the applicability section.

10 COMMISSIONER SHORNEY: Why is that so difficult to
11 take out of the template? I don't understand why?
12 Why?

13 MR. ROB MORRISON: Well, I'm not sure I completely
14 understand your question.

15 COMMISSIONER SHORNEY: To make it more site specific?

16 MR. ROB MORRISON: It's not difficult to do that. I
17 mean, it - we just have to do it.

18 COMMISSIONER SHORNEY: Okay.

19 MR. ROB MORRISON: We may have to do it. We have to
20 modify the template, meaning that there is some -- we
21 have to check with our legal staff. But there is
22 some thought that if we modify the template then we
23 have to go back and re-issue all these permits again.

24 COMMISSIONER SHORNEY: Okay.

25 MR. ROB MORRISON: To the people that have their

1 permits issued. So that's why it can be a big -- and
2 in this case, it's eight.

3 MR. MALE SPEAKER: (Inaudible.)

4 CHAIRPERSON PERRY: There's eight of them.

5 MR. ROB MORRISON: Because the permit is only --

6 CHAIRPERSON PERRY: In five years, there's been eight
7 permits.

8 MR. ROB MORRISON: The permit is only effective --

9 it's based upon the issuance off of that template.

10 So if the template changes, that's where the approval
11 lies. That's just a -- the permits are issued off of
12 that template. If the template changes then we have
13 to re-issue those.

14 CHAIRPERSON PERRY: And that's what a general permit
15 is. It sits there and it just generally gets shot
16 out. And my suggestion is that you either reconsider
17 the general permit or in the meantime, you ask staff
18 to consult with this Commission that this general
19 permit, if there's an application for it, that you
20 make sure it complies with your intention of the
21 order prior to issuance of the general permit.

22 MR. ROB MORRISON: Would it be your wishes to do that
23 via e-mail? Is that the notification? Or do you
24 mean at your meetings or what, how would be your --

25 CHAIRPERSON PERRY: Yeah, e-mail's okay.

1 VICE-CHAIR HARDECKE: E-mail's fine.

2 MR. ROB MORRISON: All right. And again, we -- Earl
3 and I felt it was important that we notify you before
4 that permit hit the street so that you had an
5 understanding of what we were doing.

6 CHAIRPERSON PERRY: Yeah. And I appreciate that.
7 And as you heard, you know, what I --

8 VICE-CHAIR HARDECKE: That was good but I think what
9 we're asking is to know a little bit farther ahead.

10 CHAIRPERSON PERRY: We want it before it's issued.

11 MR. ROB MORRISON: I heard approval. I think is what
12 you said.

13 COMMISSIONER EASLEY: We want to be a part of the
14 process. Right.

15 CHAIRPERSON PERRY: Prior to issuance, prior to
16 approval. Now, could somebody make that into a
17 motion, please?

18 COMMISSIONER HUNTER: (Inaudible) site specific
19 permit, if we want to.

20 (Telephone conference operator interrupts to proceed
21 with disconnection is Number 1 is not pressed to
22 continue conference.)

23 CHAIRPERSON PERRY: Jan, are you still there? Jan,
24 are you still there?

25 MR. ROB MORRISON: We're in overtime mode here.

1 Okay.

2 CHAIRPERSON PERRY: Yeah. Okay. Well, I realize

3 that this is --

4 VICE-CHAIR HARDECKE: The phone is wanting to go

5 home, right?

6 (Laughter.)

7 MR. MALE SPEAKER: Who's the operator?

8 CHAIRPERSON PERRY: Do you want to make a motion?

9 COMMISSIONER EASLEY: I don't know the exact wording.

10 **COMMISSIONER HARDECKE: I'll make a motion that staff**

11 **contact the Commission prior to issuing any of this,**

12 **-- was it G-699 permits? Is that simple enough?**

13 **CHAIRPERSON PERRY: Contact and get approval.**

14 COMMISSIONER EASLEY: But what are we going to do on

15 the present one? Let it stand as it is?

16 CHAIRPERSON PERRY: Well, I want you to keep us

17 apprised. The activity that they're permitting is

18 not in violation of the rule. I know that. But if

19 it should start to be then this is going to get

20 yanked -- needs to be yanked.

21 COMMISSIONER EASLEY: Not monitored closely --

22 (Tape Five, Side A concluded.)

23 CHAIRPERSON PERRY: Right. If you own the land, so

24 you ought to be able to tell us what's happening.

25 MR. DRU BUNTON: (Inaudible.)

1 CHAIRPERSON PERRY: But in the future, all of these
2 permits will be put on notice. Right? Any problem
3 with that? That's a motion. We have a motion. Do
4 you want to discuss it?

5 COMMISSIONER HUNTER: Have you got a first?

6 **COMMISSIONER EASLEY: Second.**

7 **COMMISSIONER HUNTER: Second.**

8 CHAIRPERSON PERRY: Call for a vote, please.

9 MS. MALINDA OVERHOFF: Can I make sure I got the
10 motion correct?

11 CHAIRPERSON PERRY: Yes.

12 **MS. MALINDA OVERHOFF: That staff contact the Clean**
13 **Water Commission prior to issuing any G-699 permits?**

14 **CHAIRPERSON PERRY: Prior -- contact the Commission**
15 **for approval prior.**

16 MS. MALINDA OVERHOFF: Thank you.

17 CHAIRPERSON PERRY: Was that correct?

18 COMMISSIONER HARDECKE: Right.

19 CHAIRPERSON PERRY: Okay. Call for the vote, please.

20 **MS. MALINDA OVERHOFF: Commissioner Easley?**

21 **COMMISSIONER EASLEY: Yes.**

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

23 **COMMISSIONER SHORNEY: Yes.**

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

25 **COMMISSIONER TUPPER: Yes.**

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

2 **COMMISSIONER HUNTER:** Yes.

3 **MS. MALINDA OVERHOFF:** Commissioner Hardecke?

4 **VICE-CHAIR HARDECKE:** Yes.

5 **MS. MALINDA OVERHOFF:** Chair Perry?

6 **CHAIRPERSON PERRY:** Yes.

7 Thank you.

8 **VICE-CHAIR HARDECKE:** The lights just went out in the
9 hall so I guess we're now --

10 **MS. JENNIFER FRAZIER:** The point of order, Madam
11 Chairman, I have to leave or I'll be stranding two
12 five-year olds at a pre-school so I --

13 **CHAIRPERSON PERRY:** I think we're done.

14 Are we not?

15 **MR. REFAAT MEFRAKIS:** We are at the end

16 The last page of the permit report is just an
17 update on the status of our general permits. We are
18 up to date and basically got the ones are being on
19 public notice are being worked on so, --

20 Thank you.

21 **CHAIRPERSON PERRY:** And to all of you who stayed --

22 oh - we do have Joe's report.

23 Poor Joe we always have you at the end.

24 **MR. JOE BOLAND:** Good afternoon again. I have a very quick update
25 of our \$50 million bond sale for our state grant programs,

1 from that November 2007 sale of \$50 Million sale in Water
2 Pollution Control bonds, we still receive applications for
3 that funding, in fact we are up to 242 applications for over a 100
4 million in grant requests. And it's interesting what's happening
5 in the Program because some of these applicants are on our
6 stimulus fundable list as well, so there's going to be some
7 management of those projects to see, which deal really works out
8 best for them, either our Rural Water and Sewer Grant and
9 Forty Percent Grant versus stimulus grants. So some
10 of them are going to be provided an opportunity to
11 choose. Because, you know, they've been in line for
12 these projects.

13 Again, we've received over a 100 million in
14 applications for that 50 million so that's -- those
15 are the important numbers to keep in mind. One other
16 -- the next, unless you have any questions on that.

17 I'll just skip to the Small Borrower Loan
18 Program. That was a request from Commissioner
19 Shorney, I believe, just kind of a quick status on
20 that Small Borrower Program. I know we come to you
21 occasionally with an odd request for a small borrower loan
22 here and there for less than a \$100,000 -- excuse me -
23 - \$100,000 or less, and we put a very quick summary
24 together on Page 956.

25 We've got about 22 loans outstanding so it's a

1 very small program but it's very, very effective for
2 some communities that cannot get through the SRF or
3 do not qualify for Rural Development or CDBG funding.
4 We can fill a very unique niche with this Program.
5 We do this without debt -- I'm sorry -- without bond
6 authorization. We allow annually appropriated debt
7 for this Program. It's the only one we do, and there
8 are reasons for that but this is a summary on 8 or --
9 956 that basically shows the portfolio of small
10 borrowers and their outstanding loan amounts.

11 And the only other issue, I was just going to
12 speak on the American Recovery and Reinvestment Act
13 again. I failed to mention earlier where the amounts
14 of applications we have gotten so far. And if I did
15 mention it, I apologize because I forgot. But for
16 clean water, we've received about \$940 million in
17 applications for that \$108 million that we're
18 receiving. So obviously, there's quite a bit of
19 competition for that. And we respect that
20 competition and we understand the needs of all those
21 communities and hope to deal with some of those through
22 our normal SRF Program. But including drinking
23 water, we received about \$1.4 billion in applications
24 just for this recent activity so it's quite a bit.

25 Some of the other discussion I had on your

1 material that was provided, if you have the interest
2 or the time, there's a little bit more discussion on
3 EPA's definition of green infrastructure and the set
4 asides that are available for this stimulus
5 capitalization grant we received. We have the opportunity to take
6 4 percent of that for our program administration. We
7 will request that in our application. It's about \$4.3
8 -- \$4.3 million that would pay for our staff and some
9 regional office support with the idea that how we
10 fund ourselves now, some of our operational money, we
11 intend to set aside that same amount about \$4.3
12 million to provide some engineering assistance grants
13 to communities that really need the help now.

14 So that kind of in a nutshell is just one more -
15 - one more little sneak peak at what we intend to do
16 with some of that stimulus money. So that may change
17 between now and the time of award but that's our
18 plan, moving forward.

19 And again, that's to be able to use some of our
20 money that we use to pay for ourselves, now, to free
21 that up and provide some assistance to some
22 communities that just don't have the wherewithal --
23 to do the engineering or some of the facility
24 planning to get the SRF so we're hoping to use that
25 as another boost for some of those communities to

1 even get to it.

2 Any questions on that?

3 CHAIRPERSON PERRY: Good idea.

4 MR. JOE BOLAND: Thank you very much.

5 CHAIRPERSON PERRY: Thank you.

6 Phil, did you have a comment to make on this?

7 MR. PHIL WALSACK: I'll stand down

8 Thank you.

9 CHAIRPERSON PERRY: Thank you.

10 MR. EARL PABST: I have just a couple real quick
11 things, Commissioners. Just to let you know, first
12 of all, our water fees, which I've let you know
13 before, which were to sunset in December of this
14 year, we got a one-year extension, the bill that Joe
15 spoke of earlier, House Bill 661 also had a one-year
16 extension for our water fees. So now, we have until
17 December of 2010 to get water fee legislation in so
18 we've got six or seven months to work with
19 stakeholders to get a bill ready for next session.

20 We haven't really had any conversations yet
21 with Mark Templeton. He's aware of it but as soon as
22 session is over I think we'll need to get with him
23 with a strategy on moving forward. If you remember,
24 we had the interim committee a couple years ago
25 looking at water fees. They did not finalize the

1 report. We never got that report finalized.

2 In a sense we're kind of starting all over but
3 hopefully we'll be able to use that interim committee report as
4 a basis to move forward with some legislation for
5 next session. But as we go through the next few
6 months, we'll keep you up to date on that. And then,
7 I also put in your packet, you can look at it later,
8 it's just a proposed rule, it's called Rule or --
9 Permit Consolidation. There was a bill passed last
10 year.

11 It allows the Department if we have a facility
12 that needs multiple environmental permits, a water
13 permit, an air permit. It allows us to work with that
14 community to prioritize those permits so they're
15 getting the most important permit first. And it kind
16 of gives us a waiver of the statutory deadlines that
17 we're working under. Because it's quite easy for
18 somebody to get a land disturbance permit but if they
19 need an air permit or something like that, it could
20 take months. And that may be the limiting permit.

21 So that legislation gave us the ability. It's
22 voluntary on the permittees' part but it gives us the
23 opportunity to work with that permittee to suggest,
24 you need to work on this permit, first, and then this
25 one. And we've got a rule to put that in place and

1 that's what's in your packet, just to give you an
2 idea of what that'll look like.

3 And then really that's all I had. I just also
4 wanted to thank the Commission for all the work you
5 do and particularly thank you, Kristin, for your
6 years of service to the Commission on behalf of the
7 Division and the Program and your commitment to water
8 quality in this state. So thank you very much.

9 I don't know, like Ron said, if I'll be in this
10 capacity at our May meeting but I certainly
11 appreciate the opportunity to work with the program
12 and work with the Commission for the last five
13 months. I've enjoyed it and I've learned a lot.

14 So thank you and I think Ron has something real
15 quick.

16 VICE-CHAIR HARDECKE: Yeah. I want to take this
17 opportunity to present Kristin with recognition here
18 from the Commission. There's very few people in this
19 state that have probably given any more as a
20 volunteer to the good of the state. And we want to
21 thank you and wish you well.

22 (Applause.)

23 CHAIRPERSON PERRY: Thank you very, very much.

24 I am more touched by the fact that you would
25 all wait to be here for this. And I thank you very

1 much.

2 There is a person who gave more and that would
3 be Ron who called many night after he put a whole day
4 in the fields or in the barn, and as all of you know
5 that I've told the Commissioners that there was never
6 a group that I have been a part of that I have been
7 more honored and more privileged to be a part of than
8 this, and you all made it be that way. No group have
9 I respected more. And I have certainly appreciated
10 staff, although you see how I'm challenging you all
11 the time, I think that's the job of this Commission.
12 And I certainly hope that that tradition continues
13 that you realize that's how we get things done better
14 to bring that balance.

15 Thank you all very, very much.

16 (Applause.)

17 CHAIRPERSON PERRY: Here we go.

18 Is there a motion?

19 MS. MALINDA OVERHOFF: Do you need public comment?

20 CHAIRPERSON PERRY: Pardon?

21 MS. MALINDA OVERHOFF: (Inaudible.)

22 CHAIRPERSON PERRY: Oh. I'm sorry. Is there any
23 public comments?

24 (No response.)

25 MS. MALINDA OVERHOFF: We do need to close the

1 meeting.

2 CHAIRPERSON PERRY: We do need to vote to close the
3 meeting.

4 COMMISSIONER HARDECKE: I'll make a motion to adjourn.

5 COMMISSIONER EASLEY: Second.

6 CHAIRPERSON PERRY: Please call for the vote.

7 MS. MALINDA OVERHOFF: Commissioner Shorney?

8 COMMISSIONER SHORNEY: Yes.

9 MS. MALINDA OVERHOFF: Commissioner Tupper?

10 COMMISSIONER TUPPER: Yes.

11 MS. MALINDA OVERHOFF: Commissioner Hunter?

12 COMMISSIONER HUNTER: Yes.

13 MS. MALINDA OVERHOFF: Commissioner Hardecke?

14 VICE-CHAIR HARDECKE: Yes.

15 MS. MALINDA OVERHOFF: Commissioner Easley?

16 COMMISSIONER EASLEY: Yes.

17 MS. MALINDA OVERHOFF: Chair Perry?

18 CHAIRPERSON PERRY: Yes.

19 Jan, please, thank you so very much for staying
20 with us all day long.

21 COMMISSIONER TUPPER: Not a problem.

22 CHAIRPERSON PERRY: Oh. It was a big problem I bet.

23 Thank you all very, very much. Go Missouri.

24 (Tape Five, Side B concluded.)

25

1 CERTIFICATE OF REPORTER

2

3 I, DANIELLE Y. MOSER, within and for the State
4 of Missouri, do hereby certify that the audio
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6 to the best of my ability and therefore reduced to
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12 thereto, nor financially or otherwise interested in
13 the outcome of the action.

14

15 DANIELLE Y. MOSER,

16 Notary Public

17 Commission # 07398805

18 Commission Expires 01-08-2011

Respectfully Submitted,

Earl Pabst
Acting Director of Staff