Missouri Clean Water Commission
P.O. Box 176, Jefferson City, Missouri 65102

Notice of Open Meeting
Missouri Clean Water Commission

People with disabilities requiring special services or accommodations to attend the meeting can make arrangements by calling the Commission secretary at (573) 751-6721, the division's toll-free number at 1-800-361-4827, or by writing two weeks in advance of the meeting to: Department of Natural Resources, Clean Water Commission Secretary, P.O. Box 176, Jefferson City, MO 65102. Hearing impaired individuals may contact the program through Relay Missouri at 1-800-735-2966.

AGENDA

MISSOURI CLEAN WATER COMMISSION MEETING

Department of Natural Resources
East Elm Street Conference Center
Bennett Springs/Roaring River Conference Rooms
1730 East Elm Street
Jefferson City, MO 65102

September 8, 2010

CLOSED SESSION – Convene 8:30 a.m.

The Missouri Clean Water Commission will go into closed session to discuss legal actions, causes of action or litigation and confidential or privileged matters under Section 610.021(1), RSMo.

OPEN SESSION – Convene 9:00 a.m.

- Call to Order/Introductions

Administrative Matters

1. **Approval of the July 7, 2010 Missouri Clean Water Commission Meeting Minutes**

   Recommended Action: The Missouri Clean Water Commission to vote and approve minutes.

2. **Proposed 2010 303(d) List**
John Ford, Watershed Protection Section

Recommended Action: The Department recommends the Commission approve the proposed list as is or with any changes they deem necessary.

3. **Proposed Methodology for the Development of the 2012 Section 303(d) List in Missouri**
John Ford, Watershed Protection Section

Recommended Action: The Department recommends that the Commission approve Attachment Two, the clean copy of the proposed 2012 303(d) Listing Methodology Document as is, or with any changes deemed necessary by the Commission.

4. **2011 State Revolving Fund Intended Use Plan**
Doug Garrett, Financial Assistance Center

Recommended Action: The Program recommends that the Commission approve the State Fiscal Year 2011 Clean Water State Revolving Fund Intended Use Plan as revised.

5. **Administrative Hearing Commission's Recommended Decision for the City of Jasper, Appeal No. 08-1077 CWC**
Jennifer Frazier, Attorney General's Office

Recommended Action: The Program recommends that the Commission adopt the Administrative Hearing Commission's recommendation that the permit issued by staff correctly required a Class C certified operator.

6. **10 CSR 20-8.110 Engineering – Reports, Plans and Specifications**
Emily Lyon, Financial Assistance Center

Recommended Action: Staff recommend approval of the Commission to proceed with filing the proposed rulemaking amendment.

7. **Amendment to 10 CSR 20-7.031, Water Quality Standards, Proposed "Fishable/Swimmable" Rule Language**
John Hoke, Watershed Protection Section

Recommended Action: Information only.

8. **Targeted 2008-2009 Section 319 Nonpoint Source Grant Project Ranking**
Colleen Meredith, Watershed Protection Section

Recommended Action: Information only.

Variances

9. Empire District Asbury Plant Variance Request CWC-V-1-10
John Rustige, Permits and Engineering

Recommended Action: Staff recommends approval of the request with the following conditions:

1) By October 16, 2010, Empire District shall submit to the Department a Quality Assurance Project Plan (QAPP) for the collection of data and detailed method for developing site-specific water quality criteria for sulfates and chlorides in Blackberry Creek. The Department shall review this QAPP within sixty days of receipt of the report and make a determination on whether to proceed with the formal development of site-specific water quality criteria. Empire District shall continue to conduct Whole Effluent Toxicity testing as required in their permit.
2) If the Department determines that the development of site-specific criteria is feasible, the Department shall inform Empire District and provide comments on the QAPP and provide direction necessary for Empire District to complete a study. Empire District shall complete the study by March 31, 2011. If approved by the U.S. Environmental Protection Agency and the Department this information will be included in the next triennial review of Water Quality Standards. These standards shall be incorporated into the planned rulemaking effort, which is scheduled for formal proposal on March 12, 2012, and effective on December 31, 2012. Upon the effective date, Empire District is required to meet the applicable Water Quality Standards, and this variance will be terminated.
3) If the Department determines that the development of a site-specific water quality criteria is not feasible, the Department shall notify Empire District, and the Asbury Plant will be required to meet the applicable Water Quality Standards for sulfates plus chlorides (10 CSR 20-7.031(4)(L)) by October 31, 2013. This deadline provides three years to meet the effluent limits from the time that the Department makes the site-specific water quality criteria feasibility determination.

Staff Updates

10. Permits and Water Quality Review Sheet Update
Refaat Mefrakis, Permits and Engineering

Recommended Action: Information only.

11. Financial Assistance Center Update
Joe Boland, Financial Assistance Center

Recommended Action: Information only.

12. **Rulemaking Cost Statements**
    - **10 CSR 20-6.300 Concentrated Animal Feeding Operations**
    - **10 CSR 20-7.031 Water Quality Standards, Anti-degradation Implementation Procedure**

    Carol Garey, Water Protection Program

    Recommended Action: Information only

Standing Items

- **Legal Report**
  Jennifer Frazier, Attorney General's Office

  Recommended Action: Information only.

- **Director's Update**
  - Underground Storage Tank Regulations Update

  Scott Totten, Acting Director, Water Protection Program

  Recommended Action: Information only.

Presentation

- **Public Comment and Correspondence** - This standing item provides an opportunity for comments on any issue pertinent to the Commission's role and responsibilities. The Commission encourages any and all interested persons to express their comments and concerns. General Public

Recommended Action: Information only.

- **Missouri Clean Water Commission Meetings**
  - November 3, 2010 Commission meeting Department of Natural Resources, East Elm Street Conference Center, 1730 East Elm Street, Jefferson City, MO 65102.
  - January 5, 2011 Commission meeting, Lewis and Clark State Office Building, 1101 Riverside Drive, Jefferson City, MO 65102.
  - March 2, 2011 Commission meeting, Lewis and Clark State Office Building, 1101 Riverside Drive, Jefferson City, MO 65102.
  - May 4, 2011 Commission meeting, Lewis and Clark State Office Building, 1101 Riverside Drive, Jefferson City, MO 65102.
  - July 6, 2011 Commission meeting, Lewis and Clark State Office Building, 1101 Riverside Drive, Jefferson City, MO 65102
  - September 7, 2011 Commission meeting location to be determined.
  - November 2, 2011 Commission meeting location to be determined.

Recommended Action: Information only.

Closed Meeting - The Clean Water Commission may go into closed session at this meeting if such action is approved by a majority vote of the Commission members who constitute a quorum, to discuss legal, confidential or privileged matters under Section 610.021(1), RSMo (Supp. 1995); personnel actions under Section 610.021(3), RSMo (Supp. 1995); personnel records or applications under Section 610.021(13), RSMo (Supp. 1995) or records under Section 610.021(14), RSMo (Supp. 1995) which are otherwise protected from disclosure by law.

Target Adjournment: 3:00 p.m.

For more information contact:

Ms. Malinda Steenbergen Commission Secretary, Missouri Clean Water Commission
Water Protection Program, P.O. Box 176, Jefferson City, Missouri 65102
Phone (573) 751-6721
Fax: (573) 526-1146 E-mail: malinda.steenbergen@dnr.mo.gov

MISSOURI CLEAN WATER COMMISSION MEETING

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

September 8, 2010

MINUTES

Present

Ron Hardecke, Chair, Missouri Clean Water Commission
Todd Parnell, Commissioner, Missouri Clean Water Commission
Jan Tupper, Commissioner, Missouri Clean Water Commission
William A. Easley, Jr., Missouri Clean Water Commission
Scott B. Totten, Acting Director of Staff, Missouri Clean Water Commission
Jennifer Frazier, Counsel, Missouri Clean Water Commission
Malinda Steenbergen, Secretary, Missouri Clean Water Commission

Stacey Armstrong, Watershed Committee of the Ozarks, Springfield, Missouri
Melissa Bagley, Environmental Protection Agency, Kansas City, Kansas
Dorris Bender, Water Pollution Control, Independence, Missouri
Joe Boland, Department of Natural Resources, Jefferson City, Missouri
Georganne Bowman, Boone County, Jefferson City, Missouri
Andy Brashear, Simmons Foods, Joy, Oklahoma
Bob Bromley, Empire District Electric Company, Joplin, Missouri
Robert Brundage, Newman, Comley & Ruth P.C., Jefferson City, Missouri
Rich Burdge, Department of Natural Resources, Jefferson City, Missouri
Brittany Burrientos, Newman, Comley and Ruth, Jefferson City, Missouri
Mary Campbell, Empire District Electric, Carl Junction, Missouri
John Carter, Rolla, Missouri
Erica Cox, Project WET, Springfield, Missouri
Lorin R. Crandell, Missouri Coalition for the Environment, St. Louis, Missouri
Allen Decker, Missouri Rural Water Association, Gray Summit, Missouri
John DeLashmit, Environmental Protection Agency, Kansas City, Kansas
Adam Dorrell, Benton & Associates, Kirksville, Missouri
Tim Duggan, Attorney General's Office, Jefferson City, Missouri
Joe Earney, Simmons Foods, Siloam Springs, Arkansas
John R. Elrod, Simmons Foods, Fayetteville, Arkansas
Deborah Frank, Missouri Botanical Garden, St. Louis, Missouri
Tiffany Frey, James River Basin Partnership, Springfield, Missouri
John Ford, Department of Natural Resources, Jefferson City, Missouri
Ed Galbraith, Barr Engineering, Jefferson City, Missouri

Carol Garey, Department of Natural Resources, Jefferson City, Missouri
Doug Garrett, Department of Natural Resources, Jefferson City, Missouri
Curt Gateley, Department of Natural Resources, Jefferson City, Missouri
Ross Henson, Washington, Missouri
John Hoke, Department of Natural Resources, Jefferson City, Missouri
Leslie Holloway, Missouri Farm Bureau, Jefferson City, Missouri
Hans Holmberg, Limno Tech, Hudson, Wisconsin
Caroline Ishide, Missouri Coalition for the Government, St. Louis, Missouri
Ted Koenig, Department of Natural Resources, Jefferson City, Missouri
Mike Kruse, Department of Natural Resources, Jefferson City, Missouri
Carrie Lamb, City of Springfield, Springfield, Missouri
John Lodderhose, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Randy Lyman, City of Springfield, Springfield, Missouri
Emily Lyon, Department of Natural Resources, Jefferson City, Missouri
John Madras, Department of Natural Resources, Jefferson City, Missouri
Jack McManus, Attorney General's Office, Jefferson City, Missouri
Leasue Meyers, Department of Natural Resources, Jefferson City, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Rob Morrison, Barr Engineering, Jefferson City, Missouri
Leanne Tippett Mosby, Department of Natural Resources, Jefferson City, Missouri
Gary Mursky, Simmons Foods, Siloam Springs, Arkansas
Terry Nelson, Department of Natural Resources, Jefferson City, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
Mike Pessina, HDR, Springfield, Missouri
Mike Ray, City of Branson, Branson, Missouri
John Reece, Little Blue Valley Sewer District, Independence, Missouri
John Rustige, Department of Natural Resources, Jefferson City, Missouri
Ted Salveter, City Utilities, Springfield, Missouri
Terry Satterlee, Shook, Hardy & Baer, Kansas City, Missouri
Candy Schilling, ERC, Jefferson City, Missouri
Kevin C. Smith, Department of Natural Resources, Jefferson City, Missouri
Darrick Steen, Department of Natural Resources, Jefferson City, Missouri
Trent Stober, Geosyntec-MEC Water Resources, Columbia, Missouri
Kavan L. Stull, Empire District Electric, Joplin, Missouri
Donna Swall, Lake of the Ozarks Watershed Alliance, Sunrise Beach, Missouri
Steve Townley, EIERA, Jefferson City, Missouri
Rebecca Townsend, Missouri News Horizon, Jefferson City, Missouri
Roger Walker, REGFORM, Jefferson City, Missouri
Phil Walsack, MPUA, Columbia, Missouri
Mary West, Jacobs Engineering, St. Louis, Missouri
Bill Whipps, Department of Natural Resources, Jefferson City, Missouri
Karla Wilson, Eco Works Unlimited, St. Louis, Missouri
Warren Witt, Ameren/LOWA, Lake Ozark, Missouri
Gene Woods, Simmons, Southwest City, Missouri
Mike Zimmerman, HDR, Taney County, Springfield, Missouri

BEFORE THE CLEAN WATER COMMISSION

DEPARTMENT OF NATURAL RESOURCES

STATE OF MISSOURI

MEETING OF:

SEPTEMBER 8, 2010

CONDUCTED BY:

CHAIRMAN RON HARDECKE

TRANSCRIBED FROM AUDIO BY:

DANIELLE Y. MOSER

MIDWEST LITIGATION SERVICES

3432 WEST TRUMAN BOULEVARD

SUITE 207

JEFFERSON CITY, MISSOURI 65109

(573) 636-7551

(573) 636-9055 Facsimile

P R O C E E D I N G S

CHAIRMAN HARDECKE: I'm Ron Hardecke from Owensville. We have Jan Tupper, Commissioner from Joplin and Todd Parnell, Commissioner from Springfield, Bill Easley Commissioner from Cassville, Malinda Steenbergen, secretary to the Commission. Jenny Frazier the legal counsel to the Commission from the Attorney General's Office and Scott Totten is the acting director for the Commission and the Water Program.

So we'll begin with **Tab No. 1** the minutes; are there any corrections or additions to the minutes?

COMMISSIONER TUPPER: Mr. Chairman, I move the minutes be approved.

COMMISSIONER PARNELL: Second.

CHAIRMAN HARDECKE: Malinda, take the vote, please.

MS. MALINDA STEENBERGEN: Commissioner Easley?

COMMISSIONER EASLEY: Abstain.

MS. MALINDA STEENBERGEN: Commissioner Tupper?

COMMISSIONER TUPPER: Yes.

MS. MALINDA STEENBERGEN: Commissioner Parnell?

COMMISSIONER PARNELL: Yes.

MS. MALINDA STEENBERGEN: Chair Hardecke?

CHAIRMAN HARDECKE: Yes.

Okay. Thank you. We'll move on to **Tab No. 2**. It's a **presentation of the 2010 303(d) List**, John

Ford.

MR. JOHN FORD: Good morning, Mr. Chairman, Commissioners. My name is John Ford. I work in the monitoring assessment unit of the Water Pollution Control Branch and I'm here this morning to ask for approval of the 303(d) List.

The Department (inaudible) through the Water Pollution Control Act Section 303(d) requires states to bi-annually submit a list of impaired waters to the Environmental Protection Agency.

When the Commission approved the 2010 listing methodology document on May 6th of 2009, the Department developed and internally reviewed a proposed list in February of this year. This list was place on public notice from February 24th until July 28th, 2010. As a result of comments received during the public notice period and because EPA had approved some TMDL studies since the public notice period began, today's list shown as Table 1, it is on Page 227 of your packet, I believe, removed 38 water body pollutant pairs from the public notice list.

Most of these 38 waters shown in Table 2 on Page 237 of your packet were removed due to either the completion of TMDLs in 18 cases or because recent data shows that the water body is no longer

impaired by the pollutant, which was in 16 cases.

There are four water body pollutant pairs on today's list that have been added to the February 24th, public notice list. These are Wilson's Creek in Greene County, due to bacteria; Kiefer Creek in St. Louis County, due to bacteria; a trib to Old Mines Creek in Washington County where there's excessive sediment deposition due to abandoned barite pond and nitrogen was added as a pollutant to Manito Lake in Moniteau County, which is already on the public notice list for phosphorus.

Today's list adds 126 water body pollutant pairs to the 2008 list. Promulgation of nutrient criteria for lakes in the State Water Quality Standards in 2009 resulted in 55 of these new listings. There were 29 new listing for low dissolved oxygen and 20 for bacteria.

Today's list proposes to remove 45 water body pollutant pairs from the 2008 list. These waters are included as Table 3, which is on Page 239 of your packet.

Approved TMDLs since the approval of the 2008 list account for 21 of these proposed delistings and 21 are based on data indicating the waters are no longer impaired by these pollutants. Three public meetings

on the proposed list were held during the public notice period. A total of three members of the public attended these meetings and minutes are attached as part of the administrative record, Attachment One.

The administrative record also includes all written comments received to date and during the public notice period. This administrative record is shown on Pages 241 through 386 of your packet.

The Department received several letters providing comments on the proposed list. These letters and the Department's response are included in this administrative record. I would like to provide you a brief summary of public comments and our response.

Two comments were received on water quality -- on quality assurance documents. One of these noted the long length of time needed for the Department to provide some of the data and both suggested that quality assurance information should be provided free of charge. Our response was that we can supply existing electronic QA documents quickly and free of charge, but for requests that require considerable staff time to compile and copy, we need

to be able to reclaim our costs.

We received one comment suggesting that dissolved oxygen be removed as a 303(d) pollutant since it was an inherent condition of the water rather than a pollutant. The Department's response was that we agreed in principle and such an action would reduce our workload but that we held little hope that EPA would agree with is. However, the Department will broach this subject with EPA.

(Please note at this time an audio malfunction interrupted the recording of the meeting, and therefore this transcript.)

[A copy of the Public Comments and Department Response portion of John Ford's presentation and a summary of Robert Brundage of Newman, Comley and Ruth's comments and Department's response are being inserted into the minutes due to the audio malfunction.]

There were three comments on the listing of streams impaired by lead mining. The first was that some of the data used by the Department appeared to be in the mixing zone and was therefore inappropriate for assessing chronic criteria. The Department checked the location of this data and did eliminate some samples and re-assessed this water body, resulting in the removal of nickel as a pollutant from one stream.

The second comment suggested the sediment quality guidelines in the current Listing Methodology Document (LMD) may be inappropriate based on a recent study in the Joplin area. The Department responded that it must follow the current LMD, but is willing to review the results of this new study as part of the revision of the next LMD.

A third comment questioned the use of toxicity and invertebrate data in assessing streams where this data did not appear to conclusively demonstrate impairment. The Department response was that when waters are listed for

narrative criteria concerns, the LMD requires us to use a "weight of evidence" approach to assessing data which includes display of any applicable chemical, physical or biological data. Some of this data, standing on its own, may not conclusively show impairment, but it provides the Commission and the public information on exactly what kind of data was available and used in this 'weight of evidence" approach.

Five comments were received on St. Louis area streams. The first was that the list should include virtually all small urban streams in the St. Louis area since they all shared the same kind of problems. The Department responded that it agrees in principle with this comment, but that the LMD requires us to list only those streams for which water quality data is available.

A second comment requested the addition of Kiefer Creek to the list and provided data not previously reviewed by the Department. The Department reviewed this data and subsequently added Kiefer Creek to the proposed list for bacteria.

A third comment questioned why some chloride data on Maline Creek did not result in listing that pollutant. The Department's response was that the samples in question were collected during a storm event and that the LMD explicitly

eliminates samples collected under those conditions from consideration of chronic criteria exceedences.

A fourth comment questioned our proposed de-listing of a portion of Dardenne Creek. The Department responded that we believed the commenter had misread the information we presented and that upon re-reading our information sheet for Dardenne Creek would withdraw the comment.

A fifth comment questioned the proposed de-listing of Peruque Creek. The Department responded that both fine sediment deposition data and aquatic invertebrate data did not indicate impairment and therefore there was no justification for such a listing.

Three comments were received regarding lakes on the proposed list. The first opposed the proposed de-listing of Lewistown Lake for atrazine. The Department noted that finished water data and information on the city's very limited use of activated charcoal during the 1990s was good evidence that raw water atrazine levels met the state standard.

A second comment opposed the listing of three lakes with strict site specific nutrient criteria. The Department response was that we must follow the existing water quality standards and LMD in developing our list. We did suggest that in the next revision of the LMD, we could discuss changing our statistical methods for evaluating lakes where these stringent site specific criteria apply.

A third comment, received from two sources, noted that the Department had erred in calculating the nutrient criteria for some lakes. The Department agreed. We recalculated the criteria and reassessed the data for these lakes, which resulted in removal of several lakes from the list and changes in the pollutants ascribed to some lakes that remain on the list.

One comment questioned why the most recent bacteria data used to assess Wilson Creek was from 2007 and that the Department had not assessed the data against the losing stream E. coli criterion. The Department response was that we used all the available data at the time the assessment was made. The Department agreed that we had overlooked the one mile losing stream section and reassessed

the data using the losing stream criteria. This resulted in the addition of bacteria as a pollutant to one mile of Wilson Creek on the proposed list.

The final comment we received requested retaining Tributary to Wolf Creek in Madison County on the list for dissolved oxygen. The Department's response was that we believed the original listing was in error since only three dissolved oxygen measurements have been made on this stream in the last 25 years. The Department noted that it would make collection of additional data on this stream a high priority.

Summary of Robert Brundage of Newman, Comley and Ruth's Comments and Department's response:

Robert Brundage of Newman, Comley and Ruth, PC expressed concern that the Department was not adequately displaying or making available, laboratory quality assurance information on the data used to make 303(d) list decisions. Chris Boldt, the head chemist in the Department's lab explained the rigorous quality assurance procedures the lab follows and the results of all of the quality assurance testing that are contained within the lab LIMS database. Accepted standards for writing quality assurance reports include four different levels of detail. The Department's lab does not produce written reports on quality assurance because those require additional manpower and cost. Additional resources would be needed to be able to provide these reports.

[The presentation given by Hans Holmberg of Limno Tech is being inserted into the minutes at this point due to audio malfunction.]

[This page left blank]

Presented to CWC
9-8-10

9/8/2010

Data Quality Review of Draft 2010 303(d) List

September 8, 2010

LimnoTech

Data Provided at Public Notice

List of Impaired Waters

Year	Waterbody Name	WBID	Ds	L Size	WB Size	Units	Pollutant
2010	Big Cr.	2916	P	3.0	32.0	Mi.	Cadmium (S)
2010	Big Cr.	2916	P	3.0	32.0	Mi.	Lead (S)
2010	Big Cr.	2916	P	3.0	32.0	Mi.	Metals (S)

Data Supporting Determination

Missouri Department of Natural Resources
Big Creek - WBID 2916
Sediment Chemistry, 1996-2007
Data is in mg/kg, except HG (ug/kg)

ORG	SITE	DATE	SITENAME	CD	CO	SN	NI	PB	ZN
MoDNR	2916/28.5	20070523	Big Cr. Bl. Glover smelter		80.2	1800	42.3		
MoDNR	2916/28.5	20060519	Big Cr. Bl. Glover smelter		41.6	1425	30.6		
MoDNR	2916/28.5	20041020	Big Cr. 2 mi.N. Glover smelter		17.2	371	17		271
			Mean				30.63		366
			Probable Effect Level	4.98			48.6	128	459

Data Provided at Public Notice

Data Supporting Determination

Missouri Department of Natural Resources
Big Creek - WBID 2916
Sediment Chemistry, 1996-2007
Data is in mg/kg, except HG (ug/kg)

ORG	SITE	DATE	SITENAME	CD	CO	SN	NI	PB	ZN
MoDNR	2916/28.5	20070523	Big Cr. Bl. Glover smelter		80.2	1800	42.3		
MoDNR	2916/28.5	20060519	Big Cr. Bl. Glover smelter		41.6	1425	30.6		
MoDNR	2916/28.5	20041020	Big Cr. 2 mi.N. Glover smelter		17.2	371	17		271
			Mean				30.63		366
			Probable Effect Level	4.98			48.6	128	459

It starts with a Plan.

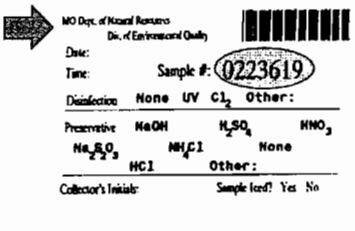
- Quality Assurance Project Plan (QAPP)
  - Project Management – Why? Who?
  - Sampling Design – What? Where? When?
  - Sampling and Analytical Methods – How?
  - Data Validation and Usability – How will we know the data is acceptable?

4

The Plan gets implemented.

Sampling

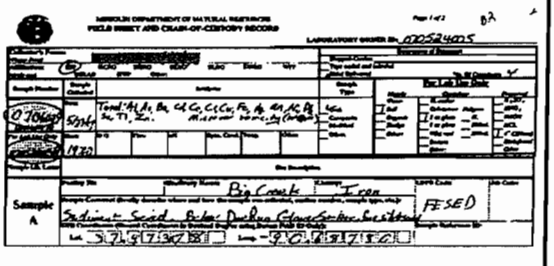
Sample Labeling



From: Environmental Sample Collection, DNR Division of Environmental Quality, ESP

5

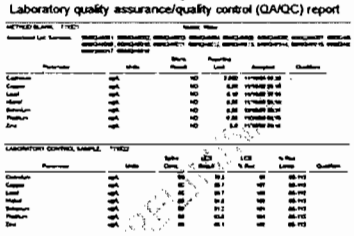
Samples go from field to laboratory with a chain-of-custody (COC).



6

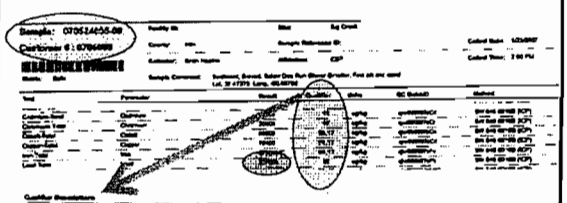
The laboratory runs analyses and checks results and quality.

Laboratory quality assurance/quality control (QA/QC) report



7

The laboratory reports results back to program.



6

The program reviews results and uses to make impairment determinations.

Missouri Department of Natural Resources
Big Creek - WBID 2916
Sediment Chemistry, 1996-2007
Data is in ug/kg, except HG (ug/kg)

ORG	SITE	DATE	SITE NAME	CD	CO	MN	NI	PB	ZN
McDNR	2916/26.5	20070525	Big Cr. Bl. Glover smelter	[illegible]	60.2	1800	42.3	[illegible]	[illegible]
MDNR	2916/26.5	20080519	Big Cr. Bl. Glover smelter	[illegible]	41.6	1425	30.8	[illegible]	[illegible]
McDNR	2916/26.5	20041020	Big Cr. 2 mi bl. Glover smelter	[illegible]	17.2	371	17	[illegible]	271
			Mean	[illegible]			30.03	[illegible]	500
			Probable Effect Level	4.98			48.6	128	459

List of Impaired Waters

Year	Waterbody Name	WBID	Cls	L Size	WB Size	Units	Pollutant
2010	Big Cr.	2916	P	3.0	32.0	ML	Cadmium (S)
2010	Big Cr.	2916	P	3.0	32.0	ML	Lead (S)
2010	Big Cr.	2916	P	3.0	32.0	ML	Metals (S)

9

All we see on public notice are the results…unless we request more info…

Missouri Department of Natural Resources
Big Creek - WBID 2916
Sediment Chemistry, 1996-2007
Data is in mg/kg, except HG (ug/kg)

ORG	SITE	DATE	SITENAME	CD	CO	MN	NI	PB	ZN
McDNR	2916/28.5	20070523	Big Cr. Bl. Glover smelter	[illegible]	80.2	1800	42.3	[illegible]	[illegible]
McDNR	2916/28.5	20080519	Big Cr. Bl. Glover smelter	[illegible]	41.6	1425	30.8	[illegible]	[illegible]
McDNR	2916/28.5	20041020	Big Cr. 2 mi bl. Glover smelter	[illegible]	17.2	371	17	[illegible]	271
			Mean	[illegible]			38.83	[illegible]	546
			Probable Effect Level	4.98			48.6	128	459

List of Impaired Waters

Year	Waterbody Name	WBID	Cls	L Size	WB Size	Units	Pollutant
2010	Big Cr.	2916	P	3.0	32.0	Mi.	Cadmium (S)
2010	Big Cr.	2916	P	3.0	32.0	Mi.	Lead (S)
2010	Big Cr.	2916	P	3.0	32.0	Mi.	Metals (S)

10

Sunshine Data Request

- Initial request for data on May 11, 2010
  - Water bodies and pollutants

Waterbody Name	WBID	Pollutant	County
Big Creek	2916	Cadmium (S)	Wayne/Iron
Big Creek	2916	Lead (S)	Wayne/Iron
Big Creek	2916	Metals (S)	Wayne/Iron
Crooked Creek	[illegible]	Copper (W)	Iron/Dent
Indian Creek	1946	Zinc (W)	Washington
Sunshine Creek	2751	Lead (W)	Iron
Sunshine Creek	2751	Zinc (W)	Iron
West Fork Black River	2755	Cadmium (S)	Reynolds

  - Sample results/lab reports
    - necessary for assessment of data used to create listing
  - Lab QA/QC data
    - necessary to evaluate quality of data
  - Data validation reports
    - desirable for summarizing, correlating and explaining lab QC results and sample results, sample data deficiencies, and data useability/acceptablility judgements

Information Received from DNR

- June 3rd: received sample results already available on website
- June 18th: 44 laboratory QA/QC data packets
  - cover sheet with sample numbers, analytes, media, analysis dates
  - 35 QC packets for water samples
  - 8 QC packets for soil/sediment samples

Renewed Sunshine Data Requests

- Additional requests in July 2010 needed to put pieces together
  - Quality Assurance Project Plans (QAPPs)
    - necessary to provide project-specific QA/QC criteria for data quality assessment
  - Chains-of-Custody (COCs)
    - necessary to link field sample IDs and lab sample IDs
  - Lab sample reports
    - necessary to provide information linking sample results with lab QC data (field sample IDs, lab sample IDs, sample collection dates, sample analysis dates, lab QC qualifier codes)

Information Received from DNR

- July 14th: received QAPPs for recent sampling
- July 21st: received 33 COCs

Findings from review of available information

- Of 243 water samples, we can link only 66 to QA/QC data from laboratory
- Of 77 sediment samples, we can link only 7 sediment samples to QA/QC data from laboratory
- Bottom Line: Cannot conduct independent data quality assurance review

Conclusions

- Request listings withheld because data quality cannot be independently confirmed

Waterbody Name	WBID	Pollutant	County
Big Creek	2916	Cadmium (S)	Wayne/Iron
Big Creek	2916	Lead (S)	Wayne/Iron
Big Creek	2916	Metals (S)	Wayne/Iron
Crooked Creek	1928U-01	Copper (W)	Iron/Dent
Indian Creek	1946	Zinc (W)	Washington
Strother Creek	2751	Lead (W)	Iron
Strother Creek	2751	Zinc (W)	Iron
West Fork Black River	2755	Cadmium (S)	Reynolds

Recommendations

- Improved transparency and efficiency for independent review:
  - Sample reports should contain all information needed to find associated QA/QC data in analytical batch reports
  - Field QA/QC data should be included
  - Sample and QA/QC data should be stored and linked in a database for efficient retrieval and dissemination
  - Consider providing all information for each data set (analytical batch) in one package
  - Data validation reports on an analytical batch basis would enhance data transparency and end-user data assessments

Questions

Sediment Quality Guidelines in Listing Methodology

- DNR uses levels based on study published in 2000
  - *Development and Evaluation of Consensus-Based Sediment Quality Guidelines for Freshwater Ecosystems*, MacDonald *et al.*, Environmental Contamination Toxicology, Volume 39, Pages 20-31, 2000
- Concerns:
  - Represent sediment contaminated with multiple pollutants
  - Authors state the thresholds should be used along with other tools to inform decisions
  - Authors recognize the need for site-specific data

19

Recent information demonstrates concerns

- MacDonald *et al.*, *Development and Evaluation of Sediment and Pore-Water Toxicity Thresholds to Support Sediment Quality Assessments in the Tri-State Mining District (TSMD), Missauri, Oklahoma, and Kansas, Draft Final Technical Report*, February 2009
- Sediment thresholds much higher than 2000 study: cadmium up 247%; lead up 71%; zinc up 542%
- These results indicate the need to develop thresholds on a site-specific basis

20

MR. ROBERT BRUNDAGE: -- are we going to have two different standards here as one of the foundations to one of your decisions today?

MR. HANS HOLMBERG: The cost of bringing this information together has come up a couple of times. At the right time, at the right place compiling this information can be a very efficient process. At a time when it's all done in the past and it's in different peoples' hands it becomes a much more erroneous process and less efficient and as Mr. Ford mentioned the data that we're looking for is probably in a database somewhere at the lab and these things probably have been checked at some point, but they haven't been -- at that time they weren't put together and maintained with that data to the end of the process when they're actually being used.

So at the right point and right time, I think, this can be done with relatively little effort.

CHAIRMAN HARDECKE: I think it's fair for the regulated public to be able to -- would we need to provide verifiable data? I'd like to ask EPA how -- how you evaluate the data from the State? Are there discrepancies or what's your process?

That's you, John.

MR. JOHN DeLASHMIT: Morning Commissioners. Good

morning, Mr. Chairman. I'm John DeLashmit. I'm chief of the water quality management branch at EPA's Region 7 Office in Kansas City.

We typically, even though, state's feel like we do get down in the weeds a lot when we review their 303(d) list, this is one area that we haven't delved into looking at the data. But -- and when I hear Robert's presentation, I understand. I used to work in the waste programs, the clean-up programs and we were very strict about data validation, QAQC data quality that's all part of what you do, but one thing I would ask the folks of the data that you were able to look at; did you find any problems?

MR. HANS HOLMBERG: Well, we received a small proportion, percentage (inaudible) --

MR. JOHN DeLASHMIT: Right.

MR. HANS HOLMBERG: And then the last stage in the game so we haven't conducted what we would call a full data validation at this time.

MR. JOHN DeLASHMIT: 'Cause sometimes when we do this we may -- in the waste programs when we would do it I remember we would look at maybe 10 percent, 20 percent of the data and check it to see and then if that was all good we would use that as an indicator that the rest of the data was good as well. We

didn't typically look at every piece of data. So that's what I was wondering is the things that they were able to look at, did they find problems? If they did that could be an indicator that maybe there were problems with the rest of the data as well.

CHAIRMAN HARDECKE: Right.

MR. JOHN DeLASHMIT: Did I answer the question?

CHAIRMAN HARDECKE: Yeah.

MR. JOHN DeLASHMIT: Thank you.

CHAIRMAN HARDECKE: I don't know if it's the direct-- if it's the job of this Commission to set the -- the data analysis for the Department. I think that's something we can look for in future list. Because I do believe it's very important for the regulated communities to feel comfortable with the quality of data.

I guess there's a lot dumped out here all at once to think about, so --

Any other comments?

(No response.)

CHAIRMAN HARDECKE: We have several more cards here to go through.

COMMISSIONER TUPPER: Proceed.

CHAIRMAN HARDECKE: Thanks, Robert, for your presentation and we'll give that consideration. John

Elrod?

MS. MALINDA STEENBERGEN: He's the person who spoke during the closed session so I think he changed it his mind.

CHAIRMAN HARDECKE: Okay. Trent Stober, did you wish to speak on this? You had a card for Number 2.

MR. TRENT STOBER: Okay. Thanks.

CHAIRMAN HARDECKE: Thank you.

MR. TRENT STOBER: Good morning, Chairman, Commissioners. My name is Trent Stober with Geosyntec Consultants in Columbia, Missouri. This morning I'd like to speak on behalf of the City of Springfield regarding a recent inclusion of Wilson's Creek for bacteria impairment for E. coli. I'd also like to recognize that Randy Lyman from the City is also present, today, if there's any questions for him as well.

Our concern with the listing is not as much with the -- the listing as it is with the sources indicated for the impairment. Although I would like to comment just generally on the way that losing stream bacteria data are -- are handled for 303(d) listings. And I think it warrants some review of that for the 2012 Water Quality Standards Review.

Essentially the -- the data were

evaluated in a different mechanism as we have for Whole Body Contact A criteria or Whole Body Contact A recreational uses. Our regulation set up that the -- the whole body contact criteria of 126 E. coli per 100 milliliters is applied as a geometric mean within Whole Body Contact A water bodies but in losing streams it's considered as a maximum value never to be exceeded, which is -- which is a fairly arduous task to meet in most streams.

With the -- with the 303(d) listing methodology Mr. Ford handled this as an evaluation of -- that only 10 percent bact- -- or 10 percent of the samples available could exceed that criteria without causing a 303(d) listing. So essentially 90 percent of the data had to be below the 126 E. coli criterion and with that there's no dispute that that ratio is exceeded in Wilson's Creek and I suspect that it's exceeded in many of our losing streams. The source of impairment that was identified included both point sources and urban nonpoint sources within the watershed.

So we were tasked with evaluating the discharge quality data from the city's southwest wastewater treatment plant and there's quite a bit of record on the bacterial levels, you know, essentially fecal

chloroform is monitored in compliance with their effluent regulations.

Their -- the effluent regulations as they stand -- stood in the last permit differ somewhat with the water quality criteria. So we evaluated compliance with a fecal chloroform level of 200 which is typically used as an equivalent to 126 colonies of E. coli per 100 ml.

If you recall we made that shift in the 2005 Water Quality Standards to E. coli and so -- but we only have fecal chloroform data from the southwest wastewater treatment plant. And, again, 200 would be generally considered equivalent to the 126 E. coli criteria. And, in fact, previous rules the -- that 200 level was our water quality criteria for fecal chloroform.

We evaluated those data from 2006 to the present and found that only 1.3 percent of the time did that 200 value -- was that 200 value exceeded from the wastewater treatment plant. And, again, so almost 99 percent of the data from the southwest plant was below that -- that fecal chloroform old criterion of 200.

I'll also say that -- you know, this -- those data differ from their effluent reg- -- their

effluent limits and there was no violations during that period of their NPDES discharges.

So since there's such a small fraction of data from the southwest treatment plant that indicate levels exceeding what would be equivalent to the E. coli criterion and, you know, ten times less than that would be required to cause the 303(d) listing we recommend that the -- the Commission eliminate point source as one of the sources for the impairment.

Again, we're not asking for an elimination of the -- of the 303(d) listing just an elimination of point source as one of the causes of impairment.

CHAIRMAN HARDECKE: What's the water body again?

MR. TRENT STOBER: Wilson Creek.

It's been a recent addition. I don't believe it's in your packet.

CHAIRMAN HARDECKE: Oh, okay.

MR. TRENT STOBER: Because again

COMMISSIONER PARNELL: It's here.

MR. TRENT STOBER: -- and, John, can speak to this but my understanding is there was a public comment --

COMMISSIONER PARNELL: Page 235.

MR. TRENT STOBER: It might be -- I believe, it's listed as unknown in that version.

COMMISSIONER PARNELL: Pollutants are unknown and the

source and urban.
MR. TRENT STOBER: Yeah. But -- but that speaks to aquatic life use impairment not the --
COMMISSIONER PARNELL: Okay.
MR. TRENT STOBER: -- bacterial impairment.
So from my understanding there was public comment that was received about how data are handled with losing stream and originally it was considered for the 303(d) listing because it meets the geometric mean of 126.
COMMISSIONER PARNELL: So where is the other listing? You say it's not available.
MR. TRENT STOBER: John, where does the listing come in --
MS. MALINDA STEENBERGEN: Is that what's in the blue packet? Is that a new list?
MR. JOHN FORD: There should be old copy. It's on (inaudible) one. It's the proposed 2010 list that will be on the last page of that list.
COMMISSIONER PARNELL: 235?
CHAIRMAN HARDECKE: It's in bold print on the addition --
MR. JOHN FORD: Right.
CHAIRMAN HARDECKE: -- or on the list in the blue packet.

MR. SCOTT TOTTEN: John, what's that -- on the -- in the blue packet the bolded what's that mean?

MR. JOHN FORD: I think they're four waters that are listed in boldface type and those are the ones that are recent additions to the list since the February public notice list.

MR. SCOTT TOTTEN: It's listed for bacteria and sources point and urban nonpoint source.

MR. JOHN FORD: That's correct.

And I did have occasion to -- to look at the DMR data from the Springfield southwest plant a couple of days ago and I would agree that the disinfection that they're doing there is good and the -- it looks -- it looks like the bacteria coming from the wastewater plant is probably not a significant source that's causing these violations of the -- of the losing stream standard.

So we don't have any problem, at this point, with removing point source designation there and just saying its nonpoint source.

CHAIRMAN HARDECKE: Okay.

MR. TRENT STOBER: I would also add that there's multiple nonpoint sources as well and, you know, within that watershed we have both rural and urban areas and -- and I don't think there's sufficient

information to really designate whether that's urban or rural nonpoint source or a combination thereof. So we would like to also add rural nonpoint source or recommend to add rural nonpoint source as one of the sources of potential impairment.

COMMISSIONER PARNELL: Where's the rural?

MR. TRENT STOBER: This station is downstream of Springfield to some degree so there's a mixture of both land uses within the watershed.

COMMISSIONER EASLEY: You're saying move the point source, but add rural?

MR. TRENT STOBER: Yeah. I believe that would be appropriate.

COMMISSIONER TUPPER: Are you talking about rural/urban nonpoint --

MR. TRENT STOBER: Right. Right. Right. Just designating there's multiple sources of nonpoint sources within the -- within the watershed, but I would say we've evaluated, you know, most of these issues are caused during wet weather periods. We've evaluated data from North Fork River as well as Bull Creek which are both considered reference streams for the area and were actually used by U.S. EPA to -- as -- as targets for the recent publically noticed TMDLs for Wilson and Pearson Creek for those unknown source-

-- or the unknown impairment of aquatic life.

And I would add that in those streams based on the data available from USGS that 126 target is exceeded in North Fork River by 21 percent of the data and in Bull Creek 14 percent of the data. So, I think, it just ad- -- highlights in all these studies that there's -- there's occurrences even in, I think, streams that everybody would consider to be very high quality -- or levels that exceed this 10 percent criterion.

You know effectively by targeting that as a single sample or 10 percent exceedance we greatly reduce the target geometric mean for the water body given the spread and the data that we typically see in streams. Essentially by handling those data in that manner are the geometric mean that you'd have to target in these streams is about 20 to 40 CFU per 100 ml which is a great reduction in what -- in what we use for protection of our heavily used water bodies in this State.

So, I think, that -- that again just highlights the fact that moving forward we really need to evaluate what an app- -- what an appropriate level of bacteria criteria and how to manage those data for these losing stream situations because I suspect that those are violated probably more frequently than

what one would expect.

So with that, again, I would just recommend just in summary the exclusion of point source as a source, the inclusion of rural along with urban nonpoint sources and, again, recommend that moving forward we evaluate the manner in which we handle bacteria criteria in losing streams.

CHAIRMAN HARDECKE: So if I heard you right you're suggesting that some of these reference streams just the natural variation exceeds the 126 over 10 percent of the time.

MR. TRENT STOBER: Right. Correct.

In fact, in evaluating 169 water quality stations within the Elk River, Bull Creek, James River, Sac and Spring River watersheds we found that 75 percent of the streams violated that 10 percent value.

So, I think, it's just really -- you know, I'm not --

CHAIRMAN HARDECKE: And those are considered the reference?

MR. TRENT STOBER: No. Those are all the streams out there. That's just, you know, a grab of all -- all data that are available just to give you a perspective of -- of what -- what all the streams are

like. Some of those obviously impacted and -- but they also include some of the more high quality streams that we have as well.

CHAIRMAN HARDECKE: Other questions?

(No response.)

MR. TRENT STOBER: Thank you.

CHAIRMAN HARDECKE: Did Randy want to speak? Randy Lyman.

MR. RANDY LYMAN: Morning Chairman, Commissioners.

CHAIRMAN HARDECKE: Morning.

MR. RANDY LYMAN: I'll just be real brief. I just wanted to put an exclamation point on the information that Mr. Stober presented and we would like to see the word "point" taken out of the -- of the sources and the word "rural" added to the urban nonpoint sources. We feel like that is appropriate.

Trent mentioned our -- our track record at that plant, the southwest plant, we've gone now for four years without any violations of anything that's in our permit and received gold awards from our -- some of our trade association for the last four years. And if we can go one more year we'll get platinum for five in a row, so --

Anyway and as we speak the new ozonation system is going in on the plant, which we've had on that

plant, you know, which is kind of state-of-the-art for a long, long time and the new -- the new system is going in with -- with some of the stimulus money and so forth and we'll be able also to -- to disinfect some of the wet weather flows at that point in time when that's completed, so --

Our data continues to just look better since recent expansions a few years ago. The last couple of years we're just not seeing any problems going on whatsoever in meeting our permit requirements and we just feel it's appropriate as we presented today.

Appreciate your time.

CHAIRMAN HARDECKE: Thank you.

MR. RANDY LYMAN: Thank you.

CHAIRMAN HARDECKE: Phil Walsack.

MR. PHIL WALSACK: Morning, Commissioners. My name's Phil Walsack with the Missouri Public Utility Alliance. I want to thank Robert Brundage for setting the table for the importance of data.

And Commissioner Easley you asked an outstanding question and I'm going to address it and Mr. Parnell you did the same.

Commissioner Easley you said we're -- we need to be careful about setting a precedent. And I want to talk to you about setting a precedent that happened

some number of years of ago at the inclusion of dissolved oxygen as a pollutant in Missouri on Missouri's 303(d) list.

Commissioner Parnell, I am ecstatic that before eleven o'clock we get to talk about money because I think money is driving the conversations. I would love to live in a pristine environment and that cost money and I have to figure out what I'm willing to spend to live in that environment. So thank you for bringing up an element of costs before 11. I appreciate that.

I want to talk about dissolved oxygen for a second. We wrote a letter, a fairly lengthy letter, to the Department about this notion that dissolved oxygen is not a pollutant, but rather a condition in the stream. You don't add dissolved oxygen or the lack of it to a stream so that it becomes on the 303(d) List. We wrote this letter because we believe that just putting dissolved oxygen on the 303(d) List is a bad precedent. And we're getting to see the -- the -- we're getting to see that play out.

In the community of Butler, they discharge to a Mound Branch and this is on Page 338-- of your -- or the public packet. I'm not sure what that page number equates to yours so I'll read just a tiny bit

of this.

They were listed for BOD and ammonia back in 1998-, the Butler Wastewater Treatment Plant, then had to -- because they were listed as a 303(d) violation they had to make an upgrade, the did so in 2003. The stream stayed on the list and because this stream stays on a list on the 303(d) List you have to craft something called a TMDL, a Total Maximum Daily Load.

You have to craft that document. In this case the EPA assisted the Department in 2010 to craft said document. Right now, the Butler Wastewater Treatment Plant they are -- well, they're rivaling Springfield for their own platinum award, you know, their CBOD is right now at 2.445 milligrams per liter. That is an amazingly low number.

And, yet, the TMDL came out and said, oh, by the way we'll make you ratchet that down 1.5 milligrams per liter, 1.5 parts per million. Now, the taxpayers and the ratepayers in Butler just had their stream listed, they just upgraded their wastewater treatment plant and, now, you're telling me based on a TMDL because low dissolved oxygen on our list we're going to go back to the ratepayers and say, I need you to pull out one more part per million, one more. I have

no idea what that's going to cost. Is that worth it?

It certainly is not worth it for the upstream affects on that stream which are low DO. Above the discharge of the wastewater treatment plant we have low dissolved oxygen. So wastewater plant is not so sophisticated that they can pump their waste stream up hill, upstream and contaminate the waste stream -- the receiving stream with dissolved oxygen or low dissolved oxygen.

By placing low dissolved oxygen as a pollutant we craft this list, but then we have to do something about it. And that is our problem with listing dissolved oxygen as the pollutant. It is not a pollutant. It never was a pollutant. It was a bad precedent that was set some number of years ago and now look where we're at. Ninety -- and, now, I just did a simple count 'cause I'm a simple guy. Okay? I think there were 383 entries listed on that list of yours of which 90 are dissolved oxygen. That's 23 percent of the workload for the Department is not pollution, but a condition of the stream. A condition of the stream it says on other TMDLs that were written. This one happens to be for Buffalo Ditch in Dunklin County, Kennett Wastewater Treatment Plant that says, um, boy upstream of the wastewater

treatment plant we have low dissolved oxygen.

There are reasons we have low dissolved oxygen because there is pollution out there. And we need to figure out what that is. And we have a place -- a place holder to do exactly that. It's called -- in your report there's a Table 4(c) you put the -- put those places on a special table, on a special list that doesn't then require a Total Daily Maximum Load to be written.

Obviously, I was the one who wrote that dissolved oxygen that Mr. Ford talked about. And I wrote that two of the brightest John's in the room, no disservice to any of the other bright John's 'cause I know there are more than two here today. I want Mr. DeLashmit to comment on the following statement made by Mr. Ford in writing to me and in your packets on Page 343.

And then I want Mr. Ford to address this one element. Okay? I'm going to talk about Mr. Ford's first and then go back to Mr. DeLashmit's.

In Paragraph 2, it says had your comments been made earlier in the public participation process we might have vetted your idea to other stakeholders and the EPA. However, I think it is late in the process to be discussing this issue for the 2012 listing

methodology document.

Understand that I am a deadline guy. Okay? I am. I perform well under stress, well under deadlines. You give me a floating deadline and I don't meet it. Say clean the garage this summer I'm not going to do that. Say clean this garage Sunday afternoon by God I can hit that. So the Department said July 28th is your deadline and I hit on July 20th. I made those comments during the public participation process I thought.

If this isn't the deadline that we're shooting for just give me the deadline. I'm an outstanding employee at hitting deadlines and I'll hit it. And I don't care when the deadline is you tell me when it is and I'll hit it.

Now, if we're saying the deadline is floating and your public comment is wanted but frankly just adds stress to the system then don't ask me to do it 'cause I've got other things to do. I've got better things to do.

I want to provide great public comment in the right form in the right schedule so if you tell me to hit a deadline that's July 28th by gosh I'm going to do it. Now, I would like Mr. Ford to tell me what that really means, earlier in the public participation

process.

And then I want Mr. DeLashmit and I'm going to give him a heads up here and he already got a heads up about an hour ago that I was going to ask him this question because Mr. Ford's letter to us that's in your -- in your public comment at 343, first paragraph says, On the other side of the argument is the fact that the U.S. EPA Region 7 and I add emphasis here expects states lists to include DO. Now, hang on, is dissolved oxygen a pollutant or not?

So if it's not a pollutant why am I adding -- why am I talking about that in the Clean Water Act? Nutrients, I'm with you. I got to thinking, and sorry I apologize for doing that.

I got to thinking how many other people on this list here, on the 303(d) List, have actually been removed for DO and something else has been put on there. And I come to the City of Monett, which is Clear Creek segment 3293, Page 282 in your 303(d) List. It says on there that nutrients are the problem in Monet. Wastewater treatment plant and that's the source. And when you pop over to the places that were deleted off the 303(d) List on Page 237, Clear Creek, it says right there wastewater treatment plant in Monett, Barry and Newton County low -- and

reason for deletion off the list low DO due to nutrients. Yes, that's what we're looking for.

The condition is low dissolved oxygen and what is my pollutant, I don't know yet, but in Monett it's nutrients by gosh and that's what we're going to hunt them down for and we're going to go after. We're going to go after nitrogen and you're going to go after phosphorous. Okay. I can do that.

I cannot shoot in the dark and chase low DO all over the Missouri streams when I've got -- you know, almost a million miles of Missouri streams. I cannot do that and neither can you, neither can the Department. That's too much work. Tell me what the pollutant is and I'll go get it. Tell me the stream condition and I can't do much.

I can put it on a list and says, let's figure out why this stream has low dissolved oxygen. It just might be a natural condition. It might be because someone's polluting the thing. It might be urban pollution, a point source, a nonpoint source but we can get to the bottom of the problem. But throwing it on a list, the 303(d) List, and then cranking out a very lovely, professional document that says, crank those numbers down at the wastewater treatment plants, boys. I know you were 2.4 but

we're going to get you to 1.5.

Are we serving the environment any benefit by doing that? That concludes my comments. The coffee was caffeinated this morning I can feel it.

(Laughter.)

MR. PHIL WALSACK: I would like the two brilliant John's in the room to address those two questions if they might and if it's the pleasure of the Commission.

Thank you.

CHAIRMAN HARDECKE: Could we get a response from the Department?

MR. SCOTT TOTTEN: John Hoke.

CHAIRMAN HARDECKE: John Hoke.

MR. JOHN HOKE: We're going to spring a 3rd John on you.

(Laughter.)

MR. JOHN HOKE: Thank you, Mr. Chairman. Thank you, Commission. My name is John Hoke. I'm the TMDL unit chief and I also have the privilege of being coordinator for the 2012 Water Quality Standards triennial review.

Mr. Walsack made some points about TMDLs and the standards and I felt it appropriate for the other John to get up and talk for me to address a couple of those things. You know, I think, it's widely

recognized that the Department acknowledges and recognizes that low dissolved oxygen is an issue in some streams whether you call it a pollutant or a condition.

Then that sort of stems from our one-size fit all as a Water Quality Standard as a 5 milligram per liter minimum. We recognize that there are other conditions out there that are acceptable, that do protect the designated beneficial uses. And, I think, we're going to work with stakeholders during this next Water Quality Standards triennial review to revise the DO criteria to allow for those wider ranges of excursions and those other criteria that EPA even has published in some criteria recommendation documents.

So we look forward to working with Mr. Walsack and others to craft those regulations and those revisions.

Speaking of the TMDLs; Mound Branch, City of Butler is one of a couple water bodies and permittees that are kind of caught in this TMDL consent decree that we and EPA as our partner required to develop TMDLs at this time before the end of the year to address those consent decree impaired waters.

We do, however, recognize that, that criteria

that the TMDL is supposed to hit may be in question, it may not be appropriate. So while the TMDL is, thank you very well written and technically documented, and I can't speak to the intricacies of the modeling. I do know that it targets the existing criteria of 5.0 and in places that it would require potential a significant reduction in BOD as well as nutrients.

However, recognizing that some facilities, like the City of Rolla, have already upgraded or are potentially planning on upgrading; the Department as part of that TMDL process as written into the implementation section, a phased approach to implementing any requirements the TMDL might require of a facility and extend the amount of time that we would potentially put -- until we put the new permit limits in to investigate a number of things. Is the criteria appropriate? If not, let's develop a criterion that's appropriate, redo the modeling and set the permit limits appropriately. I think in some cases we'll find that the criteria is appropriate and no other upgrades may be necessary.

There'll be other situations where perhaps an upgrade will be necessary and perhaps the upgrade will be more modest than a radical down to, you know,

no BOD.

So, I think, we've put into place even for these TMDLs a path forward for the permittees and we may need to solidify this and make it more durable in some sort of consent judgment or something like that with -- or administrative order with the permittees to kind of get to the Department's intention not to implement those restrictive requirements until such time as we have a chance to go back and -- and study those waters given that -- you know, our time line for developing the TMDLs is short but our implementation is at the Department's speed and discretion. So, I think, we'll take the time then to make sure that any upgrade is absolutely necessary and reasonable to meet the -- the Water Quality Standards.

And that's all I had so I'll turn it over to the other John's and they can respond to anywhere that I missed unless you have questions for me.

COMMISSIONER PARNELL: Are you implying that every situation is negotiable?

MR. JOHN HOKE: No. Well, a permit is supposed to target the Water Quality Standards and any other TMDL document that's out there. We've been living with this DO criteria, which is by far the probably the

most restrictive out there for -- for all waters of the state recognizing that all waters may not meet that.

I think we need to be more flexible in how we set the standards and more reasonable on how we apply the standards for those waters in 303(d) assessment as well as TMDL development.

The hard and fast is a facility needs to meet Water Quality Standards. If we don't know, have certainty what that standard is we need to give some time for the scientist and engineers to develop appropriate criteria to make sure that what we do require is reasonable. And so for these TMDLs that are caught in the one lawsuit that has to deal with the consent decree on TMDL development we recognize that maybe some more time is needed. So we'll allow that time before we put these requirements on facilities to determine whether or not the target we're shooting at is actually correct.

So we can be flexible on how we implement the TMDLs. They have to be done by the end of this year, but we're flexible on how we can implement those TMDLs.

CHAIRMAN HARDECKE: Other John's?

MR. JOHN HOKE: Thank you.

MR. JOHN FORD: Mr. Walsack mentioned that he's a guy that does well with fixed dates so I will remind him that there were two fixed dates on our public notice. The one that he responded to which was July 28th and that was the ending but there was another date and that was February 24th and that was the beginning. So we had a public notice period of over 100 days.

One of the reasons we have such a long period is so that within that public notice period if people bring things to our attention that they want to discuss we can pull in all the stakeholders that want to be informed on that issue and have an opinion so that we can all discuss it.

And that's only going to work if we get involved in the process early. So, Phil, I would say the date next time for you to focus on is not the end date, but the beginning date if there's something important we need to discuss, let's start early.

Secondly, with regards to the DO issue no question the dissolved oxygen is an inherent condition of the water. It is not a pollutant in itself. Dissolved oxygen, however, is affected by many different things in the stream by organic material that acts as oxygen demanding substances. It's affected by the levels of nutrient which then

affect the levels of algae and algae then affects oxygen. It's affected by sediment oxygen demand as well as material that's suspended in the water colony.

What we do when we make the list is if it looks like there is convincing data that a dissolved oxygen problem is caused by something that we can specifically name and that might be nitrogen, phosphorous, nutrients, whatever or BOD itself. We try and list that as the cause, not DO. However, in some cases we just don't have the information that tells us what's causing the problem. Is it a combination of things? Is it something we just don't have information on? So in those cases we list it as low DO.

I'd also note that a couple of cycles ago, I believe, it was the Department's decision not to list waters for low DO on the 303(d) List and EPA did not view that well. And maybe Mr. DeLashmit would like to talk about that.

MR. JOHN DeLASHMIT: Good morning, I'm John DeLashmit, again, a couple of things. I hope I kept track of all the questions that Phil wanted answered.

First of all, EPA expects that states assess in their 303(d) List against their Water Quality

Standards and Missouri does have a Water Quality Standard for dissolved oxygen. It's a little different than most of the Water Quality Standards that we see. Most of the criteria and a lot of the criteria are expressed as the maximum concentration. DO is kind of upside down. It's expressed as a minimum concentration. You must be above 5 -- or at 5 or above in order to satisfy the Water Quality Standard. So it's a little bit different than the others.

But it is as the other folks have said a result of many things; nature can be one of them, nutrients can be another and unfortunately Missouri lacks nutrient criteria for streams. It's something that we've pointed out repeatedly and we're anxious and hopeful that the State will develop nutrient criteria at some point. Then maybe we can compare against that instead of looking at dissolved oxygen.

But the dissolved oxygen can (inaudible) response variable to pollution much like chlorophyll A. You will also see on the list that there are some water bodies listed for chlorophyll. Well, chlorophyll isn't necessarily a pollutant. As I was growing up, I think, it was an essential ingredient in breath mints and it's also something that's produced

by plants. And nutrient enrichment can cause chlorophyll A to be at high levels. That's one of the things we use to indicate that perhaps nutrient enrichment is taking place and there's pollution and nutrients need to be reduced.

So the DO, I think, you're correct it's not really a pollutant, but it is the result perhaps of pollution and when we target that we're looking at possible ways to respond to increase the level of dissolved oxygen and implementation of the TMDL as John, first John, said it's something that the State is in charge of and hopefully that when we're looking at implementing the TMDL we're looking to reduce the factors that are causing this suppressed oxygen in the stream.

And was there another -- did I forget a question?

MR. PHIL WALSACK: I'll let you stand down on that.

MR. JOHN DeLASHMIT: Okay.

MR. PHIL WALSACK: I want a piece of you later.

MR. JOHN DeLASHMIT: I'll be here all day.

Thank you.

MR. PHIL WALSACK: Again, Phil Walsack, with Missouri Public Utility Alliance. I will close with this; we had an attorney general named Ashcroft. In Ashcroft versus Union Electric Company they held that

discharging water with low dissolved oxygen level does not constitute either pollution or contamination since both require the addition of contaminants or pollutants.

That is the key thing here. Having 90-some-odd water bodies on the list so that you can craft a TMDL places a workload that isn't warranted. You're doing work that may not be warranted. If you just save those low DO waters, put them on a list, keep assessing them, sampling them with good quality data, you're going to be able to tell what the pollutant is. That's the appropriate methodology. Don't get ahead of yourself by just putting them on a list and then cranking out a court decreed consent order.

And I appreciate Mr. Ford's comments that the comment started in February. I do appreciate that. That game is 60 minutes long. It is football season everyday counts. And if you need me to come and score 40 in the first quarter, I'll score 40 in the first quarter but just let me know that.

Thank you, Commissioners.

CHAIRMAN HARDECKE: Thank you.

Are you ready for a vote on this?

COMMISSIONER TUPPER: Ready.

What you want me to do with the Springfield

deal?
COMMISSIONER EASLEY: Yeah.
COMMISSIONER PARNELL: Just amend it I guess.
COMMISSIONER EASLEY: You want me to make the motion? Mr. Chairman, I would move that we adopt the list as proposed with the one minor amendment that for Wilson's Creek point be eliminated and rural be added so it would be rural/urban NPDES.
COMMISSIONER TUPPER: Second.
MS. JENNIFER FRAZIER: Excuse, Mr. Chairman, before you vote to amend the list I'd like to speak to you and provide counsel in closed session on that.
CHAIRMAN HARDECKE: Okay. All right.
MS. JENNIFER FRAZIER: If we could take a five minute break and maybe take a vote to go into closed session or ten minutes I'd appreciate that.
CHAIRMAN HARDECKE: That'd be fine.
Who wants to make a motion to go into closed session?
COMMISSIONER TUPPER: I move the Commission go into closed session.
CHAIRMAN HARDECKE: I think you --
COMMISSIONER PARNELL: Second.
MS. JENNIFER FRAZIER: For the purpose of --
(Vote taken,all Commissioners voted Yes)(Break in proceedings.)

COMMISSIONER PARNELL: Mr. Chairman, if I may, I'd like to amend my motion that we approve the list with two exceptions: Wilson's Creek and Cave Spring Branch, which the Commission will recommend it be extended for further public comment.

COMMISSIONER TUPPER: Second.

CHAIRMAN HARDECKE: Malinda, take the vote, please.

MS. MALINDA STEENBERGEN: Commissioner Easley?

COMMISSIONER EASLEY: Yes.

MS. MALINDA STEENBERGEN: Commissioner Tupper?

COMMISSIONER TUPPER: Yes.

MS. MALINDA STEENBERGEN: Commissioner Parnell?

COMMISSIONER PARNELL: Yes.

MS. MALINDA STEENBERGEN: Chair Hardecke?

CHAIRMAN HARDECKE: Yes.

Okay. We'll move on to **Tab No. 3 the 2012 303(d) Listing Methodology Document**, John. John Ford take out?

MR. SCOTT TOTTEN: Bill, is John Ford back there? Bill Whipps is John Ford back there?

MR. JOHN FORD: Good morning, again, Commissioners, the listing methodology document; that describes how the Department will use water quality data to determine if waters of the state are impaired.

The Department Staff meets with stakeholders and

other interested members of the public approximately every two years to revise this document as needed. The Department has a public participation process for revision of the LMD that runs concurrently with the public notice for the 2010 303(d) List. All comments received on the proposed 2012 listing methodology to date are documented in the minutes of the 305(b) meetings held in the spring of 2010, which are included in the administrative record or appear in the minutes of the Clean Water Commission hearing on 2012 LMD on July 7th, 2010.

The Department received four comments related to 2012 listing methodology during the public meetings. The Department agreed with these comments and the 2012 listing methodology has been revised accordingly. Two additional comments were received at the July 7th hearing on the listing methodology document. One comment express concern over the current method of interpreting biological data for small streams, but did not make a counter proposal for how this should be done.

The Department currently uses methods that are widely supported in the technical literature and we believe that our current method is the proper one. The other comment suggested there might be a need for

clarifying language about the interpretation about of the 96 hour exposure period. At the meeting the Department said we would be willing to look at any language to comment or propose but to date we have received none.

Revisions that were made did not result in any major changes from the 2010 listing methodology that was approved by the Commission. Minor changes include, one, acute ammonia exposure period changed from 24 hours to 1 hour. This corrects the error in the 2010 listing methodology. Since the acute ammonia criteria in our standards is based upon a 1 hour exposure period not 24.

And the second change was the calculation of the sediment equation. Now, uses 150 percent of the probable affect laws instead 100 percent. This change makes the assessment of sediment toxicity for multiple metals rise to the same level of proof as for individual metals. The change corrects an oversight in 2010 listing methodology.

The other wording changes are not changes in methods used but simply add clarifying language. These include clarification about the toxics rules as it relates to data age, clarification of how the Department assesses aquatic invertebrate communities

in small streams, clarification of how the Department assesses compliance with antidegradation provisions in the Water Quality Standards and clarification of the definition of Category 4(c) and Category 5 waters and removal of language related to the Departmental TMDLs, which are outside the scope of this document.

The Department received three comments on the proposed 2012 list, our listing methodology document. The first was that dissolved oxygen should be eliminated as a 303(d) pollutant. The Department response was that we agree in principle and we would hope that EPA would agree. The Department will broach this subject with EPA prior to the development of the next list.

Second comment concerned the need to revisit the current sediment quality guidelines based on a recent study of metals toxicity in the Joplin area. The Department response was that we will review the study and discuss as part of the 2014 listing methodology document revisions.

And the third comment expressed concern that the current site-specific criteria for lakes are so stringent that many high quality lakes may be placed on the 303(d) list. This comment was not a criticism of the current listing methodology. But

consideration of other statistical methods, which might be used in the 2014 listing methodology might alleviate some of this concern.

Our recommended action the Department recommends that the Commission approve the attached -- Attachment 2 the clean copy of the proposed 2012 303(d) listing methodology as is or with any changes deemed necessary by the Commission.

That's the end of my statement. Do you have any questions?

COMMISSIONER PARNELL: This may or may not be the place to discuss this, but I did agree with Chairman Hardecke said about our constituents understanding the regulations by which they're regulated. And I don't know how to reflect it in this discussion, but Mr. Brundage and his associate raised some legitimate questions about how you can track back to build credibility and is that something you're going to look at? Is that -- is that something that warrants more attention? Not money, but more attention.

MR. JOHN FORD: Maybe that's better answered by someone from our lab, Chris, are you here? I guess Chris Boldt is not here. We had a couple of folks from our lab, but I talked to them at the break. They said that the information that was requested was

sent. It was all there, it was just a matter of linking -- linking it up. The data was there. The information was there that they could have linked individual samples with quality assurance samples.

COMMISSIONER PARNELL: This sounds like a communication issue and I would just hope that we would follow-up on it.

MR. JOHN FORD: I -- I think we can. There were -- they're certainly welcome to talk to the folks in our lab and try and understand -- you know, how we do -- how we do and track quality assurance and how that's recorded in our data system.

You know if there's ways that we can -- we can develop a report out of that data system that doesn't take a lot of time and expense, I think, we'd certainly be happy to do that.

MR. SCOTT TOTTEN: Chris Boldt is here. He's in the back of the room. Chris, would you like to come up and address that?

MR. CHRIS BOLDT: I wasn't here for the whole question.

MR. JOHN FORD: I think the question was: Are we actually tracking everything we need to be in the way of quality assurance and --

COMMISSIONER PARNELL: No. My question was trying to

get back to the question that was raised earlier. Can we communicate with our constituents to help them understand and reconcile the data we have? And Mr. Brundage and his associates said that that was not possible now. And, I think, Mr. Ford's saying that's a communication issue and that's -- it doesn't have to be part of this approval process, but I think it warrants this Commissioner saying I would like to see you pursue something to improve that communication and understanding as long as it doesn't impose an undo burden financially or workforce-wise on you.

MR. SCOTT TOTTEN: Chris, can you introduce yourself for the record?

MR. CHRIS BOLDT: I'm Chris Boldt. I'm the laboratory manager for ESP.

I think that the answer to the question is we do have a level of QC that's required for us on -- on every sample that we run. We put it into a data packet and that data packet was given to the interested party as well as the chain of custody and all supporting documents.

Now, when that packet was given it's not -- it's what I would call a level one or two data packet and there are up to four levels of data packet. A level four data packet would be the most comprehensive and

would include case narratives. It would include all of the QC that's charted and tracked in a maybe, what I would say, more user friendly way, but it requires a lot of time to do that.

The data packet that we gave had all the QC information for that particular run or was pertinent for that run. Some of the data packets would have included samples that were not a part of this particular project and that's because we don't -- we don't segregate our samples into particular projects. So we may have run samples from other projects and included them with this, but we don't have the means of separating that out on our -- on our hard data -- what we call hard data packets or what comes off the instrument in terms of instrument runs.

So what you'll see is samples in this project that were printed with other samples and the QC is -- is pertinent to all of the samples not just for that particular project. So in order to separate the QC out and the samples out into a nice, neat packet for that particular project in my opinion would be well beyond the scope of what we can do as a laboratory with the means that we have.

But I also say that other laboratories, private laboratories, contract laboratories will not give you

anymore data than we submitted for this particular project unless requested and it will come out a higher cost. So if you want a level three or four data packet from a private laboratory you're going to pay probably, I'm only guessing, but probably twice the cost in order to do that because it takes a certain amount of time to put all that together.

So I'm not sure if I answered your question completely. But just to simplify --

COMMISSIONER PARNELL: No, you did. You said you can't do it with a cost reasonable basis.

MR. CHRIS BOLDT: Yeah. And the bottom line is we do about 25,000 samples a year and this was, I think, and I'm guessing around 300 samples that we had to dig out over eight years out of archives. So you can see that in order to -- to kind of segregate these and put these not nice projects would just be beyond what we have the capability of doing.

And actually it's beyond what the capability of a lot of laboratories would do. They don't give you those data packets unless you ask for it and then they probably assign a project manager specifically for that project and they hand-guide it all the way through. We just -- we don't do that. We certainly have the QC and that stuff available and it was

provided, but just not in the concise packet that may be provided at a higher level.

CHAIRMAN HARDECKE: I guess my question is: It seems -- and I don't know if this is what Robert was asking for, but it seems like if we have a water body on the 303(d) List then say here we got Troublesome Creek, if someone wanted to know where the data was collected and how it was collected on Troublesome Creek that you should be able to give them that in a reverse order?

MR. CHRIS BOLDT: Um-huh. Yeah. We can certainly do that. And I -- I think all the data that we provide as far as I know you should be able to make the connection between say Trouble Creek, the sample number, location, when it was collected, you know, time and date --

CHAIRMAN HARDECEK: And who collected it, conditions --

MR. CHRIS BOLDT: -- some of the field readings and stuff like that and, I think, the field notebooks were provided. It's my understanding that that was the case.

So, yeah, that should all be traceable certainly. And if you were to call me on the phone and say, hey, I've got Trouble Creek can you trace some of that

back I could do that without having to go through this process I can probably look in our LIMS and in a matter of, you know, short period of time could -- could trace that back.

CHAIRMAN HARDECKE: I guess my point is, we're putting water bodies on a list here which caused a varying degrees of regulation for the residents in Missouri and I think the question-- what I'm perceiving the question to be is that if someone wants to know how, when and why that data was collected that we should be able to provide them that in a format that they wouldn't have to put the pieces of the puzzle together.

And Hans made a comment that if -- if the program was put together and I know you do a lot more testing that what's on the 303(d) List, but possibly since this is such an important list and has other ramifications it would be worth putting a program together that the water bodies that are listed here that data would go into a format whereby if somebody wants to know about Troublesome Creek you can plug that in and -- and send it to them. Is that unreasonable?

MR. CHRIS BOLDT: Well, I'm not sure if it's unreasonable but it may be outside the scope of what we do as a laboratory so you may be asking the wrong person

there. In other words, we're providing data to programs just like a private laboratory would provide it to clients. So we provide them with -- with hard copy results. They don't even get the -- the level of data that was provided for this project. We retain it at the laboratory and -- you know, and then archive it after several years.

So we retain all the quality control information, all of the stuff that was associated with that, the chains of custody and that sort of thing. So, basically, the only thing that the -- that -- what I'll call our client, the program, gets is the final report with -- with minimal information and sample result, any qualification, data collection and time of collection, that sort of thing.

So it's minimal information. We can provide it beyond that as far as somebody that wants to know more information about that if it's not -- if it's on the final report then that should be available through the Internet on our website to be able to find that information. Most of what we do is published to the -- to the Internet so that -- that would be available.

As far as, you know, whether or not we gave a higher level data packet a three or four that still

wouldn't really answer that question in terms of being able to look at the data like you're talking about at least in my opinion I don't think that would be possible.

CHAIRMAN HARDECKE: Other questions?

(No response.)

CHAIRMAN HARDECKE: Thanks for your explanations.

MR. CHRIS BOLDT: Yep, thanks.

CHAIRMAN HARDECKE: John?

MR. JOHN FORD: Any other questions about the listing methodology?

(No response.)

CHAIRMAN HARDECKE: Okay. We got a couple cards here. We may come back to you. Robert?

MR. ROBERT BRUNDAGE: Good morning, Commissioners, Robert Brundage, Newman, Comley & Ruth. Hans Holmberg and I will make a few additional comments. I did participate in the listing methodology. John Ford does an excellent job of making himself available and answering questions.

There was one change that was made in here that I appreciate concerning -- comparing data from small streams like macro-invertebrate data from very small streams to reference values of very large streams. And that is addressed in the -- in your briefing

document on Page 409. So that was a positive development.

At your last meeting I made a comment about toxicity data where it says no more than one exceedance of acute or chronic criteria in three years for all toxics. So in other words if you have two grab samples and you've exceeded for the chronic level, which is the lower level then you were put on the 303(d) List and there really hasn't been a change in here concerning that. So I don't have any specific language for you, but I want to point out that I felt -- still think that this listing methodology has a tendency to place overreliance upon grab samples when trying to gauge chronic compliance.

The third thing I wanted to say and Hans Holmberg will help provide a little bit more details. And it's regarding probable affect concentrations. When we submitted some comments on the 303(d) List we also included some references that the probable affect concentration levels listed here in the listing methodology are I guess out of date. I had previously expressed concern that I didn't think they were appropriate for maintaining this listing methodology; however, they are still in here today.

And the same researcher who had set forth the

old values has now updated his research and the levels are in fact higher for most metal constituents and its probable affect concentrations for metals and sediments. And this listing methodology here proposed to you today doesn't take into account those new higher levels. I think, John, your response was you had considered for the 2014 303(d) List cycle, but that's a long ways away and I suggest maybe there's an opportunity to do something now and to better explain the probable affect concentration issue.

I will ask Hans Holmberg to, please, come to the podium here and explain that to you. And, I think, Hans had provided -- when we handed out those Power Point slides earlier. There was two slides on this issue at the very end of that packet so if you still have that you might want to refer to those.

MR. HANS HOLMBERG: Thank you, Commissioners. I'm Hans Holmberg with LimnoTech. I'm commenting on the use of sediment quality guidelines in the 2012 listing methodology document.

The probable affects concentrations are levels that are used in the listing methodology are based on a study by a researcher named McDonald under contract the EPA of his 2000 paper in which the listing

methodology he refers to is called The Development and Evaluation of Consensus Based Sediment Quality Guidelines for Freshwater Ecosystems. Those values were developed on sediment samples collected across the country from sediments impacted by multiple sources of pollution and contaminants including hydrocarbons as well as metals.

And this is a concern that that document itself, the 2000 study recognizes that the toxicity threshold to develop they're taking into account multiple types of pollution and sources. The authors also state that the thresholds should be used along with other tools to inform decisions that Mr. Ford mentioned previously in related to the dissolved oxygen discussion that the Department will use a weight of evidence approach when measuring one parameter doesn't give a definitive decision on whether a stream is impaired or not.

We would make the case that use of these sediment quality guidelines can be used as a tool amongst the weight of evidence approach in assessing a stream, but it might guide further study, either more sediment sampling, toxicity sampling within that stream itself or looking at the aquatic life communities there. And in making an impairment

determination in listing that stream would be better listed for the observed affects rather than listed for contamination in the sediment itself as is the current practice.

And the authors also recognize in the 2000 document the need for site-specific data given the variability they saw on the data set used in the 2000 study.

As Mr. Brundage mentioned McDonald again under contract with EPA conducted a study published in 2009 in the tri-state mining district of Missouri, Oklahoma and Kansas. This study collected more representative data to what we would find in some of the parts of Missouri and some of the streams potentially impacted by mining operations.

And that study presented these probable affects concentrations and levels at a much higher level than what was in the 2000 study. Cadmium was up 247 percent, lead up 71 percent, zinc up 542 percent over what was presented in the 2000 study.

These results -- and again in that study the authors continue to recognize the variability even within the tri-state mining district and then looking at a specific stream they strongly recommend collecting site-specific data to support a sediment toxicity threshold.

So with that in mind we'd recommend that the 2012 listing methodology document not use these probable affects concentrations as measure of determining impairment, but again could be used with the new data to guide future sampling or in the weight of evidence approach to determine impairments and list appropriately.

Thank you.

CHAIRMAN HARDECKE: Thank you.

Do you have anything else, Robert?

MR. ROBERT BRUNDAGE: I asked Mr. Holmberg to follow-up just a little bit on what you heard from the gentleman from the laboratory on our response to some of his comments.

MR. HANS HOLMBERG: Again, this is Hans Holmberg with LimnoTech. I want to express my appreciation for the cooperation of Mr. Ford and Mr. Boldt demonstrated in this process in trying to winnow -- sift and winnow through the data and information that we were trying to acquire to obtain the -- to assess the data quality behind the 303(d) listings. They were responsive and always helpful in their comments.

Mr. Boldt said that he believes we were provided with all the information to connect the data in the 303(d) tables to the quality assurance, quality

control packets that were provided by the lab. We have done our beset efforts to connect those pieces. We have not been able to do so with the information provided.

Perhaps it is a miscommunication issue as we've gotten one piece of the puzzle that's not connected and then another piece we -- we can start to draw lines but we haven't been fully able to connect.

As I mentioned, all of the data rather a relative, a minority of the data back to their quality assurance, quality control packets from the laboratory.

That's all. Thank you.

CHAIRMAN HARDECKE: Thank you.

John, do you have any comments on the probable affect concentrations?

MR. JOHN FORD: Yes. Thank you.

Robert did supply us during the public notice period with information that this -- this other study, this more recent study that took place in the Joplin area. And they did recommend higher levels and site-specific information was probably more valuable. We have not had a chance yet to read that document or go over it. Again, we received the information fairly late in the process and so not

having a chance to read and evaluate it ourselves we didn't have a chance to bring it before the stakeholders during this public participation process.

My suggestion was that between now and the next revision of the listing methodology we review this document. We've vet it with all the stakeholders so that everybody can look and then make a decision on how we want to revise these PECs in the next listing methodology, the 2014 version.

CHAIRMAN HARDECKE: But that's going to put it off for another whole cycle.

MR. JOHN FORD: It would. And, I guess, the only comment I would have at this point on our use of these PEC values is that the only streams that they have resulted in listings on are those where we have heavy metal mining in the State. And almost all of those we have had confirmation from other types of information like biological studies that show toxicity that these streams do have problems and appear to be related to heavy metals.

So I don't think the current ones that we're using are causing us a problem with going out and selecting streams that aren't impaired. In other words, the streams that we are -- that we are putting

on the list based upon these PEC values and other information seem to be supported by other types of data that they do in fact have toxic conditions.

I'm not concerned that, you know, we're way off from where we need to be, but we're certainly willing to -- to look at this new information.

CHAIRMAN HARDECKE: Are they impaired from those -- those metals --

MR. JOHN FORD: They're --

CHAIRMAN HARDECKE: -- over the levels that are contained in this report or --

MR. JOHN FORD: Yes. The ones that are listed are ones that have concentrations higher than the PECs we're using now.

CHAIRMAN HARDECKE: But, I mean, if you would take the -- the new levels that he indicated in this report --

MR. JOHN FORD: I haven't even reviewed those yet. I don't know what those numbers are.

CHAIRMAN HARDECKE: Okay.

COMMISSIONER TUPPER: John, is McDonald's Joplin report come out in final form? All I've seen is a draft.

MR. JOHN FORD: I haven't been able to get a copy yet.

COMMISSIONER TUPPER: I -- you know, I don't think you'd -- I'd like to see a final report before we do major changes.

CHAIRMAN HARDECKE: Okay. Phil Walsack?

MR. PHIL WALSACK: Thank you, Commissioners. I'll make this brief.

I believe and if I misspeak his name I apologize. Chris from the laboratory just stated something that gave me an uneasy feeling and, I think, Commissioner Parnell, you summarized the answer fairly nicely which is the lab isn't willing to or can't arrange laboratory data in a fashion that's publically useable.

Guys we're going to spend billions of dollars in municipal governments in Missouri based on laboratory data. That's what we're going to do. Billions of dollars in Missouri, ratepayers' dollars is based on lab data. We got to get the lab data right. We got to share the lab data so we know we're spending the money in the right places. It is the critical piece, the cornerstone of this whole deal. We got to have good lab data. So I implore the Department that it's publically palatable and useable so we can ascertain whether we're spending billions of dollars in the right place.

Thank you.

CHAIRMAN HARDECKE: Thank you.

What's your pleasure?

COMMISSIONER PARNELL: I'm ready to --

CHAIRMAN HARDECKE: Oh, John, I've got one more question. I don't know if this is the place for it, but a few years ago we discussed putting the streams that were listed for mercury on a separate list and I was wondering, whatever happened to that?

MR. JOHN FORD: I don't -- I don't remember any discussion about that personally. As far as I know --

CHAIRMAN HARDECKE: It was at a Commission meeting a few years ago. I don't remember exactly when. There was a provision of another -- it's on the 303(d) List, but another category for those waters that are listed for mercury with atmospheric deposition.

MR. JOHN FORD: Okay. I guess remember it there was a provision where we could have a mercury implementation strategy or something like that --

CHAIRMAN HARDECKE: Right.

MR. JOHN FORD: -- as opposed to a TMDL. John?

MR. JOHN HOKE: John Hoke, TMDL unit chief. Yeah. There was a provision a couple years back where EPA would allow states to list mercury in a separate

category, Category 5M of their integrated report, M for mercury, if the State had in place regulatory controls for mercury reduction from atmospheric sources.

At the time the proposal was offered to the states the Department looked at, you know, what regulatory controls do we have in place to control mercury? And out sided for a reasonable potential for municipal discharges and other industrial discharges from point source water perspective we really don't have any. And that the cost burden to put those in place in sort of an expedited fashion to take advantage of that Category 5M would be prohibitive.

Putting them in Category 5, the impaired waters list, gives the State eight to 13 years to develop implementation plans and put into place regulatory reductions not only for air permits and water permits, but things like, hazardous and solid waste like, you know, the mercury in your dental mouth and fillings and things from that nature. We had none of that in place. That in order for us to take advantage of that 5M, EPA would want documentation that we had those in sort of control some place and we just didn't at the time so we couldn't take

advantage of it unfortunately.

Bottom line it takes just about as much effort to write a TMDL mercury listings than it would be to get those -- those in place so at the time it felt -- the Department believed that just keeping on the list was the best way to address those waters.

CHAIRMAN HARDECKE: So how do you write a TMDL for mercury?

MR. JOHN HOKE: We haven't quite gotten there yet, but we will eventually have to go through that process. They're scheduled far out on our schedule, I think, 2015-2016 is when we have it scheduled.

It's going to be -- it will probably be one person on my staff and then folks in other programs; Hazardous Waste, Air Pollution Control, Solid Waste. We'll have to identify all the sources and we're -- you know, typically when we're dealing with water we can focus on waters and not nonpoint sources from water perspective for a TMDL for atmospheric deposition of mercury. We're going to have to pull in our Air Pollution Control colleagues, we'll have to pull in Solid Waste, Hazardous Waste and document all of those potential sources and then make recommendations on, you know, what reductions are needed from water; what reductions are needed from air; what reductions

are needed from solid and hazardous waste.

And then it will be up to the State to implement that through regulatory action, you know, potentially for voluntary self-compliance on things like dental offices or permits for generators of mercury and those sorts of things. It's going to be a complex process, I mean, we recognize that and we're going to need all the help from the stakeholders in this room as well as stakeholders in other programs to pull that off.

CHAIRMAN HARDECKE: Well, let's ask, John, how do you address that when it's atmospheric deposition?

MR. JOHN DeLASHMIT: There actually has been one, isn't it in Minnesota?

MR. JOHN HOKE: Minnesota did a mercury TMDL, but not a category 5.

MR. JOHN DeLASHMIT: Yeah. Not a Category 5.

That the opportunity to use Category 5 as John said comes with conditions and they think the Department made a decision that those conditions would just be too challenging to try to address.

But I would suggest, now, I haven't read the TMDL for mercury the State of Minnesota developed but, you know, that's -- that's one of the areas, I think, that perhaps you should look toward to see how

that was done 'cause it's not an easy thing to do.

As John said you're probably going to have to have metrological data, many things, source assessment that can cover a lot of different areas. So it's not going to be easy and we recognize that.

CHAIRMAN HARDECKE: So you will keep that in mind, right?

MR. JOHN DeLASHMIT: Yes, we will. We'll work with the Department on this.

COMMISSIONER TUPPER: Good luck.

MR. JOHN DeLASHMIT: Stand with our arms folded and tapping our foot waiting for this TMDL. So I have a feeling that reviewing it will be just as challenging as writing it as well.

CHAIRMAN HARDECKE: Thank you.

MR. JOHN DeLASHMIT: You're welcome.

CHAIRMAN HARDECKE: Okay.

COMMISSIONER TUPPER: Mr. Chairman, I move that the Commission approve Attachment 2, a clean copy of the proposed 2012 303(d) listing methodology document as is or with any changes deemed necessary, which are none I guess.

COMMISSIONER EASLEY: Second.

COMMISSIONER PARNELL: It was Easley.

CHAIRMAN HARDECKE: Please take the vote, Malinda.

MS. MALINDA STEENBERGEN: Commissioner Tupper?

COMMISSIONER TUPPER: Yes.

MS. MALINDA STEENBERGEN: Commissioner Parnell?

COMMISSIONER PARNELL: Yes.

MS. MALINDA STEENBERGEN: Commissioner Easley?

COMMISSIONER EASLEY: Yes.

MS. MALINDA STEENBERGEN: Chair Hardecke?

CHAIRMAN HARDECKE: Yes.

Okay. **Tab No. 4 the State Revolving Fund**, Doug.

MR. DOUG GARRETT: Morning. I'm Doug Garrett with the Financial Assistance Center. The draft of the 2011 Clean Water State Revolving Fund Intended Use Plan was placed on public notice June 4th, 2011. Public comment period ended on July 14th. I'm sorry place on public notice June 4th, 2010.

A number of comments were received, however, the most significant comments related to the administration fee and the limited availability of funds. Comments on the increase of the administration fee from one-half to a full percent indicated that, you know, some of the comments related to large communities feeling that half percent increase would mean that they would be able to go to the market for better deals.

The other comment related at the other end of

the spectrum for small communities that they may very well make the project unaffordable. We, as staff, in reviewing those comments and looking at our projects do not believe that the increase at this time will be detrimental to the program.

However, we will, you know, continue to evaluate the fees in years ahead and should it become necessary to make any adjustments down the road we will certainly entertain that and bring it before the Commission.

The other comments relating to the limited availability of funds; as you may recall we had a very successful leveraging program up until the fall of 2008-- that was when we did our last leveraged closing. We had been working with the Environmental Improvement and Energy Resources Authority as well as members of our finance team to develop a program in which we could continue to leverage.

In fact, we have been just every few days seem to have conference calls now with our finance team to have a bond sale with the EIERA this fall, looking at the projects we have funded to date the mechanics of that deal it appears at this time that we will be able to fund the contingency projects, we will fund

(Tape One, Side A and B concluded.)

MR. DOUG GARRETT: -- most if not all of them. So we

are excited we are pursuing that and should that come to fruition we may very well need to have a special Commission meeting either through a conference call to move projects from that contingency list to the fundable list. We are not proposing at this time to make that jump until we can get some better hard numbers.

We also received a specific comment from the Little Blue Valley Sewer District who has two projects that they will be looking to do down the road. The one that is critical at this point to the Sewer District is what they call their Middle Big Creek Project. They had proposed phasing their project should funds be limited so that they could, you know, begin that project to meet their schedule.

And we have, in discussions with the district, have decided to leave their project as listed on the contingency list for that full amount of $37 million and make an adjustment at the time that we would actually do funding for that project if it is necessary.

We've also made some minor editorial revisions to the IUP, which as much as we try to catch all the -- all the mistakes. There are a few that will crop up. The -- we have also made some project

revisions. The City of Brashear we had every intention of funding that through separate State programs this fall due to some easement acquisition issues they will not be able to proceed with State funding so we have moved them to our disadvantage community listing.

We have also received three applications during the public comment period. Those three are the Upper White River Basin Watershed Improvement District sponsoring a project for the River Downs West Subdivision. The IUP in your packet shows them as being placed on the planning list for $798,880.

Second project was Metropolitan St. Louis Sewer District for their Bond Place project that is for improvement district that has a few homes interested in on-site systems and those that have sewers those sewers are great need of repair. That project has also been placed on the planning list for $111,000.

And finally Boone County Regional Sewer District had a project, University Estates and Arrowhead Lake Estates for $489,221. That project we do have the facility plan in. The District does have a bond issue in place. We propose that that be placed on the fundable/contingency list.

We also have due to the -- the scarcity of funds

we've had a number of projects that went ahead and proceeded to secure funding outside of the SRF. The City of Union they had two projects on our contingency list both of those have been removed. Seneca we were able to fund that project through our State water pollution control bonds. Jefferson City they funded their project with Buy America Bonds. And Piedmont secured lease-purchase financing. And the City of Higginsville has also secured funding and it's my understanding that they have actually begun construction on their project.

There are two items that were brought to my attention after the Commission packet was put together. Those changes on Page 478 of your packet we have the fiscal year 2011 source of distribution of funds. In your packet you'll note that that says those funds are as of December 31st, 2009. It's actually, should be June 30th, 2010.

And then we also have the City of Taos who was incorrectly listed with having priority points of 55 and it should have been 80. We were all aware of that, just failed to make that change on Page 492 of your packet on the Non Point Source Direct Loan list.

And we are requesting that the Commission adopt the IUP as presented with making the correction to

the Taos priority points as well as correcting the date on the distribution of the capitalization grant and loan repayment funds to June 30th, 2010.

Are there any questions?

COMMISSIONER EASLEY: You have a section in here that I don't remember seeing before its called nonpoint source and green infrastructure demonstration grant.

MR. DOUG GARRETT: Yes, Commissioner, as part of the federal 2010 appropriation the language requires that the State look to provide funding for green infrastructure projects.

So it -- we had been working with both the Ozark Clean Water Company to do some nonpoint source projects down in Stone County to get a, basically, look at these centralized wastewater systems there. And then we've also been working with the Taney County group to develop a Class A regional biosolids facility to serve a number of communities around the -- the lakes there in Taney County.

The projects, these two specific projects, we have wrestled with several issues. The Ozark Clean Water Company under the normal SRF program for nonpoint source projects they were unable to, working with us, develop a method to secure the loan funding for the project.

The Taney County project they were requesting early on approximately $10 million in grant funds; two million from our State Forty Percent Grant program with the balance through a federal earmark program. The -- what they were hoping at that time was to get our approval for the $2 million in Forty Percent Construction Grant Program and then use that to leverage Congress, basically, to secure a special infrastructure grant from them.

Though both the Commission at those presentations as well as Staff did not believe that that was a wise use of funds to provide 100 percent grant for a project. That they needed, basically, to have some of their own funds in that project even though we did feel it was a very worthwhile project.

So in discussions with the Tri-Lakes folks in Taney County they were able to scale back their project to $6 million to get it going. And, in fact, shortly after meeting in our offices with representatives from the county they went back and it was maybe 24 hours later, 48 at the most, we had written commitment from the Taney County Commission to devote $3 million or 50 percent of the cost from their local funds.

We felt that was a very good, positive step on

their part. So that coupled with the funding that we were proposing coming out of the SRF to make the projects viable.

COMMISSIONER EASLEY: So Taney County funded it?

MR. DOUG GARRETT: They would put -- right --

COMMISSIONER EASLEY: Three million dollars?

MR. DOUG GARRETT: If you may recall under the ARRA program where we also had grant funding through the SRF we were requiring our recipients with the exception of our hardship communities to provide a 50 percent match. We were not going to provide 100 percent grant funding to communities. We carried that forward to this IUP when we learned that out of the federal appropriation 2010 grant funds would also be necessary.

So with those grant funds, you know, we say, okay, we're going to provide, you know, these grant funds but you're going to have to come up with the other 50 percent and that's what -- in both these cases they're doing.

Furthermore, with the green infrastructure requirement both of these projects would help us meet that requirement in that they would both be viewed as being green infrastructure.

COMMISSIONER EASLEY: Did you have other grant

requires for this particular section?
MR. DOUG GARRETT: Pardon?
COMMISSIONER EASLEY: Did you have other grant requests?
MR. DOUG GARRETT: No. No, sir.
COMMISSIONER EASLEY: It looks like you just sort of built this area just for these two projects.
MR. DOUG GARRETT: We had -- you are correct. We had been working with both Ozark Clean Water Company for a number of years to develop a nonpoint source program to address these centralized needs down there in Stone County. And, you know, through their good faith efforts and ours we just still could not bring something to fruition with these funds that were being made available -- you know, we had -- we still had - let me back up. We still had current applications for both these projects. So instead of placing them on the list to just receive a loan we shifted that over to grant. It was a conscious decision on our part.

Same thing with Taney County with the exception of we wanted them to, you know, go back and decide how much could they put forth and then we would match it with grant.

This does not necessarily satisfy our total

green requirement that's imposed by the feds. We will continue to work with other of our loan communities to identify green components within those projects.

CHAIRMAN HARDECKE: Now, do you have a green requirement on the SRF funds or just on the ARRA funds?

MR. DOUG GARRETT: On the 2010 SRF funds there is a green requirement.

COMMISSIONER EASLEY: What is that requirement?

MR. DOUG GARRETT: I know we put it in here.

It was not less than 20 percent of the capitalization grant, which was $56 million. So we were reserving about $11,296,000 to fund components of projects which incorporate green infrastructure.

Now, when we found out this requirement was going to be imposed upon us we had already received applications for the 2011 Intended Use Plan. And we have no doubt from EPA who awards our capitalization grant, for the 2010 capitalization grant there will be a condition in there that they will withhold these funds to -- until we demonstrate to them that we have made every possible effort to identify those green infrastructure components.

So as I say we'll be working with those loan communities as well to indentify, you know, what could be green.

COMMISSIONER TUPPER: So, basically --

CHAIRMAN HARDECKE: Is there a list of what's green?

MR. DOUG GARRETT: Pardon?

CHAIRMAN HARDECKE: Is there a list of what is green?

MR. DOUG GARRETT: There is guidance from EPA. There are some things that they determined categorically green in nature.

CHAIRMAN HARDECKE: Is that on Page 545?

MR. DOUG GARRETT: Yes, that's where it begins on Page 545.

MR. DOUG GARRETT: As an example if communities replace major pumps at a wastewater treatment plant we would expect that the pumps that are going in there that they're the new pumps so it would be more efficient than the pumps they're replacing; that by itself would not be green.

They would have to go to the next, you know, more efficient pump than what they would normally consider and they would have to demonstrate that energy savings for that pump. And then that would be evaluated by our engineering staff and then the determination made of it being green.

COMMISSIONER TUPPER: You know, like I said the last time, either a smart engineer or a devious engineer

however you want to look at it could almost make any project green if you've got no cost limitations. And that's -- I think we need to guard against approving and funding projects that are a little flagrant.
MR. DOUG GARRETT: Right. And that's where our -- our engineering review staff come into play. You know, as part of the facility planning process, you know, we inspect those consultants -- we check to ensure that they are looking at what's the most cost effective for that -- that community, still meeting the work quality requirements that are needing to be met and then, you know, work with them like in the imminent, current situation we would then work with them say, okay, of what you're proposing here is any of this green? Now, some of that -- those consultants may already have in there just from the selection of what -- what they're doing. If, you know, our engineering staff through those reviews would determine that they are, you know, using green infrastructure that's really inappropriate for a project then that would be certainly questioned.
MR. JOE BOLAND: I'm Joe Boland with the Financial Assistance Center. I think it's important to point out that as a stake -- State stakeholder we provided comments to EPA on multiple occasions on this green

component.

We're -- we've been working with it, but we're not necessarily happy with it. As a state we believe it's important for us to set the priorities on where this money goes. We don't -- we don't want to come across a case where -- you know, a green project that doesn't have the environmental impact that a, what we would call a regular concrete and steel project to take precedent over -- over the normal project.

So our engineering staff they do work very closely with these projects to make sure there isn't -- those issues that you're concerned about. I mean, we do -- we have very limited funding this year. We recognize that. We're working very hard to expand that amount of funding to -- through a new type of leveraged program, but we -- we do have to meet this 20 percent requirement. And we, it may not be the right way to say this, but we do look for the low hanging fruit. The water efficiencies, the energy efficiencies even environmental innovation is one of the categories, but we're really looking for those -- those -- those easier criteria to meet.

Now, on the drinking water side it's the same issue. And, you know, water loss is the easiest thing we -- we shoot for. It's very easy to prove.

It's the best thing we can do for our communities. So that's -- we get credit for water efficiency.

On the wastewater side we look for the same types of things. And, you know, if we can reduce flow going to a treatment plant through some I & I-type projects we may be able to, you know, get credit for that just depending on the output of the plant in the end.

So, you know, again it -- we recognize this green infrastructure component is in some ways it's kind of a challenge, but in other ways, like Doug said, we have a long list of projects. We work with those projects and grab every piece of green we can out of it. And we will -- we'll meet that 20 percent requirement I'm sure, so --

I don't know if that helps, but --

Yes.

CHAIRMAN HARDECKE: The Ozark Clean Water Company we've funded that before, right?

MR. JOE BOLAND: No, we haven't. And that's one of the reasons why. I'm glad you brought that up. The --

CHAIRMAN HARDECKE: Well, -- who is -- what was Dave Casaletto's thing?

MR. JOE BOLAND: That is -- that is Mr. Casaletto's

project. And what -- what Doug referred to earlier we -- we could never make a connection with -- through the loan program, through the traditional loan program. That's why we're taking our limited grant dollars and we want to put it towards some of these special nonpoint source projects --

CHAIRMAN HARDECKE: I thought we funded that once before?

MR. JOE BOLAND: He was on the list. He was fundable, but we -- the typical nonpoint source-type project that we want to fund has no revenues associated with it. I mean, if you look at the classic 319 projects there are no revenues. It's an educational component. You're buying a piece of property to take out of production, you know, riparian protection so there's -- there's no user rate associated with that to pay back a loan to us.

We recognize that and that's why we're putting this money towards this pilot group of projects. We really want to get something off the ground doing on-site replacement. We just haven't been able to up to this point. And a lot has -- most of that has to do with capitalizing the project. If -- if, you know, Mr. Casaletto if -- starting out there are no revenues associated with -- with this project. So we

need -- we need to capitalize this to some extent to get it to a point where it's self-revolving and that -- that's why we've kind of made this shift.

And I do -- Commissioner Easley, your original comment, I think, I want to make sure you are aware -- this was in the original IUP as presented for a public hearing and public comment originally. So I -- I just want to make sure you didn't think this was put in afterwards. It has been here since the public hearing process. Just want to make sure of that.

But, again, we're -- we really want to try and get something -- get something rolling especially on the on-site projects. We recognize it as a problem throughout the State. Southwest has really focused on it more especially Table Rock Water Quality, Inc., they've done a lot of work down there already. And we -- we would really love to get some kind of self-revolving fund set up as a pilot to see if we can use that as a model across the State, so --

CHAIRMAN HARDECKE: Questions?

(No response.)

CHAIRMAN HARDECKE: We've got a card, Phil Walsack.

MR. PHIL WALSACK: I see Ms. Tippett Mosby here and there's going to be a question posed to her in a moment.

0.5 percent, now, we're raising that to 1 percent. I talked at length about this last meeting. How is it fair that in Owensville I have a drinking water project my interest rate is -- my admin fee is 0.5 percent, but if I have a wastewater project it's 1 percent?

How is it fair and equitable to the citizens in Missouri that they're going to carry -- that St. Louis MSD is going to carry an extra half a percent, 50 basis points for a project this year? Why is it fair that the City of Joplin must fund additional fees to the Department? Why aren't we talking about the fairness and equity of this approach?

There are political implications buried in this number and I'd really like to hear what they are because these are -- these are real numbers to real ratepayers. And if we want to raise 1 percent across the board for drinking water and wastewater then so be it. But shielding one while exposing another is bad public policy and it sets as Mr. Easley brought up earlier today a bad precedent. I don't understand why we're doing this.

I want to hear from the Department why we're willing to risk political capital as well coming into January when we discuss clean water fees. I want to

understand why the Department believes this is a good move at this time.

Thank you.

CHAIRMAN HARDECKE: Leanne?

MS. LEANNE TIPPETT MOSBY: Good afternoon, Commissioners, members of the audience, Mr. Walsack. I'm not John, but my name is Leanne Tippett Mosby. I am the Acting Division Director for the Division of Environmental Quality for the Department. And I do appreciate Mr. Walsack's concerns.

It's certainly not an ideal situation that we are looking to increase this administrative fee, but as the Commission is aware we were unsuccessful in our recent attempt to get our water pollution fees extended. The legislation that we had, failed right at the end of the session so we've been faced with many difficult decisions over the past several years, frankly, we've been working for a number of years with our stakeholders in an effort to try to get our fees restructured and -- so that we can operate an adequate program.

We believe that Missouri is the right place to house the program in the State of Missouri as opposed to allowing this program to return to the Environmental Protection Agency and we've been faced

with some -- some, frankly, very difficult decisions throughout the Division of Environmental Quality including laying off staff.

It's not a decision we took lightly, but because we looked high and low for any place where we could increase our revenues and decrease expenditures in an order that we can continue the program. I would point out that -- you know, that -- that municipalities do not have to avail themselves of this program. They're, you know, they -- it's not a -- it's not mandatory that they seek funding from the SRF.

I would also point out that if we don't have a Water Protection Program in the State of Missouri we won't have an SRF program at all. So, you know, that may -- if our revenue situation improves in the future, if we're able to get our revenues adjusted to the -- to the level that we need to carry out all our responsibilities then this might be an issue that we can revisit.

Again, I guess, the simplest answer is it was very -- a decision that we didn't take lightly, but is something we felt we had to do in combination with many other things. You know, another thing that we're doing for instance is we're trying to improve our

cost recovery efforts in terms of when we have enforcement cases that take an extraordinary amount of time. We're trying to -- to make sure that we capture those costs so that we can recovery those costs from the entities in question. So this is just part of a number of measures that we're taking.

And unless you have any questions for me, that's what I have -- I'll conclude.

CHAIRMAN HARDECKE: Thank you.

COMMISSIONER PARNELL: I would move that we adopt the 2011 Clean Water State Revolving Fund Intended Use Plan as presented.

COMMISSIONER EASLEY: Second.

CHAIRMAN HARDECKE: Malinda, take the vote, please.

MS. MALINDA STEENBERGEN: Commissioner Parnell?

COMMISSIONER PARNELL: Yes.

MS. MALINDA STEENBERGEN: Commissioner Easley?

COMMISSIONER EASLEY: Yes.

MS. MALINDA STEENBERGEN: Commissioner Tupper?

COMMISSIONER TUPPER: Yes.

MS. MALINDA STEENBERGEN: Chair Hardecke?

CHAIRMAN HARDECKE: Yes.

I think the time has come for lunch. We'll reconvene at one o'clock.

MS. JENNIFER FRAZIER: Can you vote to go into closed

session?

CHAIRMAN HARDECKE: Yes.

(Vote taken for closed session all - Yes)(Break in proceedings.)

MS. JENNIFER FRAZIER: Can you -- now, is the mic on? Okay.

Hello. Okay. Thank you. All right. I'll start over. My name is Jenny Frazier with the Attorney General's Office. I'm here to present **Tab No. 5**, which is a permit appeal by the **City of Jasper**. They were appealing the specific term of their permit requiring a Class C certified operator.

There was a hearing held on October 26th of 2009. Assistant Attorney General, Tim Duggan, represented the Department and he is here and I'm going to let him answer any questions and give you any factual information that he needs to.

I'm simply going to remind you that under 621.250 your decision must be based only on the facts and evidence in the hearing record and you've been given a copy of that record. You have three options. The first is to adopt the recommendation of the Administrative Hearing Commission as your final decision. You can change a finding of fact or conclusion of law or you may vacate or modify the recommendation by the AHC, but if you do so you must

state in writing the specific reason for the change.

So with that I'll turn it over to Tim and he can answer any specific questions you might have and make a final statement.

MR. TIM DUGGAN: Good afternoon. My name's Tim Duggan I'm with the Attorney General's Office. I just want to make sure have we heard from the City of Jasper; is anyone here for them?

(No response.)

MR. TIM DUGGAN: They were represented by counsel at the hearing, but Mr. James Spradling passed away in August and his estate notified the Administrative Hearing Commission that he -- his firm was withdrawing from the case. The initial appeal was filed by the mayor so I thought he might be here to speak for the City.

The case, it's pretty straight forward. The difference between a Class C and Class D operator for this particular wastewater treatment facility is 1.28 points according to a guideline that you had promulgated as a rule, a point system for evaluating the level of wastewater treatment operator that is required to run the system for a particular plant. It's from D to A. A is the most challenging, D is the least challenging.

Before this permit was issued wastewater treatment operator status was not included in permits. This was sort of an evolving process and when this permit was issued effective April 25th, 2008, the permit did include the wastewater certification requirement.

The City had been operating a single cell lagoon with a Class D operator for years. They replaced that lagoon with what was called a Lemna System. Lemna being the company that developed it. It's in this case a two component partial mix aerated facultative three cell basin with hydraulic baffles. And attached to that is a covered anaerobic settling basin.

Now, on your point system under the -- when this permit was first put out on public notice the -- the system received eight points for the -- the technical components of the system, which was based an aerated lagoon. But the Staff before they issued the final version of the permit added two points for the settling basin that was put of the Lemna System. And they called that an advanced polishing treatment cell.

Those two points would make the difference between a Class C and Class D operator of course.

And the case really came down to a matter of -- of logic. And the Administrative Hearing Commission acknowledges the logic of the City's position which is, you know, that's a very efficient, user-friendly system and, frankly, it doesn't necessarily require anybody more trained than a Class D operator.

The Class D operator who took care of our single cell lagoon can certainly take care of this system it's a matter of throwing a switch to turn on an aerator now and then. And it's just no more complicated than that so why should we have to upgrade the -- the operator's status?

But the AHC also recognized the logic of the Department's position, which is you don't just look at how complicated it is to manage your particular wastewater treatment plant. You also look at the fact that this plant is designed to and capable of producing a higher quality effluent for the receiving stream than that -- that previous system. The previous system was -- was basically a lagoon that collected sludge and then they used the wastewater and sludge for fields. They just irrigated fields with it, whereas, this is a discharge system. And the limits for this particular system were tighter than the -- the old system.

So the Administrative Hearing Commission said, well, when you look at the fact that first of all that advanced polishing cell or that advanced treatment cell that doesn't require any particular attention in its own right that's attached to the whole system is intricate part of making sure that the effluent meets the -- the tighter limits in the permit. And, therefore, in that sense it is an advanced polishing pond because without it the -- the system would not be as affective. And the only other thing you can go do to get the same quality of effluent would be an activated sludge facility. And an activated sludge facility would merit 15 points on that same guideline as opposed to the two additional points added to the eight for the initial aerated lagoon plus two for the mechanical components and the quality of the effluent that you are to produce.

So the Administrative Hearing Commission found that the Department did not in any way abuse its best professional judgment in the way they evaluated this system. And the ten points was supported by the evidence in the testimony of the engineer from the regional office who explained the -- how he arrived at that -- that conclusion.

The other component to the appeal was worth

three points on that same scoring system. And the three points relate to the classification of the receiving stream, which is Possum Creek. Possum Creek is by default considered suitable for whole body recreational use and a recent Use Availability Analysis by the Department conducted in about May of 2007 did not rebut the whole body contact recreational use, which is deemed to be the appropriate beneficial use of this particular stream. In this particular issue the City's argument amounted to questioning whether or not the UAA that the Department conducted was perhaps less conclusive than it might have been because they argued with the rainfall data that immediately proceeded the evaluation of this particular stream.

Theirs was more localized. They had gone with rain gauges that they monitor on a regular basis whereas the Department had gone with a greater regional-wide approach based on information from the -- from NOAA and the weather service and so forth. And there was a discrepancy on how much rain had fallen or not. But John Hoke had provided us evidence that in evaluating the stream the contractor who conducted the UAA study had followed the training and had followed the appropriate protocol. And the

pictures taken of the stream segment were consistent with a stream that was not at flood conditions and had not been immediately at flood conditions before the study. And, therefore, it was considered at base flow. And if it was considered at base flow then the UAA did not rebut the presumption of whole recreational use.

The Administrative Hearing Commission recognized that the UAA might have been inconclusive with respect to that question of the base flow, but in order to take off the three points you would need a UAA that conclusively rebuts the whole body contact designated use and it would require a change of the rule of this Commission in order to implement a re-designation of that -- that stream. Since those things had not occurred then the three points were appropriately assessed. The Commission recognized its limitation of its own authority it could not order a new UAA. It doesn't have the authority to do that nor is it necessarily supported by the evidence that a new UAA is required under these circumstances. But nothing prevents a city from conducting its own UAA and at some point rebutting that presumption. By then, however, many years down the road we are there may be other changes, however, to their system that

would still require a Class C operator.

But the bottom line is they challenged five of the points on that scale and the Administrative Hearing Commission recommends that the five points were properly assessed and recommends that you let the permit stand with a Class C operator requirement that is contained therein.

And since the Administrative Hearing Commission agreed with our arguments, of course, I would urge you to adopt their recommendation.

Now, are there any questions?

CHAIRMAN HARDECKE: Questions?

COMMISSIONER TUPPER: I have a lot of questions, but in deference to Mr. Parnell's schedule I'll --

(Laughter.)

COMMISSIONER TUPPER: -- it's -- a lot of things wrong with this one, I think, but I will vote. We can move on.

CHAIRMAN HARDECKE: Once again is there anybody here from the City of Jasper?

(No response.)

COMMISSIONER TUPPER: I would like later in the meeting to ask John some questions.

CHAIRMAN HARDECKE: Okay.

COMMISSIONER TUPPER: John Hoke.

CHAIRMAN HARDECKE: Okay.

COMMISSIONER EASLEY: I move that the Commission adopt the Administrative Hearing Commission's recommendation.

COMMISSIONER PARNELL: Second.

CHAIRMAN HARDECKE: Malinda, take the vote, please.

MS. MALINDA STEENBERGEN: Commissioner Tupper?

COMMISSIONER TUPPER: Yes.

MS. MALINDA STEENBERGEN: Commissioner Parnell?

COMMISSIONER PARNELL: Yes.

MS. MALINDA STEENBERGEN: Commissioner Easley?

COMMISSIONER EASLEY: Yes.

MS. MALINDA STEENBERGEN: Chair Hardecke?

CHAIRMAN HARDECKE: Yes.

Okay. We're going to move to **Tab No. 6** and then we will take -- have Tab No. 9 next in consideration that Commissioner Parnell has to leave at two o'clock so we're going to try and take care of the tabs that need a vote before he leaves. So Tab No. 6.

MS. EMILY LYON: My name's Emily Lyon in the Financial Assistance Center in the Department. I'm here to talk about the engineering reports, plans and specifications rule of Chapter 8, Rule 110. It has -- this rule in particular has not been revised since it was implemented back in the '70s. We're basically

updating it to be in line with the Ten State Standards which we are a member state of and they're a national recognized standard.

This rule is not an environmental standard or condition. We're not establishing any of those. It's just an administrative rule to update the standards to current practice. But we did draft an RIR, Regulatory Impact Report, for the public and that was on notice from May 17th to July 16th, 2010. We did receive one comment from the Department of Health and Senior Services.

And they basically wanted us to require a -- that all facility plans and engineering reports to look at a decentralized concept as one of the alternatives. But we felt that this rule pertains to facilities 100,000 gallons per day or greater. And at that size we didn't believe it was necessary to require them to meet at that decentralized concept. We're not saying that they can't look at it. They're more than welcome to evaluate that alternative. We just felt that's probably a requirement more suited for our smaller flow facilities.

We did, also, put together private and public fiscal notes and we based those on the average construction permits that we receive and then how

much time we thought the Department and consultants would spend reviewing those to get accustomed to the new regulations. We didn't feel like it would take a lot of time for consultants to get a handle of this new regulation. There is a small learning curve, but some facilities are already required to do these things so it shouldn't be a big adjustment. And so we determined that there would be some costs, but after about three years really there shouldn't be really anymore cost because everyone should be up on the new regulation.

The finding of necessity was approved and signed in the March Commission meeting and we do have a public hearing expected on the rule at the January Commission meeting. And I would just like to recommend that the Commission proceed with filing the proposed rule, and publish it in the Missouri register. Do you have any questions?

(No response.)

CHAIRMAN HARDECKE: Questions?

(No response.)

COMMISSIONER EASLEY: I would like to make a motion that the Commission -- or I'll move that the Commission approve the request to file a proposed rule amendment to 10 CSR 20-8.110.

COMMISSIONER TUPPER: Second.

CHAIRMAN HARDECKE: Malinda, take the vote, please.

MS. MALINDA STEENBERGEN: Commissioner Parnell?

COMMISSIONER PARNELL: Yes.

MS. MALINDA STEENBERGEN: Commissioner Easley?

COMMISSIONER EASLEY: Yes.

MS. MALINDA STEENBERGEN: Commissioner Tupper?

COMMISSIONER TUPPER: Yes.

MS. MALINDA STEENBERGEN: Chair Hardecke?

CHAIRMAN HARDECKE: Yes.

Okay. We'll move to **Tab No. 9**.

COMMISSIONER PARNELL: There's no legal action today? I don't see any legal --

COMMISSIONER TUPPER: No.

MR. JOHN RUSTIGE: Good afternoon, Commissioners. In February the **Empire District Electric Company** submitted a complete variance application for their Asbury Plant. They're seeking a variance for a period of five years from applicable Water Quality Standards for sulfate and chloride for discharge to Blackberry Creek

(Tape Two, Side A concluded.)

MR. JOHN RUSTIGE: -- tributary to the Spring River in Jasper County. The cooling water is supplied from deep wells that contain high, natural sulfate and chloride levels. The cooling water discharge has

frequently shown concentrations that exceed the Water Quality Standard of 1,000 milligrams per liter. Blackberry Creek is impaired for sulfite and chloride and is on the 303(d) List. Empire District has conducted an assessment of the aquatic community in Blackberry Creek and their assessment concludes that it compares favorably to communities found in control streams.

They have also conducted whole effluent toxicity testing using both fathead minnows and Daphnia. And the tests show that the effluent passes the chronic or the seven day test. The water has a high level of hardness and that really reduces the toxic affects of these pollutants.

Empire District did receive a previous variance for this situation. The previous variance required Empire to conduct a preliminary review of technical options to address the situation and they -- they did conduct that review and looked at various technologies, but they weren't able to identify an approach that was cost effective. At the May 6th Commission meeting I presented a preliminary variance to the Commission and the variance was subsequently put on public notice. The public notice was published on July 22nd and that period closed August

22nd. Empire District provided several comments during that comment period and we've prepared a recommendation on the variance as required by the statute.

This recommendation has been modified from what was originally published in the briefing document because we addressed some of those comments after the briefing document was finalized. So you'll find the final variance recommendation in your blue packet.

So I offer the following findings. There are high natural background concentrations of sulfites and chlorides in the water used for cooling water. The previously mined land in the vicinity further increases sulfite and chloride levels. During the current period in which the District operated under the variance they have investigated the options to meet appropriate effluent concentrations. These technologies have been identified as technically feasible, but not cost effective.

During the current variance period Empire District has not developed site specific water quality criteria that could be incorporated into Missouri's Water Quality Standards. And I also note that no adverse effects have been noted while conducting these chronic wet tests. So given those -

- those findings staff would recommend the approval of the variance with a set of conditions.

Staff recommends that by October 16th, 2010, Empire District submit to the Department a draft quality assurance project plan for the collection of data and a detailed method for the development of site specific water criteria for sulfites and chlorides in Blackberry Creek. The Department shall review this draft plan within 30 days and provide recommended modifications for consideration.

Both the Department and Empire will coordinate with and request comments from U.S. EPA regarding the acceptability of this draft plan for data collection and interpretation in order to develop a site specific water quality criteria. Empire District shall provide responses to comments and produce a final quality assurance project plan within 30 days of receipt of all written comments.

The Department shall review the final plan and make a determination at that point whether to proceed with formal development of site specific water quality criteria. Empire District shall continue to conduct the whole effluent toxicity testing as required in their current permit.

If the Department determines that site specific

criteria is feasible then Empire District shall initiate the study within 45 days of approval begin. It's the intention of the Department then to incorporate the results of that study into the next triennial review and into the next rulemaking that's associated with that review. By March 15th, Empire District shall review the data, by March 15th of 2011, and provide preliminary site specific criteria for sulfites and chlorides as well as other information necessary for the Department to develop a Regulatory Impact Report.

Empire District then shall complete the study by October 16th, 2011, and the Department then intends to use the results of that study and roll that information into the rulemaking. That rulemaking is scheduled for proposal March 12th, 2012, with an effective date of December 31st, 2012. And then upon the effective date of that rule Empire is required to meet the applicable Water Quality Standards and the variance then will be terminated.

If, however, the Department determines that it's not feasible to develop a specific Water Quality Standard, site specific water quality criteria, the Department shall notify Empire District and the Asbury Plant will be required to meet the current

applicable Water Quality Standard for sulfites plus chlorides within three years of notice and no later than October 16th, 2016. This deadline provides the necessary time to meet those limits from the time that we make a decision on whether a site specific water quality criterion is feasible.

So with that I would recommend that the Commission approve this variance with the conditions that I presented. The variance will supersede the existing variance and become effective once approved.

Questions?

(No response.)

CHAIRMAN HARDECKE: Any questions?

(No response.)

CHAIRMAN HARDECKE: Trent Stober.

MR. TRENT STOBER: Commissioners, Trent Stober with Geosyntec representing Empire District Electric Company. We also have several representatives from Empire District if you have any more questions and so forth and want any clarifications.

Just one thing to go on record that this is not just about costs that there is negative secondary impacts that I know -- well, that are -- are from the southwestern part of our State recognized and the -- the potential for groundwater depletion if the Water

Quality Standards as is are intended to be met. Essentially the most viable, most technically achievable and cost effective means to -- to meet the standards are to essentially pump additional groundwater out of -- out of the groundwater source for the cooling water to essentially dilute the chlorides and sulfates within the effluent. So with that I -- we have appreciated the Department's willingness to work collaboratively with this and expect that to be the case going forward, you know, there's -- there's statements about feasibility of -- of developing the site specific criteria and approval from DNR along the way. And we just hope that we can work collaboratively with the Department to ensure that we get a result that's technically defensible and sound as well.

And then, also, it's clear that this variance begins and supersedes the last so that we have a continuous chain of protection from the two variances. Have any questions?

(No response.)

CHAIRMAN HARDECKE: Thank you.

COMMISSIONER TUPPER: Mr. Chairman, I move the Commission approve with the variance request with the conditions placed on it by the Staff.

COMMISSIONER PARNELL: Second.

CHAIRMAN HARDECKE: Malinda, take the vote, please.

MS. MALINDA STEENBERGEN: Commissioner Easley?

COMMISSIONER EASLEY: Yes.

MS. MALINDA STEENBERGEN: Commissioner Tupper?

COMMISSIONER TUPPER: Yes.

MS. MALINDA STEENBERGEN: Commissioner Parnell?

COMMISSIONER PARNELL: Yes.

MS. MALINDA STEENBERGEN: Chair Hardecke?

CHAIRMAN HARDECKE: Yes.

We'll go back to No. 7. Okay. Now, **Tab No. 7**.

COMMISSIONER TUPPER: Drive careful.

MR. JOHN HOKE: Mr. Chairman, thank you, Commissioners. Again, my name is John Hoke. I'm the TMDL unit chief of the Water Protection Program. I'm also the Water Quality Standards coordinator for the 2012 Water Quality Standards review. And Tab No. 7 before you on Page 647 of your packet, I'm presenting today draft rule language that applies designation to fishable/swimmable uses to currently unclassified waters.

In September 2000 U.S. Environmental Protection Agency had determined that Missouri's Water Quality Standards do not fully implement the fishable/swimmable use designations required by

Section 101A of the -- of the federal Clean Water Act. As promised at the July, I think, it's 14th meeting we are providing draft rule language to you today that we believe applies the designation of fishable/swimmable waters in such a way that to currently unclassified waters that satisfies the section 101A criteria both by the Clean Water Act on -- and the rule in your package is essentially unchanged with the exception of a couple of areas that -- that apply to the designation of uses.

I direct your attention to Page 653 of your packet. The Department has changed language under Subsection 2, designation of uses. In particular 2C, 2D, 2E and 2K. Section 2C all perennial rivers and streams and intermittent streams with perennial pools shall support whole body contact recreation-Category B, secondary contact recreation, warm water aquatic community protection, human health protection and life cycle wildlife protection uses as defined earlier in the rule. And these uses are consistent with the presumptive beneficial use protection required by the Clean Water Act Section 101A(2).

We believe that that new language pulls in currently all the waters that are listed as classified in the rule. It applies to them because

that is -- this is essentially the procedure that the Department of Natural Resources and the Department of Conservation use to originally classify those waters along with some -- and their sure stream servers back in the '70s and '80s. As well as, we believe, this will pull in waters that may not necessarily fall into the second addition that we've made to the rule which is 2D. All waters specially represented by the 1 to 100,000 scale Natural Hydraulic Data center, NHD, shows -- also support Whole Body Contact Recreation Category B, secondary contract recreation, warm water aquatic community, human health protection and life cycle wildlife water protection uses. These uses are also consistent with the presumptive beneficial use designations by the Clean Water Act.

The 1 to 100,000 scale NHD data set is a commonly used data set by the Department, U.S. EPA and U.S.G.S. to track water bodies in the State and nationally and is a fair representation of perennial rivers and streams and intermittent streams with permanent pools. In earlier presentations to the Commission and to the water protection forum workgroup the Department made demonstration as did the Missouri Department of Conservation that aquatic life do exist on these 1 to 100k waters and we feel

confident that designating to this special extent to those 1 to 100k waters will satisfy the rebuttal presumption of fishable/swimmable for -- for those waters.

And we say this is specially represented by the 1 to 100k scale because that data set will change as you get finer and finer resolution. We want to make sure that the start and end points don't change, but we still get that representation based on the line work and not necessarily how -- how they change through time. There's interests from stakeholders and EPA that the Department maintain a list of those waters that receive the designation pursuant to this new rule. So in rule we've written that the Department shall maintain a geospatial data set, which is essentially GIS layer that you can draw maps and display pictures of those waters as well as a list of those water bodies that receive use designations under 2C and 2D of the rule.

That's to our benefit as well as stakeholders and EPA benefit so we can track these waters through time and be able to link them to permits and other environmental concerns or features that -- that we may need.

Lastly, 2K in rule the Department feels that

prior to implementation of new effluent limits for these -- for dischargers to these new waters there needs to be Use Attainability Analysis protocol that's been developed and adopted by the Commission to afford either the Department or a permittee the opportunity to go out and conduct a Use Attainability Analysis to rebut the -- both either the protection of aquatic life or the whole body contact uses that were -- that would be applied by these portions in rule.

Like I said these changes are part of the 2012 Water Quality Standards triennial review. It's the Department's intention to kind of jumpstart the water classification workgroup at some time this fall to begin discussions on such things as that Use Attainability Analysis for aquatic life protection as well as other suggestions and past forward for moving the rule closer towards fruition for that 2012 effective date.

And with that I'll answer any questions that you might have today.

CHAIRMAN HARDECKE: Okay. We'll take some comments and we may need to come back to you.

MR. JOHN HOKE: I agree. Thanks.

CHAIRMAN HARDECKE: John Carter.

MR. JOHN CARTER: Mr. Chairman, members of the Commission, I'm John Carter. I'm here as a landowner. And the 1 to 100,000 scale comes up in my hayfields to the normally dry drainages going to my hay fields. That takes a good rain to have water going through those hayfields. And, I think, that they do not need to be waters of the state would be under the regulation.

I have talked to my State Senators, State Representative both whom have farms asked them to check their farms to see how much of their land is covered like this and they are concerned. So I ask the Commission to, please, rethink adopting this rule.

Thank you.

CHAIRMAN HARDECKE: Okay. Thank you. Ed Galbraith.

MR. ED GALBRAITH: Good afternoon, Commissioners. Thank you for this opportunity to address the Commission on this draft rulemaking. My name is Ed Galbraith. I'm with Barr Engineering and I represent a number of municipals and sewer districts who have an interest in this rule and understand that the stream classification system does need to be addressed, but we would like to see it move forward in a predictable order and responsible manner.

This rule would increase the number of waters that have the presumed uses by about five fold. So it does have a significant impact on -- on the State and how -- how we manage the Clean Water Act in this State. So we do need to think carefully about how we move forward with this.

I do want to make just three brief points. First of all, this approach is consistent with Missouri's existing regulation to the extent that we classify waters based on their ability to have either perennial flow or perennial pools. What this rule does is instead of requiring actual field -- actual stream surveys or field investigations it's using GIS technology, basically, as a predictor and a reasonably good predictor of where -- of where that -- those perennial waters are. So in that sense even though it is a massive increase in the number of classified waters it's consistent with our current regulatory understanding and definition of how we classify waters.

The second thing, second virtue, I guess, of this rule as opposed to the Department's previous proposal was to suggest that all waters of the state have the presumed uses. What's -- what is a good thing or one aspect of using the 100k data is that

you know exactly where those stream reaches begin and end down to -- down to -- you know, as close as we can get GIS technology or GPS technology to go. So there's no ambiguity. It's not based on where -- where the water is channelized or where it crosses the property line or things like that that can change. Once it's in the rule and has a GIS data set assigned to its permit writers, permittees, cities that manage MS4 permits they -- they know exactly where those -- where those presumed uses begin and end.

The third point that I'd like to make is that this approach is, as far as we can tell, is consistent with and reasonably likely to fulfill the requirements of the federal Clean Water Act in Missouri and I say that based on the -- on the fact that this approach was recently adopted by Iowa and even more recently approved by EPA for use in that state so we have a reasonable assurance that -- that it will fulfill the federal Clean Water Act requirements of assigning the presumptive uses to -- to the waters of the United States.

So in summary it's a cost effective way of implementing our own regulations; two, it's -- it provides transparency and predictability and, three,

a pretty good assurance of complying with the Clean Water Act.

That's all I had to say. I'll answer any questions if I can. Thank you.

CHAIRMAN HARDECKE: Thank you. Terry Satterlee.

MS. TERRY SATTERLEE: Hi, my name is Terry Satterlee and I'm a lawyer with Shook, Hardy & Bacon. I'm here as part of the group that Ed's with representing municipalities, also, I have representing some Ag interests. I'd like to make two points and Ed did the schedule. And I'm on twice so I'll just give you once.

The Clean Water Act is 38 years old. I've been practicing 36 years so that gives you a feel of how I've watched it grow. I've always felt that it was implemented in the east coast and the west, but it never really fit in the middle, middle states and, I think, we're seeing the results of that now with the impact Ag and the municipalities.

And what I'd like to address is two issues, one, is the 1 to 100k. I support that issue. My clients support that. Understanding everybody's not going to like it, but it is a proven methodology. Iowa did have to do quite a few UAAs to protect -- to move, as Mr. Carter indicated, some of the Ag related issues,

but the alternative that we're looking at now with the notification by the Missouri Environmental Coalition is all waters of the state and I will relate very quickly to you. And I went through an all waters of the state designation in Kansas in 1994, which was litigated; which was -- went through the Legislature twice, went to the Kansas Supreme Court, was in federal court. They had to do -- spend so much money on doing UAAs to get dry ditches out of the classification. And especially in Missouri where -- not unlike Kansas it includes groundwater in the definitions of water of the state, which makes it even more interesting to consider that under the pending litigation and notification that all waters of the state would include ground water in Missouri.

So I do encourage the -- my clients do encourage the adopting of the 1 to 100 understanding that the Use Attainability Analysis may have to and will be used specifically. Now, I'd like to address that quickly. And, I guess, this probably goes to Jenny. In Section 2A I'm very concerned with the downstream Water Quality Standards the way that it's worded and the fact that designating uses includes considering -- the consideration of groundwater. I think it should say "if appropriate" and frankly, I think, it

should reference the rules as they read right now.

EPA has announced that in the summer of 2011 it's going to start redoing all these rules including the Use Attainability Analysis, which could have a significant impact. And without specific references to what you're really talking about now and dealing with in the federal regulations, which I happen to believe the federal regulations apply the way the Missouri regs were written. And you're just duplicating that here as opposed to putting a new standard, which as you know Washington and the regions are trying to implement now with regard to what a UAA is. I just would hope that maybe you want to think about putting the references in and -- and thinking about really how the downstream waters if appropriate, for example, really apply in the use designation.

So those are the two points I wanted to make. Thank you very much.

CHAIRMAN HARDECKE: Phil Walsack.

MR. PHIL WALSACK: Hi, my name is Phil Walsack from Missouri Public Utility Alliance and I'm wanted to talk about a couple of very specific things. First, the adoption of the 1 to 100,000 map scale is a compromised position. It is equally painful to many. That's a better thing than all waters of the state.

One of the notions to remember is we're going to increase the number of waters in Missouri by five-fold. And where are those waters? Those waters are higher up in the -- in the food chain of waters. Okay? They are smaller streams. They are less populated areas. And one of the things that does is it affects smaller communities in Missouri. As you can see from the little spreadsheet that I've given you is one of the things we depend on is ratepayers. And ratepayers in cities pay for UAAs. They pay for regulations. That's just how the game works. And when we see communities that are losing population that means they have less ratepayers. As we move up into watersheds we see smaller communities up higher in the watershed.

And you can see when you look at the 3,500 all the way down to 100 people in Missouri you see that some of those populations have been leaving those cities; those municipal governments have been losing population since 2000. This will be hard on smaller Missouri cities. So we support the idea of a UAA, support the concept that we're going to be able to look at those smaller water bodies for smaller communities and see do we really have a water quality issue here. These smaller communities in Missouri, about 600 of

them, are going to be impacted by these new rule changes.

Going to -- now, in all honestly going to all waters of the State has little impact on the 1 to 100,000 scale because most of those small communities will be in this and we do realize this already. But those 600 communities we need to have an off ramp, a regulatory off ramp, through the UAA process that we can say to the Jaspers of the world, to the other smaller communities out there that we have a place for you to get off the track of being heavily regulated when you have a small lagoon system.

So we support the 1 to 100,000 map scale data set. But it is still going to be a challenge. It's going to be a challenge for the Department to regulate five times more streams. And we understand that. And the folks you're going to have to regulate are the folks with less talent, with less people and with less money.

As I showed you last time what we're also seeing in Missouri is that our ratepayers as individuals are pretty smart. You know we decide to use less water because it cost money when we have tightening finances. That spreadsheet I gave you last meeting

we show that 50 of 70 so 50 communities are selling less water between 2008 and 2009 and that impacts what you can collect in rates, and what you can collect in fees, so --

We see those downturns in usage. We see downturns in population growth. New regulations will be hard on Missouri municipals particularly those high on the watershed on smaller water bodies.

Thank you very much.

CHAIRMAN HARDECKE: I got a question.

MR. PHIL WALSACK: Absolutely.

CHAIRMAN HARDECKE: is there a consideration of a categorical UAA for some of these smaller communities?

MR. PHIL WALSACK: I would say you're above my pay rate. I would say you'd need to talk to someone like an Ed Galbraith to understand what that really means on the larger scale. I don't really know if that's -- if we can pull that off.

But we need something to consider for those smaller cities. I don't know if the categorical one is going to work or not because some of the communities -- and the reason I say that is because the folks up in the north and the folks in the south they have different kinds of streams.

CHAIRMAN HARDECKE: Right.
MR. PHIL WALSACK: And we have losing streams in the south where you don't really have that in the north. We have lots of different things to consider between northern Missouri and southern Missouri and we just don't look alike in those two regions.
CHAIRMAN HARDECKE: Well, it could have more than one category, too.
MR. PHIL WALSACK: Absolutely.
Thank you.
CHAIRMAN HARDECKE: Kevin Perry.
MR. KEVIN PERRY: Good afternoon, Mr. Chairman. Good afternoon, Commissioners. My name is Kevin Perry and I'm with REGFORM the Regulatory Environmental Group for Missouri. We are a business association. I represent businesses from around the State on environmental issues. And I appreciate the opportunity to speak to you today on this important proposed draft regulation, so thank you very much.
As others before me have said, today, stream classification needs to addressed in Missouri. We know that and stakeholders and others have come to the Department with the urge and the request to address this issue and we want to acknowledge that the Department has been responsive in taking on and

looking at and investigating this issue and working with stakeholders to come to a proposal that -- that will work for everybody and that will obviously satisfy some of the drivers that are there; a lot of those driven by EPA. And as also has been said while this proposal has some disadvantages to it that being five-fold increase in the regulatory burden we believe this is a workable compromise that given some of the other options that are available to us, like, the waters of the state. This is an attractive resolution and way to go particularly with the end points of the water bodies well defined in this 1 to 100,000 database.

So we support it. And have a few comments to add to it. One, of which being just putting on the record our concern about the regulatory burden, the level of effort that is going to now rest on the shoulders of the Department to now regulate five times more. Obviously, I'm in here talking to the Commission. I'm in here talking to the staff and the administrators of DNR about how my members can be served better by the Department.

We are fee paying entities. We'd like to have the services provided and the permits reviewed. And this addition of this effort is a -- is a concern to

-- of ours, but we acknowledge once again it's a compromise that is -- is we think the right place to land.

Specifically, I want to remark on two parts of the draft regulation that's in front of you today and just, you know, make some requests or offer some ideas for further explanation that we'd like this group and staff to consider as we move forward with this regulation.

One, is in Section 2E of this. It describes the list of water bodies that must be maintained by the Department and it's not clear on this and we would like to see this be clear and that is that the list in its initial form be adopted by this Commission. And that subsequent amendments to this list also be reviewed and adopted by this Commission. We think that that's a significant part of this and that it should not just be administratively adopted by the reference to the earlier sections in this proposed rule.

Secondly, I would invite you to consider with me Section 2G. This part of the proposed rule, the draft rule as we see it today identifies a UAA process for removing uses and sub-categories of uses, but it -- it doesn't really spell out an objective

process that could be used by anyone to add a use. So we would like, again, this Commission and members of the Staff and administration at the Department to consider that the fair process would be to set for the process a set of rules, a set of guidelines that everybody can play by to get things added on and removed.

So that there's no surprise. There's no unanticipated additions that are outside of the expected procedure, so --

Those are our comments for today. Again, we appreciate you guys turning an ear our way and listening attentively to our suggestions and, again, we support this 100,000 adoption. We're concerned about the level of effort, but we see it as being responsive in something that really needs to be addressed, so --

Thank you for your attentiveness. And if I can answer any questions I'll give it a try.

(No response.)

CHAIRMAN HARDECKE: In 2G would that be a place that you would define a categorically UAA or something to that type?

MR. KEVIN PERRY: You know, I don't think we would oppose it. I think that if it's possible and I think

that -- you know, Phil, just said that we need to really explore those categories and what they really mean and so if that turns out to be a fine place to put it, I think, that'd -- that'd be fine. But, I think, what we're really asking for is that the process be well defined. That we don't just wake up one day and find something that's been added that nobody's looked at or considered previously.

CHAIRMAN HARDECKE: Thank you.

MR. KEVIN PERRY: You're welcome.

CHAIRMAN HARDECKE: Robert Brundage.

MR. ROBERT BRUNDAGE: Mr. Chairman, members of the Commission, I'm here on behalf of a number of my clients who have concern about this rule. However, as the speakers before you I'm kind of this group with Ed Galbraith, Terry Satterlee, Phil Walsack, REGFORM and Trent Stober's going to hear from it. We -- my clients and -- or many of my clients are generally supportive of the 1 to 100k. One aspect of the rule that I wanted to point out as part of my presentation so as not to overlap the other speakers here is kind of the last part of the rule.

It talks about Use Attainability Analysis for aquatic life protection. It says that these UAAs shall be performed in accordance with methods and

procedures found in the, quote, Missouri Aquatic Life Protection Use Attainability Analysis Water Body Survey and Assessment Protocol, to be developed by the Department and adopted by the Commission. And it goes on to say, implementation of the new effluent limitations for dischargers affected by 2C and 2D of this rule shall not occur until such time as this document is adopted and available for use.

In other words, it's not going to kick in until we have the use attainability process in place and that's a positive aspect of this rule. But one other thing that's not addressed in this rule is; what are we going to do in the meantime? If this rule is in effect and we haven't had time to get the UAA in place to be able to perform these UAAs what are we going to do about the 303(d) listings?

So we would suggest that there -- that the Department consider that, take that into account and somehow during the -- I don't know where you would put this. Whether you put it in this rule or in the listing methodology or by policy of the Commission that if the regulation was changed and we applied some different Water Quality Standards then until such time this UAA protocol is in place and people have had time to utilize it you're not going to add a

whole lot more water bodies to the 303(d) List when they're probably just going to be taken off through UAA process.

So that was my comment. Thank you.

CHAIRMAN HARDECKE: Mary West.

MS. MARY WEST: Thank you, Chairman Hardecke. My name is Mary West, Commissioners. I'd like to make, I guess, about four points today and I'll try and keep it brief. I've been serving on the stakeholder committee for stream classification since it began several years ago. I will tell you that it has not been a painless process. That there have been a number of varying opinions in that group and that we failed to come to consensus as a stakeholder group. That is one of the few stakeholder groups that I have ever been in that resulted, as you will, in a split decision.

One of the things that we disagreed about and then I repeatedly asked for clarification regarding was the difference between waters of the United States and waters of the state. As you know the waters of the state includes a subset of waters of the United States, but goes beyond what we would typically think of as waters of the U.S., particularly, in light of the SWANCC and Rapanos

decisions. The September 2000 letter may have been written entirely differently had it may -- had it been written today regarding the unclassified waters in the state.

The second point that I would like to make is that because of the vast and far reaching impacts of this change to classified waters in the State of Missouri about by far and above the majority of permitted entities discharge into unclassified, currently unclassified waters of the state. Permittees are going to require flexibility and implementation whether it be variances, site specific criteria, Use Attainability Analyses or what have you the flexibility in how this rule is implemented is going to be key in how much this cost and whether or not it is actually successful in improving the water quality in the streams.

As others have mentioned before, this will classify about five times the number of stream miles that are currently classified for the beneficial uses for fishing and swimming. The TMDL requirements, that I would expect to see, would be more than five times what we are currently looking at. In addition to, increased water quality monitoring requirements that we currently don't have resources for on the

existing streams and engineering reports, plans and specifications review for plant upgrades, et cetera. This is going to impact not only the permitted entities but also DNR Staff and EPA Staff as well because there's going to be a huge amount of workload.

The environmental impact is another issue that we need to consider. Repeatedly in meetings with regulators when asked if we can determine what actions were necessary to improve water quality the answer is, no, this is just the rule. This is the way we have to do this. I would encourage the Commission to push to let us do the things that make sense in the watershed that will actually improve the water quality. If that is building an upgraded treatment plant then it is building an upgraded treatment plant. If it is addressing nonpoint sources from Ag then it is addressing those nonpoint sources. If its storm water runoff from a community then that's what it is. But let's sit down as a group; identify the priorities and where we need to spend our money.

The increased power and chemical use for increased requirements on permitted entities when they may not be the source of the impairment whether its natural conditions for low DO, habitat loss or

nonpoint sources does not seem to be a good requirement and would money ill spent.

Protection for water -- for waters that are unclassified currently does exist. We have narrative criteria in the State as a blanket designation. There are those who would tell you that there are no requirements for those who discharge into these unclassified waters and I would like to remind you that there are technology limits as well as water body by water body designation. And so everyone has to meet a certain amount of effluent limits in their permits when they discharge whether it's a general permit for construction activities, for storm water or whether it's a wastewater treatment plant or a CAFO. All of us have regulations we have to meet whether it's to an unclassified stream or classified stream.

The difference is really about disinfection. That -- that is probably the biggest issue. The second issue is, protection of the lower orders of aquatic organisms and you will notice in your permit -- or in the rule Trent will actually talk to you about that in a minute, about aquatic organisms and I looked for that definition in federal law and cannot find it.

So in summary and not to keep you too much longer, but in general a designation for the 1 to 100,000 is a compromised position. Many of us are not like -- do like it, but we feel that given other alternatives it's probably the best that we can do in today's regulatory climate. In a perfect world each stream would be assessed one-by-one or at least each watershed modeled and uses assigned that are achievable and reasonable. However, that is not the case because we don't have the time or the resources.

I will tell you a brief story just to illustrate why I get so passionate about this. And I went to visit a small treatment plant in a mid-size community. This community has three treatment plants in their community. A lot of communities in Missouri are like this they don't just have one plant they have several. I've seen as many as four or five municipal plants from one community.

But as we're driving down the gravel road outside of town to get to this treatment plant we notice off to the side cows standing in the creek. We get to the treatment plant, part of the scope of study that we're being asked to evaluate is disinfection for the wastewater treatment plant, I would submit to you that until the cows leave the

creek it doesn't make much sense to spend a million dollars on disinfection at that treatment plant.

So, I think, we just need to look at all of the issues, all of the sources, figure out where our money is best spent and then move on from there whether we deem these waters as classified or not we need to look at water quality impacts and how we can best improve the resource.

Thank you and I'll answer any questions.

(No response.)

CHAIRMAN HARDECKE: John Lodderhose.

MR. PHIL WALSACK: Hi, I'm Phil Walsack. I'm not John Lodderhose.

COMMISSIONER TUPPER: Hi, John.

(Laughter.)

MR. PHIL WALSACK: Got better looking already. Don't repeat that. It doesn't take them long.

A few things I wanted to bring back to your attention. Now, you heard me enough this morning talk about dissolved oxygen. This is a place where we start talking about dissolved oxygen in these new regulations.

The dissolved oxygen standard needs to be addressed in what we're doing here. Just piling on some more dissolved oxygen strings, some more 303(d)

listed streams is not a good idea in light of the fact that we're going to increase the number of streams being regulated by the Department.

We need a comprehensive look at and I hate using the word comprehensive right now 'cause it has negative connotations, but we need this dissolved oxygen deal dealt with. Dissolved oxygen is not a pollutant. It's a condition. We cannot have five-fold more streams being impaired for dissolved oxygen. We really need to get this right and just have this done fast.

Thank you.

CHAIRMAN HARDECKE: Trent Stober. We actually get Trent here.

MR. TRENT STOBER: Hey, how 'bout that. We'll try to keep this brief, but I'll just highlight the opportunity that we have here to go ahead and refine our Water Quality Standards, in particular, our beneficial uses and water quality criteria for

(Tape Two, Side B concluded.)

MR. TRENT STOBER: -- aquatic life uses while I confer with the Department that we need multiple classifications or different tiers of aquatic life uses. We feel that there could be some further refinement to -- to help us assign uses properly

within water bodies. For example, the limited warm water aquatic life community where it specifies that anthropogenic or human cause conditions are factors that could allow the water body to move into those -- into that category. However, there's many times natural conditions that -- that impact the -- the aquatic life that we can expect to have in a given stream.

And that's reflected in the UAA factors that -- that are embodied in the federal regulations. Many of those hinge on more natural conditions. Only -- only a couple -- or, I think, three factors really hinge on human cause conditions.

As I said, too, getting the uses right is one thing, but also this is an opportunity for us to assign an appropriate level of protection with respect to the criteria that apply to those uses. In particular, Phil just brought up we really need to use this opportunity to address our dissolved oxygen criteria. In addition, I would go on to say our biologic data and biocriteria need to be carefully thought out in how those data are applied to various streams. For example, right now our reference streams and our biocriteria are really targeted for wadable, perennial streams and comparison to those

streams for these smaller are just as inappropriate as comparison of a bio criteria to our large rivers like the Missouri and Mississippi River.

So we really need to vet through a process to, again, classify these -- or assign these beneficial uses, but also the criteria and how those apply. We're in wholehearted agreement that aquatic life Use Attainability Analysis protocol is -- is needed and is something that can be implemented. Several states have gone through these processes and I don't see anything that should hold back our state.

I mean obviously those need to be refined to tailor them to our water bodies and our aquatic life communities. We look forward to working with the Department and the stakeholders to develop such a protocol.

My only other comment would be in Section 2A, Paragraph 2A, on -- on how downstream uses are considered within designating uses. And concerned about how there might be reinterpretations of the original intent of the federal regulations with this regard. And ultimately all streams are going to have a higher beneficial use for the most part downstream of them until we get to the ends of the waters of our state. So how that -- how that Use Attainability Analysis comes

into play with those downstream uses is to some degree, you know, fairly vague.

And we have adequate mechanisms within our water quality regulations to address those such as when we develop water quality based effluent limits. Those effluent limits not only have to protect the immediate use within the water body, but also any of those downstream uses. Similarly a Total Maximum Daily Load study has to protect all those uses whether it flows -- you know, once a water body leaves our state as well.

So we sure would recommend in removing that -- that paragraph from the regulation as well. So with that any comments/questions?

CHAIRMAN HARDECKE: You're saying remove 2A in its entirety?

MR. TRENT STOBER: Yeah. I believe that that -- there's already federal regulations that could be embedded in that and I -- I'm just concerned that that could be misinterpreted within our regulatory framework.

Thank you.

CHAIRMAN HARDECKE: Leslie Holloway.

MS. LESLIE HOLLOWAY: Mr. Chairman, members of the Commission, Leslie Holloway representing Missouri

Farm Bureau. I want to talk about one aspect of the proposal in front of you in particular. I agree with comments that have already been made. But when we talk about whether to go to the 1 to 100k NHD we have some real concerns with that along the lines of what you have heard previously from John Carter and Phil Walsack.

We were brought into this process late in the process, in fact, it was in February of 2009 before we received our first notice of the workgroup proceedings. So we came in after there had been a discussion of this and, in fact, the presentation at the January 2009 meeting. And it might be useful to review from the notes of that workgroup meeting there was a summary of advantages and disadvantages to going to the rule of the 100k scale.

And one of the disadvantages was that it likely -- the 100k NHD network likely extends beyond the stream reaches capable of supporting other Section 101A uses, i.e., swimming and human health fish consumption.

Another disadvantage was the large increase in classified streams, five times the current mileage, might increase the cost significantly for administering permits and water quality assessments. The minutes go on to say that the group discussed these

advantages and disadvantages in context of three critical needs; Number one, to satisfy the fishable/swimmable goal of the Clean Water Act. I'm abbreviating these. Two, to ensure that the classification system is manageable by the State; is accessible and legible to the general public and is compatible with systems used by other agencies involved with water quality management. And, three, is to establish a proper foundation for the development and administration of other essential elements of the Water Quality Standards including the biological assessment procedures, reference streams, tiered aquatic life uses, biological condition gradient and UAAs.

And, again, that was a meeting that we were not a part of because we hadn't been included in the notification of these meetings until after that took place, but given that and given the discussions that have come subsequent to that we have some concerns. And certainly the issue of categorical UAAs is one that comes into play in discussing whether that's an appropriate scale to move forward with. And we do think the categorical UAAs need to be revisited or something along those lines that might make it a more workable approach for the state.

And other than that the other thing I'd like to comment on is the process that we're going through now involving the legal proceeding that the Missouri Coalition for the Environment has initiated at the same time that the Department is trying to move forward with this rulemaking process.

And the thing that, I think, needs to be really emphasized for the record and for whatever role the Commission may end up playing in that legal proceeding is that it appears to me that there is more than adequate evidence that DNR has been moving forward with this rulemaking. They may not have moved as fast as the Coalition would have liked them to and maybe have not moved in the exact direction that the Coalition would like for them to move. But if there's any question and my understanding of the basis of the legal action is to try to show that DNR and EPA have not in fact moved forward with trying to address a situation that EPA had brought to DNR's attention in that letter from 2000.

When, in fact, you know, in the letter from 2000 it was presented to DNR as something that needs to be discussed. That's a quote from the letter. It wasn't something you've got to do this tomorrow. It wasn't at the top of the list. There was a list and

I talked about this at the March Commission meeting. I won't go through it again, but there was a list of at least a dozen things probably more that DNR was to address. And they had those prioritized. DNR responded and said, this is how we would prioritize these. On the issue of the unclassified streams they said, we need to discuss this further with with DNR because we need further clarification.

After that there was a letter sent out to stakeholders about setting up meetings to start working with stakeholders on all of these issues. It was a series of one, two, three, four, five, six meetings schedule in 2001 to address the whole range of issues that had been addressed -- that had been laid out by EPA.

So between that initial notification in 2000 and the actions that DNR took then and the subsequent discussions that DNR has had with stakeholders and with the workgroup there are -- there are plenty of examples of how both EPA and DNR have been moving forward on this process. And if there is further discussion of that I would urge the Commission to weigh in, in that regard, and also urge the Department to weigh in on that regard.

And, finally, the comment that I bring up pretty regularly because it seems that, again, as Mary West pointed out. What is the environmental impact of what -- what we're proposing here? What are we going to accomplish? If you look at water quality overall in Missouri it's better now than it's been. And if we're moving in the right direction then, you know, we need to take that into account as well.

And I'd be happy to answer any questions.

CHAIRMAN HARDECKE: Thank you.

MS. LESLIE HOLLOWAY: Thank you.

CHAIRMAN HARDECKE: I got a couple questions maybe of John before we go to the last card.

In regard to how far up these small streams this would go have you made a map that would show --

MR. JOHN HOKE: Yeah. We've made maps on the -- kind of the extent of how far these -- these waters go. It really depends on the watershed because it's in the watershed area and how much it collects to form those 1 to 100k streams.

We have that available. We can present it to you. I know the difference between the 1 to 100k, which is -- if you're familiar with topographic maps it's like the 30 meter resolution. It's the big map. The blue lines on the big map whereas seven and half

minute quad you're used to when you go hiking you're use to and things those are the 1 to 24k. Some of the 1 to 100k are the solid blue lines on there, some of them not. Predominately those are 1 to 24k waters on that type of scale.

It is about a five time increase in the number of classified to be sure.

CHAIRMAN HARDECKE: Well, I would like to have a map. And, now, in regard to what John Carter said and Leslie, you know, I think people need to know how far up these dry ditches we're talking about going. And then --

COMMISSIONER TUPPER: You want me to ask my question to John while he's up there?

CHAIRMAN HARDECKE: That's fine.

COMMISSIONER TUPPER: Mostly it's about the UAAs -- I mean, Mary might have been talking about Jasper. And, I guess, we won but we did not improve water quality one iota.

MR. JOHN HOKE: Um-huh.

COMMISSIONER TUPPER: All we did was cost the citizens of Jasper an extra ten or $15 a month on their sewer bill. And Mr. Duggan is not correct. The difference between C and D operator is not 1.3 points; it's several hundred dollars a year.

MR. JOHN HOKE: Um-huh.
COMMISSIONER TUPPER: I mean that's the difference.
MR. JOHN HOKE: Right.
COMMISSIONER TUPPER: What they had was three D operators including the mayor and a couple alderman and they ran the sewer plant. Now, they've got to go get somebody trained and pay for it.

UAAs, I attended a meeting many, many months ago and we talked about asking people if they had ever seen anybody swim in these streams.
MR. JOHN HOKE: Um-huh.
COMMISSIONER TUPPER: What happened to that?
MR. JOHN HOKE: The -- getting back to Possum Creek in Jasper County as an example. That was one of the waters that received whole body contact back in 2005 with a default sort of application by the Commission at that point in time.

The Department initiated UAAs at the request of the Commission to go out and try to rebut that presumption. We gathered the data. The question here was as Mr. Duggan said, was it at base flow? Looking at the data the contractor and the Department thought it was at base flow. We -- as part of that process we try to get interviews. The contractor did not get any interviews. We did not receive any

comments from the public when we put the UAAs on public notice. So we didn't receive any information on existing uses.

COMMISSIONER TUPPER: Has anybody from DNR ever seen Possum Creek?

MR. JOHN HOKE: I believe Mr. Perkins has.

COMMISSIONER TUPPER: Who would that be?

MR. JOHN HOKE: Mr. Perkins is Southwest Regional Office. Yeah, he's been out to Possum Creek and he was the --

COMMISSIONER TUPPER: Oh, that's Greg.

MR. JOHN HOKE: Yeah, talk to Greg.

We -- we acknowledge that precipitation might have been an issue in that case and we volunteered to work with the City to come up with another UAA in the future at some point in time in the future if they were willing to do it. We haven't heard from the City, yet, on -- on that.

COMMISSIONER TUPPER: I've walked all six miles of that thing and you couldn't put me in there if you had a gun to my head.

(Laughter.)

COMMISSIONER TUPPER: I mean it's that bad.

MR. JOHN HOKE: Yeah.

COMMISSIONER TUPPER: In your testimony you talked

about getting rainfall data from the same watershed; are you aware that Pierce City and Diamond are not in that watershed?

MR. JOHN HOKE: When Staff looked at it, yeah, they try to find rainfall data that was within the watershed or adjacent to within reasonable proximity.

COMMISSIONER TUPPER: Would it not be more prudent to get some data from maybe four points around? All of these are south and east and --

MR. JOHN HOKE: Um-huh.

COMMISSIONER TUPPER: -- way south and east.

MR. JOHN HOKE: Obviously, we like to get, you know, as close to the watershed as possible.

COMMISSIONER TUPPER: Why do they accept it when they just go on the Internet and get some numbers? Why don't we force the contractors to really do a job?

MR. JOHN HOKE: To setup a gauging station or to collect the data?

It's something we thought about. We actually would like to engage the operators more in the process as well if they have -- have data that they could have submitted. And we mentioned this to the operator of the City of Jasper the Department could have accepted their data on precipitation had they commented on the UAA and let us know that perhaps

there -- it may have been an outlier. Even if the Department had refuted the UAA and basically said it was inconclusive and we couldn't use any of the date fundamentally the water body had the use from the 2005 rulemaking and until it gets removed by UAA those points had to assessed against the operator.

I mean, I --

COMMISSIONER TUPPER: That's a whole other issue.

MR. JOHN HOKE: Yeah.

COMMISSIONER TUPPER: The reason I'm picking on you, John, is you told the administrative judge you're the guy that trains the contractor, so --

MR. JOHN HOKE: Um-huh.

COMMISSIONER TUPPER: I mean, it looks to me like we're paying for nothing.

MR. JOHN HOKE: There are some -- there are other examples where the UAAs that the contractors have done have offered some relief to a facility and the use has been removed. It just -- you know, the weather conditions, the field conditions at the time and Possum Creek is something we can take another look at in the future. Work with the City maybe on coming up with a UAA if that's something they're interested in.

COMMISSIONER TUPPER: Okay.

CHAIRMAN HARDECKE: Okay. One more for now and then I'll save the rest for -- are -- does the Department intend to deal with the DO issue in this rulemaking?

MR. JOHN HOKE: Yeah. In the rulemaking report that accompanied a previous version of the rule under -- there's a section on addressing Section 304(a) criteria, which is criteria that EPA develops for states to promulgate in Water Quality Standards. DO is one of those issues. The Department recognizes that the 5.0 milligram per liter minimum is only one of a half dozen DO criteria of different concentrations and different durations and frequencies that are available to the State to use from the EPA.

EPA has a 1986 dissolved oxygen criteria document that actually contains a table of DO values not only minimums, but daily averages, weekly average values that the Department for whatever reason did not put in our Water Quality Standards back in -- back in the early days that predates my time. So there are other criteria available that if used and assessment methodologies, the 303(d) listing methodology, if it used some of those criteria and we deemphasized those daily minimums and more emphasize kind of a natural even flow water quality and

DO in the streams of Missouri.

Some of those listings, I don't know how many, will probably drop off because you're not holding them to higher criteria. And one of the things we'd like to do with this next rulemaking is look at incorporating more of those dissolved oxygen criteria in our standards as well as, you know, even that may not fit all the cases in the State. We'd also like to look at, in some cases, more site specific DO criteria kind of on a stream segment by stream segment basis.

CHAIRMAN HARDECKE: Are we going to do that now?

MR. JOHN HOKE: It's part of this 2012 Water Quality Standards rulemaking, yeah, broadening the DO criteria so no longer will there just be two values. A minimum for warm water and a minimum for cold water, but we'd like to put in some daily average values that are -- that are much lower -- and resemble, based on EPA's own studies conditions that aquatic life can tolerate and survive in. And we're talking four milligrams per liter, in some cases three. So there are much lower criteria that we could have at our disposal if they were in the Standards and that's our intention to put them in the Standards.

CHAIRMAN HARDECKE: Well, we've been talking about this for a long time so, I think, the folks -- the stakeholders out here are -- want that included.

MR. JOHN HOKE: For sure.

CHAIRMAN HARDECKE: What about the cost of all of this to DNR? We had lengthy discussion about data this morning. If you increase the stream miles by five times where are we going to find the money to do the testing, do the TMDL,the data collection, the data recovery, the TMDLs and UAAs?

MR. JOHN HOKE: Yeah. It is a much larger volume of work. Other states have encountered -- I mean, other states have much larger scopes of waters that they have to investigate as well. John Ford's the monitoring guy, but he and I have had some discussions on that and with that increase in water bodies without an increase in funding we work those in to our schedule.

You know we say we'll take X percentage of that every year over the next ten to 15 years and assess them. It's not something that EPA was going to, hopefully, require us to assess immediately but rather allow us to work them into our workload and, you know, pick some percentage every year for the next five years, ten years. So that eventually we'll

have a cycle where we actually do go in and we assess all these waters and do TMDLs and conduct inspections and that sort of thing.

Obviously, if we get an increase in funding we can speed that up a little bit.

CHAIRMAN HARDECKE: Okay. But if these 1 to 100k is adopted are the regulated entities going to have that much time to comply?

MR. JOHN HOKE: The -- the idea behind the UAA protocols that we have is that, you know, until they're available for use the Department would not compel, you know, a permittee to comply with those regulations.

I think something the Department has done and the Commission has recognized in the past that it's only fair that we allow time for studies and implementation when new rules come into affect. I think that was shown in the previous disinfection rule back in 2005. It was shown in the phosphorous reduction rules down in Table Rock Lake and that area of the state back when those rules were put in. And I see this as being no different.

In this version of the rule we don't have any dates specific in the rule. If stakeholders are willing to work with the Department to discuss dates we can also

put - we could potentially put those in as well to give some certainty when protocols will be developed and things will be implemented and that sort of thing.

CHAIRMAN HARDECKE: Okay. Well, we might get back to you.

MR. JOHN HOKE: Okay. Thank you.

CHAIRMAN HARDECKE: Thank you. John DeLashment. Another John.

MR. JOHN DeLASHMIT: Third or fourth, I believe. Good morning or afternoon. I'm John DeLashmit, chief of Water Quality Management Branch at EPA's Region 7 office. I have a statement I'd like to read and then I'll give copy to Malinda afterwards so she'll have it.

Today, September 8th, 2010, is the ten-year anniversary of EPA's September 8th, 2000, letter to MoDNR that cited problems with the Water Quality Standards in the State of Missouri.

We've made quite a bit of progress in the last decade, but we still have some work to do. Unfortunately, Missouri has yet to apply default beneficial uses to all of its waters. As our 2000 letter states Section 101A(2) of the Clean Water Act establishes a national goal of water quality which provides for the protection and propagation of fish, shellfish and wildlife and recreation in and on the

water wherever attainable.

EPA's regulation at 40 CFR Part 131 interprets and implements these provisions by requiring that Water Quality Standards provide for a default use designation of fishable/swimmable unless those uses have been shown through a Use Attainability Analysis to be unattainable. And this application is to waters of the United States.

The failure to make these designations has serious environmental problems. The region and MoDNR have been presented with data taken from many unclassified streams in Missouri that show waters teaming with aquatic life, aquatic life that deserves protection. Since more than 80 percent of the State's NPDES permits are issued for discharges that occur into unclassified waters the scope of the problem is significant.

Ten years have gone by. It's time to stop talking and take action. Missouri is one of the last states in the country to deal with this aspect of the Clean Water Act. This prolonged inaction has prompted others to act to remedy the situation. You're all probably aware that on August 8th, 2010, a lawsuit was filed in federal court alleging that EPA has failed to fulfill its duty to ensure that

Missouri's Water Quality Standards are in compliance with the Clean Water Act.

The lawsuit asked the court to order the EPA to specify the changes necessary for Missouri's Water Quality Standards to meet the requirements of the Clean Water Act and if the State fails to adopt the changes within 90 days to promulgate the Water Quality Standards for the State of Missouri.

It's longed been the preference of the Clean Water Act and EPA for the states to develop their own Water Quality Standards and we want that to be the case here. If the State fails to act on this matter very soon it may not be our decision to make.

Any questions?

(Laughter.)

MR. JOHN DeLASHMIT: Thank you.

CHAIRMAN HARDECKE: Any questions of anybody?

(No response.)

CHAIRMAN HARDECKE: I'll just make a statement, I think, in regard to cost. We've talked -- heard a lot of testimony today about the cost to permitted entities that -- I think, I raised this in some of the last meetings I haven't heard any estimate of cost or I don't know how you could estimate the cost of the nonpoint source entities and, I think, that's

something we need to address as we go forward because that -- that will be sizable I'm sure.

I guess it would be time to move on to **Tab No. 8.**

MS. COLLEEN MEREDITH: Good afternoon, Chairman Hardecke, Commissioners. I'm Colleen Meredith. I'm chief of the Watershed Protection Section. And I'm bringing to you Tab No. 8 and its Page 657 and 658 and at the July 7th, 2010, Commission meeting Greg Anderson spoke to you about the targeted 2008/2009 Section 319 Nonpoint Source Grant project ranking. And we brought this to the Commission as information only.

Due to discussion with the Commission and with some of the applicants and there are some of the applicants in the audience today it was made plain that the incremental funds if we could spend those this year it would be the most beneficial to get those out to the group.

The first listing we gave you had ten practices that were approved and those were for base funds except for three practices -- or three of the projects. Now, two of the projects were the State -- the Lakes projects and those are funded noncompetitively because those are used for 303(d)

listing and for monitoring.

So in this new listing what I have is on the top the first nine projects are base funded projects, those are the ones that were already approved in the last list. The top project just under the base projects was the one project that was approved for incremental funds. So what staff did is we got together and we looked at all the projects that were not recommended for funding and in the last listing it said, not recommended for funding unless there was significant revisions. So what we did is we went through and we got -- we looked at all the projects that were not recommended for funding again and we looked to see if there were any of those that with some work we could get to meet incremental funding so that we could get that money out there.

So we looked at several different things and they were if the project had an accepted nine element watershed plan, which is required or if they were very close with a draft plan. We also looked if they had a monitoring plan because that's a requirement. We looked to see if they had the ability to show load reduction. We also needed to make sure that they were on the 303(d) List or had a TMDL or were State priority water.

So what we did is we went through all the projects and we -- these projects that are on the bottom of your chart, except for the top project because that was one that was already approved by the ranking committee, those were all ones that staff felt that could be put forth by the Department for incremental funds. And what we would do is work with those to get them ready because we need to really obligate those funds by December.

So that's what we did. If you have any questions you can let me know. None of the other projects met those requirements so I feel this was a fair way to look at the list and to make sure that we could get those incremental funds out this year.

CHAIRMAN HARDECKE: Okay. Now, you've got 3.5 million available and 5.3 requested; is that right?

MS. COLLEEN MEREDITH: Right.

On both of these, if you look on the base funding list and the incremental list, the funding requested is the raw amount of funding that came in with the projects. Generally the projects are always negotiated some. These incremental projects several of those had places in the project that would -- those will have to be cutout because they weren't in the watershed or they weren't covered by the 303(d)

List. Some of them might not have had -- they may have had other things that we couldn't fund. They weren't really incremental parts of the project.

So by the time that the Staff negotiates these, I think, there'll be sufficient funding at least to give the projects -- get a good project and then they may be able to roll into to 2010 funds for additional if they can't, you know, get everything done in these projects they want to. But all these need to be negotiated.

CHAIRMAN HARDECKE: So you think it's within the scope of negotiation to do something for two, four -- these five?

MS. COLLEEN MEREDITH: I do, yeah. I think we could easily negotiate with these and make sure they get a good project and that they at least get a good start and then if they need additional money we can probably go to a future year funding to help them to continue on.

CHAIRMAN HARDECKE: In the top part of the list you've got 3.061 million compared to 3.150 so that wouldn't --

MS. COLLEEN MEREDITH: Right.

CHAIRMAN HARDECKE: -- be --

MS. COLLEEN MEREDITH: That -- that'll also be

negotiated and if there's some other funding left over or something that -- that can always be used for another project or possibility even if these get negotiated we might pick up the next base project that was in line.

CHAIRMAN HARDECKE: Okay. So where -- you want us to look these over and then get back to you?

MS. COLLEEN MEREDITH: Well, this is for information only. We're hoping to get going with these because we do need to get those funds out by December.

CHAIRMAN HARDECKE: Okay. Thank you.

MS COLLEEN MEREDITH: Okay. Thank you.

CHAIRMAN HARDECKE: Okay. We did No. 9 now up to 10.

MS. GEORGANNE BOWMAN: I have a card.

CHAIRMAN HARDECKE: Oh, I'm sorry. Sorry about that.

MS. GEORGANNE BOWMAN: That's all right.

Good afternoon, Commissioner Hardecke, Commissioners. The one Commissioner left, Scott and Colleen. I want to thank everybody for reevaluating these. Like I said at the last meeting we put an ungodly amount of work into these proposals and I've talked to the other groups that have worked on these as well. And we really appreciate the staff time in going back through these. So thank you very much.

CHAIRMAN HARDECKE: Thank you.

MR. SCOTT TOTTEN: Darrick Steen.

MR DARRICK STEEN: Morning Commission. It's getting late. This will be quick I promise.

MR. SCOTT TOTTEN: Introduce yourself Darrick.

MR. DARRICK STEEN: Yeah. My name is Darrick Steen. I'm the agricultural unit chief within the Permits and Engineering Section. Refaat is normally up here. Refaat had sort of a medical issue yesterday so he's recovering at home, I think, today. So I'm in his place. And quite frankly some of the specifics I'm -- I'm not going to be all that familiar with, but if you turn to Page -- **Tab No. 10** we look at the permits backlog tracking graph.

It shows a slight uptake in the backlog and quite honestly I -- after talking with Refaat we both assume that that will -- will continue to go up just a little bit due to a number of things. One of those being expiring -- a bulk of general permits that will be expiring or have expired or will expire and that includes the CAFO permit that expires in February of next year. Of course, you know, we had a staffing -- we continue to have a staffing issue within the permit section with permit writers. It's my understanding we do have approval to hire a couple new permit writers and we do have a new engineer on

staff that's working under John Rustige's unit that will be -- certainly help out, but there's going to be a lag time between getting them trained and writing permits and having permits that actually expire, so -- so that's that page.

The next page the water quality review assistant report, 12 active requests sort of on the docket. We've got seven of them that are two months or older. We received six of them since the last Commission meeting. If I remember right at the last Commission meeting there was a big -- a large number that had been received and so they're still trying to catch up from that large increase four months ago still yet. So those are the numbers on those.

If you have any questions just, please, let me know. I'm going to move on to -- so the remaining pages there, I think, are all the review sheets that have been completed. Now, turn to Page 681; 681 is my specialty which is the CAFO and agrichemical and agricultural construction permits. Honestly this sheet, which is now several weeks old shows I don't know six or seven of them that are under review, although a couple of those have certainly been issued. Since August 16th we have received another seven applications that aren't on this sheet -- that

aren't on this list so for whatever reason there's been certainly an uptake in construction permitting activities on the CAFO and agrichemical side of the house in the last -- well, let's say since July 1. In fact, we've -- I'm seeing maybe as many as 11 or 12 applications in the last I don't know 45 days that we've received. And it looks like we only received maybe 13 or 14 of them in the -- in the first six months of 2010.

So I don't know if that shows the agricultural community is -- the economy is picking up a little or if it's just a time of the year where construction permits are coming in for next year, next year's construction season. I don't know yet. Maybe in a month or two we'll have a better idea.

Page 683 starts with -- shows the general permits that are expiring when they're issued and expired and it will note that there are several of them that are expiring in 2011 including the CAFO permit. We have about 530 facilities, CAFO facilities covered under that general permit. And I might make a note that -- that we are making good progress on the renewal of those 500 plus permits. Renewal applications were sent out in July. We received a number of those back. We have a draft

general permit on public notice right now. It'll come off public notice in a few weeks and we've -- we've tried to -- tried to do some outreach to the stakeholder groups. We had an informational meeting a couple of weeks ago on that permit. And, basically, what we're doing is we're issuing a permit, a general permit; we're extending -- we're really extending the current general permit for two more years. It's -- it's got some new requirements in it since this last regulatory change, but this permit will last for two years instead of the normal five. And the primary reason for that is it will give us essentially two more years to update our regulations to reflect the new EPA rule. Hopefully take care of some fee issues that are ongoing.

But, also, another reason was because EPA had -- EPA headquarters had committed to producing some permit writers guidance earlier in the year that has yet to -- yet to be published, final. I know that they're working on it. I've seen some preliminary drafts of that guidance, but it hasn't -- hasn't hit the streets yet. So that guidance is going to be certainly important for Missouri and other states as we develop what will be a -- you know, the next CAFO permit, NPDES permit. There's a lot of -- certainly

still a lot of questions on how -- on how to do that in -- in the State.

So for those reasons and others we needed to extend this general permit for two more years, which is what we proposed and so far every -- everything seems to be going smooth on that path. So it looks -- everything looks good on the permit side for the CAFOs. I will say, also, that we're -- we are continuing the rulemaking process for our Phase 2 rulemaking. We've got a couple workgroup meetings scheduled in the next couple months. And so you'll see a little bit more activity on that front and they're -- those rulemakings, you know, will continue through 2011 and probably finalized in early 2012.

That is all I have unless there are any questions.

(No response.)

CHAIRMAN HARDECKE: Thank you.

Okay. **No. 11**, Joe.

MR. JOE BOLAND: Good afternoon, Mr. Chairman, members of the Commission. I'm Joe Boland with the Financial Assistance Center and I'll be very brief as well. Very quickly on our $50 million bond sale update we're nearing the end of that. We've got about $47 and a half million already awarded and in

the process of award. So we're -- we only have a few more million to get out the door and we have projects that are very active right now in getting -- getting to bid, out to bid and we're going to be making those awards here in the next few months. So that should be wrapping up that $50 million effort.

Moving on to the recovery act or the stimulus projects, to date we -- your packet has, as of the date of the preparation of these materials we had pushed out about $35 and a half million just in ARRA funds alone with another $12 and a half million of our base program funds. That -- as of yesterday, we've pushed out about $60 million altogether. So it has increased and the pace of the construction during the summer, obviously, is helping that. So we're -- we're moving right along with those. Let's see --

Related to that I -- one of the concerns Commissioner Tupper brought up earlier was the green projects and those types of activities are requirements in the recovery act itself and the projects. I think it's important to note that right now we have four different agencies reviewing us right now. We have four -- four agencies auditing us, one, is the State Auditors. EPA is coming next Monday for a program review. We also have Joint

Committee on Legislative Research that has Staff in our offices right now reviewing everything. And these aren't just financial reviews. These are performance reviews as well in some of the cases. And EPA will be looking at all of our green projects, and the Buy American components. So they'll be diving into some of those details that we talked about earlier, so --

So suffice it to say we have a lot attention right now.

COMMISSIONER TUPPER: Good.

MR. JOE BOLAND: And we also have our independent auditors coming as well so we'll have -- we'll have four agencies looking at us.

CHAIRMAN HARDECKE: Are you saying you have auditors auditing auditors?

MR. JOE BOLAND: It's -- I'll just say that they are crawling over each other for space right now, so --

But we're doing our best to accommodate their needs and giving them everything they need.

One other issue very quickly we mentioned or Doug mentioned earlier that we may need a special teleconference maybe end of September or into October to move some of the projects that are just on the contingency list moved up to the fundable list so we

can move forward with making some loans with them as we continue to finalize our new leveraged bond sale this fall.

So I'm hoping that would not be a problem but, again, right now the preliminary schedule is looking like we would close on this new bond issue first part of November. As of right now, it looks like that might get pushed back a couple weeks. So we may -- we may be coming to you earlier part of October just to make some of those changes moving those projects up.

So that's really about all I had unless you had any further questions.

(No response.)

CHAIRMAN HARDECKE: Thank you.

MR. JOE BOLAND: All right. Thank you.

CHAIRMAN HARDECKE: Phil Walsack.

MR. PHIL WALSACK: Phil Walsack with Missouri Public Utility Alliance. I'll make this brief.

While there are days we seem like we're opponents and adversaries with the Department there are other days when the Department has examples of shining success. There's a letter as I think you are aware from U.S. Representative James Oberstar from the 8th District of Minnesota congratulating Joe

Boland and his staff and the environmental finance center for moving money with the ARRA project faster and more thoroughly than any other state in the Union.

States for which I've worked, for states for which I've lived in so to be number one ranking in the United States believe in the ARRA project or don't believe in federal stimulus either way we ran the football and we ran it all the way.

That is important to note that Missouri outdid many states that are much bigger than we are, have much bigger staff and much bigger budgets. So to have moved our money the way that Joe Boland and his staff did they're to be commended for that recognition from U.S. Representative Oberstar.

Thank you.

CHAIRMAN HARDECKE: Congratulations, Joe.

COMMISSIONER TUPPER: Well, done.

CHAIRMAN HARDECKE: Okay. Thank you. **Tab No. 12.**

MS. CAROL GAREY: Good afternoon, Commissioners. I'm Carol Garey, rule coordinator for the Water Pollution Control Branch. We wanted to talk to you just a little bit this afternoon about statement of cost reviews and what that entails and particularly for two important rules, 7.031 Water Quality

Standards and 6.300 CAFO.

7.031 Water Quality Standards Antidegradation Implementation Procedure was effective August 30th, 2008. And CAFO 6.300 was effective February 29th, 2009. Statements of actual cost are required for all rulemakings under Section 536. So we do these for each of the rulemakings. But because the actual cost of these amendments did not exceed their public fiscal note estimated cost by 10 percent or more no costs are required to be published in the Missouri Register for either of these rules.

Statements of actual cost reviews are typically done after the first full fiscal year of implementation from the effective date of the rule. For 7.031 the amendment established requirement for antidegradation review for all new and expanded an discharges, the actual cost --

(Tape Three, Side A concluded.)

MS. CAROL GAREY: -- was $2,692,418 below the estimated cost of $4,476,522. The actual cost was roughly 40 percent less than the original estimate.

Now, a portion of the overall cost, the Department cost, did exceed the public fiscal note cost estimate. Department costs were more principally because a less involved review process was anticipated at that time. Subsequently to the

rule the Staff did expend considerable time with individual applicants, explaining the process and assisting with preparing the application. Applicant costs were lower than they would have otherwise experienced by working with staff. Several workshops were hosted and detailed Internet materials were prepared and published.

Now, regarding the estimated cost for the municipal facilities the original cost assumed that there would be 21 projects that would be required to undertake an evaluation of existing water quality. Whereas, in reality the comprehensive reviews were only required on 12 projects so that the lower number was partially a result of a slow down, we think, in economic activity. There were also lower lab and equipment costs as well as applicant decisions to select non-degrading or minimal degrading alternatives.

For growing the analysis of treatment alternatives and use of consultants so the no discharge or minimal degrading alternatives resulted in significant environmental improvements such that Missouri's antidegradation program may now be characterized as an effective regulatory tool where water quality is improved or at the least maintained.

Now, moving on to the second one 6.300, Concentrated Animal Feeding Operation. The report here after the first full year, fiscal year implementation as required by State law, July 1 of this year is also positive in a sense that the costs did not exceed the public original estimate by 10 percent or more.

Actual costs for CAFO were based on permit applications and annual reports received and reviewed during the reporting period. The CAFO amendment established some new requirements, new loss assessment and new annual reporting requirements. Department costs indicated no new costs that were attributed to the swine greater than 55 pound animal unit threshold change. Since no new permit applications resulting from this change were actually received the NPDES fee fund revenue, original estimate, was based on collecting a fee for an estimated five new operating permit applications.

There were no applications. There were no fees collected. Additional Staff review for the projected applications was less than expected because only 18 new construction permit applications were actually submitted instead of 60. The -- this decrease is most probably a result, again, of a slowing

economy. There were 210 fewer staff hours expended than originally anticipated and staff time was primarily needed for the expanded review of the new reporting requirements.

Overall Department costs or in this case NPDES permit fee fund expenses incurred were $34,639 below the public fiscal note estimate of $51,166. In actuality then the actual costs were only 32 percent of what was originally anticipated.

So we think this is positive news and wanted you to understand that this really wraps up the rule. Are there any comments or questions that occur to you?

CHAIRMAN HARDECKE: Sounds good to save a little money.

MS. CAROL GAREY: Yes.

COMMISSIONER TUPPER: Yep.

MS. CAROL GAREY: Yes, yes, it does.

Thank you.

CHAIRMAN HARDECKE: Thank you.

I'm at the end of my book. Scott do you have an update.

MR. SCOTT TOTTEN: Jenny's on before I am.

MS. JENNIFER FRAZIER: I do.

I have just a very quick **legal report**. It

mainly has to do with reporting to the Commission that on August 17th and 18th the Attorney General's Office hosted the Lake of the Ozarks symposium called Environmental Roadmap for the Future. You were all invited. And Chairman Hardecke came, I think, for one day and I just want to report that from our perspective it was a huge success, very positively received. We had at least over 100 in the audience both days sitting there for over eight hours listening to the testimony. We could not have done it without the cooperation of the Department and the Lake of the Ozarks Watershed Alliance. And I'm sorry that Donna Swall left right before I talked, but Warren if you could carry that back as a board member of LOWA. We really appreciated their guidance and participation and just all the assistance we received.

And we should be coming out with a report in a month or two when I can get around to writing it on what we learned and with some recommendations for what we think should or could happen to -- for the Lake long-term protection.

And just really appreciate the Department's cooperation and Tim is in the back of the room as well. We had a lot of excellent presentations. Our

only regret was that we just couldn't afford everybody hours and hours because it's such a complicated issue and we just had a lot of experts and a lot of very good input.

So I just wanted to report to the Commission on that.

CHAIRMAN HARDECKE: Yeah. And I will say it was very informative and I think the Attorney General Staff did a good job. So thank you.

Scott (Director's report).

MR. SCOTT TOTTEN: I have a request to the Commission. We normally would have our January meeting on the first Wednesday, which is January the 5th. That conflicts with -- with certain -- certain schedules and I would like to move that back to January the 12th, one week after that, if that's okay?

I don't hear any objections, I guess, it's far enough in advance. But that does have an affect on one of the things that we voted on today. We have two prepared documents for the construction specifications, the rule on construction guidelines, a design guide for construction of wastewater facilities. And the copy in your blue packet is the copy that has the dates for the rulemaking process and it included a hearing on January the 12th.

I'd like to also let the Commission know that the Commission currently has in its rulemak- -- rules and regulations the underground storage tank requirements. Those have been administratively reassigned to the Hazardous Waster Commission and the Hazardous Waste Commission is in the process of revising those regulations and moving those over into their -- their chapters of the regulations, so --

When that process is completed then this Commission will no longer have that jurisdiction over those areas anymore

COMMISSIONER TUPPER: Would they take anything else?

MR. SCOTT TOTTEN: Are they tak- -- they sending any money with that you think? I don't know.

And then I'd just like to also take this opportunity to recognize Mr. Tom Herrmann, former Chairman of this Commission, who served for many, many years and ably so, passed away recently. And I just wanted to recognize him -- his presence today because all of us in some way, shape or form were shaped by his presence. And, I think, we're better people for that, so I just wanted to say that.

And this will be my last Commission meeting, I guess, as acting director. John will take over on the -- on the 15th or 16th of September and he will be here for

the November meeting.

Thank you.

CHAIRMAN HARDECKE: (Inaudible) or are you just changing the date?

MR. SCOTT TOTTEN: No, we're just changing the date.

CHAIRMAN HARDECKE: Okay. Is that it?

(No response.)

CHAIRMAN HARDECKE: Motion to adjourn?

COMMISSIONER TUPPER: So moved.

COMMISSIONER EASLEY: Second.

CHAIRMAN HARDECKE: I think we'll all vote for that.

Thanks for coming.

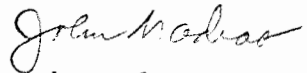
(Tape Three, Side B concluded.)

CERTIFICATE OF TRANSCRIPTIONIST

I, DANIELLE Y. MOSER, within and for the State of Missouri, do hereby certify that the audio transcription in the foregoing audio was transcribed to the best of my ability and therefore reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this audio was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

DANIELLE Y. MOSER, Notary Public
Commission # 07398805
Commission Expires 01-08-2011

Respectfully Submitted,



John Madras
Director of Staff