MINUTES OF THE
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

November 3, 2010

Present

Ron Hardecke, Chair, Missouri Clean Water Commission
Jan Tupper, Commissioner, Missouri Clean Water Commission
William A. Easley, Jr., Missouri Clean Water Commission
Frank Shorney, Missouri Clean Water Commission
Sam Hunter, Missouri Clean Water Commission
John Madras, Director of Staff, Missouri Clean Water Commission
Jennifer Frazier, Counsel, Missouri Clean Water Commission
Malinda Steenbergen, Secretary, Missouri Clean Water Commission

Melissa Bagley, Environmental Protection Agency, Kansas City, Kansas
Karen Bataille, MDC, Columbia, Missouri
Dorris Bender, Water Pollution Control, Independence, Missouri
Joe Boland, Department of Natural Resources, Jefferson City, Missouri
Lauren Brenner, Department of Natural Resources, Jefferson City, Missouri
Andy Brashear, Simmons Foods, Joy, Oklahoma
Robert Brundage, Newman, Comley & Ruth P.C., Jefferson City, Missouri
John Bryan, The Poultry Federation, Jefferson City, Missouri
Brittany Burrientos, Newman, Comley and Ruth, Jefferson City, Missouri
Emily Carpenter, Department of Natural Resources, Jefferson City, Missouri
John Carter, Doe Run, Viburnum, Missouri
Becky Cripe, Department of Natural Resources, Jefferson City, Missouri
Joe Earney, Simmons Foods, Siloam Springs, Arkansas
John R. Elrod, Simmons Foods, Fayetteville, Arkansas
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
Curt Gateley, Department of Natural Resources, Jefferson City, Missouri
Naomi Gebo, Department of Natural Resources, Jefferson City, Missouri
Dennis Greaney, Labarque Creek, Wildwood, Missouri
Bart Hager, MSD, St. Louis, Missouri
Cindy Hebenstrett, Missouri American Water, St. Louis, Missouri
Albert E. Hoag, Sr., Belton, Missouri
John Hoke, Department of Natural Resources, Jefferson City, Missouri

Leslie Holloway, Missouri Farm Bureau, Jefferson City, Missouri
Bill Jackson, MLDDA, Brunswicks, Missouri
Ann Lavaty, Environmental Protection Agency, Kansas City, Kansas
John Lodderhose, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Randy Lyman, City of Springfield, Springfield, Missouri
Ed Malter, City of Springfield, Springfield, Missouri
Gary Marble, Office of Congressman Blaine Luetkemeyer, Columbia, Missouri
Kevin Meneau, Friends of Labarque Creek, Wright City, Missouri
Claire Meyners, Labarque Watershed Stream Team Association, Eureka, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Leanne Tippett Mosby, Department of Natural Resources, Jefferson City, Missouri
Gary Murphy, Simmons Foods, Siloam Springs, Arkansas
Mark Osborn, Department of Natural Resources, Jefferson City, Missouri
Anne Peery, Department of Natural Resources, Jefferson City, Missouri
Bob Perry, Perry Ag Lab, Bowling Green, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
Kristin Perry, Representing SSS Inc./Citizens of Missouri, Bowling Green, Missouri
John Reece, Little Blue Valley Sewer District, Independence, Missouri
John Rustige, Department of Natural Resources, Jefferson City, Missouri
Melissa Scheperle, MoDOT, Jefferson City, Missouri
Mike Stevinson, SSS, Inc., Louisiana, Missouri
Trent Stober, Geosyntec-MEC Water Resources, Columbia, Missouri
Steve Taylor, Missouri Agribusiness Assn., Jefferson City, Missouri
Wallis W. Warren, Ozark Fly Fishers, Beaufort, Missouri
Sunny Wellesley, Environmental Protection Agency, Kansas City, Kansas
Roger Walker, REGFORM, Jefferson City, Missouri
Phil Walsack, MPUA, Columbia, Missouri
Bill Whipps, Department of Natural Resources, Jefferson City, Missouri
Bob Williamson, KCMO Water Services, Kansas City, Missouri
Jeff Windett, Missouri Cattlemens Assoc., Columbia, Missouri

CALL TO ORDER

Chair Hardecke called the meeting to order on November 3, 2010 at 9:30 a.m., at the Department of Natural Resources' East Elm Street Conference Center located at 1730 East Elm Street, Jefferson City, Missouri.

Chair Hardecke made introductions of the Commissioners, Staff Director, Legal Counsel, and Commission Secretary.

Chair Hardecke announced that during closed session the Commission approved the appointment of John Madras as the Director of Staff of the Missouri Clean Water Commission/Director of the Water Protection Program.

ADMINISTRATIVE MATTERS

Approval of the September 8, 2010 Missouri Clean Water Commission Minutes
Agenda Item #1

Commissioner Easley made a motion to approve the September 8, 2010 Meeting Minutes as submitted. Commissioner Tupper seconded the motion. The motion passed with a roll call vote:

Commissioner Hunter:	Abstain
Commissioner Easley:	Yes
Commissioner Shorney:	Abstain
Commissioner Tupper:	Yes
Chair Hardecke:	Yes

Approval of the October 6, 2010 Missouri Clean Water Commission Teleconference Meeting Minutes
Agenda Item #2

Commissioner Tupper made a motion to approve the October 6, 2010 Teleconference Meeting Minutes as submitted. Commissioner Shorney seconded the motion. The motion passed unanimously with a roll call vote:

Commissioner Easley:	Yes
Commissioner Shorney:	Yes
Commissioner Tupper:	Yes
Commissioner Hunter:	Yes
Chair Hardecke:	Yes

Chair Hardecke asked Director of Staff John Madras to explain the test run of the recording of the Commission meeting minutes. Mr. Madras explained that this meeting would be recorded by using a digital recorder along with the cassette recorder that is normally used. The audio minutes would then be posted on the Commission's website for viewing within a week of the Commission meeting. A copy of the audio minutes would also be available by request in the form of a cassette tape or CD. Hard copy minutes will still be transcribed but will only include a brief description of the agenda item and the motions and votes taken by the Commission. Mr. Madras noted that providing the minutes by audio on the Commission's website will provide a cost savings to the Department of approximately $800 to $1000 per meeting.

Chair Hardecke reiterated that this is a test and if this format does not fit the needs of the public the Commission will revisit the process at the next Commission meeting.

Final Approval of 2010 303(d) List
Agenda Item #3

John Ford, Watershed Protection Section, presented documentation regarding the Final 2010 303(d) List. At the September 8 meeting, the Commission approved the 2010 303(d) List proposed by the Department with the exception of two waters, Cave Spring Branch and Wilsons Creek. The Commission requested a 30 day public notice to allow further comment on the listing of Cave Springs Branch in McDonald County for nutrients, and requested further public comment on the source(s) of bacteria in Wilsons Creek in Greene County. The 30 day public notice period ended October 28, 2010.

The Department received two comments during this period. One comment came from Geosyntec Inc. on behalf of the City of Springfield and provided an analysis of bacteria levels in several streams in Southwest Missouri and a request that bacterial sources for Wilsons Creek be stated as "urban and rural nonpoint sources." The other comment letter was from Newman, Comley and Ruth, P.C. on behalf of Simmons Foods and provided information on water chemistry and biota in Cave Springs Branch. This letter requested removal of Cave Springs Branch from the 2010 Missouri 303(d) list. Based on the information provided and the Department's review of documentation in these two comment letters, the Department recommended:

1. The source of bacteria in Wilsons Creek on the 2010 303(d) list should be listed as "urban and rural nonpoint sources", and
2. Cave Springs Branch should be removed from the 2010 303(d) list.

Trent Stober, Geosyntec Inc. noted that he was in attendance if the Commission had any questions for him.

Leslie Holloway, Missouri Farm Bureau, commented that regarding Wilsons Creek she had no objection to changing the characterization to urban and rural nonpoint sources but noticed the comment letter's reference to livestock in the watershed and a suggestion that it is not unreasonable to assume that livestock waste finds its way into the stream and so therefore is part of the cause of the impairment. Ms. Holloway wanted to add for the record that wildlife is also adding waste to that watershed and it should be recognized that there is that source in addition to other sources of rural nonpoint pollution.

Robert Brundage, Newman, Comley and Ruth, P.C., co-counsel for Simmons Foods, thanked the Commission for granting the 30 day comment period and noted they were pleased that the Department agreed with their recommendation to remove Cave Springs Branch from the list.

Commissioner Shorney made a motion that the Commission accept the source of bacteria of Wilsons Creek on the 2010 303(d) List should be listed as urban and rural nonpoint sources, and that Cave Springs Branch should be removed from the 2010 303(d) List. Commissioner Tupper seconded the motion. The motion passed unanimously with a roll call vote:

Commissioner Easley:	Yes
Commissioner Shorney:	Yes
Commissioner Tupper:	Yes
Commissioner Hunter:	Yes
Chair Hardecke:	Yes

Mr. Ford noted that the Department will submit the list and supporting documents to the Environmental Protection Agency (EPA) within the next two weeks. All of the documents submitted to EPA should be ready to be placed on the Department's 303(d) website in three weeks.

Amendment to 10 CSR 20-7.031, Water Quality Standards, Proposed "Fishable/Swimmable" Rule Language
Agenda Item #4

John Hoke, Watershed Protection Section, presented information regarding a potential amendment to 10 CSR 20-7.031, Water Quality Standards rule language. In September 2000, the U.S. Environmental Protection Agency determined that Missouri's Water Quality Standards at 10 CSR 20-7.031 did not fully implement the "fishable/swimmable" use designations required by Section 101(a) of the federal Clean Water Act. The Department provided draft rule language to the Commission and stakeholders that applies the designation of "fishable/swimmable" uses to currently unclassified waters of the State at the September 8, 2010 Commission meeting. At the request of the Commission at that meeting, the Department presented maps of proposed and existing stream coverage that could be used.

Chair Hardecke requested the staff post a copy of these maps on the Commission website.

Ed Galbraith, Barr Engineering representing the Urban Areas Coalition, reported that after meeting with the Department staff on October 14th to discuss in length their comments proposed at the September Commission meeting, is encouraged by the process the rule is taking. Mr. Galbraith stated there are some implementation issues to iron out but overall it was a good meeting and progress was made.

Mr. Galbraith also expressed the concern of the folks he represents regarding the Department not taking the opportunity to intervene in the lawsuit.

No action was taken by the Commission.

Status of Total Maximum Daily Load Development Under the Consent Decree and Memorandum of Understanding
Agenda Item #5

John Hoke, Watershed Protection Section, presented the progress on the Total Maximum Daily Load (TMDL) development in regard to the schedule outlined in the TMDL Consent Decree and Memorandum of Understanding between the Environmental Protection Agency (EPA) and the Department. Mr. Hoke stated that as of this Commission meeting, the Department has one remaining TMDL (Lake Taneycomo) that must be completed under the Consent Decree. The Department anticipates having that TMDL submitted to EPA by November 15, 2010.
No action was taken by the Commission.

STAFF UPDATES

Permits and Water Quality Review Sheet Update
Agenda Item #6

Refaat Mefrakis, Permits and Engineering, presented an update on permit performance. No action was taken by the Commission.

Financial Assistance Center Update
Agenda Item #7

Joe Boland, Financial Assistance Center, presented an update on the $50 Million Bond Sale and the American Recovery and Reinvestment Act Funding.

Mr. Boland briefly explained the new type of leveraged program that the Financial Assistance Center is working on now. The Bond Sale closing will take place around the middle of November. Mr. Boland stated he will present more details to the Commission at the January Commission meeting. No action was taken by the Commission.

STANDING ITEMS

Legal Report

Jennifer Frazier, Attorney General's Office did not have any items to report to the Commission. No action was taken by the Commission.

Director's Update

John Madras, Director, Water Protection Program thanked Scott Totten for his performance as Acting Director of the Program over the past year.

Mr. Madras noted that at the January 2009 Clean Water Commission meeting the Commission approved the transfer of the tanks rules to the Hazardous Waste Management Commission. Mr. Madras stated that these rules related to underground storage tanks would be proceeding under the authority of the Hazardous Waste Management Commission. Mr. Madras noted that no further action is needed by this Commission.

Mr. Madras pointed out the National Research Council of the National Academies of Science released two reports dealing with big river issues. He stated that these reports provide information that may be useful in dealing with future issues. Mr. Madras also noted that these reports are available on the National Research Council of the National Academies of Science's website.

Mr. Madras stated the Water Protection Forum is scheduled to follow the Commission's meeting today.

Chair Hardecke asked for a status on the fee legislation. Mr. Madres thanked those who had supported fee legislation in the past session, and stated the Department looks forward to further discussions but there is no proposal for discussion at this time.

Chair Hardecke reiterated that the National Academies of Science study was released on September 28, 2010 and the Mississippi River Basin study was released on October 14, 2010. Chair Hardecke urged the Commission and public to review the studies. No action was taken by the Commission.

PRESENTATIONS

Public Comment and Correspondence

Water Quality Standard for Phenol, Brittany Burrientos, Newman Comley & Ruth

Brittany Burrientos of Newman, Comley and Ruth, P.C. presented a request to the Commission, on behalf of Associated Industries of Missouri, regarding revision of the phenol water quality standard for the protection of aquatic life, drinking water, and groundwater designated uses.

The Department will review the petition and all available science and information to determine whether phenol criteria should be revised. Any revisions to phenol water quality criteria will occur during the upcoming review of Missouri's water quality standards regulation.

Missouri's Municipal Operations and Capital Improvements Budget Ratios, Phil Walsack, Missouri Public Utilities Alliance

Mr. Walsack presented information related to municipal budgets, specifically the budget allocations related to wastewater operation and maintenance, capital improvements, debt service and reserves. He also presented information on the general abilities of cities to finance needs to meet clean water act requirements.

Nomination of LaBarque Creek as an Outstanding State Resource Water, Claire Meyners, LaBarque Watershed Stream Team Association

Friends of LaBarque Creek presented a request to the Commission that LaBarque Creek in Jefferson County be designated as an outstanding state resource water.

The Department will review the request and all available science and information to determine whether LaBarque Creek should receive the designation. Any revisions to LaBarque Creek designated uses will occur during the upcoming review of Missouri's water quality standards regulation.

SSS, Inc. Permit Modification Request – Kristin Perry, Representing SSS, Inc.

Kristin Perry, representing SSS, Inc. requested the Commission modify the permit of the SSS, Inc. SSS, Inc. is an industrial facility with 12 outfalls. The facility is a quarry operation and has a terminal to handle salt and fertilizer. The facility is currently under the Environmental Protection Agency enforcement action for violating permit limits. Ms. Perry stated the permit issued to SSS Inc. appears to be much more restrictive in sediment and nutrients allowed to enter the Mississippi River than what appears to be entering the river from a local Corps of Engineers project.

Mike Stevinson, SSS, Inc. reiterated the request to have his permit modified.

Jenny Frazier, Legal Counsel to the Commission suggested to the Commission it would be appropriate for them to go into closed session to discuss the legal aspects of the permit modification.

Commissioner Tupper made motion to go into closed session to discuss legal matters. Commissioner Easley seconded. The motion passed with a roll call vote.

Commissioner Shorney:	Yes
Commissioner Tupper:	Yes
Commissioner Hunter:	Yes
Commissioner Easley:	Yes
Chair Hardecke:	Yes

Adjourned closed session at 1:10 p.m.

The Commission requested Jenny Frazier propose language for a Commission vote. Ms. Frazier proposed:

1) The Commission to direct SSS, Inc. to submit an application for a permit modification to staff per the established procedures and that the staff work through that application as quickly as possible and provide a recommendation to the Commission at the next Commission meeting.
2) Further the Commission to direct the staff to communicate with the Environmental Protection Agency (EPA) regarding the EPA enforcement action pending against SSS, Inc., and express the Commission's concerns regarding the numeric criteria for nutrients contained in SSS, Inc's permit and the absence of numeric nutrient standards for the Mississippi River. Staff should further express the Commission's concerns regarding the unfairness of imposing these numeric criteria on private industries and not imposing it upon federal agencies, such as the Corps.

Commissioner Easley made the motion to accept Ms. Frazier's proposed language. Commissioner Shorney seconded the motion. The motion passed unanimously with a roll call vote:

Commissioner Easley:	Yes
Commissioner Shorney:	Yes
Commissioner Tupper:	Yes
Chair Hardecke:	Yes

John Madras, Director of Staff stated that the Water Protection Forum would began in one hour.

ADJOURNMENT OF MEETING

Commissioner Tupper made a motion to adjourn the meeting. Commissioner Shorney seconded the motion. The motion passed unanimously with a roll call vote:

Commissioner Easley:	Yes
Commissioner Shorney:	Yes
Commissioner Tupper:	Yes
Chair Hardecke:	Yes

The meeting adjourned at 1:30 p.m.

Respectfully Submitted,

John Madras

John Madras
Director of Staff