

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

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7

MEETING OF:

8

SEPTEMBER 2, 2009

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CONDUCTED BY:

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CHAIRMAN RON HARDECKE

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

2 CHAIRMAN HARDECKE: We'll go into closed  
3 session.

4 VICE-CHAIR HUNTER: Mr. Chairman, I move that  
5 the Clean Water Commission go into closed session to  
6 discuss personnel actions under Section 610.021(3),  
7 RSMo; personnel records or applications under Section  
8 610.021(13) RSMo.

9 COMMISSIONER SHORNEY: Second.

10 CHAIRMAN HARDECKE: All in favor?

11 COMMISSION: Aye.

12 CHAIRMAN HARDECKE: Malinda. We got to take  
13 this -- I'm sorry.

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: Commissioner Parnell?

21 COMMISSIONER PARNELL: Yes.

22 MS. MALINDA OVERHOFF: Commissioner Hunter?

23 VICE-CHAIR HUNTER: Yes.

24 MS. MALINDA OVERHOFF: Commissioner Leake's not  
25 here.

1           **Chair Hardecke?**

2           **CHAIRMAN HARDECKE: Yes.**

3           MS. LEANNE TIPPETT MOSBY: I would -- if you'd like,  
4 I'd move around here.

5           CHAIRMAN HARDECKE: Our new director Leanne  
6 Tippett Mosby. And I want to introduce her to you  
7 now. We did have unanimous approval of her  
8 confirmation and look forward to working with her.

9           Dan Schuette's here, I'd ask him if he'd like to  
10 make any comments regarding the new appointment and  
11 direction of the Program.

12          MR. DAN SCHUETTE: Yes, Mr. Chairman, thank you;  
13 members of the Commission, my name is Dan Schuette.  
14 I'm the director for the Division of Environmental  
15 Quality and I wanted to thank you for your  
16 consideration and eventual confirmation of Leanne as  
17 the staff director to the Clean Water Commission.

18          I think I mentioned to you that we went through  
19 a pretty extensive process to fill all of our vacant  
20 program director positions and pleased that Leanne  
21 was interested in the job, first of all, and then  
22 secondly, you know, it was confirmed by you.

23          For the members -- for the people out in the --  
24 in attendance here, Leanne has been with the  
25 Department about 15 years. She has quite a bit of

1 experience both before she came to the agency and  
2 afterwards she actually is -- is an educated nurse  
3 and has practiced as a nurse, so she has a health  
4 background. She's got an environmental degree.  
5 She's worked in quite a few positions in our  
6 Department both from a technical side, from an  
7 administrative side and from a political side; she  
8 worked as part of the liaison with our Agency,  
9 working with the Legislature in the past.

10 She also has worked as a staff director for the  
11 Missouri Air Conservation Commission. And -- so she  
12 has that ability to -- to understand the technical  
13 side and bring it to the -- to the public information  
14 areas in the Commission and is responsible for so  
15 she'll do a great job for you.

16 I appreciate your confirmation and thank you  
17 very much.

18 CHAIRMAN HARDCKE: Thank you, Dan.

19 Let me begin by introducing the -- here we go --  
20 introducing the Commission. On my far right is Bill  
21 Easley, Commissioner from Cassville. Next is Todd  
22 Parnell, Commissioner from Springfield. Next is Jan  
23 Tupper, Commissioner from Joplin, Frank Shorney,  
24 Commissioner from Lee's Summit and Sam Hunter is the  
25 Vice-chair of the Commission from Sikeston.

1 I'm Ron Hardecke the Chairman from Owensville.  
2 On my left is Leanne Tippet Mosby the new staff  
3 director for the Commission and the Water Program and  
4 Jennifer Frazier the legal counsel to the Commission  
5 from the Attorney General's Office and Malinda  
6 Overhoff the secretary to the Commission and to the  
7 Program.

8 And we thank each and every one of you for being  
9 here today and being interested in water quality  
10 issues of the state. And we'll -- we've got a pretty  
11 lengthy agenda. We'll try and move through it  
12 quickly so we'll not keep you too long.

13 **Tab No. 1 is the public hearing.** And we'll  
14 begin with that. The Commission will begin the  
15 public hearing on the proposed amendment to 10 CSR  
16 20-4.040, State Revolving Fund General Assistance  
17 Regulation.

18 The purpose of this public hearing is to provide  
19 the Department opportunity to present testimony to  
20 provide both the Department and the public the  
21 opportunity to comment on the proposed amendment.  
22 This public hearing is not a forum for debate or  
23 resolution of issues.

24 The Commission asks that those commenting limit  
25 their testimony to five minutes and not repeat

1 comments that others have already made. The  
2 Commission will first hear testimony from the  
3 Department, following the Department's testimony the  
4 Commission will give the public an opportunity to  
5 comment.

6 We ask that all individuals present fill out an  
7 attendance so our records are complete. If you wish  
8 to present verbal testimony, please, indicate that on  
9 your attendance card.

10 When you come forward to present testimony,  
11 please, speak into the microphone and begin by  
12 identifying yourselves to the court reporter. The  
13 following public -- following the public hearing  
14 today the Commission will review testimony presented  
15 and make appropriate modifications to the proposed  
16 amendment to 10 CSR 20-4.040, State Revolving Fund  
17 General Assistance Regulation.

18 The Commission plans to take final action at the  
19 November 4th, 2009, meeting; the court reporter will  
20 now swear in anyone wishing to testify at this public  
21 hearing before the Clean Water Commission today.

22 Will all those wishing to comment, please,  
23 stand?

24 (Public Hearing heard in regards to Proposed  
25 Amendment 10 CSR 20-4.040, State Revolving Fund

1 General Assistance Regulation, presented by Joe  
2 Boland, Financial Assistance Center, transcribed by  
3 Ms. Karen Rogers of Midwest Litigation Services, 1911  
4 S. National Avenue, Suite 402, Springfield, Missouri  
5 65804. Transcript of the public hearing proceedings  
6 will be found in a separate transcript provided by  
7 Ms. Karen Rogers.)

8 CHAIRMAN HARDECKE: The Commission will receive  
9 written testimony to the proposed amendment 10 CSR  
10 20-4.040, State Revolving Fund General Assistance  
11 Regulation until 5:00 p.m. on September 29th --  
12 September 9th, 2009. You may submit this written  
13 testimony to Mr. Douglas A. Garrett, Missouri DNR,  
14 Water Protection Program, P.O. Box 176, Jefferson  
15 City, Missouri 65102 prior to that deadline.

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

19 Thank you.

20 Okay. Next we'll move on to the **minutes of the**  
21 **July 1st, meeting**; are there any corrections or  
22 comments on the minutes?

23 (No response.)

24 COMMISSIONER EASLEY: Ready for the motion?

25 CHAIRMAN HARDECKE: Yes.

1           COMMISSIONER EASLEY: I move that we approve the  
2 minutes as submitted.

3           COMMISSIONER SHORNEY: Second.

4           CHAIRMAN HARDECKE: Malinda, you want  
5 to take the vote.

6           MS. MALINDA OVERHOFF: Commissioner Parnell?

7           COMMISSIONER PARNELL: Yes.

8           MS. MALINDA OVERHOFF: Commissioner Hunter?

9           VICE-CHAIR HUNTER: Yes.

10          MS. MALINDA OVERHOFF: Commissioner Easley?

11          COMMISSIONER EASLEY: Yes.

12          MS. MALINDA OVERHOFF: Commissioner Shorney?

13          COMMISSIONER SHORNEY: Yes.

14          MS. MALINDA OVERHOFF: Commissioner Tupper?

15          COMMISSIONER TUPPER: Yes.

16          MS. MALINDA OVERHOFF: Chair Hardecke?

17          CHAIRMAN HARDECKE: Yes.

18          Okay. Thank you. Now, we'll move to **Tab No. 3**.

19 Jenny's going to handle that one.

20          MS. JENNIFER FRAZIER: Good morning. I'm Jenny  
21 Frazier with the Attorney General's Office. And this  
22 agenda item has to do with an appeal of a permit by,  
23 not the permittee but two adjacent landowners for  
24 Smith and Company Landfarm.

25          I'll just go briefly through the -- the facts

1 and the issues on appeal and what the Administrative  
2 Hearing Commission is recommending to the Commission.

3 The Department issued a site specific permit for  
4 Smith and Company's Landfarm on June 20th, 2007, after  
5 a public notice and comment period. Because some  
6 dates had been omitted from the permit, a revised  
7 permit was issued on July 13th, 2007.

8 Mr. Edwin Robinson appealed the permit on July  
9 19th, 2007. He did die before the hearing date.  
10 Another neighbor Mr. Terry Bates appealed on August  
11 6th, 2007. The Administrative Hearing Commission held  
12 a hearing on September 8th, 2008. The AHC issued  
13 several factual findings.

14 Smith and Company's Landfarm is located in  
15 Advance, Missouri. The Landfarm is located on 1 acre  
16 of the company's 16 acre property. The Landfarm is  
17 used to treat soil that's been contaminated with  
18 gasoline, diesel fuel, fuel oil, aviation fuel and  
19 kerosene. The Landfarm is not located in a flood  
20 plain, wet plain -- wetland or area where groundwater  
21 is found to be less than 5 feet below the ground  
22 surface.

23 Contaminated soil is treated in a surface  
24 treatment cell where it is spread for aeration and  
25 also microbial treatment. The Landfarm has a

1 retention basin to hold storm water that's been in  
2 contact with the contaminated soil. This storm water  
3 is tested to assure that it meets Water Quality  
4 Standards before it's released through an authorized  
5 discharge point to an unnamed tributary of Wolf  
6 Creek.

7 Mr. Bates raised four issues in his appeal;  
8 first, he argued that the Landfarm is within a  
9 wetland. The AHC rejected this on a factual basis  
10 because there was substantial evidence that the  
11 Landfarm was not in a wetland or flood plain.

12 Second, Mr. Bates argued that the soil treatment  
13 cell was too close to a drinking water well. The AHC  
14 found that based upon the testimony at the hearing  
15 that a setback requirement was not necessary because  
16 the treatment cell had a synthetic liner and they  
17 also found that the permit contained sufficient  
18 conditions requiring additional groundwater  
19 monitoring wells and other water sampling that should  
20 address the issue adequately.

21 Mr. Bates asked for DNR oversight in the permit  
22 as his third issue and the AHC found that whether or  
23 how the Department enforces a permit or has enforced  
24 it in the past are not reasons to deny a permit.

25 And fourth Mr. Bates expressed concern about the

1 integrity of the liner beneath the soil treatment  
2 cell and the stockpiled soil being exposed and the  
3 AHC found that there were sufficient conditions in  
4 the permit to address both these issues. There was a  
5 permit liner -- the permit liner was -- a permit  
6 required the liner to be inspected and repaired every  
7 ten years. And the permit required that the  
8 stockpiled soil be covered and inspected to prevent  
9 contact with groundwater and surface water.

10 And consequently after the hearing the AHC is  
11 recommending that this Commission deny the request to  
12 withdraw and cancel Smith and Company's operating  
13 permit.

14 I'd be happy to answer any questions. I do  
15 believe the attorney for Smith and Company is here  
16 and will also be speaking.

17 CHAIRMAN HARDECKE: Okay. Christopher Weiss.

18 MR. CHRISTOPHER WEISS: Morning Mr. Chairman,  
19 members of the Commission. I just echo what the  
20 Attorney General's Office had to say. We did have a  
21 full-day hearing on this where all the evidence was  
22 presented and I think the findings of the  
23 Administrative Hearing Commission are set out very  
24 well.

25 This is a small landfarming operation. It takes

1 soils that are mildly contaminated and that would  
2 otherwise be put in a landfill, cleans them up and  
3 puts them back out in the world where we can reuse  
4 them in a safe and environmentally friendly manner.

5         The concerns, and I would make one point, the  
6 concerns that Mr. Bates and Mr. Robinson made are  
7 really the same. Those were raised at the permitting  
8 stage during the public hearings. And the concerns  
9 they had raised are principally the reason for the  
10 condition -- special conditions that are in the  
11 permit. Department of Natural Resources took, I  
12 think, great care to make sure that those types of  
13 concerns were addressed.

14         The fact that there might be any leaching from  
15 the contaminants were adequately addressed. This is  
16 a -- it's a shallow pit. It's got a 30 millimeter  
17 plastic liner covered by clay. And the contaminated  
18 soils are brought in offsite. They're stockpiled  
19 onsite, but they're kept covered and on plastic liner  
20 and then covered and there's monitoring wells  
21 surrounding this area.

22         There's no indication that this is in a wetland.  
23 Army Corps of Engineers did a wetland study and found  
24 that it's not approaching on any wetland. And  
25 there's been no evidence of any leaching. It's

1 monitored, inspected weekly. So, I think, there's  
2 sufficient protections in here and there was really  
3 no basis at any stage here to deny the permit.

4 I appreciate your time. If you have any  
5 questions, I'd be happy to answer them.

6 COMMISSIONER SHORNEY: Christopher, where does  
7 the cleaned up soil go? Does it stay on the  
8 property?

9 MR. CHRISTOPHER WEISS: It's -- it may stay on  
10 the property for a time until they bring it in and  
11 them put it in as clean fill and whoever wants it.

12 CHAIRMAN HARDECKE: It's tested prior to that,  
13 right?

14 MR. CHRISTOPHER WEISS: It's tested prior to  
15 that. It's tested when it comes in. It's tested  
16 when it goes out and tested when it leaves, I  
17 believe.

18 CHAIRMAN HARDECKE: Other questions?

19 (No response.)

20 CHAIRMAN HARDECKE: Thank you.

21 MR. CHRISTOPHER WEISS: Thank you very much.

22 CHAIRMAN HARDECKE: Do we have a motion?

23 COMMISSIONER SHORNEY: Do we have anybody else?

24 CHAIRMAN HARDECKE: That's the only card I have.

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

1 the Commission adopt the Administrative Hearing  
2 Commission's recommended decision.

3 COMMISSIONER TUPPER: Second.

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

6 MS. MALINDA OVERHOFF: Commissioner Hunter?

7 VICE-CHAIR HUNTER: Yes.

8 MS. MALINDA OVERHOFF: Commissioner Easley?

9 COMMISSIONER EASLEY: Yes.

10 MS. MALINDA OVERHOFF: Commissioner Shorney?

11 COMMISSIONER SHORNEY: Yes.

12 MS. MALINDA OVERHOFF: Commissioner Tupper?

13 COMMISSIONER TUPPER: Yes.

14 MS. MALINDA OVERHOFF: Commissioner Parnell?

15 COMMISSIONER PARNELL: Yes.

16 MS. MALINDA OVERHOFF: Chair Hardecke?

17 CHAIRMAN HARDECKE: Yes.

18 Tab No. 4 and Jenny again.

19 MS. JENNIFER FRAZIER: That's me again. Thank  
20 you.

21 This is an appeal of a CAFO construction permit  
22 by the Missouri Parks Association. A brief summary  
23 of the facts; is that on September 15th, 2008, the  
24 Department issued Permit No. 3715 to a Mr. Russell  
25 Renner for the construction of four 66 foot poultry

1 broiler houses, housing 236,000 broiler chickens  
2 located approximately 13.4 miles from Big Sugar Creek  
3 State Park.

4 Missouri Parks Association appealed that  
5 decision to the AHC, the decision to issue the  
6 permit. Mr. Renner filed a Motion to Intervene on  
7 December 19th, 2008. On December 24th, 2008, DNR filed  
8 a Motion to Strike All Non-Water Quality Related  
9 Issues. And on February 13th, 2009, DNR filed a  
10 Motion for Summary Determination.

11 The Missouri Parks Association did not respond  
12 to the Motion for Summary Determination. And the AHC  
13 is recommending that the Commission grant the  
14 Department's Motion for Summary Determination.

15 Briefly, the Missouri Parks Association raised  
16 two issues on -- in its appeal. First, they alleged  
17 that the permit should be denied because it violates  
18 a judgment by the Circuit Court of Cole County  
19 prohibiting CAFOs within 15 miles of any state park  
20 or historic site.

21 The AHC recommends that the Commission reject  
22 this argument because that judgment was actually  
23 later reduced to limit its -- the decision to a  
24 buffer zone of 2 miles within the vicinity of the  
25 Village of Arrow Rock.

1           The AHC also notes recent prior decisions by  
2 this Commission recognizing its lack of authority to  
3 expand buffer zones or regulate matters outside the  
4 scope of the Clean Water Law.

5           Second, the Missouri Parks Association arranged  
6 (sic) -- alleges several permit deficiencies. And I  
7 -- I could go through each of those, but I would,  
8 first, just say that the Department in its Motion for  
9 Summary Determination presented evidence refuting all  
10 of the alleged deficiencies and the Administrative  
11 Hearing Commission found that the permit was complete  
12 and accurate. The MPA, the Missouri Parks  
13 Association, presented no evidence disputing the  
14 Department's findings.

15           The Administrative Hearing Commission determined  
16 that the facts as established by the Department and  
17 not disputed by the Missouri Parks Association  
18 entitled the Department to a favorable decision as a  
19 matter of law. And the AHC recommends that this  
20 Commission grant the Department's Motion for Summary  
21 Determination, enter a favorable decision for Mr.  
22 Renner and deny the Department's Motion to Strike as  
23 moot.

24           If you have any questions --

25           CHAIRMAN HARDECKE: Thank you. Any questions?

1 (No response.)

2 MS. JENNIFER FRAZIER: Thank you.

3 CHAIRMAN HARDECKE: Comments or questions?

4 (No response.)

5 CHAIRMAN HARDECKE: If not, we'd entertain a  
6 motion.

7 COMMISSIONER TUPPER: I move that the Commission  
8 adopt the recommended decision of the Administrative  
9 Hearing Commission on the Russell Renner CAFO Permit  
10 Appeal No. 08-1758-CWC.

11 COMMISSIONER HUNTER: Second.

12 CHAIRMAN HARDECKE: Malinda, take the vote.

13 MS. MALINDA OVERHOFF: Commissioner Easley?

14 (No response.)

15 MS. MALINDA OVERHOFF: Commissioner Easley?

16 COMMISSIONER EASLEY: Can't hear you.

17 MS. MALINDA OVERHOFF: Commissioner Easley?

18 COMMISSIONER EASLEY: Yes. Yes.

19 MS. MALINDA OVERHOFF: Commissioner Shorney?

20 COMMISSIONER SHORNEY: Yes.

21 MS. MALINDA OVERHOFF: Commissioner Tupper?

22 COMMISSIONER TUPPER: Yes.

23 MS. MALINDA OVERHOFF: Commissioner Parnell?

24 COMMISSIONER PARNELL: Yes.

25 MS. MALINDA OVERHOFF: Commissioner Hunter?

1           **VICE-CHAIR HUNTER: Yes.**

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

3           **CHAIRMAN HARDECKE: Yes.**

4           **No. 5.**

5           MS. JENNIFER FRAZIER: This is the last permit  
6 appeal. This is also an appeal of a Construction  
7 Permit No. 3716. The permit was issued to Mr. Steve  
8 Renner.

9           And this case is actually identical to the case  
10 I just discussed in terms of the facts, the issues  
11 raised and the Administrative Hearing Commission's  
12 response with two exceptions the permittee is  
13 different. It's Steve Renner this time. The permit  
14 was authorized -- the permit authorized construction  
15 of two 66 foot poultry broiler houses and the  
16 facility is located 14.1 miles from Big Sugar Creek  
17 State Park.

18           And all other aspects, the facts -- in all other  
19 aspects, the decision and the recommended decision  
20 are exactly the same. So without repeating what I  
21 just said, previously, I would simply say that the  
22 AHC did determine that the facts as established by  
23 the Department and not disputed by the Missouri Parks  
24 Association entitled the Department to a favorable  
25 decision as a matter of law.

1           And the AHC is recommending that the Commission  
2 grant the Department's Motion for Summary  
3 Determination, enter a favorable decision for Steve  
4 Renner and deny the Department's Motion to Strike as  
5 moot.

6           If you have any questions.

7           CHAIRMAN HARDECKE: Thank you. Any questions?

8 (No response.)

9           CHAIRMAN HARDECKE: If not, we'd entertain a  
10 motion.

11           COMMISSIONER SHORNEY: Mr. Chairman, I move the  
12 Commission adopt the recommended decision of the  
13 Administrative Hearing Commission on the Steve Renner  
14 CAFO Permit Appeal No. 08-1757-CWC.

15           COMMISSIONER TUPPER: Second.

16           CHAIRMAN HARDECKE: Malinda, will you take the  
17 vote, please?

18           MS. MALINDA OVERHOFF: Commissioner Easley?

19           COMMISSIONER EASLEY: Yes.

20           MS. MALINDA OVERHOFF: Commissioner Shorney?

21           COMMISSIONER SHORNEY: Yes.

22           MS. MALINDA OVERHOFF: Commissioner Tupper?

23           COMMISSIONER TUPPER: Yes.

24           MS. MALINDA OVERHOFF: Commissioner Parnell?

25           COMMISSIONER PARNELL: Yes.

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

2           **VICE-CHAIR HUNTER: Yes.**

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

4           **CHAIRMAN HARDECKE: Yes.**

5           Okay. **Tab No. 6.**

6           MR. JOHN RUSTIGE: Good morning. My name is  
7 John Rustige. I work in the Permits and Engineering  
8 section. I'm here this morning to request Commission  
9 approval to file a proposed amendment to 10 CSR 20-  
10 7.015, Effluent Regulations.

11           There's a number of things we're trying to  
12 accomplish with this rule and a couple are pretty  
13 significant. Let me maybe start with some of the  
14 less consequential changes. The first would be to  
15 incorporate a revision that allows alternative (sic)  
16 -- alternate discharge limits to sub-surface waters  
17 associated with risk-based corrective action  
18 projects. The Risk-Based Corrective Action  
19 Program is administered by the Hazardous Waste  
20 Program. And the discharges would be allowed so long  
21 as there is no unreasonable risk to human health or  
22 the environment.

23           The second proposed addition is to make the rule  
24 consistent with EPA's combined sewer overflow policy.  
25 And it would incorporate a direct reference in a new

1 section. And this would give the Department the  
2 ability to draft permits in conformance with that EPA  
3 policy, their CSO policy. And it would allow us to  
4 set effluent monitoring commitments for the CSO  
5 communities that would be addressed in their long-  
6 term control plans.

7 Now, there are a couple that are -- changes that  
8 are more significant. Let me talk about those for a  
9 second. The US EPA informed the Department that  
10 certain provisions of the effluent rule, those  
11 provisions that allow non-continuous wet weather  
12 discharges limited to 45 milligrams per liter weekly  
13 average that those -- those BOD -- those provisions  
14 essentially allow treatment to be bypassed.

15 And therefore they don't meet the federal  
16 requirements that all discharges from POTWs receive  
17 secondary treatment. So in response to that federal  
18 determination we're -- we're going to propose to  
19 remove those paragraphs that authorize those  
20 discharges.

21 This is a pretty significant change, especially  
22 in terms of expense to these communities. We've  
23 identified 53 POTWs that have these intermittent  
24 discharges in their permits. And elimination of  
25 these outfalls will really require a whole range of

1 engineering solutions. Some communities rarely  
2 discharge from these outfalls, but -- but others  
3 discharge nearly every significant rainfall. They  
4 have these.

5         So each community is going to have to study the  
6 issue for their system and then address inflow and  
7 infiltration in their collection system. Maybe  
8 consider policies or local ordinances to address  
9 inflow and infiltration from private sewers and then  
10 they'd have to probably evaluate and maybe construct  
11 additional storage at their wastewater treatment  
12 plants or maybe in the collection system itself. And  
13 they may even have to expand plant capacities or  
14 consider high rate treatment in certain  
15 circumstances.

16         So we would expect all these efforts to be quite  
17 costly. And in the fiscal note we're presenting a  
18 worse-case approach. We work with the Missouri  
19 Public Utility Alliance to -- to sort of look at the  
20 current household sewer rates and then calculated the  
21 impact of raising those rates in those communities up  
22 to 2 percent of the Median Household Income.

23         And this resulted in a worse-case estimate, cost  
24 estimate of 106- excuse me-- \$196 million per year. And that's  
25 once we get through the full five-year permitting

1 cycle.

2           The other significant change that we're  
3 proposing is to replace fecal chloroform with E. Coli  
4 as the indicator bacteria for permitting purposes,  
5 which would allow us to place E. Coli permit limits.  
6 As part of this we're also proposing monitoring for  
7 E. Coli as well. The proposed monitoring frequency  
8 is weekly with compliance to be determined by  
9 averaging the bacteria counts for all the samples  
10 collected within a calendar month.

11           Now, this is a lot more frequent than monitoring  
12 for most of the pollutants and we will be seeking,  
13 specifically seeking comments during the public  
14 hearing process on what monitoring frequency may be  
15 appropriate especially for some of the smaller  
16 systems where weekly monitoring will probably be  
17 considered quite a burden.

18           As you may recall, we published the Regulatory  
19 Impact Report for this rulemaking on February 13th of  
20 2009 and the comments on that closed April 14th. We  
21 did receive several comments and we've incorporated  
22 those suggestions into the fiscal note that we've  
23 prepared for filing with this rule.

24           So with that I'd be glad to take any questions  
25 you might have.

1 Any questions?

2 (No response.)

3 CHAIRMAN HARDECKE: Any questions?

4 I've got one on the -- as these -- the third  
5 item that you mentioned, as those regulations are  
6 implemented, I am gathering that that will done over  
7 the five-year permitting cycle so everyone would be  
8 brought in within five years.

9 MR. JOHN RUSTIGE: Yes. When their permit ex- -  
10 - their current expired that's when they would  
11 come in and that outfall would be eliminated.

12 CHAIRMAN HARDECKE: Okay. So what about the  
13 ones who are on the lead edge? Say, six-months away  
14 from a new permit, with the extent of what that is  
15 going to be expected of them; how will we handle that  
16 so that they can have a reasonable chance to get  
17 their --

18 MR. JOHN RUSTIGE: Yeah. As typical -- as  
19 typical with permits there would be allowed some  
20 time to make that correction and put a plan  
21 together to do that.

22 COMMISSIONER PARNELL: Can you be more specific  
23 than some time?

24 MR. JOHN RUSTIGE: Typically, --

25 MR. ROB MORRISON: I think to give you some

1 feedback, Commissioner Parnell, what we would do --  
2 we do have some entities that are in that position  
3 right now. We would be prepared and are in the  
4 process of negotiating a compliance agreement with  
5 them that would supplement their -- their current  
6 permit and it would outline a time frame for  
7 assessing their infiltration and inflow, assessing  
8 the condition of their sewer system, putting together  
9 a capital improvements program if they -- if they  
10 need to do that and making the necessary adjustments  
11 to their collection system to work towards  
12 eliminating the discharges from -- from the peak flow  
13 clarifier.

14         And that's -- that's about the extent today that  
15 I can tell you and that that process would probably  
16 take several years to -- to go through. And many  
17 communities we try to get them as a rule of thumb to  
18 be evaluating their entire sewer systems in  
19 somewhere, seven to ten years, you know, in terms of  
20 the evaluation.

21         If they're starting from square one by the time  
22 they get to the end it would be a lengthy process,  
23 five to seven years to get through the whole thing  
24 depending upon the size and capabilities of the  
25 communities and things like that.

1           But that -- that's our plan is to have a  
2 compliance agreement, settlement agreement, some sort  
3 of administrative agreement to take these communities  
4 forward. We're not able to put any sort of schedule  
5 of compliance into the permit as EPA views compliance  
6 with secondary treatment as a condition that should  
7 have already been made.

8           And so that we're not able to put schedules of  
9 compliance in our permits and the like, we're  
10 prohibited from that. So that-- that's kind of the  
11 thumbnail of the plan that we have.

12           CHAIRMAN HARDECKE: Other questions?

13           COMMISSIONER TUPPER: That figure of \$50 per  
14 sample; where'd that come from?

15           MR. JOHN RUSTIGE: Yeah. We talked to several  
16 labs and we also determined -- contacted the vendor  
17 that supplies the testing equipment and the testing  
18 equipment can be purchased for -- between \$4,000 and  
19 \$4,500; so calculating a cost per sample over a four-  
20 year life would give about \$50 a sample.

21           COMMISSIONER TUPPER: What -- what about  
22 training for the operator? If they buy the  
23 equipment, somebody's got to use it.

24           MR. JOHN RUSTIGE: Yeah. We didn't consider  
25 training cost in the -- in the fiscal note.

1           COMMISSIONER TUPPER:  You've got training cost  
2 and payroll cost.

3           Seems a little low to me.

4           CHAIRMAN HARDECKE:  Any other questions for  
5 John?

6           COMMISSIONER SHORNEY:  John, is the -- is the  
7 total cost -- you mentioned \$196 million?

8           MR. JOHN RUSTIGE:  Well, that was just for that  
9 single element.

10          COMMISSIONER SHORNEY:  Which element was that  
11 again?

12          MR. JOHN RUSTIGE:  The removal of the secondary  
13 outfalls, the intermittent wet weather outfalls.

14          COMMISSIONER SHORNEY:  Okay.

15          Then I was reading later on, on the overall cost  
16 -- where does the five billion come in on the CSO?

17          MR. JOHN RUSTIGE:  Well, that --

18          COMMISSIONER SHORNEY:  Is that --

19          MR. JOHN RUSTIGE:  -- that would be a total cost  
20 over a period of time --

21          COMMISSIONER SHORNEY:  Over a period of time?

22          MR. JOHN RUSTIGE:  -- instead of, you know, over  
23 a 20-year period.

24          COMMISSIONER SHORNEY:  We're talking about a  
25 pretty good, pretty good lump of money.  That's the

1 only point I'm trying to make.

2 MR. JOHN RUSTIGE: It is really an expensive --  
3 it's a very expensive issue.

4 COMMISSIONER HUNTER: That's the total cost.  
5 John, that's the total cost?

6 MR. JOHN RUSTIGE: Yes. Total cost over a 20-  
7 year period.

8 COMMISSIONER HUNTER: Capital improvements, plus training  
9 plus sampling the whole works?

10 MR. JOHN RUSTIGE: Over a 20-year period. Yes.

11 COMMISSIONER SHORNEY: Do we have any idea if  
12 we'll be able to stay within that 2 percent of sewer  
13 rate limit with that five billion? Have we --

14 MR. JOHN RUSTIGE: It's -- it's difficult to  
15 know what the actual cost will be without study of  
16 individual systems. That's why we kind of took that  
17 worse-case approach. I would expect it to be  
18 something less than that, but I can't prepare a  
19 calculation for you and go through that. So  
20 that's -- we expect it at above 2 percent. There may  
21 be no feasible alternatives for some of these  
22 communities and if that's the case and they can make  
23 that demonstration then the bypass would be allowed.  
24 So that's kind of why we chose that 2 percent as sort  
25 of a worse-case scenario.

1           CHAIRMAN HARDECKE: Any other questions?

2           COMMISSIONER SHORNEY: This is kind of a minor  
3 question, I guess, John, but on the -- Page 235 of  
4 the -- the limits for bypassing -- am I reading this  
5 right? For lagoon or -- or higher; am I reading that  
6 right on that page?

7           MR. JOHN RUSTIGE: I'm not sure. I don't have a  
8 briefing document.

9           CHAIRMAN HARDECKE: Where are you, Frank? What  
10 page?

11          COMMISSIONER EASLEY: Two-thirty --

12          COMMISSIONER SHORNEY: Two thirty-five. It says  
13 exceptions to paragraphs: wastewater lagoon, it  
14 looked like the limits were higher. I would just --  
15 is that just --

16          MR. JOHN RUSTIGE: Yeah. No. I think it's just  
17 a wording change. I don't think the limits have  
18 actually -- are actually changing.

19          COMMISSIONER SHORNEY: Okay.

20          And on Page 246, D(I). I'm just curious as to  
21 the rounding of 5 milligrams per liter, just rounding  
22 that up; is that just -- what's that based on?

23          MR. JOHN RUSTIGE: Well, that's -- that's how  
24 the rule reads now.

25          COMMISSIONER SHORNEY: Is how --

1 MR. JOHN RUSTIGE: This is just a clean-up.

2 COMMISSIONER SHORNEY: -- is how -- how the --  
3 so we're just copying a rule from --

4 MR. JOHN RUSTIGE: Yeah. This is just a clean-  
5 up of -- of some of the language to make sure that  
6 things stay --

7 COMMISSIONER SHORNEY: -- documents?

8 MR. JOHN RUSTIGE: Yeah.

9 COMMISSIONER PARNELL: I have a question. Is  
10 Missouri unique in its violating of this discharge  
11 rule or are there a lot of other states out there  
12 like us that are going to have to invest money?

13 MR. JOHN RUSTIGE: Yeah. We've -- we've met  
14 with EPA about this. And what -- what they've told  
15 us is that this is a consistent way that they're  
16 doing this across the nation. Now, other states may  
17 of not -- may not have permitted those outfalls the  
18 way we have. And so they may not have to remove  
19 those. They may not treat them as permitted  
20 outfalls; if that makes sense?

21 But what we're -- what they've told us, we  
22 cannot -- we cannot permit those outfalls any longer.  
23 So to eliminate those, that's what the communities  
24 are going to have to do.

25 I think some other states may turn an eye, blind

1 eye to some of that, but -- what I mean by that is,  
2 they -- those outfalls may be occurring but they  
3 aren't permitted so --

4 CHAIRMAN HARDECKE: We have one card. And then  
5 if we have any more questions, we can come back to  
6 John. Phil?

7 MR. PHIL WALSACK: Good morning, Phil Walsack,  
8 Missouri Public Utility Alliance. As John alluded to  
9 we have been working with the Department considerably  
10 towards the resolution of this issue.

11 We have comments. We'd like to commend the  
12 Department for several things it did in its most  
13 recent version of this rule and the fiscal note.  
14 First of which, is to list the communities. Now, you  
15 don't get them by name, but you get a table in your -  
16 - in your document there that list how bad inflow and  
17 infiltration is in some communities.

18 Knowing that, the magic number that we're  
19 shooting for is two-and-a-half. Okay? You can see  
20 how many people in that table have discharges that  
21 are above two-and-a-half. A considerable number; 25  
22 of them have a discharge of -- between four times and  
23 six times their daily flow and some of them are way  
24 past that. Okay? All the way out, I believe, the  
25 final number is 34 and that number means, if I'm a

1 city and I discharge a million gallons a day when it  
2 rains, I discharge 34 million gallons a day. That's  
3 what that multiplier means, so trying to fix that 34  
4 community; that's a big number. And we commend the  
5 Department for be willing to say how bad the I & I,  
6 the inflow and infiltration is in communities.

7 Second, we've commended the Department for being  
8 able and willing to go out in the free market and see  
9 how much cost per foot we're talking about in some --  
10 you know, for rehabilitation work. That is in your  
11 document. What we are still at odds with the  
12 Department about are several key elements and you've  
13 brought some of them up already this morning. One of  
14 which, is this cost that John's using the \$196  
15 million. That cost number that that's the end-all  
16 cost.

17 We don't have any documentation from the federal  
18 government that says once you get to 2 percent of the  
19 Median Household Income you're done. You don't have  
20 to do anymore. There isn't a document like that. I  
21 wish there was, but there's not. The newest draft  
22 document about a utility analysis is not one of  
23 those. It is not that final backstop that says no  
24 balls will get past here if you throw a wild pitch.  
25 That's not true. It still moves forward.

1           This issue still moves forward. That \$196  
2 million, right now, is a -- is a window of rate  
3 increase opportunity from where we are now to the 2  
4 percent. That's all that number is. That number is  
5 not a cost for anything. That's a window of  
6 opportunity for increased rates.

7           And our contention is that this project will be  
8 beyond that \$196 million for these 53 communities.  
9 That's what our contention is. When we look at how  
10 much it cost to rehabilitate sewers; that this  
11 project will eliminate the 45/45 permitted outfalls,  
12 calling them in the future a bypass, an enforceable  
13 violation and we need to do something about that.

14           One of the things that Missouri communities  
15 don't particularly want to do is to receive a federal  
16 order to fix it. That's where we are. The  
17 implementation policy is between DNR, the communities  
18 and the federal --  
19 (Tape One, Side A concluded.)

20           MR. PHIL WALSAK: -- you know, we work out a  
21 resolution here, but that permit could go out next  
22 month and says your outfall's eliminated, you can't  
23 discharge from there anymore under a permitted  
24 condition and therefore you have to call it a bypass  
25 from here on out.

1           Now, that community cannot respond by next  
2 spring when the rains come to eliminate their inflow  
3 and infiltration. That -- they just can't do that in  
4 Bethany. There are, as you saw the list, the other  
5 communities on the list can't do that either. It  
6 can't be Republic. It's -- it -- you know, their  
7 numbers are too big.

8           So this is a long-term project. And Mr.  
9 Morrison is correct when he suggests that -- that in  
10 your permit, sorry, it's eliminated. There's no  
11 alternatives. It's out. It's a bypass. And, now,  
12 what do we do from here? This is the implementation  
13 part where us, Missouri communities and municipals  
14 need to work with DNR to find some resolution 'cause  
15 if we don't do that the federal orders are pretty  
16 easy to see coming because you now have a table  
17 that's public knowledge. I have the table. EPA has  
18 the table. Okay? There's communities attached to  
19 each one of those. Real communities with real  
20 ratepayers in that will receive an order if they  
21 don't start moving forward.

22           So we're working hard with DNR to get some  
23 policy, some step-by-step approach to ramp up here  
24 because we know in communities we can't go from a .5  
25 of the Median Household Income to a 2 and stay in

1 political office. That won't happen. You can't go  
2 that fast. That's called rate shock and that won't  
3 be appropriate in our communities. We can't adjust  
4 that fast. Particularly when we're looking at an  
5 economic recession, like, we're in. Cities will  
6 face, next year and the year after the brunt of  
7 decreased taxes to tax revenues and decreased water  
8 and usages and that ultimately affects sewer rates.

9 I don't see any of my federal counterparts here.  
10 I'll turn and just see if there are any in the  
11 audience. And I don't see them. And we have asked  
12 repeatedly for some guidance, some direction, some  
13 softening of this approach, some ramp up of this  
14 approach and we are not seeing it.

15 The permits will go through with outfalls  
16 eliminated and now we have to react. That's what's  
17 before you today is we're going to react with money,  
18 that's how it usually works. These folks in these  
19 communities are going to have to build something that  
20 cost some fairly significant amount of dollars and  
21 we're going to have to study it to figure out what's  
22 the best thing to build. And that's your decision  
23 today.

24 In our opinion the \$196 million is not going to  
25 cover it and we just need to go in with our eyes wide

1 open that it's not the end. That's not enough and it  
2 will be more than that just for this piece of  
3 regulation and then you combine that with the other  
4 regulations that are coming. These are big, big  
5 changes; big financial impacts to Missouri  
6 municipals.

7 Thank you very much.

8 CHAIRMAN HARDECKE: Other comments or questions?

9 It would be nice if EPA was here to offer their  
10 input.

11 COMMISSIONER TUPPER: Probably the reason  
12 they're not.

13 CHAIRMAN HARDECKE: Could be.

14 (Laughter.)

15 CHAIRMAN HARDECKE: I think the significance of  
16 this at this time is -- is very worth noting because  
17 we are in a very severe economic time and these are  
18 very large numbers to be promulgating on communities.

19 Comments, questions, other questions for John?

20 COMMISSIONER TUPPER: I would have to agree with  
21 Phil. I don't -- I don't think we've got a handle on  
22 the cost. I don't know that there is anyway to get a  
23 handle on the cost. Every system is different. The  
24 fair number of them or a high percentage, in my  
25 opinion, the problem is in the laterals not in the

1 main lines. And that is an expensive thing to deal  
2 with. I can't see the average homeowner spending \$800  
3 or \$1,000 to resolve the problems in their laterals.

4 COMMISSIONER SHORNEY: John or Rob, basically we  
5 don't have too much choice here; do we? I mean, if  
6 you did not go ahead with this and there's those --  
7 you'd have to operate under, probably get sued; you'd  
8 have a consent decree, right. So really we're just  
9 carrying forth here with EPA directive, I guess,  
10 basically and it's going to cost a lot, but that's  
11 just the way it is, I think.

12 MR. ROB MORRISON: And I -- I appreciate your --  
13 your -- all of your input and your thoughts. I want  
14 to assure that -- that we have made our position very  
15 clear with EPA about how -- how high-rate flows, how  
16 wet weather flows should be treated and managed and  
17 we have -- we have -- there are several instances.

18 The Little Blue Valley situation in Kansas City  
19 is one that comes to mind in terms of how by- -- what  
20 is bypasses? What is high-rate treatment? When is  
21 auxiliary treatment employed? And the consequences  
22 for those utilities that are in those situations.

23 The difficulty for us, today, is that we have a  
24 regulation, 45/45 BOD and TSS weekly limits in our  
25 regulations. EPA has told us that they will not

1 allow us to issue those permits. It puts us in -- in  
2 somewhat of a conundrum, if you will. We have  
3 regulations on the books that we are not allowed to  
4 issue permits on and that is essentially where we are  
5 today.

6 And as John and as you-all have surmised we are  
7 going to have to enter into compliance agreements as  
8 we move forward. It is going to be a long, expensive  
9 process and we -- we need that flexibility for the  
10 communities to -- to be able to make improvements to  
11 their systems and get to a point where -- where they  
12 can make improvements and at the same time balance  
13 the economic conditions that -- that are facing us.

14 And I think we all understand that there are  
15 some challenges out there. So I think, Commissioner  
16 Shorney, you're correct in the sense that we have a  
17 regulation. It is not going to be -- we're not going  
18 to be allowed to issue permits because of the fact  
19 that it doesn't meet the definition of secondary  
20 treatment. That's the bottom line.

21 And EPA has said, Nope. You can't -- can't do  
22 those for -- for your outfalls, they have to meet  
23 secondary treatment or, of course, water quality base  
24 limits that you're -- you're putting forth.

25 So those -- that's -- that's essentially the

1 issue before us is and you are correct -- I mean, we  
2 -- we are sort of caught between the preverbal rock  
3 and a hard place. And, I think, we do have the  
4 opportunity to exercise some flexibility. That we  
5 can work with the communities as -- as Phil mentioned  
6 there is some opportunities for some -- some -- some  
7 good solutions here and we can employ that in those  
8 compliance agreements and -- and move forward.

9 But it is something that as far as this  
10 regulation is concerned it does present some  
11 challenges in terms -- some -- some entities are  
12 saying, Well, why can't you issue permits that's in  
13 your regulations? And our response is, Well, EPA has  
14 indic- -- given their intention to object to any  
15 permit that comes out with those limits that are  
16 imposed. So it -- it really is of no point for us to  
17 -- to move forward.

18 CHAIRMAN HARDECKE: Would there be any -- would  
19 it be of any help if -- if we delayed on this --  
20 taking action on this today until EPA can show up and  
21 have a conversation with us about it as a Commission?

22 MR. ROB MORRISON: EPA is in the -- in the  
23 process and I -- and that is -- that is a good  
24 suggestion. And certainly we could -- we could have  
25 EPA come and give us some -- some more feedback in

1 terms of their wet weather initiatives. There are  
2 movements afoot. There are several national  
3 organizations that are working with EPA to come up  
4 with a wet weather strategy.

5 But the bottom line in all of this is we cannot  
6 issue these permits. I mean, aside from how EPA  
7 chooses to let communities deal with their wet  
8 weather flows; we will not be able to write permits  
9 with these limits on that outfall. That -- that will  
10 not change as far as EPA is concerned because of the  
11 definition of -- of -- of the 45/45. And we're --  
12 we're sort of mixing sort of apples and oranges here  
13 and kind of coming up with tangerines because we have  
14 -- we have wet weather flow issues, which are all  
15 being handled under wet weather flow policy, Phil,  
16 mentioned a utility analysis that EPA has out right  
17 now. There are the issues of blending and bypassing  
18 and all these are occurring up here sort of on this  
19 level and then over here we've got our regulation  
20 that says, for those facilities that have peak flow  
21 clarifiers you can discharge at a 45/45 weekly limit  
22 effluent.

23 That -- that is not -- that is not on the table,  
24 Commissioner Hardecke. That is no where in the  
25 discussion to be -- to be found -- I mean, that is --

1 that's a non-starter for EPA. Now, over here can --  
2 how do we -- you know, what the utility analysis  
3 would allow; what ultimately EPA's final position on  
4 blending and -- and those types of things, high rate  
5 treatment and these various other factors, yeah,  
6 there's -- there's -- there's plenty of -- of flex- -  
7 - you know, there's plenty of discussion occurring  
8 over here, but none from the standpoint of -- of  
9 allowing Missouri to retain those 45/45 weekly  
10 limits.

11 So I -- I think a delay would just further tend  
12 to put off our ability to clearly implement --  
13 there's other things in this rule besides, as you  
14 know -- besides the 45/45 and it has to do with the  
15 E. Coli, switching to the E. Coli limits. We need to  
16 get on with -- with that. That's something that  
17 needs to happen. So that's just my recommendation.

18 CHAIRMAN HARDECKE: Is E- -- is EPA going to go  
19 along with your, I forget what you referred to, your  
20 agreement with the cities over the extended period of  
21 time to implement this?

22 MR. ROB MORRISON: Certainly, we will -- we will  
23 need to keep EPA informed as schedules are developed  
24 and obviously if we had a schedule with a community  
25 for 400 years or something like that, that would

1 obviously probably not be acceptable.

2           And I'm using an extreme example, but we -- we  
3 did have a community that gave us a fairly long  
4 schedule on a project. But, I think, as long as the  
5 schedules are reasonable and they're somewhere, you  
6 know, in terms of being able to get through and  
7 assess the collection system and make improvements on  
8 a -- you know, ten -- ten, 15-year cycle, I think,  
9 ten, 15, 20, somewhere in that range, I think, will  
10 be -- I think will be fine for -- for those -- for  
11 those agreements, but certainly that's one thing that  
12 we -- we need to do as we go through these is to make  
13 sure EPA is aware and generally okay because what we  
14 would not want to do is to setup a situation where we  
15 would have an agreement that isn't acceptable and it  
16 invites federal action into a community that's  
17 already got a compliance agreement. So that --  
18 that's something we don't -- we want to make sure  
19 that we're -- we're being very careful and, again,  
20 balancing those economic needs and financial  
21 capabilities with their ability to assess their  
22 collection systems.

23           CHAIRMAN HARDECKE: Have you discussed that with  
24 EPA?

25           MR. ROB MORRISON: They are aware and they do

1 support the use of those compliance agreements in  
2 those communities, yes.

3 CHAIRMAN HARDECKE: Phil, do you have any more  
4 comments on -- on what's just been discussed?

5 MR. PHIL WALSAK: You-all are right. Okay.

6 These are big numbers being mandated by the  
7 federal government. Okay. That's what this is. The  
8 only stop-get measure for municipals -- you know, is  
9 the John and Rob and Curt and Kevin show. You know,  
10 those are the working guys and gals in the Department  
11 who have to keep the feds for use of a better word,  
12 out of the communities and let Missouri deal with its  
13 issues.

14 We are hopeful and we have discussed the  
15 compliance agreement approach. I am discussing it  
16 currently with member cities, telling them you have  
17 some choices. You can come, the federal approach.  
18 You're not going to like it. Okay. The five  
19 communities who are already doing the federal  
20 approach aren't suggesting that's a lot of fun. But  
21 you need to come to the state with some suggestions,  
22 some ideas with some longer term and Rob is  
23 suggesting that a decade kind of term, it took 40  
24 years to break this stuff, you know, we can't fix it  
25 in five. Not in our current economic conditions and

1 even if it was glory days, we probably couldn't fix  
2 it in five.

3         We are going to have to make sure that these  
4 compliance agreements are doable and reasonable in  
5 the communities and have EPA stand by them. To my  
6 knowledge EPA has never over-filed on top of the  
7 state when we've had an agreement in place. Have  
8 them come in and say, That's a nice agreement, but we  
9 want ours. They never done that to my knowledge in  
10 the last 25 years.

11         This is an opportunity for us to work with the  
12 municipals and get this done without hurting cities  
13 'cause what we don't want to see happen is a bunch of  
14 folks who move out of the city and put -- you know, a  
15 trailer out in the country and put a septic tank on  
16 it and that defeats the whole purpose here of trying  
17 to get improved water quality. And that's what we  
18 don't want to see is an outmigration from cities. We  
19 want to keep people in the cities and keep them  
20 hooked up to the sewer and make sure the sewers are  
21 working right. But we can't fix everything in five  
22 years.

23         Certainly, we're in Springfield today you're  
24 using their system today. I'm sure they appreciate  
25 that today. I mean, they've been working on it for -

1 - you know, seriously working on for 12 years,  
2 hustling on it, really working hard on it and it's  
3 not fixed.

4 So this is a long project. And we just need to  
5 go in eyes wide open. And we will work very hard  
6 with DNR to get compliance agreements that work from  
7 municipals and that are acceptable by EPA.

8 Thank you.

9 COMMISSIONER SHORNEY: Phil, so you would  
10 recommend that we move ahead today with it?

11 MR. PHIL WALSAK: One of Rob's points is  
12 absolutely true, which is the permitting side is  
13 different than the implementation side. And we're  
14 really talking about the permitting side today.

15 And you're getting more and more conscious of  
16 the implementation side so you have a permit that  
17 that sentence got eliminated, now what? And there  
18 will be some now what's come before you in -- in the  
19 force -- in the way of compliance agreements. In the  
20 way of working out this -- the implementation part of  
21 this, which is always where I want to go, you know  
22 the regulations are nice but they're just some words  
23 and now we got to make sure that the guys who wear  
24 boots and jeans to work can make this stuff work out  
25 there in the field.

1           And if EPA holds these -- if we say today, we're  
2 not going to move forward than these 53 communities,  
3 they don't get a permit and then there will be more  
4 communities who don't get a permit. And then what?  
5 You know we're just stalling the inevitable. And  
6 then, in which case right now, the feds could come in  
7 right now and say you know what, we're taking you.  
8 We're putting you under an enforcement action from  
9 us. And it's very different than what it is from  
10 DNR. It really is and one of these days we ought to  
11 probably sit down and look at them. One of them is  
12 42 pages right now and the DNR version is around 12.  
13 You can tell that the feds really mean business on  
14 this and we haven't had much success at a pushback on  
15 this issue.

16           We, too, will be working with the national  
17 organizations to try to figure out what the direction  
18 is inside the beltway, inside Washington D.C. to try  
19 to figure out where we're going with this 'cause  
20 Missouri's going to have issues because we have  
21 rainfall. And we have older cities.

22           So holding back today, we're holding back the  
23 inevitable. We need to work now on implementation.

24           Thank you.

25           CHAIRMAN HARDECKE: Rob, do you feel like if we

1 go ahead and move forward it will compromise our  
2 negotiating position with EPA?

3 MR. ROB MORRISON: No. I -- I don't. I -- I  
4 think that they've made their position pretty clear  
5 on our ability to issue permits with 45/45 limits.  
6 So -- and that's not really -- that's not really an  
7 argument that I want to -- that I want to tackle. To  
8 try to argue the point that 45/45 weekly limits are  
9 equivalent to the 30/30 monthly averages, which is  
10 essentially the difference between our arguments.

11 And it's sort of a technocratic legal difference  
12 between 30/30 monthly average and 45/45 weekly  
13 averages. So -- so what they're saying is your 45/45  
14 weekly average only limits in your permits don't meet  
15 secondary treatment so you can't issue those outfalls  
16 with that -- with that set of limits. That's really  
17 all they're saying.

18 On the other side of it, I think, we've got a  
19 lot of traction about our position. We've been very  
20 clear with EPA. We've articulated it on several  
21 occasions and I think that part of it, there is some  
22 traction being made and there's more to be had. But  
23 on the implementation side, I believe, we're on a --  
24 on a good track. Now, in the end; what will it come  
25 out? I mean, that's -- that is probably in the hands

1 of Lisa Jackson and Peter Silva with EPA.

2 But certainly we have -- we are trying to do our  
3 part to make it clear as to how -- how we feel it  
4 should -- should be -- should be run.

5 CHAIRMAN HARDECKE: Any questions or comments?

6 (No response.)

7 COMMISSIONER SHORNEY: Mr. Chairman, I move the  
8 Commission file the proposed rulemaking amendment to  
9 10 CSR 20-7.015, Effluent Regulations.

10 COMMISSIONER PARNELL: Second.

11 CHAIRMAN HARDECKE: Malinda, take the vote,  
12 please.

13 MS. MALINDA OVERHOFF: Commissioner Shorney?

14 COMMISSIONER SHORNEY: Yes.

15 MS. MALINDA OVERHOFF: Commissioner Tupper?

16 COMMISSIONER TUPPER: Yes.

17 MS. MALINDA OVERHOFF: Commissioner Parnell?

18 COMMISSIONER PARNELL: Yes.

19 MS. MALINDA OVERHOFF: Commissioner Hunter?

20 VICE-CHAIR HUNTER: Yes.

21 MS. MALINDA OVERHOFF: Commissioner Easley?

22 COMMISSIONER EASLEY: Yes.

23 MS. MALINDA OVERHOFF: Chair Hardecke?

24 CHAIRMAN HARDECKE: Yes.

25 Okay. John, you get Tab No. 7 as well.

1 MR. JOHN RUSTIGE: Okay. Thank you.

2 I'd like to summarize the comments and responses  
3 to 10 CSR 20-6.010, which is the Construction and  
4 Operating Permit Regulations starting on Page 300 of  
5 your briefing document.

6 The purpose of this amendment is to provide a  
7 mechanism to transfer a construction permit from an  
8 existing owner and our Continuing Authority to a new  
9 owner. The only comment we received on this  
10 rulemaking was one of general support and it was made  
11 by Mr. Robert Brundage on behalf of the Missouri  
12 Agribusiness Association.

13 No changes were made to the proposed rule  
14 therefore it be the Department's recommendation that  
15 the Commission adopt the amendment as proposed and  
16 then if adopted we would expect the rule to become  
17 effective on December 30th of 2009.

18 CHAIRMAN HARDECKE: Any questions or comments on  
19 this rulemaking?

20 (No response.)

21 COMMISSIONER EASLEY: I move that the Commission  
22 adopt the order of rulemaking for 10 CSR 20-6.010,  
23 Construction and Operating Permits with no changes  
24 and approves the order be filed with JCAR and  
25 Secretary of State.

1 COMMISSIONER TUPPER: Second.

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

4 MS. MALINDA OVERHOFF: Commissioner Tupper?

5 COMMISSIONER TUPPER: Yes.

6 MS. MALINDA OVERHOFF: Commissioner Parnell?

7 COMMISSIONER PARNELL: Yes.

8 MS. MALINDA OVERHOFF: Commissioner Hunter?

9 VICE-CHAIR HUNTER: Yes.

10 MS. MALINDA OVERHOFF: Commissioner Easley?

11 COMMISSIONER EASLEY: Yes.

12 MS. MALINDA OVERHOFF: Commissioner Shorney?

13 COMMISSIONER SHORNEY: Yes.

14 MS. MALINDA OVERHOFF: Chair Hardecke?

15 CHAIRMAN HARDECKE: Yes.

16 Tab -- Joe, on Tab No. 8.

17 MR. JOE BOLAND: Good morning again. I'm Joe  
18 Boland with the Financial Assistance Center and today  
19 we're asking you to take -- take action on our Storm  
20 Water Grant and Loan Program.

21 We filed this rule amendment in March of 2009.  
22 It was published in Missouri Register April 15th, we  
23 held a public hearing July 1 at the last Clean Water  
24 Commission meeting and comment period ended July 8th.  
25 No comments were received on this -- on this

1 amendment.

2 So at this time, we ask that you adopt 10 CSR  
3 20-4.061, our Storm Water Grant and Loan Program.

4 CHAIRMAN HARDECKE: Any questions or comments on  
5 this one?

6 (No response.)

7 COMMISSIONER SHORNEY: Mr. Chairman, I move the  
8 Commission adopt rule amendments to 10 CSR 20-4.061,  
9 Storm Water Grant and Loan Program as presented in  
10 the order of rulemaking.

11 COMMISSIONER EASLEY: Second.

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

14 MS. MALINDA OVERHOFF: Commissioner Parnell?

15 COMMISSIONER PARNELL: Yes.

16 MS. MALINDA OVERHOFF: Commissioner Hunter?

17 VICE-CHAIR HUNTER: (No response.) (Stepped out of room)

18 MS. MALINDA OVERHOFF: Commissioner Easley?

19 COMMISSIONER EASLEY: Yes.

20 MS. MALINDA OVERHOFF: Commissioner Shorney?

21 COMMISSIONER SHORNEY: Yes.

22 MS. MALINDA OVERHOFF: Commissioner Tupper?

23 COMMISSIONER TUPPER: Yes.

24 MS. MALINDA OVERHOFF: Chair Hardecke?

25 CHAIRMAN HARDECKE: Yes.

1 I'll believe we'll take a ten-minute break for a  
2 little bit and meet back at 10:45.

3 (Break in proceedings.)

4 CHAIRMAN HARDECKE: Okay. We're to **Tab No. 9**  
5 and Byron.

6 MR. BYRON SHAW: Mr. Commissioner, members of  
7 the Commission, I'm Byron Shaw and I'm the Chief of  
8 the Engineering Unit of the Financial Assistance  
9 Center. And I've been with the Water Protection  
10 Program now for -- since -- well, I started 1st of  
11 December. And I'd previously been here in the  
12 Division of Environmental Quality, Water Pollution  
13 Control Program, in fact, that's where I started my  
14 career back with DNR in 1987. I worked in water  
15 pollution for seven years in the Financial Assistance  
16 unit at that time and then I moved to the Technical  
17 Assistance Program and went to State Parks for a few  
18 years and now I'm back in the Water Protection  
19 Program so it's good to be here.

20 Well, as you're aware with the -- your  
21 materials, we're working on Chapter 8 of the design  
22 guide. And if you're familiar with Chapter 8 it is  
23 the design guide to instruct you how to design and  
24 construct wastewater treatment facilities, which  
25 includes, of course, sewers, lift stations,

1 wastewater treatment plants themselves. And to do  
2 that you have to have a plan put together, a facility  
3 plan, engineering report and, of course, other  
4 documents, your plans and specifications, too. And  
5 that's where we're at with the rules that we're --  
6 we're looking at today.

7 Chapter 8 has been updated in portions over  
8 time, but generally it's been, like, 30 years since  
9 Chapter 8 has been revised. And it's a pretty tough  
10 process. When I was in water pollution before I left  
11 in -- what was it '94, we were working on updating  
12 portions of it at that time and I know the portion I  
13 was working on never reached fruition. So that's why  
14 we're working on it now.

15 And we're starting with 110, which is Facility  
16 Plan and Engineering Reports, Plans (sic) -- Plans  
17 and Specifications portions. And the main idea of  
18 this is to make it more clear of what needs to be  
19 submitted to hopefully help reduce review time and  
20 also comments back and forth between the Department  
21 and the consultants in the -- the communities.

22 Chapter or Rule 110 was last revised March 11th  
23 of 1979 so that one makes the 30-year mark. This is  
24 the Regulatory Impact Report that we're talking about  
25 today which will cover the rule and, of course, it

1 will be put out on public notice for 60 days or at  
2 least 60 days after approval by the Commission.

3         And the engineering report -- I'm going to go  
4 through the Regulatory Impact Report through the  
5 items a little bit. Of course, a description of it;  
6 the engineers' report or facility plan broadly  
7 describes existing problems, they look at alternative  
8 methods to handle the -- the wastewater and it tells  
9 also about the capital cost related with the  
10 alternatives and the one selected and it also talks  
11 about the demographics of the community, things --  
12 you know, commercial operations, industrial  
13 operations, typical of that. So it tells you about  
14 what -- what is there in the community that's being  
15 addressed and also describes why it's necessary.

16         And the plans and specifications, of course, are  
17 the drawings and specifications needed to construct  
18 wastewater treatment facilities.

19         Item No. 2, the -- there's a document called the  
20 Ten State Standards and that's with several states  
21 and around the Great Lakes in which Missouri's also -  
22 - Great Lakes and the Mississippi River area,  
23 Missouri's also a member of that board, too. And so  
24 it's -- the Ten State Standards is what our current  
25 rules are based upon for the design guide and that's

1 what we're basing this one too, of course, every  
2 state kind of has their own little intricacies and  
3 uniqueness so we change accordingly.

4       There's been a couple stakeholders meetings  
5 already held to -- well, actually more than a couple,  
6 but for this specific one there's been a couple. And  
7 the original ones were talked about the whole design  
8 guide and the need for it. And then there are some  
9 specific ones about comments on what needs to be  
10 changed with this specific rule. So that's already -  
11 - there's been discussions on that already.

12       And then you get on down to No. 3. Who's this  
13 most likely going to affect? It's going to affect  
14 private and public entities and, of course, anyone --  
15 you know, sewer districts, cities, villages, anyone  
16 that's going to be -- subdivisions, businesses, anyone  
17 that's going to be having that sewer project.

18       And, of course, the consultants will be  
19 intimately involved with this with putting the  
20 information together and talking to the -- to the  
21 Department.

22       And the -- I have a note down here, it says,  
23 public and private wastewater treatment systems  
24 benefiting from the rule amendment will include all  
25 those involved in construction permitting, owners

1 consulting engineers, environmental interest and the  
2 Department. Clarification of the rule along with  
3 deleting unneeded items and adding critical  
4 requirements will provide for more efficiency in the  
5 construction permitting process.

6 And that's our goals to hopefully make things  
7 flow a little bit better and cut back some of the  
8 time back and forth when we have to request the  
9 information anyway.

10 Get down into increase and cost, we're not  
11 exactly sure if there will be an increase of cost  
12 maybe initially just because the rules have changed  
13 and it's going -- people are going to have to get  
14 used to what needs to be submitted. And we've  
15 changed some of it to where it was -- you know,  
16 should or recommended some of its becoming more  
17 mandatory now because that information had to be  
18 submitted anyway and so if we make it where it has to  
19 be included to begin with then we're not spending time  
20 going back and forth getting that information so --

21 We did estimate that -- we figure, well, let's  
22 take -- take a guess at what it's going to cost and  
23 we've -- of course, we have to review engineering  
24 contracts for the State Revolving Fund projects,  
25 anything that's getting grants and loans we have to

1 review those. So we kind of have an idea of what  
2 some things cost. I know there's consultants here  
3 that may disagree and if they have a better idea of  
4 what this cost we'll be glad to take that into  
5 consideration, too, but --

6 We're estimating that, like, for sewer  
7 extensions, which usually that's just an engineering  
8 report, pretty simple, maybe \$1,000 increase, you  
9 know, per submittal at least for the first year until  
10 they figure out, Okay. This is what we need to do.  
11 Then in the future they'll know they already have to  
12 have that information so it won't be as cumbersome.

13 And we estimated from the number -- oh,  
14 something I didn't mention earlier, this -- right  
15 now, we're starting the rules that we're looking at  
16 are for 100,000 gallons per day and greater  
17 facilities and so when we looked at our cost analysis  
18 we looked at how many, you know, permits we do for  
19 those -- for facilities over 100,000 gallons per day.  
20 And we figured, well, maybe -- maybe 100 facilities  
21 are going to be affected for the sewers and so that's  
22 \$100,000 and then we looked at -- we said, well,  
23 maybe for a treatment plant we're looking at maybe  
24 \$5,000 increase per submittal and we figured about 14  
25 percent of our projects or 25 percent of our projects

1 are over 100,000 gallons per day as we figured about  
2 14 projects and that came up to about \$70,000.

3         So we're looking at maybe \$170,000 increase over  
4 the first year of when this rule would go into  
5 affect. And hopefully that number would decrease and  
6 go down to zero over time just from the fact that  
7 once they -- once everyone learns what needs to be  
8 submitted we're saving the time going back and forth.  
9 It'll be actually more efficient and then that cost  
10 will disappear.

11         We figure there might be a little  
12 - cost for the Department and looking at maybe  
13 \$26,000 or so for the Department to begin with, but  
14 then again for our side, too, it would decrease  
15 because we're not going to be spending much -- as  
16 much time doing correspondence.

17         And No. 4, just kind of gets back at that. And  
18 looks at that again and says if you -- there will  
19 eventually be a decrease to both public and private  
20 and the Department's cost due to expected  
21 deficiencies. No action at this time -- or I guess  
22 this is No. 6, and no action at this time will cause  
23 continued use of a cumbersome system with various  
24 interpretation by the Department, which will only  
25 lead to increased cost.

1           No. 7, is there any other less costly way; this  
2 is a process that has to be done so I really, to me  
3 this seems like the best thing is to make things more  
4 efficient so part of the permitting process.

5           And No. 8, again, this is part of the permitting  
6 process so there's really no other alternatives that  
7 we need -- that we can consider because they have to  
8 submit this information to get their permit -- get  
9 the construction permit so --

10           No. 9, short-term consequence that all the  
11 engineering reports and facility plans will have to  
12 comply with quotes, "criteria". And the out- --  
13 long-term outcome is that the public will have a  
14 better understanding of the Department's requirements  
15 for engineering documents and there will be an  
16 efficiency gain in the submittal of the review and  
17 approval process.

18           No. 10, explanation of the risks to human  
19 health; the proposed rule not directly addresses --  
20 does not directly address standard for human health,  
21 public welfare or the environment because it has the  
22 criteria for technical issues to be addressed in the  
23 engineering documents.

24           And then No. 11, identification of the sources;  
25 the scientific information was that the Ten State

1 Standards can be found at that e-mail add- -- or  
2 website that's listed there and then our comments  
3 that have been taken to stakeholders, the e-mail add-  
4 -- or website is listed there, too.

5 No. 12, description impact statement of any  
6 uncertainties and assumptions made in conducting the  
7 analysis on our resulting risk estimate; since the  
8 proposed rule addresses the format and content of  
9 engineering documents no risk assessments were  
10 conducted.

11 And 13, a description of any significant  
12 countervailing risks that may be caused by the  
13 proposed rule; since the proposed rule does not  
14 contain any Water Quality Standards, but  
15 predominantly administrative procedures there are no  
16 countervailing risks to be analyzed.

17 And No. 14, identification of at least one, if  
18 any, alternative regulatory approaches that will be -  
19 - that will produce comparable human health, public  
20 welfare or environmental outcomes; Department has not  
21 indentified any alternative regulatory approaches  
22 that will produce comparable results.

23 And then No. 15, the comment period, 60-day  
24 period; will be -- public comments on this Regulatory  
25 Impact Report from September 2nd through November 9th

1 will be accepted. So it's a little over 60 days.  
2 And comments can be submitted by e-mail or mail at  
3 the addresses here to Mr. Dave Uhlig. He's one of  
4 the engineers in my unit and there's his e-mail  
5 address and the mailing address is Dave Uhlig, PE,  
6 Missouri Department of Natural Resources, Water  
7 Protection Program, Post Office Box 176, Jefferson  
8 City, Missouri 65102-0176.

9 And if you need No. 16, copies of the comments,  
10 the web information, where it's listed at there's the  
11 website listed and then, of course, you can contact  
12 Dave Uhlig to get comments or make comments and  
13 copies of the comments already made so --

14 I think I got through it. So any -- any  
15 comments, suggestions?

16 CHAIRMAN HARDECKE: Any questions for  
17 Byron?

18 (No response.)

19 COMMISSIONER EASLEY: You ready for a motion?

20 CHAIRMAN HARDECKE: Yes, sir.

21 COMMISSIONER EASLEY: Okay.

22 I move the Commission approve the release of the  
23 Regulatory Impact Report for public comment from  
24 September 11th, 2009 through November 9th, 2009.

25 VICE-CHAIR HUNTER: Second.

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

3           MS. MALINDA OVERHOFF: Commissioner Hunter?

4           VICE-CHAIR HUNTER: Yes.

5           MS. MALINDA OVERHOFF: Commissioner Easley?

6           COMMISSIONER EASLEY: Yes.

7           MS. MALINDA OVERHOFF: Commissioner Shorney?

8           COMMISSIONER SHORNEY: Yes.

9           MS. MALINDA OVERHOFF: Commissioner Tupper?

10          COMMISSIONER TUPPER: Yes.

11          MS. MALINDA OVERHOFF: Commissioner Parnell?

12          COMMISSIONER PARNELL: Yes.

13          MS. MALINDA OVERHOFF: Chair Hardecke?

14          CHAIRMAN HARDECKE: Yes.

15          MR. BYRON SHAW: Thank you.

16          CHAIRMAN HARDECKE: Thank you.

17          No. 10, Rob?

18          MR. ROB MORRISON: Good morning, again, members  
19 of the Commission. My name is Rob Morrison, Chief of  
20 the Water Pollution Control Branch.

21                Today, we are bringing back an issue before you.  
22 It involves the Level 2 designation of the City of  
23 Columbia and Boone County Regional Sewer District for  
24 areas that have been identified in their August 10th,  
25 2009, submittal. Namely the unincorporated areas of

1 Boone County and the City of Columbia proper.

2           What I'd like to do is call your attention this  
3 morning to a memo that's in your blue packet. That  
4 is a memo from me through Leanne and Dan to Chair  
5 Hardecke. That is a supplement to the information  
6 that's in the green -- that's in your normal packet.  
7 And I'll just briefly run through that, that  
8 September 1st memo that's there. And it -- and that  
9 serves as our recommendation on -- on this -- on this  
10 process.

11           The -- in our regulations 10 CSR 20-6.010(3)(C)  
12 requires the Department to review any submittals that  
13 are made requesting Level 2 Continuing Authority  
14 designation. And it says in our regulations there in  
15 Paragraph (3)(C) that the Commission, once the  
16 Department has made a recommendation, the Commission  
17 may approve, require changes, deny the plan and/or  
18 hold public hearings related to the -- to the  
19 approval of the plan.

20           I think that'll be something that you -- that  
21 Jenny may want to way in on in terms of what actions  
22 that you can take, specifically, today and we do have  
23 some recommendations at the end of this memo. But,  
24 specifically, there are some options there about  
25 approving, requiring changes and then denying the

1 plan or holding public hearings and I think that that  
2 probably could be interpreted public meetings as well  
3 given the age of this regulation.

4 In essence we reviewed the plan. We have found  
5 in our review that the City of Columbia and Boone  
6 County both duly formed political entities in the  
7 state of Missouri. We found that they do have the  
8 financial capability. They do have the authority to  
9 operate a regional wastewater treatment system within  
10 their jurisdictional boundaries.

11 We do acknowledge that there are some  
12 differences in their Capital Improvements Plan. What  
13 you'll see in here is that the City of Columbia and  
14 Boone County that have a Capital Improvements Plan  
15 and that was in the large binder of information that  
16 you received in your packet. The Boone County's plan  
17 and Mr. David Shorr is here today representing Boone  
18 County and the City. And he -- he can speak to the  
19 mores of the specifics of the Capital Improvements  
20 Plan but as -- in essence what you have is a  
21 situation where the City of Columbia's plan extends  
22 for a longer time frame than -- than Boone County's  
23 plan.

24 This is a joint request. It was made on -- in  
25 conjunction one with another so therefore we -- we

1 kind of look at it as we took the shorter duration of  
2 the plans, the Capital Improvements Plan for Boone  
3 County was a little shorter duration and so we're  
4 looking at that as a plan for Boone County at least  
5 through calendar year 2013.

6 I'm certain that they have further plans, but  
7 they're just not annunciated in their Capital  
8 Improvements Plan and it's obvious from their  
9 ordinances and regulations of the county that they  
10 have the designs and desires to be able to go forward  
11 with a operation of a -- of a regional wastewater  
12 collection and treatment system.

13 If you're following along in your memo, I'd like  
14 you to go over to Page 2 --

15 CHAIRMAN HARDECKE: Rob?

16 MR. ROB MORRISON: I'm sorry.

17 CHAIRMAN HARDECKE: If anyone in the audience  
18 would like a copy of the memo they're on the back  
19 table just if you wanted to follow along.

20 MR. ROB MORRISON: I think there was one that  
21 was left back there.

22 CHAIRMAN HARDECKE: Oh. Okay.

23 MR. ROB MORRISON: We brought several. So  
24 there's a rush back there to get -- I should have put  
25 a "leave your dollar" when you pick those up.

1 (Laughter.)

2 MR. ROB MORRISON: I could have supplemented our  
3 income.

4 CHAIRMAN HARDECKE: Sorry to interrupt.

5 MR. ROB MORRISON: Very good. I should have  
6 pointed that out. Thank you for -- for pointing that  
7 out.

8 On Page 2 of the memo it begins to get into some  
9 more of the -- of the details. We recognize at the  
10 Department that -- that this effort has the potential  
11 to bring a lot of benefits in terms of public health  
12 and protection of the environment, but we also  
13 acknowledge that some of the costs associated with  
14 entities that are required to connect to those  
15 systems might -- it might be a financial hardship for  
16 them.

17 So we -- we understand that it -- this is sort  
18 of a double-edge sword. That there are benefits that  
19 come with regional sewers and there are some  
20 financial pitfalls perhaps as well.

21 One of the things that was important to note in  
22 your packet of information is that Columbia and Boone  
23 County both have a process in place. They have a  
24 variance process in place where the folks that are  
25 affected by the decision of the Boone County Regional

1 Sewer District or the City of Columbia can apply and  
2 they can have their situation heard and processed in  
3 that fashion.

4 And we feel like that that's an important  
5 process in order to provide a check and balance, if  
6 you will, between the -- the final connection  
7 requirements and balancing those local issues of --  
8 of cost.

9 And clearly that'll be a situation where Boone  
10 County and the City of Columbia will be responsible  
11 for their residents there and -- and seeing that they  
12 get their due process and so forth and so on once --  
13 once this process is -- has completed.

14 I also want to point out in that second  
15 paragraph on Page 2; there's an italicized portion.  
16 Our regulations and they are 10 CSR 20-  
17 6.010(8)(A)(10) are going to require this -- this  
18 quote that we have here in the italicized. And I'll  
19 -- I'll read it so that -- in case the audience is  
20 not -- doesn't have a copy. The tributary wastewater  
21 flow shall be connected to the Continuing Authority  
22 listed in Paragraph 3(B)(1) or 3(B)(2), which those  
23 are Level 1 or Level 2 Continuing Authorities within  
24 90 days of notice of availability by the Continuing  
25 Authority. And the permittee shall obtain Department

1 approval for closure or alternate use of these  
2 facilities.

3           So what -- what's happening here is that -- that  
4 once Boone County and the City of Columbia --  
5 (Tape One, Side B concluded.)

6           MR. ROB MORRISON: -- general sewers are  
7 expected to be available within five years we'll be  
8 adding that condition to those per- -- to those  
9 permits of those private entities. And then once, of  
10 course, availability is there and a connection has  
11 been notified then that entity will be required to  
12 connect and close their facilities. Or the alternate  
13 use of those facilities could be converted to a pump  
14 station or something, something like that.

15           Now, recommendation: The first recommendation  
16 that we have in here and it's -- it's slightly  
17 different than what you have in your -- in your  
18 packet. I can go back and look in here, but what I  
19 want to point out is that our recommendation here  
20 contained today is in the form of our memo. The  
21 information in your packet that you have on Page 349  
22 is a preliminary recommendation that we put in there  
23 as a place holder at the time that the packets were  
24 printed.

25           So I just want that to be clear, is that our --

1 our recommendation today stands as this memo that you  
2 have before you. It contains three basic components  
3 that we're recommending the Commission consider  
4 today.

5 We -- we want to state that we offer preliminary  
6 support and we recommend that the Commission grant  
7 Level 2 Continuing Authority to Boone County Regional  
8 Sewer District and the City as described in their  
9 August 10th submission in accordance or -- you know,  
10 subsequent to the execution of the following  
11 conditions: the first one, we believe that it's  
12 important for Boone County and the City to complete a  
13 30-day public notice period. That public notice  
14 period would -- would be a notification of local  
15 entities, private entities, public entities that  
16 would be affected by the Regional Sewer District. We  
17 believe it's appropriate for -- for them to host a  
18 meeting and report the results of that meeting and  
19 comments back to the -- back to the Commission prior  
20 to your final action on their request.

21 Secondly, we believe that -- that the time frame  
22 for designation of the Sewer District and the City as  
23 a Level 2 entity should be consistent with their  
24 regional plans. And in this particular case we -- we  
25 are looking at 2013 as the end of that current

1 Capital Improvements Plan. And I'm sure that Mr.  
2 Shorr will offer some clarifications on -- on this  
3 particular item.

4 But, sufficed to say, given the situation that  
5 we have right now we would request that a condition  
6 be included in the final approval from the Commission  
7 that a -- a follow-up document be received by the --  
8 by the Department and by the Commission on July 1st of  
9 2013. And that would be a document that would sort  
10 of be the next step or the next phase of their  
11 regionalization efforts in -- in the operation of  
12 their facility.

13 And then finally the third recommendation on --  
14 on Page 3, I think, it says Page 2, but anyway the  
15 third -- the third recommendation there on the last  
16 page of the memo is a condition that we would like to  
17 see the Commission require Boone County and the City  
18 to hold regular public meetings. And the suggestion  
19 there is that it would be an annual meeting to  
20 discuss the plans of the expansion of the Sewer  
21 District, you know, within those service areas.

22 And we felt like that that was an important  
23 element. I believe, that Boone County has good  
24 intentions and that they do communicate routinely and  
25 regularly but we felt that it was prudent for the

1 Department to ensure that -- that that public  
2 communication element be maintained in -- in any sort  
3 of approval that comes -- comes forth.

4 A coup- -- just a couple of editorial comments,  
5 I think, what you see here is a culmination of -- of  
6 a lot of hard work in terms of the City of Columbia  
7 and Boone County. As far as I know this -- there are  
8 no Level 2 Continuing Authorities in the State of  
9 Missouri, at least, I'm not aware of any. But there  
10 could be that this happened in the past, but I'm not  
11 aware of any that have been designated by the  
12 Commission as -- as Level 2 Continuing Authorities.

13 So I think you -- you're correct and we are  
14 right in terms of taking prudent steps here to make  
15 sure that this is done properly. I do know there are  
16 several sewer districts in the state that are looking  
17 at this process and hopefully we'll be able to glean  
18 some information from this process. As well as, I  
19 know, that Boone County Sewer District has been very  
20 good to work with those other districts and try to  
21 help them get to a -- a better operational condition.

22 So with that I will -- will answer any questions  
23 or I -- I will turn the podium over to Mr. Shorr.

24 Any questions for me?

25 (No response.)

1           CHAIRMAN HARDECKE: Questions for Rob?

2           (No response.)

3           CHAIRMAN HARDECKE: I -- I want to thank you for  
4 your updated recommendation. I think that shows a  
5 lot of consideration and give us a place to start so  
6 --

7           MR. ROB MORRISON: Sure. Thank you. I'll turn  
8 the podium --

9           CHAIRMAN HARDECKE: David?

10          MR. DAVID SHORR: Good morning, Mr. Chairman,  
11 members of the Commission. My name is David Shorr.  
12 I am an attorney with the law firm of Lathrop & Gage.  
13 As I discussed last time, I'm also outside counsel  
14 for both the City and the Boone County Regional Sewer  
15 District and the County of Boone. We -- we have  
16 three entities that are playing in this exercise  
17 because of their political authority and legal  
18 authority and jurisdiction.

19          In addition, I have the unique role also of  
20 being the Vice-chair of the Boone County Regional  
21 Sewer District. And that's part of where -- some of  
22 this -- all this genesis has -- has come from of  
23 trying to enhance regionalization and in my opinion  
24 the goal and objective of reducing the number of  
25 direct discharge points throughout Boone County.

1           We believe that the more we can eliminate  
2 discharge locations the better we have from a  
3 regulatory perspective and that's how we're going to  
4 try and work through it.

5           I want to do a couple quick editorials. First  
6 of all, our corporation with Staff has been excellent  
7 on this issue. Always want to point it out 'cause  
8 frequently I'm put in a position of having to have to  
9 be contrary to Staff. We've had excellent lines of  
10 communication. They have been enthusiastic in trying  
11 to accomplish and objective and its most appreciated.

12           We also understand the precedent that Rob and  
13 the Commission have to work with. We may be the easy  
14 one and others that follow may not be so easy and so  
15 we do understand the necessity for some inconvenience  
16 on our part if we don't fit where it needs to be at a  
17 later date.

18           I also don't won't my comments perceived as  
19 negative, this is a -- a process. And I -- I support  
20 the positions in which the Department is going  
21 through even with the recommendation. I just want to  
22 point out a few things that I want to be sure you  
23 understand as it applies to my clients. On the first  
24 recommendation from the following conditions as  
25 stated in the memo, and by the way we received the

1 memo last night. So we have not had an opportunity  
2 to ever express our concerns to you-all or -- I  
3 talked to Rob last evening, but other than that.

4 I want to remind the Commission that we use what  
5 we call the ultimate public response method, which is  
6 called "we take everything to the voters." Our  
7 entire CIP from standpoint of the Boone County  
8 Regional Sewer District is essentially voted on by  
9 our -- not only our constituents but all the  
10 residents of Boone County, which is kind of unique.  
11 Our users could essentially be told what to do by the  
12 residents of Boone County; how -- because of how the  
13 statutes are written. So every citizen in the City  
14 of Columbia votes on a Boone County Regional Sewer  
15 District bond issue, but citizens of Boone County  
16 don't necessarily vote on bond issues for the local  
17 jurisdictions who are incorporated in Boone County.

18 So understand that when we go to the public for  
19 a vote, for our 5,000 plus users for Boone County we  
20 recognize that the 100,000 plus users of the City of  
21 Columbia will dictate our fate. And as a direct  
22 result we're very choosy about how we handle that.

23 We don't take that vote lightly. We view that  
24 as the ultimate transcript. The City as well has  
25 joined with us and we've done the last -- Steve, how

1 many -- four, three -- three bond issues we've done  
2 jointly. They are separate bond issues, but our  
3 campaigns are integrated and they're put together,  
4 together so that the same citizenry understands how  
5 it fits. So we agree with the purpose of what your  
6 Department is talking about, about trying to  
7 communicate this jointly. Let them know the total  
8 package. Let them know how the expenses are going to  
9 be shared amongst their various friends and  
10 neighbors.

11 Those decisions were by 70 percent on both bond  
12 issues. So our -- our public understands, at least,  
13 the context of how the money is going to be spent.  
14 As a result, I would kind of request that the 30-day  
15 public notice period as it applies to Boone County,  
16 at least, going into this and -- and the City of  
17 Columbia is unnecessary. It may be necessary for  
18 others who come after us. We're certainly not going  
19 to sit here and say it's a hill to die on, but I  
20 would suggest that, at least, as it applies to Boone  
21 and what we've done. We've done the homework that  
22 you've asked us or would like us to do already.

23 As it applies to the second recommendation; I  
24 would just like to -- like you to note that the --  
25 there is not a budget in place, at least, at the

1 sewer district level for a complete CIP for the  
2 district because the current CIP, Capital Improvement  
3 Plan is where we're at right now. While it expires  
4 on the 13th -- I mean, the 2013; the reason for that  
5 expiration is your passage of the disinfection rule.  
6 And the fact that we have had to modify as a direct  
7 result of the disinfection rule over 13 of our  
8 wastewater treatment plants.

9       So we follow a planning philosophy at the  
10 Regional Sewer District that is, and the City as  
11 well, called continuous planning. So we have the  
12 book as a base document, but you may change or EPA  
13 may change our outlook in a brief period of time as  
14 you just discussed in the last rule where we have to  
15 try and figure out; how do we adjust our District in  
16 a five-year period?

17       So as a direct result long-term plans have now  
18 gone what I'd call passé in favor of adaptive  
19 management where we are now going to -- looking at a  
20 five-year, six-year window saying, what are we going  
21 to be required to do? And as an example, as you've  
22 instituted the Antidegradation strategy it even  
23 impacts our current CIP as to how we are going to  
24 address plants that we consolidate.

25       And so now we're -- we're also seeing another

1 change we have to adapt, too. So the traditional do  
2 a 20-year plan, create a CIP off of a 20-year plan is  
3 no longer what we would consider affective for a  
4 community that may decide that real estate in the  
5 eastern portion of the community is hotter than real  
6 estate in the southern portion of the community and  
7 now all of sudden our populous decides that they want  
8 greater investment in the -- in the northern area.

9       The third item is not in dispute. We need to do  
10 public meetings. We do public meetings. We have  
11 public newsletters, both the City and the County  
12 provide for public awareness and public activity. So  
13 there's -- there's not a dispute in doing it, it's  
14 just -- it's just the manners in which we do things  
15 right now, getting to where we're at.

16       So my -- my suggestion and it's only a  
17 suggestion would be that as it applies to my -- our  
18 submittal the first item is not necessary in that we  
19 have done recent bond issues to do exactly what the  
20 intent was. And I do want you to be aware of the  
21 change and how we're doing our planning. And we do  
22 hold public meetings with regard to our CIPs, both  
23 the City and the County and, of course, all of our  
24 public meetings both the City, Coun- -- County  
25 Commission and the Sewer District are all public

1 subject of the Sunshine Law and are posted and  
2 properly available to the public.

3 So with that I'll answer any questions. Steven  
4 Hunt is here from the City of Columbia to answer your  
5 questions that might be directly involved with the  
6 City. And that's all I have.

7 CHAIRMAN HARDECKE: Well, I want to thank you  
8 for the information. You teach us to be careful of  
9 what we ask for, right?

10 MR. DAVID SHORR: We try.

11 (Laughter.)

12 MR. DAVID SHORR: We try.

13 CHAIRMAN HARDECKE: Yeah. No. That was good  
14 and we thank you. We have questions for David?

15 COMMISSIONER SHORNEY: David, the -- the Bullet  
16 1 there. Wouldn't you just be getting feedback on  
17 the Level 2 considerations, you know, wouldn't you  
18 want to get feedback on that from the constituents?

19 MR. DAVID SHORR: The answer is, is that the  
20 areas in which we've currently proposed improvements  
21 have already been in the Capital Improvement Plan. I  
22 would say potentially, yes, with regard to -- for  
23 example, expansions in the future.

24 The big item that has received -- that you have  
25 probably received some communication relates to

1 Prathersville. And Prathersville is a community  
2 north of Columbia. It's economically depressed. It  
3 has, I believe, four; Rob? Four DNR plants of the 56  
4 that are in the County of which three of them have  
5 enforcement actions on them. We have been trying to  
6 have and as has the Commission Prathersville sewerred  
7 because of public health issues for the last 15  
8 years.

9 That is the probably hottest area and part of  
10 the reason for the temperature, Commissioner, is two  
11 factors: one, permits are up and as a direct result  
12 we're starting to appeal those permits that are your  
13 permits because we don't believe they should be  
14 renewed. Okay?

15 So we have actions with the AHC on at least one  
16 if not two of those that Ms. Graham is working on.  
17 And so this addresses a global picture. Okay?

18 The other issue is the stimulus money. The  
19 County Commission has been working on a Neighborhood  
20 Improvement District in that area for years. With  
21 the stimulus possibility they asked the Sewer  
22 District to accelerate its efforts to try and come up  
23 with a strategy and again working cooperatively with  
24 our partners, the Commission is one of our partners,  
25 they would be responsible for the NID, which is their

1 issue. We, responsible for the execution 'cause we  
2 carry out some -- we have four or five NIDs that have  
3 already gone through most of those are economically  
4 depressed areas.

5 So that's why there's gravity on the situation  
6 is stimulus package is stimulating our -- our need to  
7 have this conversation so the answer is, we do not  
8 object to it. Okay?

9 If that is the pleasure of the Board, we will do  
10 it. I just wanted to make sure that you were aware  
11 of all the efforts we already went through.

12 COMMISSIONER TUPPER: I think we ought to  
13 require the 30-day notice up. Your variance  
14 procedure bothers me a little. Where is it? It says  
15 something about avoiding the cost more or not. A  
16 variance is not sought primarily to avoid financial  
17 expense. That would be the prime reason, I think,  
18 anybody would seek a variance. And your general  
19 manager and your Board are going to make the decision  
20 anyway. I -- I don't like the way that's worded.

21 MS. LEANNE TIPPETT MOSBY: May I?

22 CHAIRMAN HARDECKE: Leanne make your comment.

23 MS. LEANNE TIPPETT MOSBY: Just briefly. First  
24 of all, I wanted to thank David for his kind comments  
25 about Staff and I would agree, I would echo the same

1 thing that is Staff and David have worked very well  
2 together on this issue.

3 In terms of -- I just also wanted to comment  
4 briefly on the issue -- I apologize that you did not  
5 receive the memo earlier than that, but part of the  
6 reason was we received this large packet of  
7 information just a day or two before we had to  
8 finalize the briefing documents.

9 And so we were faced with having to put  
10 something on the agenda. And Staff worked very hard  
11 and put a lot of consideration into this  
12 recommendation. And there were several people that  
13 were involved and had very extensive discussions  
14 about it.

15 So it's not the ideal situation to be under, but  
16 there were -- there were reasons in this case why  
17 that happened that way.

18 MR. DAVID SHORR: And, again, as I prefaced. I  
19 didn't want -- want my comments to be taken as  
20 negatives or objections. The Staff has worked very  
21 hard. They have the precedent issue for you that  
22 quite frankly is substantial for their ongoing  
23 history. Okay?

24 CHAIRMAN HARDECKE: In regard to the variance  
25 procedure who would be the body that they would ask

1 the variance -- who would be the authority on that?

2 MR. DAVID SHORR: Commissioner, it would depend  
3 on which jurisdiction is being -- where the activity  
4 is going to occur. If it's within the city limits of  
5 the City of Columbia it would be the City of Columbia  
6 that would have to make that decision. That would be  
7 done by their counsel. Okay? If it is in the areas  
8 served by the Boone County Regional Sewer District it  
9 would be by the Boone County Regional Sewer  
10 District's Board.

11 CHAIRMAN HARDECKE: Okay.

12 MR. DAVID SHORR: The Board of the District is  
13 appointed by the County Commission and it has a  
14 member from the various townships that are served by  
15 the District.

16 CHAIRMAN HARDECKE: The Sewer District Board?

17 MR. DAVID SHORR: Yes.

18 CHAIRMAN HARDECKE: Okay.

19 Other comments or questions?

20 COMMISSIONER SHORNEY: On -- excuse me, David,  
21 on Bullet No. 2 there concerning the December 31,  
22 2013, date; are you saying that planning -- well, I  
23 think, what you're saying is planning is changing  
24 very rapidly so then would there be any time limits  
25 on this Level 2 Authority in your opinion?

1           I mean it looked to me like this was going to --  
2 the way this was stated, this Level 2 Continuing  
3 Authority; would that be -- the way this was written  
4 after December 31, 2013, you'd have to come back for  
5 another look at the Continuing Authority?

6           MR. DAVID SHORR: Yeah. And I don't have a  
7 problem with that.

8           I mean, that -- the strategy there is to make  
9 sure there is ongoing continuing planning. It's not  
10 abstract. It's part of a process. Theoretically we  
11 can make a decision that our current plan at 2013 is  
12 sufficient to extend and advise the Department and  
13 the Commission accordingly.

14           It -- you -- we are in kind of a unique scenario  
15 in that the relationship between the City and the  
16 Sewer District is such that it evolves as the City  
17 annexes and expands. Our agreements include a  
18 provision that the City can request customer  
19 recovery. So if there's an area that's annexed that  
20 is Boone County Sewer District, the City when it  
21 feels appropriate can say, Okay. We want those  
22 customers back in our annexed city.

23           The only real main rule is that the City assure  
24 that we have enough customers to maintain our bonded  
25 indebtedness and our ability to pay back debt. So

1 we're kind of like an ameba, where we keep moving  
2 further out as the City grows and we do not retain  
3 necessarily the prospect of ownership over time. So  
4 that's what I mean by a continuous planning document  
5 that's really not -- it's not a traditional look at a  
6 20-year plan.

7       It's our ordinances are the same as the City  
8 code. So when they were -- for example, if Steve  
9 were to take over an area, his expectation would be  
10 that they would've been the same sewers that he would  
11 have put in.

12       It's a good model. The problem is, is every  
13 good model that progresses changes what we  
14 traditionally think. I also want to advise the Board  
15 that as we discussed at the last meeting there is one  
16 or two plants and service areas that are so far  
17 removed from anything relating to the City of  
18 Columbia that they will likely never have any  
19 discussion with regard to regionalization.

20       The nature and character of the ordinances of  
21 Boone County require any developer who wants to  
22 proffer a new sewage system that would be -- even  
23 approved by DNR going forward have to give it to the  
24 County. So there's no longer the situation where Rob  
25 and his staff will be in a scenario where a new

1 privately operated plant will exist in Boone County.

2           So we don't have to worry about this issue of  
3 plants being eliminated that are not owned by the  
4 public in the future. We only have to worry about it  
5 as it applies to the past. And there's 56 of them in  
6 Boone County. And that's what we're talking about.  
7 We're talking about 56 units. Some of those will  
8 still stay in business forever. And it's going to be  
9 up to Rob to sit there and say, you're -- got to be  
10 in compliance. Others we will ask to be phased out  
11 because the City and the District have assumed the  
12 area in which they serve.

13           And that just makes sense. So I hope that  
14 answers your question. And I don't object to the  
15 language. I just wanted you to understand, how we do  
16 business now which is a different model than might  
17 come in, for example, Platte County. Platte County  
18 might have a 20-year plan.

19           COMMISSIONER SHORNEY: Has the variance been in  
20 place for a long time? What has been -- have you had  
21 any experience with it?

22           MR. DAVID SHORR: I've been on the Board eight  
23 years. The variance has been in place since I got  
24 there.

25           COMMISSIONER SHORNEY: Was it before you were

1 there?

2 MR. DAVID SHORR: Yeah. It was there before.

3 COMMISSIONER SHORNEY: And have you had any  
4 experience with it?

5 MR. DAVID SHORR: We've had one or two. Most of  
6 them relate to issues on elevation in other words  
7 system-related issues where cost may be prohibitive  
8 and as Commissioner Tupper said, it's not necessarily  
9 costs but it's the dynamics of the system and how the  
10 system sits similar to Lake of the Ozarks where it's  
11 up and down.

12 We got an area that we can't serve, but it's  
13 required to be served. We may grant a variance to  
14 deny requirement of service. I will tell you that  
15 when we do these takeovers of other facilities that  
16 are new and current, there are issues that we may put  
17 in place with regard to our other standards in order  
18 to get a plant built.

19 We have a plant being built, that normally we  
20 require a buffer area; that we've compromised our  
21 buffer area to develop or build plant. That's a  
22 variance, you know, with regard to the process 'cause  
23 we don't take title until the plant is completed. So  
24 it's their plant until it's completed.

25 So we try and do creative stuff. We don't have

1 a lot of money so --

2 CHAIRMAN HARDECKE: In regard to the new units  
3 that would come on that wouldn't be physically  
4 connected; the Sewer District will still operate  
5 them? Is that what I'm understanding?

6 MR. DAVID SHORR: Own and operate them. Not  
7 just --

8 CHAIRMAN HARDECKE: Own and operate?

9 MR. DAVID SHORR: And the systems in which  
10 they're connected to, Commissioner. We have three  
11 under construction right now that are privates that  
12 are permitted, consistent with DNR rec- -- standards  
13 that we will take over upon completion and acceptance  
14 and of course the payment of all the bank notes,  
15 which is now the tough item.

16 CHAIRMAN HARDECKE: In -- in regard to those  
17 that are in far outlying areas of Boone County should  
18 they desire to have the Sewer District assume the  
19 operation would that be a possibility even though  
20 they wouldn't be connected just the same as these new  
21 ones that you're assuming?

22 MR. DAVID SHORR: The answer is, yes. There is  
23 a -- there is a rule that the Sewer District has in  
24 its rules. The tough part will be they will have to  
25 pay for the appropriate upgrade prior to transfer,

1 which is only reasonable to the rest of the 5,000  
2 plus customers.

3 And remember our rates are universal. So it  
4 doesn't matter if we have a plant that has 25 people  
5 on it or if we have a plant that goes to -- or a  
6 portion that goes to the City, our rates are the  
7 same. They will be by 2013 about \$63 a month. Okay?

8 Now, the only change in difference in our rates  
9 unlike some other areas is based upon the type of  
10 system. If you have a pressure system or a step  
11 system, which has higher maintenance you are in a  
12 separate class and that rate is added to your  
13 treatment rate. But all our treatment rates are the  
14 same across the entire district, which -- you know,  
15 being a -- being on a plant that only has about 27  
16 customers, right now, myself, my plants been  
17 amortized for ten years. Okay?

18 I'm getting the increase whether I like it or  
19 not. And I had to put up with my own neighbors  
20 asking me, why? So I think this is a -- it's not a  
21 perfect model for every place, but for this area it  
22 is.

23 Remember also in our situation we have the  
24 ordinance by the County and the zoning by the County  
25 that other counties do not have and that mandates

1 that this must occur. I mean, it's not a choice. If  
2 a developer wants to build a subdivision in the rural  
3 parts of Boone County and wants sewer service they  
4 must connect now to the District meaning they either  
5 have to build their own plant for us to take over.  
6 Okay? Or they have to connect to our system.

7 Other counties do not have that benefit. And we  
8 are, of course, a Class 1 county which gives us some  
9 authorities that these other rural counties don't  
10 have. So we are somewhat unique. And, again, that's  
11 why I understand the demand for precedent.

12 COMMISSIONER TUPPER: If there was a development  
13 that required a lift station those folks are going to  
14 pay a surcharge on top of this universal charge?

15 MR. DAVID SHORR: No. They will pay for their  
16 sewer system. Okay? If their sewer system is say,  
17 for example, step system. Okay? They will pay a  
18 charge for maintenance. Okay?

19 Example, we have a tier rate for a step system  
20 that is higher than a tier rate for -- for a gravity  
21 system.

22 COMMISSIONER TUPPER: Gravity --

23 MR. DAVID SHORR: Okay? But the sewage  
24 treatment rate is dictated by our overarching sewer  
25 treatment rate throughout the entire system. It's a

1 maintenance-based rate plus debt service plus OM&R.  
2 Okay? Which is the way, I think, we-all should be  
3 moving. We do not have what I'd call a political  
4 rate. Our rate is actual costs. And the City -- the  
5 City has a different rate formula, but we purchase  
6 wholesale capacity from the City. And we do have a  
7 formula with regard to the District's cost to the  
8 City.

9 City, of course, is set by the Counsel. And the  
10 Counsel will decide what their -- their rates are  
11 going to be. And they are going more and more to  
12 actual rate base. In fact, their rates continue to  
13 rise as well.

14 By the way, they're building a \$60 million plant  
15 addition, which we have had an extensive negotiation  
16 with Rob over. That's been exceptionally cordial and  
17 we appreciate their support. But, of course, the  
18 Columbia plant has the wetlands and it's been a very  
19 complicated effort to put a square peg in a round  
20 hole.

21 And they've done a wonderful job of trying to  
22 help us get through that in order to, again, do  
23 something different. And I appreciate it very much.

24 MR. DAVID SHORR: Rob, do you want another  
25 compliment?

1 (Laughter.)

2 MR. ROB MORRISON: (Statement inaudible.)

3 MR. DAVID SHORR: Refaat just came back to work.

4 CHAIRMAN HARDECKE: So once again this  
5 Continuing Authority will only affect those 53 -- or  
6 56 permitted entities at this time?

7 MR. DAVID SHORR: Correct.

8 CHAIRMAN HARDECKE: The rest of the County is  
9 already under County connection?

10 MR. DAVID SHORR: And if, you know, if they're  
11 operating well and I have to raise this. The  
12 experience we have to date is that the majority of  
13 these are not operating well. Okay? If they were to  
14 be operating well and they have no violations and  
15 they have no connection capability, I can't see a  
16 position where we would not waive. And what I mean  
17 by waive is not variance. The provisions that we've  
18 discussed is when a plant like this should come in  
19 for permit we would get the right to express our  
20 authority under Tier 2.

21 I would expect that there's going to be, of  
22 these 56, I would expect that there's going to be a  
23 handful, maybe even ten at least that will not be  
24 waived. In other words, they will be expected to  
25 continue. And the question really gets down to --

1 from the Department standpoint; are they in  
2 compliance? Okay?

3 CHAIRMAN HARDECKE: I think this came up in the  
4 last meeting was the question of the connection fees  
5 for those ones that you do bring on and what kind of  
6 economic hardship that would provide and the, for  
7 lack of a better word, fairness of -- of the charge  
8 for the connection to that -- that entity whether it  
9 be a trailer park or subdivision.

10 So I think that's some of the concerns that were  
11 voiced at the last meeting. And, I guess, that's  
12 what, for me, we're passing that authority on to you  
13 in the Sewer District and when -- at this point, the  
14 -- those entities would have an option whether to  
15 comply with the permit or to pay your fee to -- and  
16 hook on with you.

17 And when that option for them is eliminated we  
18 would encourage you and sincerely hope that you would  
19 not take advantage of that situation in the fees that  
20 are charged to them for hooking on.

21 MR. DAVID SHORR: I will certainly take that  
22 back to the rest of the Board.

23 I can only do a variance and a waiver if they  
24 come forward and ask for it. Otherwise, I have a  
25 commitment to the other customers, but if they come

1 and ask I can guarantee we will hear. And there's a  
2 lot of combinations that may exist.

3 It sometimes depends on how much it's going cost  
4 for you -- for them to eliminate their plant. With  
5 the new rules in disinfection I would have to say  
6 that our option is probably much better anyway.

7 CHAIRMAN HARDECKE: I understand.

8 MR. DAVID SHORR: But on the other hand you-all  
9 can't expect me to take over a sewer system from a  
10 trailer park that hasn't been looked at in 20 years  
11 and expect my other customers to pick up the tab.

12 But if they were to come forward with an  
13 alternative we would listen to it. We have needs,  
14 too. And I'm sure they can try and find our weak  
15 spot.

16 CHAIRMAN HARDECKE: Other comments, questions  
17 for either Rob or David?

18 CHAIRMAN HARDECKE: I guess for my part I would  
19 like to see the public meeting before this point and  
20 I -- I concur with the recommendations here.

21 MR. DAVID SHORR: Okay.

22 CHAIRMAN HARDECKE: I think it's always safe to  
23 error on the side of giving the public the last voice  
24 or opportunity for voice. They may not.

25 MR. DAVID SHORR: So my expectation will be that

1 we will move to November and that we will hold a  
2 public meeting prior to that.

3 Is that what your intention is?

4 CHAIRMAN HARDECKE: Well, I think, the way this  
5 is worded if I understood Rob right we would give  
6 preliminary approval today and then have the public  
7 meeting or what -- what was your --

8 MR. ROB MORRISON: I think at this point,  
9 Commissioner Hardecke, it's -- it's really up to the  
10 Commission as to how you want to proceed. I think  
11 you have some options. You could -- you could have a  
12 motion to accept the Department's recommendation and  
13 then you would -- you know, defer final action on the  
14 decision until the November meeting or to a later  
15 date. I think is what you could -- what you could --  
16 that's one option that you could perhaps -- you could  
17 perhaps do.

18 I think by -- by offering a decision that way  
19 you are sort of codifying your -- your intentions  
20 perhaps.

21 COMMISSIONER TUPPER: I would like to see the  
22 comments from the public meeting.

23 MS. JENNIFER FRAZIER: I was going to recommend  
24 to the Commission that -- that I -- I'd warn you,  
25 again, to preliminary approval because then if

1 there's something that happens during the public  
2 meeting that causes you concern then you're sort of  
3 taking it back. It's much cleaner to -- to reserve  
4 any sort of approval until such time. So if you just  
5 follow the motion in the booklet that follows --  
6 recommends the Department's -- that that you move to  
7 approve the -- well, you just approve in accordance  
8 with the recommendation of the Department which is  
9 requiring this public comment and not have a  
10 preliminary approval of the proposal.

11 MR. ROB MORRISON: Yeah. That's --

12 MR. JENNIFER FRAZIER: If that makes sense. I  
13 kind of stuttered through that.

14 MR. ROB MORRISON: No. That's well said, Jenny.  
15 That's kind of what my point was. You can just --  
16 you can just accept the recommendation of the  
17 Department --

18 CHAIRMAN HARDECKE: Right.

19 MR. ROB MORRISON: -- and then before a final  
20 decision comes before you, you would have -- and that  
21 was the full intention here was to produce a record  
22 of the public meeting and the public comments and the  
23 responses to those comments. And you would have all  
24 that for your consideration in your final  
25 determination.

1           MR. DAVID SHORR:  If I may also, I only  
2 represent the interests of both the City of Columbia  
3 and Boone County and the Boone County Commission.  
4 I'm presuming they will favorably receive your  
5 message and have a hearing and want to do that, but I  
6 can only take that back to them.  So I just want to  
7 make sure that everybody understands I'm only one  
8 player on the Commission -- on the trustees and I  
9 represent them and their interests as counsel so --

10           CHAIRMAN HARDECKE:  Any other comments?

11           MR. JENNIFER FRAZIER:  In your motion language,  
12 Commissioner, I might recommend that you clarify that  
13 the Department's recommendation as of September 1st,  
14 2009, that's just a little confusing.

15           CHAIRMAN HARDECKE:  And I guess -- in this --  
16 for this public meeting if -- I'd like to see all of  
17 these, 56 entities receive a notice.  That'd be their  
18 chance to have their voice heard if they so desire.

19           **COMMISSIONER SHORNEY:  Mr. Chairman, I move we**  
20 **accept the Department's recommendation in their**  
21 **September 1, 2009, memo regarding the Level 2**  
22 **Continuing Authority for Boone County and the City.**

23           CHAIRMAN HARDECKE:  Do we have a second?

24           COMMISSIONER HUNTER:  Second.

25           CHAIRMAN HARDECKE:  Malinda, you want to take

1 the vote.

2 MS. MALINDA OVERHOFF: Commissioner Easley?

3 COMMISSIONER EASLEY: Yes.

4 MS. MALINDA OVERHOFF: Commissioner Shorney?

5 COMMISSIONER SHORNEY: Yes.

6 MS. MALINDA OVERHOFF: Commissioner Tupper?

7 COMMISSIONER TUPPER: Yes.

8 MS. MALINDA OVERHOFF: Commissioner Parnell?

9 COMMISSIONER PARNELL: Yes.

10 MS. MALINDA OVERHOFF: Commissioner Hunter?

11 VICE-CHAIR HUNTER: Yes.

12 MS. MALINDA OVERHOFF: Chair Hardecke?

13 CHAIRMAN HARDECKE: Yes.

14 I guess we'll go ahead and break for lunch and  
15 resume at one o'clock.

16 (Break in proceedings.)

17 CHAIRMAN HARDECKE: So we'll resume and we're on

18 **Tab No. 11, Transform Missouri Intended Use Plan.**

19 COMMISSIONER TUPPER: Joe here?

20 CHAIRMAN HARDECKE: We're missing the presenter.

21 MS. LEANNE TIPPETT MOSBY: He was here just a second  
22 ago.

23 CHAIRMAN HARDECKE: Rob went after him.

24 COMMISSIONER EASLEY: Oh, what tab we on?

25 COMMISSIONER TUPPER: Eleven.

1 COMMISSIONER EASLEY: Eleven. Okay.

2 MALE SPEAKER: (Statement inaudible.)

3 CHAIRMAN HARDECKE: If he doesn't show up pretty  
4 quick, we'll let you do that. I think Rob went after  
5 him.

6 MS. LEANNE TIPPETT MOSBY: Oh. There he is.

7 CHAIRMAN HARDECKE: We get you started well you  
8 won't quit.

9 COMMISSIONER EASLEY: Almost moved you to the  
10 end of the agenda.

11 CHAIRMAN HARDECKE: Joe?

12 MR. JOE BOLAND: Sorry about that.

13 Good afternoon. I'm Joe Boland with the  
14 Financial Assistance Center. I come to ask you,  
15 today, to make a few revisions to our Stimulus  
16 Intended Use Plan our -- just a brief word on -- our  
17 staff has been working extremely hard, working with  
18 all the projects on our fundable list that you  
19 approved back in June 10th including Byron and all the  
20 engineering staff.

21 Our emphasis now is to get all the fundable  
22 projects moving as quickly as can -- as they can so  
23 they can take advantage of this one-time stimulus  
24 money. And we have some looming deadlines that have  
25 great importance to us. If we can't get most of

1 these projects in the bidding process by mid-November  
2 we -- those projects are subject to loosing their  
3 fundable status so --

4 But specifically, today, I wanted to give you an  
5 update on the Intended Use Plan and ask to move a few  
6 projects around. First of all, the communities of  
7 Frankford, St. Elizabeth and Pulaski County Sewer  
8 District No. 1 have voluntarily dropped from the  
9 fundable list. There are various reasons for that.  
10 They're either going with rural development for their  
11 funding or a combination of our other state grant and  
12 loan programs.

13 One other community, Festus/Crystal City Sewage  
14 Commission had applied. They had a great project  
15 that actually had a green component to it, but they  
16 were put on the fundable list -- they had an August  
17 4th election, bond election scheduled but that did not  
18 occur. So we had to come before you, today, to ask  
19 to remove them from the fundable list and put them on  
20 the contingency list since they did not pass that  
21 bond election they pretty much -- we have to rule  
22 them out for ARRA projects.

23 And the removal of these projects frees up a little over  
24 \$3 million in grant money. So what we're looking to do is  
25 Number one, increase Blue Springs' loan allocation.

1 We want to increase the ARRA Loan or the  
2 stimulus loan portion by \$2.9 million. And  
3 then the big -- big movement we'd like to do is move  
4 Columbia from the contingency list up to the fundable  
5 list for \$67 million.

6 This will mean a full \$3 million ARRA Grant for  
7 Columbia and the balance of this project will be  
8 picked up by our base-program funding. But they --  
9 Columbia has -- has been very aggressive in trying to  
10 meet the time tables and they kept their project  
11 moving. So we have met with them and, again, it's  
12 our recommendation to move them to the fundable list  
13 from the contingency list.

14 Any specific questions at this time?

15 CHAIRMAN HARDECKE: Are you getting some of  
16 these projects started that are further up on the  
17 list?

18 MR. JOE BOLAND: That's -- that's an excellent  
19 question. We actually have three or four that have  
20 bids open. They're holding them open right now  
21 waiting for us. We have all of our grant and loan  
22 template documents, they're moving through the  
23 approval process, through the Governor's Office right  
24 now. In fact, at lunch I received word that they did  
25 approve those templates so now we can come back to

1 our bond counsel and start preparing all the loan and  
2 grant documents.

3 Simultaneously we were seeking approval of our  
4 EPA CAP Grant awards and those were moving through  
5 the Governor's Office as well and I received word at  
6 lunch, again, on -- on those issues that they have  
7 approved the acceptance of those awards. So as of  
8 today we'll be getting those documents signed by our  
9 Department director and sent back to EPA and we'll be  
10 able to start making awards now, so --

11 So the answer is -- is, yes, we have some  
12 projects that are holding their bids open. We have  
13 some ready to go to bid right now. And, again, once  
14 we get those documents back to EPA will have -- we'll  
15 be getting our money, so --

16 Now, there is -- the action -- well, I do ask  
17 you to -- to move on these -- moving these projects  
18 on the fundable list and -- but after that, I think,  
19 we need a short discussion on scheduling monthly  
20 meetings at the very least to come to you in the very  
21 near future to -- to move projects from the fundable  
22 list or from the contingency onto the fundable list.

23 But we're -- we're sending out a letter  
24 yesterday and today to all the fundable projects.  
25 Basically, putting -- putting a deadline out there

1 that if they don't have most of their documents  
2 approved that includes facility plans, ordinances,  
3 rate structure, plans and specs; if they don't have  
4 that approved by us by November it's our  
5 recommendation to come to you and drop them from the  
6 fundable list and we'll have to -- 'cause if they're  
7 not ready to bid by the first part of November, the  
8 time table just doesn't allow enough time to go to  
9 bid -- I mean, they'll be --

10 (Tape Two, Side A concluded.)

11 MR. JOE BOLAND: -- stimulus money around at the  
12 very end if we have to. So our recommendation is --  
13 is to schedule a meeting the first Wednesday of every  
14 month via teleconference or -- or -- or whatever just  
15 to have the -- the ability to come to you and move  
16 some of these projects so --

17 CHAIRMAN HARDECKE: Okay. Do we have a motion  
18 on this one?

19 VICE-CHAIR HUNTER: Mr. Chairman, I move that  
20 the Commission approve the revisions to the Transform  
21 Missouri Intended Use Plan --

22 CHAIRMAN HARDECKE: Oh. I'm sorry.

23 VICE-CHAIR HUNTER: -- as recommended by staff -  
24 -

25 CHAIRMAN HARDECKE: I'm sorry. We have one

1 card.

2 VICE-CHAIR HUNTER: Okay.

3 MR. PHIL WALSHACK: I'll stand down. Joe

4 answered my questions. Thank you very much.

5 (Laughter.)

6 COMMISSIONER EASLEY: That was easy.

7 CHAIRMAN HARDECKE: Sorry for interrupting.

8 VICE-CHAIR HUNTER: I move that the Commission

9 approve the revision to the Transform Missouri

10 Intended Use Plan as recommended by Staff.

11 COMMISSIONER TUPPER: Second.

12 CHAIRMAN HARDECKE: Take the vote, Malinda,

13 please.

14 MS. MALINDA OVERHOFF: Commissioner Tupper?

15 COMMISSIONER TUPPER: Yes.

16 MS. MALINDA OVERHOFF: Commissioner Parnell?

17 VICE-CHAIR HUNTER: Yes.

18 MS. MALINDA OVERHOFF: Commissioner Hunter?

19 VICE-CHAIR HUNTER: Yes.

20 MS. MALINDA OVERHOFF: Commissioner Easley?

21 COMMISSIONER EASLEY: Yes.

22 MS. MALINDA OVERHOFF: Commissioner Shorney?

23 COMMISSIONER SHORNEY: Yes.

24 MS. MALINDA OVERHOFF: Chair Hardecke?

25 CHAIRMAN HARDECKE: Yes.

1           Okay. We have a suggestion here of October 7th  
2 and December 2nd for these teleconference meetings  
3 that Joe's referring to; would that -- those dates be  
4 acceptable?

5           COMMISSIONER PARNELL: What were they again?

6           CHAIRMAN HARDECKE: October 7th and December 2nd.  
7 We'll have a comm- -- regular Commission meeting in  
8 November in between there so that would put you on a  
9 monthly schedule.

10          CHAIRMAN HARDECKE: Motion?

11          MS. JENNIFER FRAZIER: No. I don't think so if  
12 everybody just agrees to that we can just schedule  
13 them.

14          CHAIRMAN HARDECKE: Okay.

15          MS. JENNIFER FRAZIER: And then we'll notice  
16 them up just like we do a normal meeting.

17          CHAIRMAN HARDECKE: Okay.

18          MR. JOE BOLAND: Yeah. We -- we would  
19 appreciate that and we might take that a step further  
20 that even with these -- these monthly scheduled we  
21 may come to you on an Ad hoc basis if we have a lot  
22 of movement we need to do and the timing of these  
23 projects and when they have to go to bid if we have  
24 to come to you in between these times we -- we may  
25 ask your indulgence to have -- have an additional

1 teleconference if necessary so --

2 CHAIRMAN HARDECKE: Your time is getting pretty  
3 short.

4 MR. JOE BOLAND: Absolutely.

5 (Laughter.)

6 CHAIRMAN HARDECKE: Okay. We'll move on to **Tab**  
7 **No. 12.**

8 MR. JOE BOLAND: And this -- briefly, I wanted  
9 to give you an update on the 2010 Base Intended Use  
10 Plan. We're receiving some questions on the status  
11 of that -- of that plan and we -- originally we  
12 thought we would come to you in the July meeting and  
13 perhaps even the September meeting to finalize this  
14 2010. But what we have found is we're just not ready  
15 to finalize this -- this yet.

16 What we -- what we're looking at is -- is a  
17 major revision of the 2010, which was public noticed  
18 back in January. That was when the draft was  
19 actually (public) noticed. We've had significant changes:  
20 Number 1, we -- we are looking to move all the ARRA  
21 contingency projects onto our Base Program Intended  
22 Use Plan. So we don't want to drop anybody from  
23 consideration completely just because they didn't  
24 make the -- the stimulus window. We want to be able  
25 to consider those projects for our Base Program.

1           So we're making all those adjustments. And --  
2 and some of those projects on the ARRA contingency  
3 list will be on the fundable list for the 2010 Base  
4 IUP. So -- so the list is going to look  
5 significantly different. And that leads us to the  
6 idea that we want to re-public notice this since  
7 there's been a significant change in the list that  
8 was published in January; we do want to make sure the  
9 public has some time to provide comments.

10           There's also going to be a significant rewrite  
11 of -- of the narrative of -- of our plan and that's  
12 due to the fact that -- how we leverage our program is  
13 changing because of the financial markets we -- we  
14 just can't -- can't get investment agreements like we  
15 used to you and that ties directly in to how we  
16 leverage.

17           So that -- all that language needs to change in  
18 there. That's really a minor reason for re-noticing  
19 it but, again, we -- we think it's worthy of doing  
20 so.

21           And that, unless there are questions that's  
22 basically my -- my explanation on the 2010 and we're  
23 hoping to bring that to you in November as well. So  
24 it's important to note that we're not -- we're not  
25 losing out on any Base Program funding for projects

1 at all. We -- as you know, the 2009 IUP is still in  
2 effect and we've come to you at each meeting to move  
3 projects on and off that list so --

4 We're not dropping anybody. We're just looking  
5 to shift people to the right -- right plan as we move  
6 forward and make adjustments on the stimulus IUP and  
7 get our Base Program IUP where it needs to be so --

8 Any questions for me?

9 (No response.)

10 MR. JOE BOLAND: All right.

11 CHAIRMAN HARDECKE: Thank you.

12 I think Phil has a comment on this one.

13 MR. PHIL WALSACK: Phil Walsack from Missouri  
14 Public Utility Alliance. I'd like Joe to explain to  
15 us how -- we see how the list is flowing, but how's  
16 the money going to flow with the new IU -- IUP? We  
17 have a lot more demands than we've had in the past  
18 and I'd just like to hear how that plan plays out.

19 MR. JOE BOLAND: Well, the structure of the Base  
20 Program; is that --

21 It's going to be the same as it has been in the  
22 past. We obviously still receive capitalization  
23 grants from EPA that will be applied to the Base  
24 Program Intended Use Plan. We're also using the  
25 repayments of our existing loan portfolio. All those

1 repayments coming back in that's applied to that new  
2 set of projects to the Base Program.

3         What we're looking at -- I think, what Phil  
4 might be getting at is the -- the attention that the  
5 stimulus funding received for our Program was pretty  
6 tremendous and we did receive over -- about --  
7 approximately \$1.3 billion in applications. And our  
8 -- our Intended Use Plans actually have -- are quite  
9 full now.

10         In the past we typically had money left over on  
11 the table and that will not be the case with the 2010  
12 IUP. We'll -- that'll make the priority points and  
13 scoring even more critical. And even more critical  
14 than the priority points is the readiness to proceed.

15         And that -- that will be what will drive who  
16 gets the funding in -- in the future. So we're also  
17 hoping -- there's a lot of discussion at the  
18 congressional level of -- of a drastic increase in  
19 funding for the clean water SRF and for the drinking  
20 water SRF as well. So we may be looking at  
21 potentially a double or tripling of the amount we get  
22 from the federal government.

23         But, again, that's all speculative at this point  
24 based on discussion at the congressional level, but  
25 nothing's been finalized through the budget process,

1 yet, so --

2 Does that -- does that help?

3 (No response.)

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

5 CHAIRMAN HARDECKE: Thank you. Okay. **No. 13.**

6 MR. MOHAMMADI: Good afternoon, Mr. Chairman,  
7 members of the Commission. Kevin Mohammadi, Chief of  
8 Compliance and Enforcement Section, Water Pollution  
9 Control Branch.

10 The first item in your packet is **Peacock**  
11 **Properties.** Peacock Properties, LLC, owns a four-  
12 unit apartment complex known as Peacock Properties  
13 located in Boone County. Wastewater from Peacock  
14 Properties is treated by a wastewater treatment  
15 facility consisting of a single-cell lagoon.

16 The facility operates pursuant to Missouri State  
17 Operating Permit, which expired by its own terms on  
18 January, 2005. Since January 2005 the Department has  
19 conducted several inspection of the facility serving  
20 Peacock Properties and documented operation and  
21 maintenance problems with the wastewater treatment  
22 lagoon.

23 In addition, Department records indicate the  
24 Department has not received the annual discharge  
25 monitoring report for the past five years.

1           Finally, the Department received a renewal  
2 application for the Operating Permit in May of 2009.  
3 Peacock Properties has been operating water  
4 contaminated sewer without a valid Operating Permit  
5 since January 2005. Department Staff has made  
6 numerous attempts to Mr. Peter Ravindran to obtain  
7 voluntary compliance with Missouri Clean Water Law.  
8 However, Mr. Ravindran has refused to accept  
9 correspondence from the Department and has refused to  
10 correct the violations.

11           Therefore, Staff recommends the matters to be  
12 referred to the office of Attorney General for  
13 appropriate legal action.

14           CHAIRMAN HARDECKE: Is there anyone here from  
15 Peacock Properties?

16 (No response.)

17           CHAIRMAN HARDECKE: If not, we'd entertain a  
18 motion.

19           **COMMISSIONER TUPPER: Mr. Chairman, I move that**  
20 **the Missouri Clean Water Commission refer this matter**  
21 **to the Attorney General's Office for appropriate**  
22 **legal action in order to compel compliance, pursue a**  
23 **civil penalty, and seek any other appropriate form of**  
24 **relief.**

25           **COMMISSIONER EASLEY: Second.**

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

3           MS. MALINDA OVERHOFF: Commissioner Parnell?

4           COMMISSIONER PARNELL: Yes.

5           MS. MALINDA OVERHOFF: Commissioner Hunter?

6           VICE-CHAIR HUNTER: Yes.

7           MS. MALINDA OVERHOFF: Commissioner Easley?

8           COMMISSIONER EASLEY: Yes.

9           MS. MALINDA OVERHOFF: Commissioner Shorney?

10          COMMISSIONER SHORNEY: Yes.

11          MS. MALINDA OVERHOFF: Commissioner Tupper?

12          COMMISSIONER TUPPER: Yes.

13          MS. MALINDA OVERHOFF: Chair Hardecke?

14          CHAIRMAN HARDECKE: Yes.

15          MR. KEVIN MOHAMMADI: Next matter is **Village Inn**

16 **Trailer Court.** Village Inn Trailer Court is 14 unit

17 mobile home park located in Potosi. Mr. Ron Jackson

18 is the owner.

19           The wastewater treatment facility serving

20 Village Inn is a re-circulating sand filter with UV

21 disinfection that discharges effluent to a losing

22 stream tributary to Mine A Breton Creek.

23           Since March 2007, Department have conducted

24 several inspections and observed a sludge residue and

25 effluent pooling on the surface of the filter; since

1 September 2007, quarterly discharge monitoring  
2 reports showed that effluent is chronically violating  
3 effluent limits for biochemical oxygen demand, total  
4 suspended solid and bacteria. Two notices of  
5 violations were issued for the effluent violations.

6 Since December 2008, Enforcement Staff has  
7 corresponded with Mr. Jackson through recent letters  
8 and telephone calls offering to resolve the  
9 violations through an out-of-court settlement  
10 agreement.

11 To date we have not received an appropriate  
12 response. Mr. Jackson has made some improvements to  
13 the facility. However, the treatment facility  
14 continues to exceed effluent limits for bacteria.  
15 Enforcement Staff do not believe further  
16 conference, consultation and pursuing would result in  
17 agreement to resolve the past violation and return  
18 the facility into compliance.

19 Therefore, Staff recommends the matter to be  
20 referred to the office of Attorney General for  
21 appropriate legal action.

22 CHAIRMAN HARDECKE: Is there anyone here from  
23 the Village Inn Trailer Court?

24 (No response.)

25 CHAIRMAN HARDECKE: If not, we'd entertain a

1 motion.

2 COMMISSIONER EASLEY: I move that the Missouri  
3 Clean Water Commission refer this matter to the  
4 Missouri Attorney General's Office for appropriate  
5 legal action in order to compel compliance, pursue a  
6 civil penalty, and seek any other appropriate form of  
7 relief.

8 COMMISSIONER SHORNEY: Second.

9 CHAIRMAN HARDECKE: Malinda, take the vote,  
10 please,

11 MS. MALINDA OVERHOFF: Commissioner Hunter?

12 VICE-CHAIR HUNTER: Yes.

13 MS. MALINDA OVERHOFF: Commissioner Easley?

14 COMMISSIONER EASLEY: Yes.

15 MS. MALINDA OVERHOFF: Commissioner Shorney?

16 COMMISSIONER SHORNEY: Yes. Yes.

17 MS. MALINDA OVERHOFF: Commissioner Tupper?

18 COMMISSIONER TUPPER: Yes.

19 MS. MALINDA OVERHOFF: Commissioner Parnell?

20 COMMISSIONER PARNELL: Yes.

21 MS. MALINDA OVERHOFF: Chair Hardecke?

22 CHAIRMAN HARDECKE: Yes.

23 MR. KEVIN MOHAMMADI: Next matter is **Westgate**  
24 **Mobile Home Park.** Westgate Mobile Home Park consists  
25 of 15 single family homes located near Mexico.

1           The wastewater treatment facility serving the  
2 mobile park is a three-cell lagoon with one outfall  
3 that discharges effluent to a tributary to Brushy  
4 Creek. Westgate is owned and operated by Mr. David  
5 Ott.

6           Since 2000, Department Staff conducted numerous  
7 inspections of the facility and observed evidence of  
8 overflow from the collection system and the lack of  
9 proper operation and maintenance of the lagoon  
10 including inadequate fencing, damage to the lagoons  
11 berm caused by thick wooded vegetation and muskrat  
12 burrows. Mr. Ott has also failed to submit monthly  
13 discharge monitoring reports since July 2006.

14           Due to these violations Department issued six  
15 letters of warning and one notice of violation to  
16 compel Mr. Ott to voluntarily correct the violations.  
17 In addition, Westgate Mobile Home Park has also  
18 delinquent permit fee in the amount of \$1,570.

19           Since April 2009, Enforcement Staff has  
20 corresponded with Mr. Ott through routine letters and  
21 phone calls offering to resolve the past violation  
22 through an out-of-court settlement agreement. On May  
23 19th and July 2nd and August 4th, 2009, Staff spoke to  
24 Mr. Ott via telephone and requested a written  
25 response to the Department offer. To date we have

1 not received an appropriate response.

2 Therefore, Staff recommends the matter to be  
3 referred to the office of Attorney General for  
4 appropriate legal action.

5 CHAIRMAN HARDECKE: Is there anyone here from  
6 Westgate Mobile Home Park?

7 (No response.)

8 CHAIRMAN HARDECKE: If not, we'll entertain a  
9 motion.

10 VICE-CHAIR HUNTER: Mr. Chairman, I move that  
11 the Missouri Clean Water Commission refer this matter  
12 to the Missouri Attorney General's Office for  
13 appropriate legal action in order to compel  
14 compliance, pursue a civil penalty, and seek any  
15 other appropriate form of relief.

16 COMMISSIONER TUPPER: Second.

17 CHAIRMAN HARDECKE: Malinda, take the vote.

18 MS. MALINDA OVERHOFF: Commissioner Easley?

19 COMMISSIONER EASLEY: Yes.

20 MS. MALINDA OVERHOFF: Commissioner Shorney?

21 COMMISSIONER SHORNEY: Yes.

22 MS. MALINDA OVERHOFF: Commissioner Tupper?

23 COMMISSIONER TUPPER: Yes.

24 MS. MALINDA OVERHOFF: Commissioner Parnell?

25 COMMISSIONER PARNELL: Yes.

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

2           **VICE-CHAIR HUNTER: Yes.**

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

4           **CHAIRMAN HARDECKE: Yes.**

5           MR. KEVIN MOHAMMADI: Next matter is **Prairie**  
6 **View Mobile Home Park.** Prairie View Mobile Home Park  
7 located west of Troy contains approximately 12 mobile  
8 homes. The mobile home park is served by a  
9 wastewater treatment facility that consists of a pump  
10 station and three-cell lagoon, which discharges  
11 effluent to Crooked Creek pursuant to Missouri State  
12 Operating Permit which expired by its own term on  
13 March, 2006.

14           On August 8th, 2007, Staff conducted a complaint  
15 investigation at the mobile home park and observed  
16 evidence that untreated sewage was bypassing from the  
17 pump station. The Department issued a notice of  
18 violation to the mobile home park, conducted two  
19 follow-up inspections and issued additional NOVs to  
20 the mobile home park on December 4th, 2007 and on  
21 January 24th, 2008.

22           On May 2009, the Department, again, conducted an  
23 inspection and observed that the well -- the wet-well  
24 of the pump station was completely filled with  
25 wastewater indicating that pump had malfunctioned and

1 bypass of the wastewater was imminent.

2           On June 2009, the Department issued a notice of  
3 violation to Prairie View for violation observed. On  
4 August 2008, Department sent a letter to mobile home  
5 park offering to resolve the past violations through  
6 an out-of-court settlement agreement with the  
7 Department. Michelle Stephens responded by phone on  
8 September 15th, 2008, and by a letter on December 24th,  
9 2008, but the homeowner -- homeowner's association  
10 has not submitted an appropriate response to the  
11 Department's offer.

12           On December 31st, 2008, Department sent a second  
13 letter offering to resolve the violations through an  
14 out-of-court agreement, but to date we do not have --  
15 received a response.

16           Therefore, Staff recommends matters to be  
17 referred to the office of Attorney General for  
18 appropriate legal action.

19           CHAIRMAN HARDECKE: Is there anyone here from  
20 the Prairie View?

21 (No response.)

22           CHAIRMAN HARDECKE: If not, we'll entertain a  
23 motion.

24           **COMMISSIONER SHORNEY: Mr. Chairman, I move the**  
25 **Missouri Clean Water Commission refer this matter to**

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

5 COMMISSIONER PARNELL: Second.

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

8 MS. MALINDA OVERHOFF: Commissioner Easley?

9 COMMISSIONER EASLEY: Yes.

10 MS. MALINDA OVERHOFF: Commissioner Shorney?

11 COMMISSIONER SHORNEY: Yes.

12 MS. MALINDA OVERHOFF: Commissioner Tupper?

13 COMMISSIONER TUPPER: Yes.

14 MS. MALINDA OVERHOFF: Commissioner Parnell?

15 COMMISSIONER PARNELL: Yes.

16 MS. MALINDA OVERHOFF: Commissioner Hunter?

17 VICE-CHAIR HUNTER: Yes.

18 MS. MALINDA OVERHOFF: Chair Hardecke?

19 CHAIRMAN HARDECKE: Yes.

20 MR. KEVIN MOHAMMADI: Next matter is **Rocky Ridge**  
21 **Manor, New Vision Care Associates, II, Inc.**, formerly  
22 owned and operated a residential care facility known  
23 as Rocky Ridge Manor located at Highway A, Mansfield,  
24 Wright County. Wastewater from Rocky Ridge is  
25 treated by an extended aeration, tertiary filtration

1 wastewater treatment facility that discharges into a  
2 losing tributary to Fry Creek pursuant to Missouri  
3 State Operating Permit.

4         Since February 2007, the Department has  
5 conducted two inspections of Rocky Ridge and during  
6 these inspections Staff observed vegetation growing  
7 on the sludge in the clarifier and vegetation in the  
8 filter bed.

9         Since first quarter of 2005, effluent discharge  
10 from the facility has violated effluent limits for  
11 one or more parameters during all 16 quarters with  
12 two discharge monitoring reports missing.

13         The Department issued one letter of warning and  
14 five notices of violation to Rocky Ridge as a result  
15 of violations observed during inspections and permit  
16 effluent exceedances reported on discharge monitoring  
17 reports.

18         On March 2009, Department sent a letter to New  
19 Vision offering to resolve past violations through an  
20 out-of-court settlement agreement. Since March 2009,  
21 the Department has been in negotiations with New  
22 Vision in an effort to resolve this matter through an  
23 out-of-court agreement. However, the Department and  
24 New Vision has not been able to reach an agreement.

25         Therefore, Staff recommends the matter to be

1 referred to the office of Attorney General for  
2 appropriate legal action.

3 COMMISSIONER PARNELL: What are the sticking  
4 points on the negotiation?

5 MR. KEVIN MOHAMMADI: It's both penalty and also  
6 the pace that they are moving to upgrade the  
7 treatment facility.

8 COMMISSIONER PARNELL: So they're stalling the  
9 agreement?

10 MR. KEVIN MOHAMMADI: Yes.

11 CHAIRMAN HARDECKE: Is there anyone here from  
12 New Vision Care?

13 (No response.)

14 CHAIRMAN HARDECKE: If not, we'll entertain a  
15 motion.

16 COMMISSIONER EASLEY: I move that the Missouri  
17 Clean Water Commission refer this matter to the  
18 Attorney General's Office for appropriate legal  
19 action in order to compel compliance, pursue a civil  
20 penalty, and seek any other appropriate form of  
21 relief.

22 COMMISSIONER SHORNEY: Second.

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

25 MS. MALINDA OVERHOFF: Commissioner Shorney?

1           COMMISSIONER SHORNEY: Yes.

2           MS. MALINDA OVERHOFF: Commissioner Tupper?

3           COMMISSIONER TUPPER: Yes.

4           MS. MALINDA OVERHOFF: Commissioner Parnell?

5           COMMISSIONER PARNELL: Yes.

6           MS. MALINDA OVERHOFF: Commissioner Hunter?

7           VICE-CHAIR HUNTER: Yes.

8           MS. MALINDA OVERHOFF: Commissioner Easley?

9           COMMISSIONER EASLEY: Yes.

10          MS. MALINDA OVERHOFF: Chair Hardecke?

11          CHAIRMAN HARDECKE: Yes.

12          MR. KEVIN MOHAMMADI: Next matter is **Rick**

13          **McVicker Swine Operation.** Mr. Rick McVicker owns and

14          operates a Class 1C swine finishing operation located

15          near Bevier in Macon County. The operation generates

16          3,681,773 gallons of wastewater per year,

17          which is stored in an anaerobic lagoon and in deep

18          pits under barn floors until it's land applied via

19          tanker truck, tank wagon and pipeline onto a total of

20          1,740 acres of cropland. The operation is located in

21          the watershed for the Middle Fork of Little Chariton

22          River, a Class C stream.

23          On August 18, 2008, Department Staff conducted a

24          complaint investigation at the operation and issued a

25          letter of warning to Mr. McVicker for failure to

1 maintain an adequate separation distance from the  
2 property boundary during land application.

3 On September 28, 2008, Staff conducted a  
4 complaint investigation at the operation and observed  
5 swine effluent flowing into the Middle Fork of the  
6 Little Chariton River. Effluent had been over  
7 applied on a field which flowed into the Little  
8 Chariton River. The release violated both numeric  
9 and general criteria of Water Quality Standards.

10 On October 21st, 2008, the Department issued  
11 notice of violation to Mr. McVicker for the  
12 violations that occurred as a result of the releasing  
13 into waters of the state.

14 Since then we have reached an agreement in  
15 principle with Mr. McVicker that requires payment of  
16 Department costs and past -- and penalty for  
17 violations.

18 Therefore, Staff recommends matters to be  
19 referred to the office of Attorney General Office  
20 contingent upon we don't reach a final agreement  
21 within 60 days.

22 CHAIRMAN HARDECKE: Is Mr. McVicker here?  
23 (No response.)

24 CHAIRMAN HARDECKE: This one would be cont- --  
25 60 days before referral, right? Is that what you're

1 --

2 MR. KEVIN MOHAMMADI: That's correct. If we  
3 don't reach a final agreement within 60 days then the  
4 matter will be referred automatically. That would be  
5 --

6 CHAIRMAN HARDECKE: He has indicated some --

7 MR. KEVIN MOHAMMADI: We have reached an  
8 agreement in principle on the -- the amount of costs  
9 and penalty.

10 CHAIRMAN HARDECKE: Okay.

11 Do we have a motion?

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

18 COMMISSIONER TUPPER: Second.

19 CHAIRMAN HARDECKE: Do we need to include the 60  
20 days?

21 MR. KEVIN MOHAMMADI: Yeah. Commissioner Hunter  
22 you need to stipulate that 60 days if no final  
23 agreement is reached within 60 days.

24 VICE-CHAIR HUNTER: If no further activity is  
25 received --

1           MR. KEVIN MOHAMMADI: If the final agreement is  
2 not reached within 60 days.

3           VICE-CHAIR HUNTER: Within 60 days? Okay.

4           CHAIRMAN HARDECKE: Do you have that, Malinda?  
5 (No response.)

6           CHAIRMAN HARDECKE: Okay.

7           We got a second?

8           COMMISSIONER TUPPER: Second.

9           CHAIRMAN HARDECKE: Malinda, take the vote,  
10 please.

11          MS. MALINDA OVERHOFF: Commissioner Tupper?

12          COMMISSIONER TUPPER: Yes.

13          MS. MALINDA OVERHOFF: Commissioner Parnell?

14          COMMISSIONER PARNELL: Yes.

15          MS. MALINDA OVERHOFF: Commissioner Hunter?

16          VICE-CHAIR HUNTER: Yes.

17          MS. MALINDA OVERHOFF: Commissioner Easley?

18          COMMISSIONER EASLEY: Yes.

19          MS. MALINDA OVERHOFF: Commissioner Shorney?

20          COMMISSIONER SHORNEY: Yes.

21          MS. MALINDA OVERHOFF: Chair Hardecke?

22          CHAIRMAN HARDECKE: Yes.

23          MR. KEVIN MOHAMMADI: Next matter is **Mr. Dan**

24 **Spanburg.** Mr. Dan Spanburg d/b/a Spanburg

25 Investment, LLC, owns and is developing five

1 residential lots within the Chelsea Rose Estates  
2 Subdivision located near Sunrise Beach in Camden  
3 County. Since March 2006, the Department has  
4 received two complaints and conducted five site  
5 inspections. During the inspections Staff observed  
6 that Best Management Practices were not in place or  
7 inadequate and sediment deposits in the Lake of the  
8 Ozarks.

9 The Department issued one letter of warning and  
10 one notice of violation as of violations observed  
11 during the inspections. The Department also  
12 requested that Mr. Spanburg apply for a Land  
13 Disturbance Permit. Mr. Spanburg has another  
14 property that is in enforcement action for failing to  
15 operate and maintain Best Management Practices as  
16 required by Missouri State Operating Permit and Water  
17 Quality Standard violations at Wellington Woods  
18 Subdivision located in Laurie, Morgan County.

19 Since March 2009, Department has attempted to  
20 negotiate and out-of-court settlement agreement with  
21 Mr. Spanburg to resolve past violation of Missouri  
22 Clean Water Law and it's implementing regulation that  
23 occurred at Mr. Spanburg's lots in Chelsea Rose  
24 Estates Subdivision. However, the Department and Mr.  
25 Spanburg have not been able to reach an agreement.

1           Therefore, Staff recommends matters to be  
2 referred to the office of Attorney General for  
3 appropriate legal action.

4           CHAIRMAN HARDECKE: Is Mr. Spanburg here?  
5 (No response.)

6           CHAIRMAN HARDECKE: If not, we'd entertain a  
7 motion.

8           COMMISSIONER TUPPER: I move the Missouri Clean  
9 Water Commission refer this matter to Missouri  
10 Attorney General's Office for appropriate legal  
11 action -- excuse me -- in order to compel compliance,  
12 pursue a civil penalty, and seek any other  
13 appropriate form of relief.

14           COMMISSIONER SHORNEY: Second.

15           CHAIRMAN HARDECKE: Oh. Malinda, take the vote.  
16 I'm sorry.

17           MS. MALINDA OVERHOFF: Commissioner Parnell?

18           COMMISSIONER PARNELL: Yes.

19           MS. MALINDA OVERHOFF: Commissioner Hunter?

20           VICE-CHAIR HUNTER: Yes.

21           MS. MALINDA OVERHOFF: Commissioner Easley?

22           COMMISSIONER EASLEY: Yes.

23           MS. MALINDA OVERHOFF: Commissioner Shorney?

24           COMMISSIONER SHORNEY: Yes.

25           MS. MALINDA OVERHOFF: Commissioner Tupper?

1           **COMMISSIONER TUPPER: Yes.**

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

3           **CHAIRMAN HARDECKE: Yes.**

4           MR. KEVIN MOHAMMADI: Next matter is **Wellington**  
5 **Woods Subdivision.** Mr. Dan Spanburg owns and is  
6 developing a 19.5 acre property known as Wellington  
7 Woods Subdivision located in Morgan County. Storm  
8 water from the site discharges into an unnamed  
9 tributary to Brush Creek pursuant to Missouri State  
10 Operating Permit.

11           Since September 2008, Department Staff has  
12 conducted two complaint investigations and one follow-  
13 up inspection of the site. During the inspection  
14 Staff observed Best Management Practices were not in  
15 place, inadequate, or poorly maintained resulting in  
16 sediment migration offsite and deposits in the  
17 receiving stream.

18           The Department issued two letters of warning;  
19 one notice of violation to Mr. Spanburg as a result  
20 of violations observed at Wellington Woods. Mr.  
21 Spanburg has another property that is, I mentioned  
22 earlier, in Lake of the Ozarks.

23           Since March 2009, the Department has attempted  
24 to reach an out-of-court agreement with Mr. Spanburg  
25 to resolve past violations documented at his property

1 in Chelsea Rose and Wellington Woods. However, the  
2 Department and Mr. Spanburg have not been able to  
3 reach an agreement.

4 Therefore, Staff recommends the matter to be  
5 referred to the office of Attorney General for  
6 appropriate legal action.

7 CHAIRMAN HARDECKE: I'll ask once, again, if Mr.  
8 Spanburg is here?

9 (No response.)

10 CHAIRMAN HARDECKE: If not, we'll entertain a  
11 motion.

12 COMMISSIONER SHORNEY: Mr. Chairman, I move that  
13 the Missouri Clean Water Commission refer this matter  
14 to the Missouri Attorney General's Office for  
15 appropriate legal action in order to compel  
16 compliance, pursue a civil penalty, and seek any  
17 other appropriate form of relief.

18 COMMISSIONER EASLEY: Second.

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

21 MS. MALINDA OVERHOFF: Commissioner Hunter?

22 VICE-CHAIR HUNTER: Yes.

23 MS. MALINDA OVERHOFF: Commissioner Easley?

24 COMMISSIONER EASLEY: Yes.

25 MS. MALINDA OVERHOFF: Commissioner Shorney?

1 COMMISSIONER SHORNEY: Yes.

2 MS. MALINDA OVERHOFF: Commissioner Tupper?

3 COMMISSIONER TUPPER: Yes.

4 MS. MALINDA OVERHOFF: Commissioner Parnell?

5 COMMISSIONER PARNELL: Yes.

6 MS. MALINDA OVERHOFF: Chair Hardecke?

7 CHAIRMAN HARDECKE: Yes.

8 MR. KEVIN MOHAMMADI: The next matter is **Mr. Don**  
9 **Emmerson d/b/a Double E Construction**. During the  
10 summer of 2008 Double E Construction was installing a  
11 48 inch concrete storm water -- storm sewer for  
12 Truman State University in Kirksville. In the course  
13 of the project Double E Construction was to install  
14 the storm sewer under a 24 inch sanitary sewer.

15 On August 1st, 2008, the Company excavated around  
16 and below the sanitary sewer pipe and the company did  
17 not support the sanitary sewer. It crossed over the  
18 storm sewer trench. The sanitary sewer broke as a  
19 result of this work. Raw sewage was released and  
20 flowed through a short section of the newly  
21 constructed storm sewer and the surface drainage  
22 ditch for about 300 feet to Bear Creek. A fish kill  
23 occurred that was documented by Missouri Department  
24 of Conservation.

25 The release lasted about ten hours on August 1st,

1 2008, contamination in Bear Creek persisted for at  
2 least three days based on observation of both the  
3 Department and Department of Conservation Staff.

4 On March 2, 2009, Department mailed a certified  
5 letter return receipt requested to Mr. Don Emmerson  
6 offering to resolve the violation through an out-of-  
7 court settlement agreement. The letter was received  
8 by Mr. Emmerson on March 2nd, 2009. However, the  
9 Department did not receive a response.

10 The Department sent a second certified letter  
11 return receipt requested to Mr. Emmerson on March  
12 30th, 2009. The letter was returned to the Department  
13 by U.S. Postal Services several days after April 18th,  
14 2009, unopened and marked unclaimed. The post office  
15 had given Mr. Emmerson two notices of the letter.  
16 Despite two attempts to contact Mr. Emmerson and  
17 negotiate a settlement agreement we have not been  
18 able to communicate with him.

19 Therefore, Staff recommends the matter to be  
20 referred to the office of Attorney General for  
21 appropriate legal action.

22 CHAIRMAN HARDECKE: Is Mr. Emmerson here?  
23 (No response.)

24 CHAIRMAN HARDECKE: If not, we'll entertain a  
25 motion.

1           COMMISSIONER EASLEY: I move that the Missouri  
2 Clean Water Commission refer this matter to the  
3 Missouri Attorney General's Office for appropriate  
4 legal action in order to compel compliance, pursue a  
5 civil penalty, and seek any other appropriate form of  
6 relief.

7           VICE-CHAIR HUNTER: Second.

8           CHAIRMAN HARDECKE: Malinda, take the vote,  
9 please.

10          MS. MALINDA OVERHOFF: Commissioner Easley?

11          COMMISSIONER EASLEY: Yes.

12          MS. MALINDA OVERHOFF: Commissioner Shorney?

13          COMMISSIONER SHORNEY: Yes.

14          MS. MALINDA OVERHOFF: Commissioner Tupper?

15          COMMISSIONER TUPPER: Yes.

16          MS. MALINDA OVERHOFF: Commissioner Parnell?

17          COMMISSIONER PARNELL: Yes.

18          MS. MALINDA OVERHOFF: Commissioner Hunter?

19          VICE-CHAIR HUNTER: Yes.

20          MS. MALINDA OVERHOFF: Chair Hardecke?

21          CHAIRMAN HARDECKE: Yes.

22          MR. KEVIN MOHAMMADI: The last matter is **Algieri**  
23 **Salvage, LLC, Callaway County**. Mr. George Algieri  
24 owns Algieri Salvage, LLC, which is located on  
25 approximately 50 acres on Old Highway 40 in Callaway

1 County. Storm water from Algieri Salvage discharges  
2 to an unnamed tributary to Cedar Creek pursuant to  
3 Missouri State Operating Permit which expired under  
4 its own term on May 29th, 2008.

5 Mr. Algieri is also operating an unpermitted  
6 land disturbance on the site that is approximately 7  
7 acres in size. The Department of Natural Resources  
8 conducted two inspections of Algieri Salvage and  
9 during the -- during one inspection Staff observed  
10 that Best Management Practices were improperly  
11 installed and inadequate resulting in sediment  
12 discharges -- discharging off-site and entering  
13 waters of the state.

14 The Department issued one letter of warning; two  
15 notices of violations as a result of the violations  
16 observed during inspections of Algieri Salvage,  
17 failing to renew Missouri State Operating Permit and  
18 operating a land disturbance without permit.

19 On May 1st, June 5th and June 12th, 2009,  
20 Department sent Mr. Algieri letters offering to  
21 resolve past violations of the Missouri Clean Water  
22 Law and its implementing regulations through an out-  
23 of-court settlement agreement. On June 16, 2009, Ms.  
24 Algieri spoke to Department Staff and during the  
25 conversation (sic,) Staff explained the process to

1 resolve this matter through an out-of-court  
2 agreement. Ms. Algieri stated that she would submit  
3 a written response to the Department's offer. To  
4 date, the Department has not received a reasonable  
5 response.

6 Therefore, Staff recommends the matter to be  
7 referred to the office of Attorney General for  
8 appropriate legal action.

9 CHAIRMAN HARDECKE: Mr. Algieri?

10 Hello.

11 MRS. ALGIERE: Hello. I was the one that called  
12 them.

13 CHAIRMAN HARDECKE: Okay.

14 MRS. ALGIERE: And they told me to send them \$370 and  
15 sum odd cents plus send the application in, and I did  
16 all that, plus a letter stating how much I was  
17 willing to pay for the penalty. And I thought I had  
18 done everything and then I get the letter that  
19 they're having this meeting. So we -- I called them  
20 yesterday to find out exactly what was going on and  
21 he said that he had told me to send him \$300 plus an  
22 application and that was -- I don't know. I'm -- I  
23 guess I'm confused.

24 CHAIRMAN HARDECKE: Okay.

25 Did you receive the application, Kevin?

1           MR. KEVIN MOHAMMADI: We have received the  
2 application earlier, but the application was  
3 incomplete. They have two operation; one, is the  
4 salvage yard that requires a general storm water  
5 permit, in addition to that, Mr. Algieri was building  
6 a pole barn building on 7 acres that requires a land  
7 disturbance permit.

8           So they did not have a land disturbance permit  
9 for that activity and also the application that they  
10 submitted for their storm water for their salvage  
11 yard didn't have the fee associated with it. So  
12 we've been requesting the fee for the storm water  
13 permit for salvage yard and also a complete  
14 application for land disturbance permit and the fee  
15 associated for land disturbance activities that they  
16 did.

17           And do -- those are -- those are just the fees  
18 associated with permits. In addition, Department has  
19 penalty claim for violation of Clean Water Law for  
20 land disturbance activities that we have conveyed to  
21 -- to them, but we have not received any counteroffer  
22 to our claim. I believe they are willing to pay the  
23 fee, but they're not -- they have not offered any  
24 penalty to us that I know of.

25       MRS. ALGIERE: Yes. I did.

1 MR. KEVIN MOHAMMADI: And how much was that?

2 MRS. ALGIERE: He told me that if I offered \$100,  
3 that'd be fine. So that's what I offered.

4 MR. KEVIN MOHAMMADI: No. I mean, our penalty  
5 demand is -- is \$1,500 and we -- we don't --

6 MRS. ALGIERE: I didn't get a letter for that.

7 MR. KEVIN MOHAMMADI: Well, --

8 MRS. ALGIERE: He told me \$3,000 that day on the  
9 phone.

10 MR. KEVIN MOHAMMADI: I can look to --

11 MRS. ALGIERE: And I told him --

12 MR. KEVIN MOHAMMADI: -- solve the  
13 correspondence that we have sent you -- the penalty  
14 demand that we have over here is \$1,500 in the file  
15 and I have to confer with the Staff if they have  
16 conveyed to you \$3,000. But, anyway, that's --  
17 that's what our claim is as of now if you -- if you-  
18 all are willing to give us a counteroffer we can give  
19 you the same offer that we did with earlier case on  
20 McVicker if we can reach some kind of agreement  
21 between now and next 45 days than matter is going to  
22 be referred contingent upon that we cannot reach a  
23 final agreement of permit fee and penalty demand.

24 MRS. ALGIERE: Okay. If we owe another penalty fee -  
25 - you know, or a fee plus another --

1 MR. KEVIN MOHAMMADI: It's not going to be \$100.

2 I want to make -- make it clear. Your penalty is --

3 MRS. ALGIERE: Okay. That's what he told me I could

4 write in the request.

5 MR. KEVIN MOHAMMADI: -- not going to be \$100.

6 MRS. ALGIERE: That's what he told me I could do.

7 And that's what I did.

8 MR. KEVIN MOHAMMADI: Well, it was my

9 understanding that he talked to you and he explained

10 to you that \$100 is not acceptable --

11 MRS. ALGIERE: Yeah. He called me back later and

12 told me that.

13 MR. KEVIN MOHAMMADI: -- and asked for --

14 MRS. ALGIERE: And then the next -- oh, excuse me.

15 MR. KEVIN MOHAMMADI: -- I'm sorry -- asked for

16 a more reasonable offer and we never received a

17 reasonable offer that's why you're here. But Mr.

18 Chairman, members of the Commission if that works for

19 you; if you'd like to refer this case to the office

20 of Attorney General contingent upon that we don't

21 reach a final agreement within 45 days. We are

22 willing to go back and work with them to see if we

23 can strike a deal.

24 CHAIRMAN HARDECKE: Okay. That sounds fair.

25 Now, you-all understand you're needing to get

1 the storm water permit and the land disturbance  
2 permit; that would be two permits?

3 MRS. ALGIERE: Storm water I have done. I've got the  
4 -- I've got it --

5 MR. GEORGE ALGIERE: Storm water.

6 MRS. ALGIERE: -- storm water permit all done.

7 CHAIRMAN HARDECKE: That's for the salvage yard?

8 MRS. ALGIERE: Yes.

9 And I've got it back in my possession with a  
10 letter that --

11 MR. GEORGE ALGIERE: I think there was some  
12 confusion; when he asked for the money to be sent in,  
13 I think, she was confused and sent in the amount of  
14 money thinking it was all -- the total amount that he  
15 wanted. And it was for the storm water permit. And  
16 she didn't realize it was also for another permit,  
17 the land disturbance permit. I think she was  
18 confused on that.

19 CHAIRMAN HARDECKE: There would be another fee  
20 for the other permit?

21 MRS. ALGIERE: I was.

22 VICE-CHAIR HUNTER: So there's actually two  
23 permit applications?

24 MRS. ALGIERE: They're wanting us to have two  
25 permits.

1           MR. GEORGE ALGIERE: Yeah. Storm water permit  
2 is ongoing.

3           VICE-CHAIR HUNTER: And a fee for each?

4           MR. GEORGE ALGIERE: We've had that for years.

5           VICE-CHAIR HUNTER: Yeah.

6           MR. GEORGE ALGIERE: And we -- we didn't know it  
7 until they showed up that we even had to have a land  
8 disturbance permit. All we were doing was moving  
9 dirt so we could build a pole barn. Well, anyhow,  
10 they told us that and I guess she didn't understand  
11 that. I didn't understand it that we had to have  
12 more money involved. We thought we just had to apply  
13 for the permit. So I didn't convey anything to her  
14 about it other than the permit. So she talked to  
15 them, they told us how many dollars they wanted. She  
16 sent it to them. And that's kind of where we are.

17           VICE-CHAIR HUNTER: Okay.

18           And, Kevin, you're suggestion is that at this  
19 point the permitting process is in the works, it's  
20 ongoing, we've got that kind of squared away and out  
21 of the picture but you want to ask us to refer to the  
22 Attorney General's Office contingent on you-all  
23 getting it worked out in the next 45 days; is that  
24 what you're saying?

25           MR. KEVIN MOHAMMADI: That's correct. I take

1 their word that they have their storm water permit in  
2 their possession. I'm not sure about the permit for  
3 land disturbance. Do you-all have the permit for  
4 land disturbance?

5 MR. GEORGE ALGIERE: Not from what I understand.

6 MR. KEVIN MOHAMMADI: I don't think that they've  
7 applied. So that needs to be applied. And we also  
8 have to make sure that they do have BMP in place to  
9 prevent erosion of the soil off the site. And we  
10 will try to negotiate a civil penalty.

11 So recommendation would be matters to be -- you  
12 approve the referral to office of Attorney General  
13 Office contingent upon no final agreement is reached  
14 within 45 days.

15 VICE-CHAIR HUNTER: And that's acceptable to  
16 you-all.

17 MR. GEORGE ALGIERE: Acceptable, yeah.

18 MRS. ALGIERE: Yeah.

19 CHAIRMAN HARDECKE: Okay.

20 We'll entertain a motion to that affect. And  
21 thanks for coming and well hopefully you can get it  
22 worked out in the next four to five days.

23 MR. GEORGE ALGIERE: I hope so.

24 MR. KEVIN MOHAMMADI: Forty-five days.

25 CHAIRMAN HARDECKE: Pardon?

1 MR. KEVIN MOHAMMADI: Forty-five days. You said  
2 four to five.

3 CHAIRMAN HARDECKE: Oh. Four, I meant 45.

4 MR. KEVIN MOHAMMADI: We'll be in touch with  
5 you.

6 MRS. ALGIERE: Okay.

7 CHAIRMAN HARDECKE: Thank you.

8 VICE-CHAIR HUNTER: Mr. Chairman, I move that  
9 the Missouri Clean Water Commission refer this matter to the  
10 Missouri Attorney General's Office for appropriate  
11 legal action in order to compel compliance, pursue a  
12 civil penalty, and seek any other appropriate form of  
13 relief contingent on the parties not being able to  
14 reach agreement within the next 45 days.

15 COMMISSIONER TUPPER: Second.

16 CHAIRMAN HARDECKE: Malinda, take the vote,  
17 please.

18 MS. MALINDA OVERHOFF: Commissioner Easley?

19 COMMISSIONER EASLEY: Yes.

20 MS. MALINDA OVERHOFF: Commissioner Shorney?

21 COMMISSIONER SHORNEY: Yes.

22 MS. MALINDA OVERHOFF: Commissioner Tupper?

23 COMMISSIONER TUPPER: Yes.

24 MS. MALIDNA OVERHOFF: Commissioner Parnell?

25 COMMISSIONER PARNELL: Yes.

1 MS. MALINDA OVERHOFF: Commissioner Hunter?

2 VICE-CHAIR HUNTER: Yes.

3 MS. MALINDA OVERHOFF: Chair Hardecke?

4 CHAIRMAN HARDECKE: Yes.

5 MR. KEVIN MOHAMMADI: Thank you very much.

6 CHAIRMAN HARDECKE: Thank you.

7 Tab No. 23.

8 MR. CURT GATELEY: Mr. Chairman and members of  
9 the Commission. My name is Curt Gateley. I'm the  
10 Chief of the NPDES Permits Unit within the -- the  
11 Permits and Engineering section.

12 This report is the same report that Refaat  
13 Mefrakis has previously given; the report that you  
14 will see in your packet on Page 417 is the standard  
15 report we had been running from January 2006 to  
16 September 2nd, 2009, on our permitting performance.

17 A new item for you that that -- that will go  
18 along with this is I had asked Staff to help me  
19 prepare a separate report, which you'll see on Page  
20 419 of just our activities in similar categories from  
21 June 1st of this year to September 1st of this year.  
22 And my concern was that the -- the overall report we  
23 had given is that reflective of what we're actually how we're  
24 performing today.

25 And as you can see the numbers are pretty close.

1 We're -- we're a little better in some categories and  
2 a little bit worse in some other categories, but  
3 largely it follows the same trends.

4 On Page 421, you'll see our -- our backlog  
5 tracking graph. Previously we had included more  
6 historical data. I ended up shortening it up some so  
7 that you could see the data labels better. So it's  
8 moved up to -- since January of 2008. The  
9 performance, we remain below the 10 percent margin  
10 that EPA has established for our performance for  
11 total backlog permits.

12 Remember that this category excludes storm water  
13 permits and things like land disturbance permits,  
14 that sort of thing. The EPA measures our performance  
15 in this category based on our site specific permits  
16 and general permits for -- for industries.

17 You can see that it is trending up slightly. We  
18 don't have an expectation that we will immediately  
19 head back above 10 percent. Some of these -- a lot  
20 of the permits that are backlogged, they all have  
21 individual stories that -- that have brought them to  
22 the position where they're at, expired for a long  
23 time.

24 Some of these are permits that we have held  
25 because of the -- the bypass discussion that you guys

1 had this morning on -- on the potential rulemaking.  
2 We wanted to hold on to those permits until we get  
3 the rulemaking completed. EPA said we can't issue  
4 permits based on the regulations as they are now.  
5 That number, that category of permits that has had to  
6 be held will continue to grow until we get that  
7 resolved.

8 COMMISSIONER PARNELL: Is the DNR goal  
9 attainable?

10 MR. CURT GATELEY: You're asking me to make a  
11 judgment call that may be above my pay grade. I --  
12 at the current amount of resources I, it is my  
13 personal opinion that may be kind of optimistic.

14 COMMISSIONER PARNELL: It makes no sense to set  
15 a goal that's not attainable to me.

16 MR. CURT GATELEY: I -- that goal has been there  
17 since I started with the agency. I think it makes no

18 COMMISSIONER PARNELL: I think it makes no sense to set a goal  
that's not attainable.

19 that's not attainable.

20 MR. CURT GATELEY: Any other questions on that part?

21 The next page is the water quality assistance  
22 section, our performance on that.  
23 You can see the numbers remain somewhat low. We  
24 think that's to some degree because of the current  
25 economy, I think, that's going to pick up as more

1 folks are looking at new developments and proposing  
2 to build new treatment facilities.

3 Page 427 we have our standard report on our  
4 water quality certifications we've produced. Those  
5 are with the Corps of Engineers, certification of  
6 Corps of Engineers projects.

7 429 is our CAFO and Agrichemical Construction  
8 Permit Report. I'll note that on the PSF projects  
9 listed there at Locust Ridge, Somerset Farm and  
10 Hedgewood Finishing that PSF had asked to -- to put  
11 those projects on hold for several months. We're now  
12 close to issuing the -- the operating permits  
13 according to the notes I have here. But the reason  
14 those have been around so long is because PSF had  
15 asked us to hold on to them.

16 Sharpe Land and Cattle, second one there, that  
17 you see, we have two listed that are under review.  
18 The second one there was -- was issued last week.  
19 The previous -- the first one, first Sharpe Land and  
20 Cattle application is -- is still incomplete so we  
21 have -- that's why it says, they're waiting  
22 engineering plan revisions. So we're waiting on more  
23 -- more information so we can complete it.

24 Do you have any questions?

25 (No response.)

1 MR. CURT GATELEY: Thank you.

2 CHAIRMAN HARDCKE: Thank you.

3 Twenty-four? Joe, again.

4 MR. JOE BOLAND: Good afternoon, again. This is  
5 just a quick **update on our Grant and Loan Program.**

6 If --

7 (Tape Two, Side B concluded.)

8 MR. JOE BOLAND: -- was state grant loans.

9 We've received 251 applications for that 50 million  
10 and totaling -- projects totaling 103 million in  
11 applications, like I said.

12 We've -- we're making good progress on  
13 distributing that -- that money and, again, a little  
14 background on -- on these bonds; we have to have all  
15 the proceeds distributed within three years. That's  
16 just part of the -- the IRS requirements for a blind  
17 pool.

18 And we're -- we're about half way there. We've  
19 already awarded approximately 23 million in projects.  
20 And that's through our Rural Sewer Grants, Rural  
21 Water Grants and State Forty Percent Construction  
22 Grants.

23 If you look at this table, I -- if you have any  
24 questions I could -- I'd be happy to answer them, but  
25 it's basically just a break down of grant type and

1 the allocation and how many -- how many awards have  
2 been made.

3 And, again, the important point is that we -- it  
4 took us a little bit of time to ramp up from when we  
5 sold the bonds to get some of those projects moving,  
6 but we're well on our way to get this \$50 million  
7 distributed by 2010 or the fall of 2010. And most of  
8 these projects are very, very small communities. In  
9 fact, when I was talking about the -- the stimulus  
10 IUP I mentioned a couple -- a couple applicants  
11 dropped off that stimulus list and this is one of the  
12 reasons that this is our state grants that they --  
13 they had a choice to go either ARRA or state grant and  
14 loan and some of them chose to go with our state  
15 grant.

16 So, again, that's where some of this funding is  
17 going and I'd be happy to answer any questions if you  
18 have them.

19 CHAIRMAN HARDECKE: Questions?

20 (No response.)

21 MR. JOE BOLAND: Thank you.

22 CHAIRMAN HARDECKE: Thank you.

23 Jenny, do you have a report?

24 MS. JENNIFER FRAZIER: I do not have a report.

25 CHAIRMAN HARDECKE: Thank you.

1 MS. LEANNE TIPPETT MOSBY: Good afternoon. I'll  
2 be brief, Commissioners. First of all, I wanted to  
3 thank you for your vote of confidence in confirming  
4 my appointment today. I'm truly excited about  
5 working with this Program and this Commission to  
6 advance water quality issues in Missouri.

7 I'd like to publically recognize the Staff.  
8 I've known a number of them for a number of years and  
9 have worked closely with them on several issues. And  
10 they -- I've always found them to be very  
11 professional and they have not disappointed me in the  
12 past three weeks. They've been very helpful to me.  
13 And I just wanted to publically acknowledge them.

14 Also, I'd like to recognize several of the  
15 stakeholders in the room. Some of them are -- are --  
16 the crowd's dwindled a little bit, but several folks  
17 in the room that I recognize and have worked with in  
18 the past on different issues. I'm looking forward to  
19 working with them on new challenging issues in water.  
20 And, also, meeting new -- new faces and working with  
21 new stakeholders.

22 Just to give you a few updates; we have a couple  
23 of rules that the Commission has previously acted on  
24 that have become effective. I just want to remind  
25 you of that. Two rules that were filed with the

1 Secretary of State's Office on August 10th, were 10  
2 CSR 20-7.031, Water Quality Standards and 10 CSR 20-  
3 6.200, Storm Water Regulations. Both of these rules  
4 will become effective on October 30th.

5 With regards to -- I wanted to also update you  
6 on some of the Department activities that are going  
7 on that will affect the Water Program. We had -- a  
8 couple months ago we had a strategic planning kick-  
9 off meeting with our Director. Spent all day with  
10 the program directors and the section chiefs in each  
11 of the environmental quality programs and our other  
12 divisions as well; I'm pleased to say that the  
13 director's identified water quality and quantity  
14 issues as one of his key strategic focus areas. And  
15 we will be embarking on additional discussions on a  
16 program-by-program basis here in the near future. So  
17 we'll keep you updated on those activities and as  
18 that progresses.

19 We -- as a couple of the Commissioners were able  
20 to attend our first -- our kick-off water fee  
21 stakeholder meeting and we were pleased to have them.  
22 We will have an -- our next meeting of the water fee  
23 stakeholder workgroup on September 25th. I don't  
24 believe that the -- the times and places have been  
25 finalized, yet. I'm looking at Malinda and she's

1 saying they have been.

2 MS. MALINDA OVERHOFF: Elm Street where the  
3 first one is and I believe it's at nine -- 9:00 a.m.

4 MS. LEANNE TIPPETT MOSBY: Okay. Elm Street,  
5 our Elm Street conference facility, in Jefferson  
6 City, at nine o'clock for those in the audience that  
7 may not have heard Malinda.

8 The first meeting, I thought, went very well.  
9 We -- we had, I think, pretty much unanimous support  
10 from our stakeholders that were there that they do  
11 want to see a strong viable water program in the  
12 State of Missouri, but everyone recognizes that there  
13 are many, many issues to -- to work through and we'll  
14 be keeping you updated on that situation as well.

15 Lastly, I wanted to point out you have some  
16 information in your blue packet related to the 303(d)  
17 List. EPA did provide notification to us on August  
18 6th that they did approve -- approve the list in part  
19 and they -- they also are proposing to add some water  
20 bodies. So they approved the listing of the 273  
21 water bodies that we identified; approved the delisting  
22 of 10 water bodies and they are proposing to  
23 add an additional 17 water bodies. And they are  
24 taking public comment on that. And that public  
25 comment period ends, I believe, on October 5th.

1           The -- four of those water bodies are being  
2 proposed to be added for bacteria. We believe that  
3 may be resulting from a timing issue with regard to  
4 our standards. We believe those may be eventually  
5 not added to the list. Four additional ones were  
6 added for dissolved oxygen. So we'll be looking at  
7 that very -- low dissolved oxygen, we'll be looking  
8 at that very closely and providing comment back to  
9 EPA. The remainder of them were listed for various  
10 pollutants so we'll also be taking a look at those  
11 and providing comment back to EPA.

12           So if you want to review the information that's  
13 in your blue packet for more specific  
14 information. But that's it, I -- I have nothing  
15 further unless you have any further questions of me.

16 MALE SPEAKER: Could you announce that date again?

17           MS. LEANNE TIPPETT MOSBY: Yes. That's  
18 Friday, September 25th at 9:00 a.m. at our Elm Street  
19 Conference Facility.

20           CHAIRMAN HARDECKE: I might mention that the  
21 response from EPA on the 303(d) List there are copies  
22 of that in the back if anyone would like to pick up a  
23 copy.

24           MS. LEANNE TIPPETT MOSBY: One more thing, I --  
25 I might say, I do tend to talk fast so you might give

1 me the hi-sign if I get going to fast. I -- that's  
2 one of my things I struggle with. So unless you have  
3 any further questions from me that's -- concludes my  
4 report.

5 CHAIRMAN HARDECKE: Okay. Thank you.

6 MS. LEANNE TIPPETT MOSBY: Thank you.

7 CHAIRMAN HARDECKE: We have a card here from  
8 **Leslie Holloway about the 303(d) List** so we'll go  
9 ahead and take that now.

10 MS. LESLIE HOLLOWAY: Mr. Chairman, members of  
11 the Commission, my name's Leslie Holloway  
12 representing Missouri Farm Bureau. I've left a  
13 letter that's being distributed now for you. I'll  
14 talk off of that -- that letter. And these are  
15 comments pertaining to the 303(d) List.

16 Leanne just talked about the notice that EPA has  
17 issued, public comment period is open until October  
18 5th and there's an issue that we had raised concerns  
19 about last fall when the 2004/2006 List was under  
20 consideration. We submitted written comments which  
21 you-all were copied on and I also talked about it at  
22 the November Commission meeting last year.

23 This letter, I'd like to just highlight some of  
24 the -- the paragraphs here that are particularly  
25 pertinent, but we are expressing objections to the

1 decision to list the entire segment length of a water  
2 body that is on the impaired waters list rather than  
3 the actual length of the impaired portion as DNR has  
4 recommended in the list that it submitted.

5 In the second paragraph that's basically  
6 restated in short by requiring that any classified  
7 stream segment with any impairment in any portion of  
8 the stream be listed as though the entire stream  
9 segment were uniformly impaired. EPA compromises the  
10 accuracy of the list.

11 The next paragraph, the third paragraph talks  
12 more about the reasoning why this is a problem or why  
13 EPA thinks that it needs to be handled differently,  
14 which until the previous listing cycle they had not  
15 objected or at least had approved the list as  
16 submitted listing the impaired length rather than the  
17 entire length.

18 Last year, EPA changed course in response to  
19 critics of this decision. EPA contended that listing  
20 the entire stream segment length would make it easier  
21 to track progress from one listing cycle to the next.  
22 However, if the entire stream segment length is  
23 listed regardless of any change in impairment for  
24 better or worse in any portion of the stream, clearly  
25 listing the entire length provides absolutely no

1 indication of either progress or deterioration.

2 In contrast, including the water body  
3 identification number, the length of the impaired  
4 portion, the latitude and longitude coordinates of  
5 the impaired portion along with the length of the  
6 entire stream segment as recommended by DNR provides  
7 some indication of the status of actual impairment.

8 I won't read through the rest of that particular  
9 page. It talks about EPA's response in January when  
10 this issue was raised on the previous list as to  
11 their rationale for wanting to substitute the entire  
12 segment length.

13 But moving to the second page in response to  
14 their comments relative to the Water Quality  
15 Standards part of their argument is that the  
16 information that DNR wants to provide is not within the  
17 Water Quality Standards and therefore does not meet  
18 the -- the needs of the list. But in reality the  
19 question is not whether that information is actually  
20 in the Water Quality Standards, the water body  
21 identification number and the coordinates but whether  
22 it is consistent with the Water Quality Standards and  
23 in fact provides better information than what EPA is  
24 suggesting in terms of being able to track impairment  
25 from year to year.

1           The -- the third paragraph on that page and I'll  
2 close my comments and be happy to take any additional  
3 questions; reiterates the comments that we offered  
4 last fall when we raised this issue. And the, I  
5 guess, most -- the clearest way to illustrate what  
6 the implications are here is that there would be more  
7 than 3,000 total impaired stream miles on the list  
8 compared to the 600 miles of actual impairment if the  
9 mileage is listed as EPA suggests.

10           So you have a dramatic aberration in the way  
11 Missouri would be calculating impaired stream miles.  
12 In addition, a less accurate list and no improvement  
13 in tracking impairment from year to year, but -- and  
14 the attachments are the letter that we submitted last  
15 November, the commitment letter with the final page  
16 of -- of the handout being some examples of waters  
17 that are on the impaired waters list and the diff- --  
18 you can see the differences between the length of the  
19 impaired portion and the length of the entire  
20 segment, which is pretty significant in most cases.

21           So we are urging that the Commission work  
22 further with EPA during this public comment period in  
23 favor of the position that the Department has taken  
24 suggesting that all of the information be included as  
25 part of the list.

1 I'd be happy to answer any questions.

2 CHAIRMAN HARDECKE: I guess the question that  
3 comes to my mind in -- in light of the fact that  
4 we're short on funds. If we have 3,000 impaired  
5 miles compared to 6,000 impaired miles --

6 VICE-CHAIR HUNTER: Six hundred.

7 CHAIRMAN HARDECKE: -- six hundred; what's going  
8 to be the difference, and this may be more to Staff,  
9 if we have to do TMDLs on all of these, how much  
10 extra work is that going to be?

11 MR. ROB MORRISON: I'm going to let Phil maybe -  
12 - is Phil -- Phil come on up, Phil. I'll give you  
13 the quickie and give -- Phil will give you the  
14 details.

15 CHAIRMAN HARDECKE: Get Phil on the program.

16 MR. ROB MORRISON: Yeah. I'll get Phil up here.  
17 He's got to -- got to earn his trip down here.

18 The -- my take on this is that -- and we can  
19 talk more about it in detail, but I would  
20 -- what it will transpire and it will -- it will  
21 force us in a way to indentify in the TMDL process  
22 the actual segments -- the sub-segments of that  
23 segment that are impaired. And we'll have to -- I  
24 mean, we'll obviously, won't have the data for the  
25 entire segment to be working on waste load

1 allocation. So they'll have to be some  
2 identification done and it will create some  
3 additional work during that process, but --

4 MR. PHIL SCHROEDER: I think Rob obviously said  
5 it right. I mean, it -- when we write a TMDL the  
6 first phase of that project is to identify the  
7 sources of the pollution and the actual segment of  
8 water or actual portion of the water that's affected.  
9 And everything in the TMDL would drive toward just  
10 repairing or restoring that segment that's -- that's  
11 actually impaired.

12 So what I envision as the added part of the TMDL,  
13 because of this -- the way that EPA's listing these  
14 waters, is another paragraph that explains why aren't  
15 we addressing all 195-and-a-half miles of the  
16 Mississippi River as opposed to maybe just -- you  
17 know, 10 or 12 miles of the Mississippi River. But -  
18 - so you'd see another paragraph in there just  
19 explaining why the numbers are a little  
20 different between what we're trying to restore as  
21 compared to his -- to what's listed on the 303(d)  
22 List. So I don't see a lot -- a lot of extra work.

23 CHAIRMAN HARDECKE: Another question in that  
24 regard. It seems like it's been a couple years that  
25 we've been talking back and forth with EPA about

1 getting our format compatible with theirs so that  
2 they would accept this. And we're always told it  
3 will be in a year or so. So is there any update on  
4 how soon that will be done or are they going -- are  
5 we achieving something and then they raise the bar  
6 again or are we not getting there?

7 MR. PHIL SCHROEDER: We may be kind of chasing  
8 each other around a table so to speak on the issue.  
9 There's really two things happening in concert that's  
10 creating some complexity here; one, is databases  
11 evolve. And it's evolving at a national level. It's  
12 evolving at the state level. They're not evolving  
13 together. And we need to somehow get the information  
14 technology paths in synch with one another.

15 And I think we're trying to do that. But the  
16 amount of resources that it takes to rearrange these  
17 databases and make them work, and make them talk to  
18 each other is an enormous amount of funding and an  
19 enormous amount of Staff that's involved with that  
20 effort. So it's very challenging to get that much  
21 mind power on that issue and resolve it.

22 The other problem we're facing, the other  
23 parallel issue is the water quality -- or the water  
24 classification structure in the State of Missouri --  
25 you know, this whole problem is really rooted in the

1 fact that the way we classify our water bodies are  
2 not reflective of how we do our water quality  
3 assessments.

4       Assessments are done such that you take certain  
5 bits of data on a water body and you try to draw  
6 conclusions from that data, but if you're trying to  
7 take one or two sites and try -- and make a  
8 conclusion about a segment that's 50, 75 or 100 --  
9 over 100 miles long you just really can't do it that  
10 well. So what we're trying to do in a water  
11 classification workgroup is redefine that structure  
12 of the water classification so it better fits how we  
13 do our assessments.

14       So when we do an assessment of water quality  
15 data in two or three points along a water quality  
16 assessment we can make a true judgment about that  
17 classified reach. And then that goes on the 303(d)  
18 List if the data shows it's impaired, not the entire  
19 water body from top to bottom.

20       So that process -- if we continue on the path  
21 that we are; we hope to conclude sometime in 2012.  
22 And so hopefully that will add a lot of effort -- or  
23 a lot of value toward resolving this issue with EPA.  
24 If they're tracking Water Quality Standards and want  
25 our water classifications to set up the 303(d) List,

1 then after 2012 we're right on board with that with  
2 them.

3 But we have to have our I.T., the -- the databases  
4 in synch at that time, too, to solve the whole  
5 problem.

6 CHAIRMAN HARDECKE: So that means we got three  
7 years before we get it resolved?

8 MR. PHIL SCHROEDER: Well, in a way -- yeah.  
9 Our 2010 assessments, which are due early in 2010 are  
10 already well underway. We should have our  
11 assessments done starting next year or later this year.  
12 So we really don't have time to try fix the database  
13 issues or to get a new water quality classifications  
14 network in place. So 2010 is really off the table in  
15 terms of having this fixed. So we'll probably come  
16 back with the same issue that Leslie has brought up  
17 in the 2010 List. But for 2012 I think we have -- we  
18 have a good chance if we stay on path and if we can  
19 find the necessary resources to address the database  
20 issues. And if the water classification workgroup  
21 can bring a good recommendation that the Commission  
22 can adopt for the classification structure, I think,  
23 it's a good chance we'll finally be on board  
24 with them.

25 CHAIRMAN HARDECKE: Where is that on the

1 priority list?

2 MR. PHIL SCHROEDER: The water classification  
3 workgroup?

4 CHAIRMAN HARDECKE: No. The -- getting the --

5 MR. PHIL SCHROEDER: The I -- database?

6 CHAIRMAN HARDECKE: -- compatible database?

7 MR. PHIL SCHROEDER: Well, it's always been a  
8 high issue for the Department. The real challenge  
9 there, Mr. Hardecke, is that -- is the resources. It  
10 is -- working on those databases, and I don't do it  
11 myself, but I hear bits and pieces about how much  
12 effort goes into that.

13 But it's a high priority, yes. And I don't know  
14 maybe somebody else from the Department can speak on  
15 -- on where we're -- you know, how far it will take  
16 -- how long it will take to finally get to that end  
17 point of having that database in synch with EPA, but --

18 I can certainly speak on the water classification  
19 workgroup. That is extreme high priority. We're very  
20 much committed to trying to get something done in 2012  
21 on that issue.

22 CHAIRMAN HARDECKE: I guess it seems like once  
23 they're listed, why it's harder to get them unlisted.

24 MR. PHIL SCHROEDER: Well, that's a matter of  
25 close coordination with EPA, I think. I've seen some

1 -- some hope on that regard in this most recent list.  
2 They've allowed us to delist some waters. And so  
3 they're by that making admission that we can present  
4 things that they will understand and accept in terms  
5 of a delisting process, but we are very -- we remain  
6 very guarded, if you will, with respect to what goes  
7 on a 303(d) List for the very fact that, yes, the  
8 criteria for getting waters on a list changes when  
9 you try to get a water off the list.

10 But we're knowing more about that each time we  
11 provide a list and so we can incorporate more issues in  
12 the administrative record that helps us when that  
13 times comes. Like the bacteria issue that Leanne  
14 mentioned, we're already working with EPA on  
15 getting those waters off the list. We  
16 structured a lot of upfront discussion and  
17 administrative record issues to help us define that  
18 issue with them so that there's really no surprise  
19 when we ask them -- explain to them why those waters  
20 should come off.

21 CHAIRMAN HARDECKE: Any questions?

22 Leslie, yeah.

23 MS. LESLIE HOLLOWAY: The sad thing is, is that  
24 all of the information that's needed to track  
25 impaired waters is there. DNR is already providing

1 that information in the information that they are  
2 including in their records, in their database. The  
3 difficulty is that EPA doesn't get it in the format  
4 that they want it in order to be able to put it in to  
5 whatever reports they have to put it in.

6 You know, obviously, the Department is working to  
7 try to meet their expectations. They haven't met  
8 your expectations, yet, and so EPA has, I guess,  
9 decided to draw a line in the sand and say, okay,  
10 you're going to have to list it our way. We can't  
11 wait anymore. When it could just as easily be done  
12 to include the list of the entire segment as EPA has  
13 suggested and the other information that DNR has  
14 suggested be included as well.

15 And then you have the information on the actual  
16 impaired miles and the information on the entire  
17 segment. So it just seems like it shouldn't be an  
18 issue.

19 Thank you.

20 CHAIRMAN HARDECKE: And EPA isn't here to -- to  
21 ask about that; are they?

22 (No response.)

23 MR. ROBERT BRUNDAGE: Chair Hardecke?

24 CHAIRMAN HARDECKE: Yes. Go ahead.

25 MR. ROBERT BRUNDAGE: Just to -- on behalf of --

1 I'm Robert Brundage with Newman, Comley & Ruth in  
2 Jefferson City on behalf of the Missouri Pork  
3 Association, Missouri Agribusiness Association. We  
4 whole-heartedly endorse the Farm Bureaus' comments on  
5 this issue and we feel the exact same way.

6 And I wanted to make sure that was on the  
7 record. And it's very frustrating to read -- you  
8 know, these public notices and EPA's position. In  
9 this day and age of GPS coordinates where we can pull  
10 out a GPS and we're within 25 feet plus or minus of a  
11 location, I don't know why EPA claims there's  
12 confusion on the -- on the location of these  
13 segments. And, I think, they should -- they should  
14 accept the Missouri list and move on.

15 They put in here that they're willing to work  
16 with DNR on this issue and I heard what Phil said and  
17 Rob said, but we need to get this issue resolved  
18 sooner than later. And I just urge the Commission to  
19 -- to keep this issue in mind and maybe periodically  
20 address an update on this issue because it's of  
21 serious concern.

22 And when you have many miles of these streams  
23 that are impaired that are not really impaired -- I'm  
24 wondering what's going to happen when -- if we do  
25 come to agreement on a way to -- to limit the listing

1 of a whole segment down to a sub-segment and then you  
2 say, okay, let's delist this other segment; I'm  
3 wondering how that's going to occur? Especially, if  
4 there wasn't any data on the other segment in the  
5 first place because EPA always says we're not going  
6 delist anything unless we can prove it with data.

7 And there was no data in the first place in some  
8 instances or the data was there that maybe it was  
9 sketchy data or whatever it was, but that's a concern  
10 I have is about -- is EPA actually going to delist  
11 these segments when these segments are shortened down  
12 to the actual segment that you approved in the first  
13 place?

14 So anyway I just wanted to make sure that we  
15 were on record supporting the Farm Bureau comments.

16 Thank you.

17 CHAIRMAN HARDECKE: Comments, questions?

18 (No response.)

19 CHAIRMAN HARDECKE: Would it be helpful for the  
20 Commission to make a statement or in support of the  
21 protocol that the Department has been using and not -  
22 - it wouldn't change anything this time, but at least  
23 show that we support the way they have made the list  
24 versus what EPA is expanding? You got thoughts on  
25 that Robert?

1           MR. ROB MORRISON: Well, if I may, Chairman  
2 Hardecke, I -- I might suggest that we could draft a  
3 letter for your signature from the Commission to EPA  
4 during the public comment period addressing this  
5 issue. And as -- and I think that would be entirely  
6 appropriate giving your feelings about the subject.  
7 And we could -- we could do that rather easily; if  
8 that would be acceptable?

9           And I do -- as Phil mentioned, it is a resource  
10 issue. We're working very hard to try to find  
11 resources. It is on the priority list. We are  
12 working on a new database that's called MOCWIS,  
13 Missouri Clean Water Information System. It is part  
14 of the project. But it is resource dependent.

15           And as you know we are resource challenged. And  
16 we are in a fee bill process and Leanne can speak  
17 probably very at length about the entire situation  
18 financially, but it does take resources to do this.  
19 IT work is not cheap. And as many of you know that  
20 are involved with it, it is time consuming.

21           And part of the issue here to, we're sort of  
22 battling a double-edged sword. We've got on one hand  
23 the need to catch up, if you will, on our 303(d)  
24 List. It's our desire to be timely. We want to be  
25 timely in April of even numbered years. That's our

1 goal is to make that deadline.

2 We're not going to quite make it this year, but  
3 we're going to be close. So on one hand we're -- but  
4 what that does is it puts us in an awkward position  
5 with our database. As Phil mentioned, one more --  
6 one more list where we're going to be talking about  
7 these kind of issues once again.

8 So we felt like, you know, in '08 that we had a  
9 -- a reasonable attempt. We felt like it portrayed  
10 the situation accurately and they have their  
11 position. And that's about the best way I can leave  
12 it.

13 CHAIRMAN HARDECKE: Did you-all desire to make a  
14 motion to send that letter?

15 MR. JOHN CARTER: Commissioner?

16 CHAIRMAN HARDECKE: Yes.

17 MR. JOHN CARTER: Malinda would you mark on my  
18 card that I would like to speak on this subject?

19 I'm John Carter with the Doe Run Company and on  
20 this particular subject I was one of the stakeholders  
21 that attended the meeting this last week on funding  
22 for the Water Pollution Control Program. And we all  
23 do support the Program.

24 We think in this instance on this 303(d) List  
25 that -- you know, the Chairman of Commission should

1 send a letter and also, I think, the Director of the  
2 Department should send a letter or should call the  
3 EPA administrator. And this is an important issue on  
4 policies that EPA causing trouble for the people here  
5 in the State of Missouri.

6 So I think it's something that -- you know, the  
7 director should be involved in, too, because we want  
8 the Department of Natural Resources to represent our  
9 stakeholders here in Missouri.

10 So that's my comments. Thank you.

11 CHAIRMAN HARDECKE: Thank you.

12 COMMISSIONER PARNELL: I move we send the  
13 letter.

14 COMMISSIONER SHORNEY: Second.

15 CHAIRMAN HARDECKE: Malinda, take the vote.

16 MS. MALINDA OVERHOFF: Commissioner Shorney?

17 COMMISSIONER SHORNEY: Yes.

18 MS. MALINDA OVERHOFF: Commissioner Tupper?

19 COMMISSIONER TUPPER: (No response.) (Stepped out)

20 MALE SPEAKER: He stepped out.

21 MS. MALINDA OVERHOFF: Commissioner Parnell?

22 COMMISSIONER PARNELL: Yes.

23 MS. MALINDA OVERHOFF: Commissioner Hunter?

24 VICE-CHAIR HUNTER: Yes.

25 MS. MALINDA OVERHOFF: Commissioner Easley?

1           **COMMISSIONER EASLEY: Yes.**

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

3           **CHAIRMAN HARDECKE: Yes.**

4           Okay. I think our next agenda item is a  
5 **presentation by Candy Schilling.**

6           MS. CANDY SCHILLING: Good afternoon. My name  
7 is Candy Schilling. I'm with the Environmental  
8 Resources Coalition out of Jefferson City. We're a  
9 non-profit group that works on water quality  
10 improvement projects around the state. We were  
11 started up several years ago by the Missouri Corn  
12 Growers' Association.

13           One of our projects, the Water Quality  
14 Improvement Projects, deals with what the people in  
15 southwest Missouri have been doing to take care and  
16 preserve and protect their water resources and we  
17 have a -- hopefully, if it plays and you can hear it.  
18 Lance maybe we could get the lights turned down, too,  
19 so that they could see this.

20           We have a DVD about this project that these --  
21 to show you what these people are doing. And I can  
22 have a few of them stand up, I think, -- where are  
23 they? Oh. There we go. Can you just give --  
24 introduce yourself?

25 (Three audience members presented their self for the

1 record.)

2 MS. CANDY SCHILLING: And then Loring Bullard  
3 also with the Watershed Committee of the Ozarks  
4 is part of the group as well.

5 In any event, one of the things that the video  
6 does is show you just what it is that the people are  
7 predict- -- protecting down here or not.

8 MR. GATELEY: We ask your patience while we try to  
9 get some of the -- the audio issues worked out.  
10 We're going to see if we can get this through the  
11 speakers where it would be loud enough for folks to  
12 be able to hear it instead of relying on the little  
13 speakers of the laptop.

14 (Audio/Video was presented regarding H2Ozarks to the  
15 Commission and audience in attendance. A copy of the  
16 audio/video may be obtained for your record by  
17 contacting Malinda Overhoff, Secretary to the  
18 Commission, Department of Natural Resources, Water  
19 Protection Program, Post Office Box 176, Jefferson  
20 City, Missouri 65102-0176.)

21 (Tape Two, Side B concluded.)

22 (Tape Three, Side A H2Ozarks presentation continued.)

23 MS. CANDY SCHILLING: I'm sorry the quality on  
24 the screen wasn't as good as the DVD. I do have some  
25 -- some DVDs if you'd like to see for yourself on

1 your own TV or your computer.

2           Again, I used to be the public information  
3 officer for the Water Protection Program at the  
4 Department of Natural Resources and one of the things  
5 that always used to say, was I wish the rest of the  
6 state was doing it like they do it down in southwest  
7 Missouri because they really put their heart and soul  
8 in it. And they really made a great contribution to  
9 protecting the environment here, so we're lucky to  
10 have these kinds of groups around.

11           I didn't know if you had any questions. We just  
12 wanted to show you some of the things that they've  
13 done. We aired this on KY3 here and also the Little  
14 Theatre downtown, the Moxie and at the Joplin TV  
15 station as well so quite a few people have seen it.  
16 And we thought you might want to see it, too.

17           CHAIRMAN HARDECKE: Thank you.

18           It's always good to see a little good news.

19           MS. CANDY SCHILLING: Yeah.

20           CHAIRMAN HARDECKE: Okay. Is there any other --  
21 Phil, you have a comment?

22           MR. PHIL WALSACK: Commissioners, Phil Walsack,  
23 Missouri Public Utility Alliance. That's an  
24 interesting segue because on your list of 53  
25 communities for this second outfall; Joplin,

1 Republic, Noel, Aurora, Ava, Cassville, Exeter, Purdy  
2 and that's just what I can remember right now. So  
3 while we have a lot of interest in this area, we have  
4 -- you know, things to do on the municipal side to  
5 improve the situation. And it is a daunting  
6 challenge and it only -- one or two times that I hear  
7 in there about the word cost, and there is a cost for  
8 municipal governments to try to do what we're talking  
9 about doing here in this -- in this video which leads  
10 me to a -- a sort of an a sigh for this Commission to  
11 consider.

12 I know that my DNR Staff is behind here,  
13 hopefully, at a safe distance. I'm reaching for Joe,  
14 there he is. Hoping he's not over my shoulder, but  
15 I'm asking the Commission to take a look at a special  
16 project that's on your contingency list for the, Joe,  
17 pronounces it -- I pronounce the ARRA list, the  
18 federal stimulus package list for a community in --  
19 of Carterville, which is one of our newest members.

20 They are seeking to build a lift station. The  
21 federal EPA, the abandon mines group is going to  
22 close their lagoon, their storm water lagoon, their  
23 overflow basin for their lift station. And their  
24 project is not on the funded list, yet, mainly  
25 because the big federal EPA from the abandoned mines

1 folks is not talking to the Region 7 folks about how  
2 we can collaborate and coordinate together for that  
3 particular project. I think it's about 1.1, \$1.2  
4 million.

5         The abandoned mine lakes -- excuse me -- the  
6 abandoned mine folks are going to close the lagoon  
7 and then the sewage needs to go somewhere and it's  
8 going to go to the 201 Center Creek Board's  
9 Wastewater Treatment Plant. But that project may be  
10 one that this Commission may want to have some input  
11 in to see if we can't get these two branches of  
12 federal government to talk together so that we could  
13 get this project on the fundable list.

14         It's a very unique project. The federal  
15 government has spent billions of dollars on the clean  
16 up in the abandon mine areas of north Joplin and this  
17 particular project is one that -- that would go along  
18 way to solving some wastewater issues and some  
19 abandoned mine issues at the same time.

20         Thank you for the opportunity to provide  
21 freelance public comments. Thank you.

22         CHAIRMAN HARDECKE: Any Staff have any comment  
23 on that proposal?

24         MR. PHIL WALSAK: He doesn't know about it.

25         CHAIRMAN HARDECKE: Okay.

1 Roger?

2 MR. ROGER WALKER: Thank you.

3 I'm Roger Walker, Executive Director of REGFORM  
4 a statewide business association of utility's  
5 manufacturers. I had a couple of comments I wanted  
6 to make, but first as that was a phenomenal video and  
7 I'm glad that you -- you showed it, and I -- thanks  
8 and admiration to everyone who's involved with it  
9 including Candy.

10 I had put on your -- in front of your desk a  
11 copy of the brochure for our annual -- now, it's  
12 Fourth Annual 2009 Missouri Water Seminar. It's  
13 September 29th and 30th. It's at the Hampton in  
14 Columbia, Missouri. I would invite all the  
15 Commissioners to as -- to come as our guest, if you  
16 can make it.

17 I wish I could invite everyone in the room to  
18 come as our guests but then I wouldn't be able to  
19 afford to put on the seminar.

20 And I wanted to -- to especially note the  
21 assistance of Rob Morrison and Leanne; we can't put  
22 on seminar like this and bring in the kind of  
23 speakers without their participation. I would also  
24 note that we're going -- we have on the agenda the  
25 watershed management issues, permitting issues,

1 relationship between DNR/EPA and we'll cover all  
2 kinds of other issues as well.

3       And including in our sponsors is Missouri  
4 Association of Sewer Districts and Missouri Public  
5 Utility Alliance, Homebuilders, Missouri Chamber,  
6 Associated Industries, our group, RCJ -- RCJ and the  
7 Kansas City Chamber. We've tried bringing together a  
8 very diverse group of speakers and topics and it's  
9 the fourth annual and it's only gotten bigger every  
10 year. And I'm not sure too many Commissioners have  
11 joined us in the past, but we would invite you to do  
12 so.

13       And then the other issue if I -- if I may 'cause  
14 its -- you know, it's -- it's becoming a source of  
15 frustration, I think, because there's probably --  
16 there's not a Commission meeting we don't go to or  
17 meeting I don't go to where we're talking about that  
18 relationship between EPA and DNR. And at some point  
19 instead of talking about it in sidebars we probably  
20 ought to talk about it more openly amongst ourselves.  
21 And I say that only because there is clearly a role  
22 for EPA and clearly a strong role for DNR and you've  
23 heard it several times today including John Carter of  
24 Doe Run, who's a member of our group. And we'd like  
25 to have -- we value a strong DNR, we want a DNR that

1 is tending to our local needs. We understand and  
2 value the role of EPA. We're seeing our issues in  
3 permitting and enforcement and in policy on now the  
4 303(d) List and, I mean, continually were seeing  
5 this, what I think, is an erosion of a relationship  
6 that where's there a state foundational program.

7       And I've said it. And I said it at our meeting  
8 on Fees Group last week or a couple weeks ago on the  
9 24th and I'll continue to say it. They both have a  
10 role but we want to be well-funded and a dynamic DNR,  
11 professionally run. And a Commission like you guys  
12 who volunteer your time are making decisions and  
13 working with our staff on looking at local nuances.  
14 Looking at the -- the permitting issues and other  
15 issues that -- that are permitted facilities and  
16 others. Understand and appreciate it.

17       We sometimes have one size to fit all. EPA,  
18 D.C. sort of led strategies that have to be nuanced  
19 at a state level and if we don't have the resources  
20 to allow that then that's not going to happen and  
21 then get the EPA override. And I'm going to stop  
22 there.

23       I probably said more than I should, but -- you  
24 know, this meeting and every time we get together  
25 it's the same story. And I just wanted to -- to note

1 that.

2 Thank you for the public session. Thank you  
3 again for that wonderful video, Candy and everyone  
4 who has been involved with that. Appreciate it.

5 CHAIRMAN HARDECKE: Thank you.

6 Anybody else have anything?

7 (No response.)

8 CHAIRMAN HARDECKE: I have one other thing to  
9 bring up. On the Missouri River issue, I don't know  
10 how many of the other Commissioners are getting the  
11 updates on public notice from the Corps of Engineers.  
12 I know Kristin and I have, but since we were in the  
13 meetings with them back in -- a year or two ago.

14 Anyhow, there's another chute project that is on  
15 the Kansas side of the river. It's called Dably  
16 (sic) Bottoms and -- or Dalby Bottoms and anyhow the  
17 -- they're not going to pump the dirt directly in the  
18 river, but they're going to pile it up and it's  
19 projected to erode in within the 10 years. And if  
20 you read the public notice if it isn't eroded in the  
21 10 years they will make sure that it does with  
22 mechanical equipment, which is a violation of the  
23 order that we issued back in March of '08 and I just  
24 wanted to bring this up.

25 I think we need to consider if we're going make

1 the -- this is open for public comments with the  
2 Corps and also the Kansas Department of Environmental  
3 Quality. Maybe we should make contact with them and  
4 let them know about our order 'cause I don't see that  
5 there's a lot of difference of which side of the  
6 river the dirt goes in on whether it's the Missouri  
7 side or the Kansas side.

8 And at the same time, the EPA is -- just  
9 released a report that hypoxia in the Gulf is down to  
10 3,000 acres this year from the projected 8,000 acres,  
11 which is a very significant difference. And from  
12 what I've read they don't have an answer to that.

13 I would offer that one answer could be the fact  
14 that the last year the Corps hasn't dumped as much  
15 dirt in the river through these projects. That's  
16 certainly worth consideration.

17 But, I think, it -- if -- as long as we have  
18 this order we should defend it. And so I wanted to  
19 bring that up for discussion.

20 COMMISSIONER TUPPER: I think we ought to  
21 contact Kansas. I don't know --

22 CHAIRMAN HARDECKE: Okay.

23 COMMISSIONER TUPPER: -- the other sounds like a  
24 jurisdiction issue to me. I don't know how much we  
25 can do to --

1           CHAIRMAN HARDECKE: Well -- yeah, I don't -- we  
2 could provide comments on this permit to the Corps.  
3 The public comments I think closes September 17th if  
4 we want to do that as a Commission.

5           COMMISSIONER EASLEY: Really it's not affecting  
6 the water in Kansas. It's affecting the water in  
7 Missouri.

8           CHAIRMAN HARDECKE: Right.

9           COMMISSIONER EASLEY: And Kansas may not even  
10 care.

11          COMMISSIONER TUPPER: I don't know how much  
12 authority we got though.

13          COMMISSIONER EASLEY: Yeah. But you can check and  
14 see.

15          COMMISSIONER TUPPER: They're working on the  
16 bank on the Kansas side.

17          CHAIRMAN HARDECKE: Right.

18          But, you know, it -- and the EPA is having  
19 another hypoxia task force meeting sometime in later  
20 September so it'll be interesting to see how they  
21 come out of their evaluation of the reduction in size  
22 of the hypoxia zone in the Gulf. Because what's been  
23 stated so far is that it's due to the nutrients coming  
24 out of the Mississippi River Basin in which Missouri  
25 has been targeted as a major contributor.

1           So that's kind of where we've come to this --  
2           this far. So if --

3           VICE-CHAIR HUNTER: Do we need to authorize the  
4           Staff to draft a letter or do you want to do it?

5           CHAIRMAN HARDECKE: With their help we can do  
6           that if that's your desire.

7           VICE-CHAIR HUNTER: I think everybody agrees.

8           CHAIRMAN HARDECKE: Okay. Do you want to make a  
9           motion to that affect?

10          VICE-CHAIR HUNTER: I make the motion that we  
11          draft a letter to the Kansas Department of  
12          Environmental Quality making them aware of our order  
13          and the reasons for it.

14          CHAIRMAN HARDECKE: And the Corps of Engineers?

15          VICE-CHAIR HUNTER: And the Corps of Engineers,  
16          yeah.

17          COMMISSIONER TUPPER: Second.

18          CHAIRMAN HARDECKE: Malinda, do you want to take  
19          the vote?

20          MS. MALINDA OVERHOFF: Commissioner Tupper?

21          COMMISSIONER TUPPER: Yes.

22          MS. MALINDA OVERHOFF: Commissioner Parnell?

23          COMMISSIONER PARNELL: Yes.

24          MS. MALINDA OVERHOFF: Commissioner Hunter?

25          VICE-CHAIR HUNTER: Yes.

1 MS. MALINDA OVERHOFF: Commissioner Easley?

2 COMMISSIONER EASLEY: Yes.

3 MS. MALINDA OVERHOFF: Commissioner Shorney?

4 COMMISSIONER SHORNEY: Yes.

5 MS. MALINDA OVERHOFF: Chair Hardecke?

6 CHAIRMAN HARDECKE: Yes.

7 Do you want to go over the dates of locations?

8 MS. LEANNE TIPPETT MOSBY: Oh. Yeah. We need  
9 to make a decision -- just -- this -- at least on the  
10 March 2010 meeting and if you want to go ahead and  
11 make a decision on the location of the May meeting as  
12 well we can do that.

13 So the November 4th meeting is in Columbia. The  
14 January 6th meeting is in St. Louis so we can start making  
15 plans.

16 CHAIRMAN HARDECKE: Do you want to move back to  
17 Jeff City for March and May; would that be --

18 VICE-CHAIR HUNTER: March and May?

19 CHAIRMAN HARDECKE: Or whatever -- other  
20 suggestions would be fine. We haven't had -- we had  
21 a couple out in the state, something like what four  
22 out in the state in a row?

23 MS. LEANNE TIPPETT MOSBY: I don't know. Cape  
24 Girardeau was the last one, right? The previous ones  
25 aren't here.

1 MS. LEANNE TIPPETT MOSBY: The previous one was  
2 in Jeff City.

3 MS. MALINDA OVERHOFF: Jeff City? Okay.

4 CHAIRMAN HARDECKE: I mean by the time we get  
5 back to Jeff City.

6 MS. LEANNE TIPPETT MOSBY: Oh. Okay. All  
7 right.

8 VICE-CHAIR HUNTER: One other thing I'd like to  
9 -- to bring up regarding the schedule I saw that next  
10 year the meeting in September is on September the 1st,  
11 which is not a good day. So I wondered if we could  
12 consider moving it back a week.

13 CHAIRMAN HARDECKE: That's fine with me.

14 COMMISSIONER PARNELL: Did you say March and May  
15 are in Jeff City; is that what you said?

16 CHAIRMAN HARDECKE: If that would be agreeable  
17 with everybody. We'll have had four out in state by  
18 that time, be back to Jeff City for a couple.

19 MS. LEANNE TIPPETT MOSBY: If I may comment, I  
20 think that might make out very well for Staff since  
21 that is during legislative session it will be a very  
22 busy time for folks.

23 CHAIRMAN HARDECKE: Okay. If there's nothing  
24 else to come before the Commission, we'll adjourn.

25 (Tape Three, Side B concluded.)

COMMISSIONER HUNTER: I move that we adjourn this meeting.

COMMISSIONER SHORNEY: Second.

CHAIR HARDECKE: Take the vote please Malinda.

MS. MALINDA OVERHOFF: Commissioner Shorney?

COMMISSIONER SHORNEY: Yes.

MS. MALINDA OVERHOFF: Commissioner Tupper?

COMMISSIONER TUPPER: Yes.

MS. MALINDA OVERHOFF: Commissioner Parnell?

COMMISSIONER PARNELL: Yes.

MS. MALINDA OVERHOFF: Commissioner Hunter?

COMMISSIONER HUNTER: Yes.

MS. MALINDA OVERHOFF: Commissioner Easley?

COMMISSIONER EASLEY: Yes.

MS. MALINDA OVERHOFF: Chair Hardecke?

CHAIR HARDECKE: Yes. Thank you.

## 1 CERTIFICATE OF TRANSCRIPTIONIST

2

3 I, DANIELLE Y. MOSER, within and for the State  
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15 DANIELLE Y. MOSER, Notary Public

16 Commission # 07398805

17 Commission Expires 01-08-2011

Respectfully Submitted,

Leanne Tippett Mosby  
Director of Staff