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1 BEFORE THE CLEAN WATER COMMISSION

2 DEPARTMENT OF NATURAL RESOURCES

3 STATE OF MISSOURI

4

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6

7 MEETING OF:

8

9 NOVEMBER 4, 2009

10

11 CONDUCTED BY:

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13 CHAIRMAN RON HARDECKE

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

2 CHAIRMAN HARDECKE: We'll begin with introductions.
3 At my left is Malinda Overhoff the secretary to the
4 Commission, next is Jenny Frazier the legal counsel
5 to the Commission, Leanne Tippet Mosby is the --
6 director of the Water Program. I'm Ron Hardecke from
7 Owensville the Commission Chair. On my right is Sam
8 Hunter, from Sikeston, the Vice-chair of the
9 Commission. Next is Frank Shorney, from Lees Summit,
10 next is Jan Tupper from Joplin and then Bill Easley
11 from Cassville.

12 So we welcome each of you to the meeting and
13 we'll get started.

14 **Tab No. 1 is the minutes from the September 2nd,**
15 **2009, meeting.** Any comments or corrections?

16 (No response.)

17 **COMMISSIONER EASLEY: I move that we approve the**
18 **minutes as submitted.**

19 **COMMISSIONER HUNTER: Second.**

20 **COMMISSIONER TUPPER: Second.**

21 **CHAIRMAN HARDECKE: Malinda, you want to take the**
22 **vote.**

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

24 **COMMISSIONER EASLEY: Yes.**

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

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1 COMMISSIONER SHORNEY: Yes.

2 MS. MALINDA OVERHOFF: Commissioner Tupper?

3 COMMISSIONER TUPPER: Yes.

4 MS. MALINDA OVERHOFF: Commissioner Hunter?

5 COMMISSIONER HUNTER: Yes.

6 MS. MALINDA OVERHOFF: Chair Hardecke?

7 CHAIRMAN HARDECKE: Yes.

8 Thank you. Tab No. 2 is the minutes from the

9 October 7th Commission meeting, teleconference

10 meeting. Any comments or corrections?

11 (No response.)

12 COMMISSIONER HUNTER: I move that we accept the

13 minutes as submitted.

14 COMMISSIONER SHORNEY: Second.

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

16 MS. MALINDA OVERHOFF: Commissioner Shorney?

17 COMMISSIONER SHORNEY: Yes.

18 MS. MALINDA OVERHOFF: Commissioner Tupper?

19 COMMISSIONER TUPPER: Yes.

20 MS. MALINDA OVERHOFF: Commissioner Hunter?

21 COMMISSIONER HUNTER: Yes.

22 MS. MALINDA OVERHOFF: Commissioner Easley?

23 COMMISSIONER EASLEY: Yes.

24 MS. MALINDA OVERHOFF: Chair Hardecke?

25 CHAIRMAN HARDECKE: Yes.

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1 Okay. **Tab No. 3**, Joe Boland.

2 MR. JOE BOLAND: Good morning, Mr. Chairman, members
3 of the Commission. My name's Joe Boland. I'm the
4 director of the Financial Assistance Center within
5 the Water Protection Program.

6 Tab No. 3 is -- has got the final step for our
7 **General Assistance Regulation**. This morning we're
8 asking you to adopt the final order or rulemaking.
9 We held a hearing on September 2nd at the last Clean
10 Water Commission meeting and we received no comments
11 on that, so -- or from that meeting rather.

12 And other than that I'd -- if you have any
13 questions that's all I have this morning was to
14 request that you adopt our final order of rulemaking.

15 If you have any general questions on what
16 this rule is about I'd be more than happy to answer
17 those. These -- the major provisions were to allow
18 us the flexibility to provide grants and loans if
19 there was any future ARRA-type funding coming through
20 the SRF, so --

21 CHAIRMAN HARDECKE: Any other questions or comments?

22 (No response.)

23 CHAIRMAN HARDECKE: We have one card, Phil?

24 MR. PHIL WALSACK: Morning. I filled -- morning,
25 Phil Walsack from Missouri Public Utility Alliance.

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1 I'll stand down on that card and go to the next
2 agenda item. Thank you.

3 CHAIRMAN HARDECKE: Okay. Thank you.

4 COMMISSIONER SHORNEY: Mr. Chair, I move the
5 Commission adopt 10 CSR 20-4.040 State Revolving Fund
6 General Assistance Regulation as presented in the
7 order of rulemaking.

8 COMMISSIONER TUPPER: Second.

9 CHAIRMAN HARDECKE: Malinda, would you, please, take
10 the vote?

11 MS. MALINDA OVERHOFF: Commissioner Tupper?

12 COMMISSIONER TUPPER: Yes.

13 MS. MALINDA OVERHOFF: Commissioner Hunter?

14 COMMISSIONER HUNTER: Yes.

15 MS. MALINDA OVERHOFF: Commissioner Easley?

16 COMMISSIONER EASLEY: Yes.

17 MS. MALINDA OVERHOFF: Commissioner Shorney?

18 COMMISSIONER SHORNEY: Yes.

19 MS. MALINDA OVERHOFF: Chair Hardecke?

20 CHAIRMAN HARDECKE: Yes.

21 Okay. Joe, Tab No. 4.

22 MR. JOE BOLAND: Thank you.

23 Tab No. 4 is some changes we need to make to the
24 Transform Missouri Intended Use Plan. This is the
25 stimulus Intended Use Plan. We've been working very

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1 closely with all of our applicants, all the fundable
2 projects as well as many contingency projects to keep
3 -- keep them moving as much as possible.

4 I'll give you the bad news first. The -- we're
5 -- Washington County Public Water Supply District No.
6 3 is not moving as -- quite as fast as we had hoped.
7 They did have engineering submitted. However, they
8 have run into some serious snags on obtaining their
9 easements. In fact, they have not obtained about
10 two-thirds of their easements to this point.

11 So we at this -- at this time we're recommending
12 that they be bypassed because of the time line we're
13 looking at, it -- it looks near to impossible that
14 they'd be able to close, even to go to bid in time to
15 make use of the ARRA funding.

16 The City of Kansas City has determined that they
17 won't be able to use ARRA funding for one of their --
18 well, for their Catch Basin Removal and Replacement
19 project. It -- now, in the case of Kansas City
20 they've had -- they had many projects that were
21 submitted and this -- this project would be --
22 essentially we're just going to be freeing up some
23 loan money with removing this particular project from
24 the fundable list as well as one other Kansas
25 City project.

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1 We had them listed for a little more than
2 \$3,000,000 in grant money in total since they had
3 several projects we had made an error on the fundable
4 list. So one of the other corrections we need to
5 make right now is to drop the amount of grant money
6 for the Kansas City Jumping Branch Interceptor
7 project by the amount of \$189,000.

8 And, again, that was our error on the -- on the
9 fundable list, but in keeping with the methodology
10 and the rules we -- we've put forth no one
11 applicant is receiving more than \$3,000,000 in grant
12 money, so this just cleans that up a little bit.

13 The next bit of bad news is Rocky Mount Sewer
14 District. We've been working very closely with them
15 in trying to get them moved forward, but they've been
16 able -- unable to reach a connection agreement with
17 the City of Lake Ozark.

18 CHAIRMAN HARDECKE: Just a minute. I'll tell the
19 Commissioners this is in the second tab of your blue
20 notebook. There's a more detailed description of
21 what he's --

22 MR. JOE BOLAND: Oh. I'm sorry. I should have --
23 should have reminded you, so --

24 CHAIRMAN HARDECKE: It's the one that looks like
25 this.

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1 MR. JOE BOLAND: Do I need to backup on any of those?

2 CHAIRMAN HARDEKCE: I believe you're all right.

3 MR. JOE BOLAND: Okay.

4 Again, Rocky Mount is not being able to come to
5 an agreement with the City of Lake Ozark to accept
6 their waste. That -- that makes that project
7 infeasible at this point. So we're recommending that
8 they be bypassed.

9 The other, not necessarily bad news, the Village
10 of Duquesne will not be needing the amount of funding
11 we originally had allocated to them. We're dropping
12 approximately, almost \$3,000,000 in funding
13 from that project just due to several circumstances,
14 one is, the project was broken into phases. In Phase
15 1 we funded part of that with our State Grant and
16 Loan Program and then finished up with -- with the
17 ARRA funds.

18 So we're reducing the amount just
19 because they don't -- they don't, quite frankly don't
20 need it. So that was -- that was one of the other
21 adjustments we'll be needing to make.

22 Now, with the removal of these projects
23 and adjustments to the amount of grant money
24 available that does free up some -- some money. So
25 we've been working with some of the contingency

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1 projects. Some are moving very, very quickly and
2 we're ready to do -- recommend several actions, one
3 is, we need to increase the amount of funding for
4 Garden City by a minimal amount of \$77 -- almost
5 \$78,000 that was due to Kansas City Power & Light
6 charging them a certain amount of money for 3-phase
7 power.

8 But -- the other -- the big, one of the big
9 projects we're looking to move up is the City of
10 California. They've -- they've been ready -- they've
11 been fundable for quite a while and --

12 Okay. I should have reminded people that
13 there are copies on the back table of this as well,
14 so I apologize.

15 Again, the City of California we're recommending
16 to move up in the amount of four -- \$4,500,000
17 approximately. We're also recommending moving the
18 City of Lake Ozark from the contingency list to the
19 fundable list; moving Fremont Hills to the fundable
20 list. Carterville, which several of you know is in
21 the middle of an EPA superfund removal project. This
22 would benefit multiple parties. And we're also
23 looking to move up Cassville for their collection
24 system.

25 Let's see. One final note on MSD you have in

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1 there is -- they were accepting bids -- or they had
2 accepted bids for the Missouri River project. And
3 just due to some issues they're dealing with on those
4 bids they have requested to substitute two projects
5 in lieu of that project. They're not asking for an
6 increase in funding. It's just swapping the projects
7 out.

8 For contingency list projects that are --
9 everything's been approved, they're ready roll and we
10 certainly have no problem with that so we're
11 recommending that -- that switch as well.

12 And with that we're requesting that you approve
13 all these revisions as we recommend. Any particular
14 questions, at this time?

15 COMMISSIONER SHORNEY: Joe, that City of California;
16 does not the \$3,000,000 limit, I guess doesn't apply
17 there?

18 MR. JOE BOLAND: That's -- that's total amount. So
19 that'll be split 50/50 between grant and loan.

20 COMMISSIONER SHORNEY: Okay.

21 MR. JOE BOLAND: So it will still be under the
22 \$3,000,000 total.

23 CHAIRMAN HARDECKE: Phil, you want to address this
24 one? Are you done, Joe?

25 MR. JOE BOLAND: Yes. I'm done.

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1 CHAIRMAN HARDECKE: You could come back --

2 MR. JOE BOLAND: I think there are some
3 representatives here from Joplin as well as
4 Carterville. I think they might like to address
5 this.

6 CHAIRMAN HARDECKE: Okay. Glen Davidson?

7 MR. GLEN DAVIDSON: Good morning, Mr. Chairman and
8 Commission. Thank you for your time. I'm Glen
9 Davidson with Allgeier Martin and Associates out of
10 Joplin. I'm here today to speak on behalf of
11 Carterville, Missouri.

12 We are -- we, of course, in the city are pleased
13 with -- in your Staff's recommendation to move the
14 project to the fundable list. There -- we would like
15 to advise the Commission, if I may, of a minor change
16 in the numbers from what you see in front of you. It
17 is small, but -- and the reason for that is the --
18 the scope of the project has changed a little bit
19 with EPAs involvement. Costs have been adjusted a
20 little bit, so if I may; can I give you some numbers?

21 CHAIRMAN HARDECKE: Okay.

22 MR. GLEN DAVIDSON: The -- the ARRA grant that --
23 that we are requesting -- and this is reflected in
24 the facility plan that is at DNR Staff now. It is
25 \$695,780, which is about \$39,500 more than what you

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1 see on the list. The SRF loan is a like number
2 \$695,780. So we would like to advise the Commission
3 of those changes if -- if we might.

4 And, again, the reason for that is some changes
5 in the estimate that have developed over the past
6 eight months or so from when the report was initially
7 done and submitted to when -- until Oct- -- this
8 October. And I'll be happy to answer any questions
9 about those numbers, if you'd like.

10 Beyond that we'd like to say that the project is
11 moving ahead -- we're moving ahead very quickly with it.
12 We will be able to get the project to bid and adhere
13 to the schedule that -- that we need to for the ARRA
14 funding.

15 As Mr. Boland noted there are some unique
16 aspects to this project that we just like to
17 emphasize very quickly. It ducktails with an EPA
18 superfund cleanup of the Oronogo-Duenweg Mining Belt;
19 this lift station as well as the Carterville and Webb
20 City systems are pretty much in the heart of that --
21 of that mining belt area. EPA is engaged in a very
22 extensive ongoing cleanup of that now.

23 And as a part of that EPA is willing to close
24 the existing lagoon that is -- now serves as the peak
25 flow lagoon for that lift station, for the

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1 Carterville's existing lift station but we can't do
2 that until we build a new one that will handle peak
3 flows.

4 EPA is willing to close this existing lagoon at
5 their expense, which is a big benefit to Carterville
6 and -- and the neighboring cities as well. The
7 contents of that lagoon are such that the zinc
8 concentrations are very high and cannot land apply
9 the material. So EPA wants to use the lagoon as a
10 repository for their -- for the material they're
11 generating with their cleanup. So this works very
12 well on -- on all counts.

13 A closure plan has been submitted to DNR in that
14 regard, too. So I think we've got all our Is dotted
15 and Ts crossed there. As this -- another thing that
16 we should note is this will, of course, free up for
17 Carterville close \$700,000 of the bonds they voted
18 earlier this year for this project. Money that they
19 will be using for I & I abatement.

20 That ties into another problem that is -- that
21 the -- that the plant that serves Carterville, Webb
22 City and Oronogo is dealing with new zinc limits.
23 Zinc final effluent limits that we're dealing with
24 and we have identified working with DNR Staff again
25 that the collection system is a major culprit of the

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1 -- of the elevated zinc concentrations that are
2 getting in to the plant.

3 And so all cities are going to have to
4 aggressively address I & I, so this will also benefit
5 Cartersville in that regard. So, I think, in all
6 respects in this case would this be a grant that just
7 keeps on giving if we're able to see it through as had
8 been proposed by Staff. With that, I'll stop. I'll
9 be glad to answer any questions if you have any.

10 COMMISSIONER TUPPER: Does Mark Doolan know that
11 we're going to hang him if he doesn't get the lagoon
12 closed?

13 MR. GLEN DAVIDSON: I talked to him this morning, as
14 matter of fact, before breakfast. He was already at
15 work so, yes, I think he's aware of that.

16 COMMISSIONER TUPPER: I have rope in my trunk.

17 (Laughter.)

18 MR. GLEN DAVIDSON: All right. I will follow-up, Mr.
19 Tupper. Any other questions?

20 (No response.)

21 MR. GLEN DAVIDSON: If not --- thank you.

22 CHAIRMAN HARDECKE: Thank you.

23 Dean Willis?

24 MR. DEAN WILLIS: Good morning. I'm Dean Willis with
25 Allgeier Martin and Associates. We're consulting

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1 engineers working with the City of Joplin on a major
2 expansion of their two wastewater treatment plants.
3 Tim Nyander who is the operations manager with the
4 public works department is also here.

5 We had as -- we have an overall project that
6 encompasses about \$35,000,000 worth of improvements
7 and we had as a part of the ARRA program broken out a
8 portion of that project in hopes that we would get it
9 funded -- you know, be able to work on some grant
10 funds through the ARRA. We have not moved on to the
11 list as it currently stands. That is something that
12 we hoped would happen. I just wanted to assure the
13 Commission that we have submitted and gotten all of
14 the necessary paperwork approved. All the local
15 bonds have been voted.

16 Plans and specs are in the state's hands and the
17 -- and we -- while we are disappointed that we didn't
18 move on to the list here we understand that there's
19 some hard decisions made by -- by the Staff and by
20 the Commission as to who moves up and who doesn't.

21 I would note a couple of -- a couple of things
22 as I understand the priority points that are assigned
23 to these projects don't have a big influence on where
24 they stand in the current list. I would note that
25 the -- the Joplin project re- -- there's 80 priority

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1 points assigned to it in this document. In fact,
2 they calculate to 125 points, I think. I believe
3 it's just an error in the priority point ranking in
4 here. It may not have an influence on who moves up
5 and who doesn't, but I thought it would be worth
6 noting.

7 One other issue, I don't know it's really an
8 issue, but the -- the portion of the \$35,000,000
9 project that we brought up it could be bid and dealt
10 with as an entirely separate project. We have
11 reflected it with about a \$9,000,000 overall cost.
12 That is something that we can also work with Staff to
13 reduce. There are components within the current
14 project that if, if there are limitations in
15 available SRF loan money that that \$9,000,000 was --
16 was impacting that project could be reduced back to
17 something less than that quite conveniently and still
18 be within the same -- the bidding time frame that
19 needs to happen to get this project awarded, you
20 know, by mid February.

21 So obviously we are -- we're anxious to work
22 with -- with DNR in whatever fashion to -- to be able
23 to participate in this program. I -- I -- that all
24 being said I don't know what'll happen in the next
25 month. You have more decisions to make in -- in

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1 December obviously and there may be other projects
2 that get bypassed and if we're not successful this go
3 around then obviously we'd sure like for the
4 consideration down the road.

5 Any questions at all on the project I'd be glad
6 to answer them.

7 Thank you very much.

8 CHAIRMAN HARDECKE: Thank you.

9 Doug Garrett?

10 MR. DOUG GARRETT: I'll guess I'll -- I'll wrap up
11 the presentation. I spoke with the representative
12 with Carterville --

13 CHAIRMAN HARDECKE: Do we need to let Phil talk
14 first?

15 MR. DOUG GARRETT: Sure.

16 MR. PHIL WALSACK: Do we need to?

17 (Laughter.)

18 CHAIRMAN HARDECKE: If he's wrapping up maybe you
19 want to.

20 MR. PHIL WALSACK: I was going to wrap up after him;
21 Phil Walsack from Missouri Public Utility Alliance.
22 We appreciate the hard work of the Department moving
23 projects up and down this fundable and contingency
24 list.

25 This is a very difficult process to go through

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1 and we appreciate their efforts. We appreciate the
2 fact that California and Carterville and Lake Ozark
3 got funded. And as you can see by the folks in the
4 room we would love more funding.

5 That is the problem with the ARRA progress and
6 program is that it just wasn't enough funding to go
7 around for Missourians. And then we are hopeful that
8 if there is anymore federal stimulus package money,
9 although I'm grabbing the podium when I say that,
10 that if there are some other federal funds that are
11 available we could sure use them in Missouri. We
12 have an under estimated need here and we have a lot
13 of projects and a lot of cities that need help.

14 But we appreciate what the Department has done
15 and we're supportive of these changes suggested by
16 the Department being brought to your attention this
17 morning.

18 Thank you very much.

19 MS. MALINDA OVERHOFF: He just came in the back,
20 that's him.

21 CHAIRMAN HARDECKE: Larry, No. 4?

22 MR. LARRY VANGILDER: Morning.

23 CHAIRMAN HARDECKE: Morning.

24 COMMISSIONER SHORNEY: Good morning.

25 MR. LARRY VANGILDER: Well, we're here late. We come

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1 from Branson this morning and just barely made it.

2 What I come to speak to you about on the
3 Intended Use Plan is to continue to work on this Tri-
4 Lakes Biosolids project. And I have some information
5 that will kind of remind you of the project. There
6 are some of you who are new to this process.

7 I have with me Mike Zimmerman with HDR and --
8 he's our consulting engineer on this -- this project
9 is a biosolids project to -- it's a partnership
10 between the City of Branson, Taney County, Hollister,
11 Kimberling City, Rockaway Beach and Branson West to
12 take our sludge and convert it from Class B biosolids
13 to Class A.

14 As you all know we live in a very sensitive
15 environment in the southwest part of Missouri in
16 regards to the carse topography and when we spread
17 the Class B sludge on the land, rain fall and those
18 kinds of thing it gets into the waterways and causes
19 some difficulties with nutrients in Table Rock Lake
20 and that kind of thing. So our -- our concept here
21 is to do a regional-type facility to convert the
22 Class B to Class A by drying it out into what we
23 would call a soil amendment, which can be used almost
24 anywhere. It can be used in our gardens. It can be
25 used for backfill for curbs for cities. It can be

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1 used for various purposes and is safe, safe to use.

2 So that's -- that's really the concept that
3 we're after is to setup a facility, a facility we
4 (inaudible) background work on it. It would be
5 located next to a treatment plant in Branson. And
6 the whole concept of why we're here is that we're
7 trying to do the -- a 40 Percent Grant opportunity
8 where we -- we're looking for a \$2,000,000 grant to
9 get this project seeded so that we can incentivize
10 some federal dollars to go along with it.

11 This is something we've been working on for at
12 least five years, probably closer to six or seven
13 years. A situation where the monies that the
14 communities use and the counties use up -- uses in
15 southwest Missouri is for getting septic tanks off
16 the line and getting people on central sewers.
17 That's where all of our monies are going into the
18 infrastructure to do those projects and to build the
19 treatment facilities to handle and keep those
20 treatment facilities up.

21 So a project like this is just not feasible for
22 debt service or even the SRF loan because obviously
23 those loans have to be paid back and there's no -- no
24 economic way to do that. So we've been continuing to
25 bring this project before the Clean Water Commission

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1 and before the Department of Natural Resources and
2 also through the federal government and all of our
3 legislatures that are working on behalf of us at the
4 federal level.

5 So that's kind of a summary of the project and
6 I've provided that to you in the -- in the brochure.
7 We'd be happy to come and make a -- we've made some
8 presentations here before so we don't want to over
9 exert our self in this process, but it's important to
10 us to -- to continue to keep this project alive and
11 the process with the Clean Water Commission and any
12 dollars that you-all can see that could be pointed
13 towards this project would be very helpful. We've
14 had some very positive feedback from our federal
15 legislatures. From EPA, we've had EPA involved in
16 this project. They're very supportive of it. The
17 Department of Natural Resources is very supportive of
18 the project and I think it's worthwhile to -- to
19 continue to pursue and that's why we're here today.

20 I'd be happy to take any questions that you
21 might have.

22 CHAIRMAN HARDECKE: Okay. Any questions?

23 (No response.)

24 CHAIRMAN HARDECKE: We'll keep it on the list.

25 MR. LARRY VANGILDER: Thank you.

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1 CHAIRMAN HARDECKE: Thank you.

2 Now, Doug.

3 MR. DOUG GARRETT: Good morning. Well, just to wrap
4 up in -- in the packet we do have some recommended
5 actions I'd like to briefly run through those again.

6 Basically, we're requesting that Washington
7 County Public Water Supply District No. 3, (Potosi
8 Lake), the Kansas City Water Services Department
9 Catch Basin Removal/Replacement project and the Rocky
10 Mount Sewer District project be removed from the
11 fundable to the contingency list.

12 Decrease the grant amount for the Kansas City
13 Jumping Branch Interceptor by \$189,477 and increase
14 the loan amount by the corresponding amount.

15 Decrease the Village of Duquesne eligible
16 project cost from \$6.6 million to \$2.9 million and as
17 Joe mentioned -- you know, the reason for that
18 decrease is that that is an ongoing project. The
19 first phase was -- was funded out the base SRF program.

20 We'd like to increase the eligible project
21 amount for the City of Garden City from \$906,700 to
22 \$984,492; move the California project from the
23 contingency list to the fundable list and increase
24 their amount from \$4,000,000 to \$4,578,500. That's -
25 - increase is based on a revised cost estimate from

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1 consultants.

2 Move the City of Lake Ozark and the City of
3 Freemont Hill from the contingency list to the
4 fundable list. With regard to the Metropolitan Sewer
5 District we want to replace the Missouri River
6 project with the Argonne Sanitary Relief project and
7 the Upper Maline Trunk Relief project.

8 Move Carterville from the contingency list to
9 the fundable list and I spoke with the consultant
10 yesterday regarding their amount of funds and we
11 would propose to go ahead and increase the eligible
12 project costs on that per their request.

13 And move the Cassville collection system project
14 from the contingency to the fundable list as they are
15 also ready to go.

16 You heard Dean Willis speak on behalf of the
17 Joplin project. We continue to work with the City of
18 Joplin on their project. We did discuss the priority
19 point issue yesterday. And the error on the priority
20 points was -- was my mistake. I went back and looked
21 at the records and in fact the priority points for
22 the Joplin project should be 140 points. And we would
23 recommend to go ahead and make that change, at this
24 point, as we're going to be amending the list anyway.

25 CHAIRMAN HARDECKE: Any questions?

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1 The -- on the Carterville, the numbers that he
2 gave are those in agree- -- are you in agreement with
3 those?

4 MR. DOUG GARRETT: Yes.

5 CHAIRMAN HARDECKE: Okay.

6 So you're recommending that change as well?

7 MR. DOUG GARRETT: Correct.

8 COMMISSIONER SHORNEY: So, Doug, what's the
9 ramifications of the point -- priority point change
10 then --

11 MR. DOUG GARRETT: Well, --

12 COMMISSIONER SHORNEY: -- on Joplin?

13 MR. DOUG GARRETT: It's -- it would just be for
14 consistency purposes. In the draft 2010 Intended Use
15 Plan we had them in as 140 points and -- you know, we
16 want to be consistent with that. Under the ARRA
17 funding program, you know, it's -- priority points
18 really don't mean a thing. On a job build, you know,
19 an infrastructure, you know, so that, you know, when
20 projects are ready to go we move them.

21 CHAIRMAN HARDECKE: Any other questions?

22 (No response.)

23 **COMMISSIONER TUPPER: Mr. Chairman, I move the**
24 **Commission approve the suggested revision to the**
25 **Transform Missouri Intended Use Plan.**

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1 COMMISSIONER EASLEY: Second.

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

3 MS. MALINDA OVERHOFF: Commissioner Hunter?

4 COMMISSIONER HUNTER: Yes.

5 MS. MALINDA OVERHOFF: Commissioner Easley?

6 COMMISSIONER EASLEY: Yes.

7 MS. MALINDA OVERHOFF: Commissioner Shorney?

8 COMMISSIONER SHORNEY: Yes.

9 MS. MALINDA OVERHOFF: Commissioner Tupper?

10 COMMISSIONER TUPPER: Yes.

11 MS. MALINDA OVERHOFF: Chair Hardecke?

12 CHAIRMAN HARDECKE: Yes.

13 MR. DOUG GARRETT: Thank you.

14 CHAIRMAN HARDECKE: Okay. Thank you. **Tab No. 5,**

15 John.

16 MR. JOHN HOKE: Thank you, Chairman Hardecke, good

17 morning. Good morning Commissioners. I'm John Hoke.

18 I'm the TMDL unit chief with the Program's Water

19 Quality Monitoring and Assessment section.

20 I appreciate the opportunity to come before you

21 today and give a status report on the Department's

22 development and interaction with TMDLs and the

23 Consent Decree and Memorandum of Understanding with

24 U.S. EPA. As you may recall in 2000 EPA entered into

25 a Consent Decree and Settlement Agreement with

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1 American Canoe Association and the Sierra Club to resolve
2 outstanding issues with TMDL development in the state
3 of Missouri.

4 That Consent Decree established a time line for
5 TMDL development both in the number of TMDLs that
6 were devel- -- to be developed for impaired waters as
7 well as dates on when those TMDLs need to be
8 completed.

9 Long story short, we're in the last year of the
10 Consent Decree under our Memorandum of Understanding
11 with EPA we are to develop TMDLs off that remaining
12 list and send -- submit them to EPA by December 31st,
13 2009, the end of this year.

14 Currently there are 28, by our count, waters
15 that still need TMDLs developed and they are in
16 various stages of development. The Department has, I
17 guess, ownership or control of 15 of the 28. Those
18 are currently go- -- undergoing final review. And
19 our intent is to public notice those 15 over the next
20 three weeks so that those TMDLs would have an
21 adequate 30-day public notice as well as time for the
22 Department to resolve any comments that may be
23 received and then submit those to EPA by December
24 31st, 2009.

25 I would be remiss if I didn't mention to the

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1 Commission we're getting a lot of help from our
2 counterparts and John DeLashmit's
3 Staff at EPA Region 7. They let a
4 contract -- and we had some contractor assistance as
5 well as EPA assistance to develop nine of those
6 remaining 28 TMDLs and we're working closely with EPA
7 Staff and the contractors to ensure that those get
8 submitted and established by the end of the year as
9 well.

10 However, there will only be four TMDLs that will
11 not be submitted by the end of this year and those
12 are hung up primarily because of recognized data
13 needs to develop a scientifically defensible TMDL.
14 And we are working with -- with EPA to establish a
15 schedule so that when those are established they are
16 at least done early 2010. Now, under the Consent
17 Decree if the Department does not establish TMDLs by
18 the end of this year then EPA is required by the
19 decree to establish TMDLs within 12 months. So it's
20 our hope that we'll be able to clean that up early
21 next year.

22 There are a few TMDLs out there and Hinkson
23 Creek here in Columbia is one of them that have
24 generated significant stakeholder interest. Even
25 with our tight time lines on these we are taking

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1 great strides to -- to work with stakeholders and
2 incorporate and help to address their concerns and
3 comments as best we can with -- with the resources
4 that we have at our disposal.

5 So long story short, we believe we will
6 substantially meet our requirements under the
7 Consent Decree along with our counterparts at
8 EPA and their help and assistance, so with that, I
9 tried to be brief. But I'm happy to answer any
10 questions that you might have.

11 CHAIRMAN HARDECKE: Is that good with you, John?

12 MR. JOHN DeLASHMIT: It is.

13 CHAIRMAN HARDECKE: That's good.

14 MR. JOHN DeLASHMIT: John and his Staff have been
15 very responsive in working together, so far, so good.

16 CHAIRMAN HARDECKE: Good.

17 Thank you very much.

18 MR. JOHN HOKE: Okay. Thank you.

19 CHAIRMAN HARDECKE: Okay. **No. 6**, Kevin.

20 MR. KEVIN MOHAMMADI: Good morning, Mr. Chairman,
21 members of the Commission. Kevin Mohammadi, chief of
22 Compliance and Enforcement Section, Water Pollution
23 Control Branch. I will be presenting four cases to
24 you for referral to the office of Attorney General.

25 The four -- the first case is: **Northern Heights**

1 **Estate, Pulaski County**, 4J Land and Cattle Company
2 owns and operates Northern Heights Estates
3 subdivision wastewater treatment facility located in
4 Pulaski County. The Facility is composed of septic
5 tanks and recirculating sand filters and currently
6 serves approximately 180 to 190 residential homes in
7 the subdivision and operates pursuant to Missouri
8 State Operating Permit.

9 The Company is listed as the owner and
10 continuing authority for the facility on the permit.
11 In June 2004, the Missouri Department of Natural
12 Resources issued a construction permit to the Company
13 for the construction of a recirculating sand filter
14 and collection system to serve 117 residential lots.

15 Since September 2008, Department Staff have
16 conducted two inspections of the facility and have
17 reviewed the quarterly discharge monitoring reports.
18 During these inspections and discharge monitoring
19 review Staff have documented that effluent
20 discharging from the Facility has chronically failed
21 to comply with its permitted effluent limitations.
22 In addition, the Company has expanded the collection
23 system without applying for and receiving the
24 approved construction permit for sewer extension.

25 Based upon the violations documented by

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1 Department Staff, the Department has issued the
2 Company two Letters of Warning and two Notices of
3 Violation to compel the Company to take appropriate
4 action to resolve the violations.

5 Due to the ongoing violations the matter was
6 referred for enforcement action. Currently the
7 system is hydraulically overloaded and can no longer
8 meet the required effluent limitation. Furthermore,
9 the Department has taken enforcement action against
10 the Company and/or companies owned by Mr. James
11 Laughlin on three occasions during the last ten
12 years.

13 On several -- on -- the last ten years on
14 several different facilities including Northern
15 Heights therefore Staff recommends the matter to be
16 referred to the office of Attorney General for
17 appropriate legal action.

18 CHAIRMAN HARDECKE: Okay. I have one card John
19 Borgmeyer.

20 MR. JOHN BORGMEYER: Thank you, Mr. Chairman, members
21 of the Commission. Good morning. My name is John
22 Borgmeyer. I'm an attorney in Jefferson City. In
23 the past, our firm has represented a subsidiary of 4J
24 Land and Cattle Company called Highway H Utilities in
25 matters before the Public Service Commission. And so

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1 I've been asked to come here today and speak to you
2 about the wastewater treatment facility at the
3 Northern Heights Estates subdivision.

4 First, I just want to point out that the owners
5 have assisted and cooperated with the Department
6 throughout the investigation process.

7 Their cooperation is documented in the Notice of
8 Violation. They are ready, willing and financially
9 able to work with the Department to resolve these
10 issues. 4J has hired the engineering firm of William
11 E. Anderson & Associates of Missouri to update the
12 Northern Heights wastewater treatment facility. 4J
13 Company submitted an application for a construction
14 permit to the DNR in October of 2008.

15 In May of 2009 the Company submitted its
16 Antidegradation report to the Department. And my
17 understanding is that the Department is currently
18 reviewing that application.

19 I have copies of the application and the summary
20 contained in the engineering report that I'll pass
21 out to you after I'm done with my comments.

22 I also have a copy of the most recent status
23 update that 4J has received from DNR. Once 4J has
24 obtained the construction permits from the Department
25 the Company is ready and able to proceed with

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1 construction of the proposed facilities and it's the
2 Company's view that the construction of these
3 facilities will go a long way towards addressing the
4 issues that were raised in the Notice of Violation.

5 Accordingly, I ask that you take the status of
6 4J's construction application into account and defer
7 the referral of this matter to the Attorney General
8 until 4J has had the opportunity to proceed with the
9 construction of those additional facilities.

10 And if you don't mind I can just pass out some
11 of the --

12 CHAIRMAN HARDECKE: That's fine.

13 COMMISSIONER TUPPER: Thank you.

14 COMMISSIONER EASLEY: Thank you.

15 MR. JOHN BORGMEYER: And thank you for your time this
16 morning.

17 CHAIRMAN HARDECKE: Thank you.

18 So what's the status of the Antideg --

19 MR. KEVIN MOHAMMADI: The Antideg application is on
20 its final stage of review. It's been reviewed by
21 Staff in permit section and we are getting close to
22 giving our final recommendation.

23 CHAIRMAN HARDECKE: Okay.

24 So with -- when that's completed then the permit
25 will be issued; is that correct?

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1 MR. KEVIN MOHAMMADI: Once that's completed, I don't
2 know what kind of comments we are going to have on
3 Antideg and that Company needs to address Department
4 comments and then the document will be put on public
5 notice.

6 CHAIRMAN HARDECKE: Okay.

7 MR. KEVIN MOHAMMADI: Well, there are several claims
8 the Department has Mr. Chairman. We have a
9 responsible party that chronically have been
10 violating Missouri Clean Water Law for the last ten
11 years on different sites, different facility and
12 location. This is not first time.

13 Secondly, we have a penalty demand. Thirdly, we
14 want some sort of Consent Decree that there is a
15 stipulated penalty associated if Mr. Laughlin does
16 not carry out through the commitment then we can go
17 to the court and seek injunction.

18 CHAIR HARDECKE: Comments or questions?

19 CHAIRPERSON EASLEY: Have you attempted to negotiate
20 the penalties in these terms?

21 MR. KEVIN MOHAMMADI: We have in this particular
22 case. Joan, you have been contacting with Mr.
23 Laughlin? Yeah.

24 Well, do to the fact that this is a chronic
25 violator in this particular case when we received

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1 the case we decided to come before the Commission
2 rather than business as usual trying to negotiate.

3 COMMISSIONER TUPPER: Is it fair to say that this
4 fellow doesn't respond until we get to the NOV stage
5 every time or --

6 MR. KEVIN MOHAMMADI: Even after NOVs he does not
7 respond.

8 COMMISSIONER EASLEY: Kevin, on these two Letters of
9 Warnings and two Notices of Violation; do you know
10 what the dates on those were?

11 MR. KEVIN MOHAMMADI: We can, it's -- we have one
12 June 2nd, 2009 --

13 COMMISSIONER EASLEY: Now, is that the letter or the
14 NOV?

15 MR. KEVIN MOHAMMADI: That's inspection and Notice of
16 Violation.

17 COMMISSIONER EASLEY: Oh. Okay.

18 MR. KEVIN MOHAMMADI: And a Notice of Violation in
19 February 2009, February 24th, 2009; Letter of Warning
20 November 12th, 2008, and September 3rd, 2008.

21 CHAIRMAN HARDECKE: That was a warning or --

22 MR. KEVIN MOHAMMADI: Two Letters of Warning,
23 September. And two Notices of Violation.

24 COMMISSIONER SHORNEY: Kevin, were there any further
25 communications after those letters?

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1 MR. KEVIN MOHAMMADI: There was no response from the
2 Company when first Letter of Warning was issued
3 September 3rd, 2008. There was a response to November
4 12th, 2008, from Anderson Engineering that basically
5 states:

6 Please be advised the construction permit
7 application with the plans and specs has been
8 submitted to Missouri Department of Natural Resources
9 for an addition to Northern Heights Estates sewage
10 treatment plan. Upon receipt of the construction
11 permit, construction of sewage --

12 (Tape One, Side A Concluded.)

13 COMMISSIONER EASLEY: Well, is that application
14 pending now?

15 MR. KEVIN MOHAMMADI: The application is pending,
16 correct.

17 CHAIRMAN HARDECKE: So they have not received a
18 permit for a construction permit yet?

19 MR. KEVIN MOHAMMADI: Well, the fact is that they
20 extended the sewer extension to additional new lots
21 without obtaining a construction permit. This is not
22 a first time developer. He has gone through this
23 process in the past. He knows he has to obtain
24 construction permit for construction prior to
25 construction but he has ignored that. That's --

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1 that's what the case is.

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

7 COMMISSIONER EASLEY: Second.

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

9 MS. MALINDA OVERHOFF: Commissioner Hunter?

10 COMMISSIONER HUNTER: Yes.

11 MS. MALINDA OVERHOFF: Commissioner Easley?

12 COMMISSIONER EASLEY: Yes.

13 MS. MALINDA OVERHOFF: Commissioner Shorney?

14 COMMISSIONER SHORNEY: Yes.

15 MS. MALINDA OVERHOFF: Commissioner Tupper?

16 COMMISSIONER TUPPER: Yes.

17 MS. MALINDA OVERHOFF: Chair Hardecke?

18 CHAIRMAN HARDECKE: Yes.

19 MR. KEVIN MOHAMMADI: The next case is **Hillcrest**
20 **Mobil Home Court**. Hillcrest Mobile Home Court is a
21 trailer park which consists of approximately 30 mobile
22 homes and is located in Pettis County. Wastewater
23 generated from the mobile homes is treated by a
24 single-cell lagoon and effluent from the lagoon
25 discharges to a tributary to Flat Creek, which is

00037

1 Class C stream.

2 The lagoon has a design population of 50 and
3 design flow of 2,250 gallons per day. The expired
4 permit under its -- the permit expired under its own
5 term on May 2008, and indentifies Mr. Robert
6 Gautreaux as the owner and continuing authority of
7 Hillcrest.

8 During one inspection Staff noted that lagoon
9 was in complete disrepair with erosion damages in
10 northeast corner of the berm allowing wastewater to
11 bypass the lagoon resulting in sludge deposits 6 to
12 12 inches deep extending approximately 50 feet below
13 the berm.

14 Department issued a Notice of Violation to Ms.
15 Gautreaux for violation observed during the
16 inspection. On May 2009 the Department sent letters
17 to Mr. and Ms. Gautreaux offering to resolve past
18 violations of Missouri Clean Water Law and its
19 implementing regulations through an out-of-court
20 settlement agreement.

21 Mr. Gautreaux responded to Department's offer
22 and submitted copies of 2007 Divorce Decree and
23 Quick-Claim Deed documenting a transfer of ownership
24 of Hillcrest from Mr. Gautreaux to Ms. Gautreaux.

25 On June 2009, the Department sent a second

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1 letter to Ms. Gautreaux offering to resolve past
2 violations through an out-of-court settlement
3 agreement. To date, Ms. Gautreaux has not responded
4 to the Department.

5 Therefore, Staff recommends the matter to be
6 referred to the office of Attorney General.

7 CHAIRMAN HARDECKE: Okay. Thank you.

8 Robert?

9 MR. ROBERT GAUTREUX: Good Morning.

10 CHAIRMAN HARDECKE: Thank you.

11 MR. ROBERT GAUTREUX: I'm Bob Gautreaux. The --
12 first off, the -- Bill Vossberg contacted me in
13 October of -- of '08 to do inspection. At the
14 time I informed him that that lagoon -- that the
15 trailer park serviced by the lagoon was awarded to
16 my, now, ex-wife in the Divorce Decree and I had
17 provided her -- I called DNR, got the necessary
18 paperwork to transfer, so she could transfer the
19 permit in her name and gave it to her which obviously
20 she never did.

21 Bill Vossberg also gave her the paperwork again
22 when he did the inspection and to date she's still
23 never transferred the permit over. The lagoon is the
24 only thing -- Hillcrest is the only thing serviced by
25 that lagoon and I have absolutely no interests in the

00039

1 trailer park. It was all given away in the divorce.

2 She -- I have -- I had provided them with
3 documentation. I never saw an inspection report on
4 that lagoon after Bill Vossberg did it 'cause all
5 that -- he -- it was all going to her because she
6 owns the trailer park. I really don't know what else
7 I can do on that to -- to -- to force her to -- to
8 take care of what she should.

9 There's a couple of other issues in there that
10 there was some inspection reports missing, one, was
11 2003. I have looked for that a lot of documentation
12 was removed just by -- the company that did it was
13 HTO (sic) -- H2O Labs and I believe when I tried to
14 search for them they're out of business. 'Cause I
15 was trying to find another copy of that. So I never
16 could find a copy of '03s. '06s that's in the letter
17 that was sent to me on this hearing, I did find and
18 provided it to DNR. Why that -- they didn't have it,
19 I don't know. But that was taken care of. In '08,
20 again, I didn't own the lagoon. I didn't do testing
21 on it.

22 What I really ask is any referral to the State
23 Attorney General is in my -- for my ex-wife only.
24 She's not responded to anything or much of anything,
25 I believe, to DNR the certified letters, anything

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1 she can go unanswered, unpicked up or anything. I
2 have done my best to do whatever DNR asks. I provide
3 them all the documentation I could. And I don't know
4 what else to do.

5 CHAIRMAN HARDECKE: But your name is on -- his name
6 is on the original permit, right?

7 MR. KEVIN MOHAMMADI: Yes.

8 MR. ROBERT GAUTREUX: Yes. It is. Name's on the
9 original permit. When we bought it, I transferred it
10 as you're supposed to out of the person's name. And
11 she's just -- not only the lagoon, she's ignored
12 maintenance in the trailer park and everything, too.

13 CHAIRMAN HARDECKE: I don't know that we can help you
14 with those problems so probably the best thing we can
15 do is refer it and then you'll have to get legal
16 counsel to force her to do this, so --

17 COMMISSIONER EASLEY: May I ask a legal question?

18 CHAIRMAN HARDECKE: Yes.

19 COMMISSIONER EASLEY: Just because he had a Divorce
20 Decree and a Quick-Claim Deed that -- that
21 transferred this to his ex-wife; does that relieve
22 him of any responsibility or liability?

23 MR. KEVIN MOHAMMADI: I think, Commissioner Easley,
24 that would be decision that would be made by office
25 of Attorney General Office to see who has liability

00041

1 as they -- they get the case that they want to only
2 pursue Ms. Gautreaux or both, Mr. and Ms. Gautreaux.

3 COMMISSIONER EASLEY: So we're contending, at this
4 point, that he does have liability and responsibility
5 on this?

6 MR. KEVIN MOHAMMADI: We are -- we are recommending
7 to refer the entire case to the office of Attorney
8 General Office.

9 COMMISSIONER EASLEY: Including both parties?

10 MR. KEVIN MOHAMMADI: Correct.

11 COMMISSIONER TUPPER: How do we --

12 MR. JENNIFER FRAZIER: Excuse me. Oh. I'm sorry.
13 Go ahead, Mr. Tupper.

14 COMMISSIONER TUPPER: How do we do that if the permit
15 that's issued to him has expired?

16 MR. KEVIN MOHAMMDI: Well, the fact that even the
17 permit has expired there was no application filed
18 then to transfer the permit to the new owner
19 and to renew it.

20 COMMISSIONER TUPPER: When it expired he didn't own
21 it according to this.

22 MS. JENNIFER FRAZIER: If I may jump in since you
23 asked a legal question I feel obligated to respond.
24 Under the Clean Water Regulations the permit -- the -
25 - the person whose name the permit is in continues to

00042

1 be responsible even though the facility is
2 transferred unless they file this application for
3 transfer.

4 And, also, we do hold people, after a permit
5 expires, if they continue to operate the facility we
6 will continue to hold the person who owns and
7 operates the facility responsible.

8 From a practical standpoint we will most likely
9 hold Ms. -- your ex-wife as the primary responsible
10 party in this case, but that's something that we
11 would work out once the case was referred to our --
12 the Attorney General's Office.

13 MR. KEVIN MOHAMMADI: So in other words you -- the
14 Commission does not want to tie Attorney General
15 Office hands by only referring Ms. Gautreaux in case
16 that they decide Mr. Gautreaux has as much
17 responsibility. That may not be the case when they
18 get the case, but you do not want to take that
19 flexibility away from Attorney General.

20 CHAIRMAN HARDECKE: We're dealing with the permit of
21 a facility not -- not who's in current ownership of
22 it?

23 MR. KEVIN MOHAMMADI: That's correct.

24 CHAIRMAN HARDECKE: And like I said a while ago
25 that's not our place to decide the legal issues

00043

1 between you and your ex-wife, so hopefully this can
2 get resolved with the Attorney General's Office.

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

8 **COMMISSIONER SHORNEY:** Second.

9 **CHAIRMAN HARDECKE:** Thank you. Okay. No. 8.

10 **MS. MALINDA OVERHOFF:** You want me to take a vote?

11 **CHAIRMAN HARDECKE:** Oh. I'm sorry. Please take the
12 vote, Malinda.

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

14 **COMMISSIONER EASLEY:** Yes.

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

16 **COMMISSIONER SHORNEY:** Yes.

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

18 **COMMISSIONER TUPPER:** Yes.

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

20 **COMMISSIONER HUNTER:** Yes.

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

22 **CHAIRMAN HARDECKE:** Yes.

23 **MR. KEVIN MOHAMMADI:** The next case is **Hummingbird**
24 **Hills Subdivision.** D2 Construction, LLC, was
25 developing 5 acre subdivision known as Hummingbird

00044

1 Hills located in St. Robert, Pulaski County,
2 Missouri. Storm water from Hummingbird Hills
3 discharges to an unnamed tributary to Gillis Hollow.

4 Since March 2009, Department of Natural
5 Resources has conducted two inspections of
6 Hummingbird Hills. During these inspections, Staff
7 observed Best Management Practices were not in place
8 resulting in sediment erosion and sediment deposits
9 up to 100 yards downstream in the receiving stream.

10 Since April 2009, the Department has issued two
11 Notices of Violation to D2 Construction as a result
12 of violation observed during site inspections. The
13 Notice of Violation and inspection report were sent
14 to D2 Construction's last known mailing address but
15 returned "unclaimed". The second NOV was returned
16 with a note that the P.O. Box has been officially
17 closed.

18 Mr. Donnie Daughtery is the owner and registered
19 agent for D2 Construction. It is our understanding
20 that Mr. Daughtery is currently living in Florida.
21 Mr. Maung T. Myat was a member of D2 Construction and
22 is listed as the facility contact on the permit
23 application. To date neither Mr. Daughtery nor Mr.
24 Myat has responded to Department requests to resolve
25 this matter through an out-of-court settlement

00045

1 agreement.

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

5 CHAIRMAN HARDECKE: Is there anyone here representing
6 D2 Construction?

7 (No response.)

8 CHAIRMAN HARDECKE: I guess we'll make a motion.

9 COMMISSIONER SHORNEY: Mr. Chairman, I move the
10 Commission refer this matter to the Attorney
11 General's Office for appropriate legal action in
12 order to compel compliance, pursue a civil penalty
13 and/or seek any other appropriate form of relief.

14 COMMISSIONER TUPPER: Second.

15 MR. KEVIN MOHAMMADI: Next case is Black Oak Organic

16 --

17 COMMISSIONER EASLEY: What about a vote?

18 MS. MALINDA OVERHOFF: Yes we'll need to take the vote.

19 MR. KEVIN MOHAMMADI: Oh. I'm sorry.

20 MS. MALINDA OVERHOFF: Commissioner Easley?

21 COMMISSIONER EASLEY: Yes.

22 MS. MALINDA OVERHOFF: Commissioner Shorney?

23 COMMISSIONER SHORNEY: Yes.

24 MS. MALINDA OVERHOFF: Commissioner Tupper?

25 COMMISSIONER TUPPER: Yes.

00046

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

2 **COMMISSIONER HUNTER: Yes.**

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

4 **CHAIRMAN HARDECKE: Yes.**

5 Why don't we take a ten minute break before we
6 get to the next one.

7 (Break in proceedings.)

8 **CHAIRMAN HARDECKE: Okay. Where's -- we're to No. 9,**
9 **Black Oak Organics.**

10 **MR. KEVIN MOHAMMADI: Mr. Chairman, we are going to**
11 **be presenting this case to you in two parts. The**
12 **first part will be a PowerPoint presentation. It**
13 **will be presented by Joan Doerhoff who is the case**
14 **manager. Basically, give you an idea of what the**
15 **site looks like, what operation is about for you to**
16 **have a better understanding and then I will follow-up**
17 **after her presentation.**

18 **CHAIRMAN HARDECKE: Okay. Thank you.**

19 **MS. JOAN DOERHOFF: Thanks.**

20 Good morning members or -- Chair Hardecke,
21 members of the Commission as Mr. Mohammadi stated my
22 name is Joan Doerhoff. I'm a water -- I work -- I'm
23 sorry -- I'm an environmental specialist in the Water
24 Protection Program, Compliance and Enforcement
25 section. Thank you for your time this morning.

00047

1 As Mr. Mohammadi stated I am the case manager
2 for Black Oak Organics and the purpose of this
3 presentation is to convey to you photographs that
4 were taken October 2nd by Department inspectors at
5 Black Oak Organics composting facility located in
6 Lawrence County near Verona, Missouri.

7 Go ahead. First thing I would start out with is
8 a map of the facility. As you enter the entrance
9 right here, it's at the top of a hill. You'll go
10 down and see raw products processing to the right.
11 We have grey waste receptacles to the left. Here's
12 our windrows cooking. Black Oak Organics has
13 approximately 15 cooking windrows and three partial
14 windrows. These windrows are not lined with
15 limestone or have clay pads underneath them.

16 Therefore, they have the potential -- the
17 leachate from the compost windrows has potential to
18 discharge into the ground and into the ground water
19 resources.

20 The next thing I'd like to point out is the
21 barrow pit. Black Oak Organics is using a former
22 barrow pit from a closed landfill, TNC Landfill
23 located right over here as a storm water retention
24 basin. Any storm water runoff from the windrows, the
25 raw products, the asphalt shingles, these cardboard

00048

1 drums runs into the barrow pit is under size and
2 insufficient. And storm water runoff will run from
3 the closed landfill or the transfer station located down
4 below also goes into this barrow pit.

5 One thing I want you to keep in mind is this barrow
6 pit is unlined, was constructed with a Department
7 approved construction permit nor was it designed by a
8 professional engineer licensed or practiced in the
9 state of Missouri.

10 This -- the next thing I want to keep -- point
11 out is the receiving stream, is Honey Creek which is
12 a losing tributary. It is also located in a sinkhole
13 area. For those of you who do not know what a losing
14 tributary is, it's a stream which distributes 30
15 percent or more of its flow during natural processes
16 through low -- through low flow conditions during
17 natural processes such as (inaudible) geologic
18 material into a bedrock aquifer located within 2
19 miles downstream of the flow discharged. In this
20 case, the barrow pit.

21 So any storm water that interacts with the
22 materials in the compost operations has potential to
23 discharge through waters of the state, the losing
24 tributary, infiltrate into the ground and impact
25 ground water resources, human health and the

00049

1 environment.

2 So here's a position of orange barrows which
3 you'll see in the slide, finished products prior to
4 screening, finished product screening operations.

5 Next slide, please.

6 Here's just a closer up picture of the
7 receiving stream. It's the red flowing right along
8 the barrow pit and the edge of the windrows. Next slide, please.

9 As you first enter Black Oak Organics
10 you will see a large pile of asphalt shingles. This
11 is located at the top of the hill. The losing
12 tributary to Honey Creek is approximately 1,000 feet
13 from the asphalt shingles. Next slide, please.

14 You'll see discarded concrete and sheetrock;
15 location top of the hill entrance by the raw
16 materials overgrown with vegetation. Next slide,
17 please.

18 Here's a closer picture of the raw materials;
19 location near the entrance at the top of the hill.
20 Losing tributary to Honey Creek is located to the
21 left of the raw materials. Storm water that comes
22 into contact with the raw materials drains downhill
23 through the windrows to the barrow pit at the bottom
24 of the hill. Some of this water bypasses the basin
25 at the -- because the slope is not sufficient to

00050

1 handle this and it also contacts the finished product
2 at the base of the hill and moves around the barrow
3 pit. This barrow pit is insufficient to handle all
4 the storm water that comes into process with it as
5 well as the processed water.

6 I think I forgot to mention that Black Oak
7 actually uses this -- the water in the barrow pit and
8 amalgamates into its compost mixtures each day for
9 the cooking process. Next slide, please.

10 Here's a better picture of some raw materials;
11 location near the entrance, note, the old tires and
12 the barrels in the background. Next slide, please.

13 Here's a close picture of metals and stockpiles
14 of raw materials; location top of hill, the entrance.
15 Black Oak Organics is using this raw materials
16 to make compost piles. There are two or three large
17 stockpiles of raw materials near the entrance. I'm
18 going to point out some products or some materials:
19 ply board, a hose, a paint can as you really can't
20 see but it's a blue paint can, rebar which you can't
21 see, foam, sheetrock, treated lumber. Next slide,
22 please.

23 Here's another picture of materials in the
24 stockpile of raw materials; location top of the hill
25 at the entrance, again, Black Oak Organics is using

00051

1 this raw material to make compost piles. The
2 Department really doesn't know what is coming into
3 the -- to the facility, what is being
4 composted; what is being processed? Okay.

5 Storm water that comes into contact with these
6 raw materials runs off the piles and has potential to
7 enter waters of the state. Next slide.

8 Scrap metal and weathered sheetrock located at
9 the top of the hill, to the left of overgrown or --
10 over vegetated pile. Next slide, please.

11 Weathered sheet rock. Next slide, please.

12 Full trash receptacle, equipment in the
13 background shreds the pallets. Next slide, please.

14 Screening occurs at the very bottom of this photo.
15 Next slide.

16 Here's down slope towards the finished product;
17 location is on the top of the hill at the entrance.
18 We have your treated lumber on the right and your
19 finished product prior to screening out the large
20 products after it is cooked. Next slide, please.

21 Here's the 32 orange barrels that I noted in
22 our first map. When the inspector was out there on
23 October 2nd, 2009, they seen 32 orange barrels. These
24 barrels are made of -- they're located at the bottom
25 of the hill to the left of the screening area.

00052

1 They're fiber drums made of heavy cardboard and
2 appear to contain animal fats. Next slide, please.

3 The label says liquid, scrap not for human
4 consumption. Next slide, please.

5 You really can't see this, but it is in the
6 print outs, the colored print outs and I apologize
7 these print outs are a little bit different than what
8 is handed out. The inspector noted white, creamy,
9 greasy fat and darker skins were observed in one of
10 the unsealed barrels and it smelled of decom- -- you
11 know, of terrible odor. Next slide, please.

12 We have metals behind the orange barrels;
13 located at the base of the hill to the left. Note,
14 the steel beams and bicycles in the pile. Next
15 slide, please.

16 From the barrow pit edge to the screening
17 operations; barrow pit is located behind the
18 screening operations. Next slide, please.

19 Here's a barrow pit berm towards the
20 screening operations complete finished product is on
21 the left. Screening occurs in front of finished
22 product. Barrow pit is located behind the
23 photographer and tributary is to the right. Any
24 storm water which interacts with the material in the
25 screening process immediately enters receiving

00053

1 stream. Next slide, please.

2 Here's a better look -- picture of the whole
3 barrow pit in relation to the compost windrows.
4 Here's the windrows. We have our barrow pit. Here's
5 the old landfill, raw product and the transfer
6 station. Next slide, please.

7 Here's the edge of the barrow pit, which shows
8 wastewater processed storm water with leachate
9 running up into the windrows. Here is scum. Here's
10 a discharge pipe from the facility. Here's a rock
11 ledge and the windrows. Storm water contaminated
12 leachate and our processed wastewater discharges from
13 the barrow pit and into the losing tributary to Honey
14 Creek. The rock edges fissured with breaks in it
15 meaning the discharge has a potential to impact the
16 quality of the ground water. Next slide, please.

17 We have inlet covered with pallet, overgrown
18 vegetation. Next slide, please.

19 Discharge pipe of the barrow pit, sludge in the
20 pipe. Next slide.

21 And here's water in the windrows. Next slide.

22 Cooking compost piles, again, these are not
23 lined. Next slide.

24 De-composting organic waste. Next slide,
25 please.

00054

1 Foam in the cooking windrows. Next slide.

2 Plastic in the cooking windrows. A Mountain Dew
3 bottle, plastics, poor operational control continuing
4 at Black Oak. Next slide.

5 Here's a spoon in the cooking. Next slide.

6 Compost pile with tributary in background.

7 Tributary and the barrow pit. Next slide.

8 Right -- losing tributary is to the right of the
9 tree line. The berm is located directly to the right
10 of the photo. And the discharge pipe located to the
11 right. Next slide, please.

12 And finished compost covered with vegetation,
13 very little operation control of materials, leachate
14 from many unknown sources can infiltrate and impact
15 the environment.

16 That completes my presentation. Mr. Mohammadi
17 will finish. Thank you for your time.

18 CHAIRMAN HARDECKE: Thank you.

19 MR. KEVIN MOHAMMADI: Thank you, Mr. Chairman. The
20 second part of the presentation is history of non-
21 compliance with Black Oak that I will be presenting
22 to you.

23 Black Oak Organic, LLC, owns and operates a
24 composting facility located in Lawrence County, where
25 the public pay to drop off yard wastes, wooden

00055

1 pallets, tree stumps, et cetera, to be processed into
2 a finished product that is sold. Black Oak leases a
3 property where the composting facility is located and
4 is using an existing barrow pit as a storm water
5 retention basin. The basin collects processed
6 wastewater flows and its storm water discharges from
7 the organic compost part and sawdust parts.

8 In January 2005, Black Oak obtained approval to
9 obtain the composting facility using yard wastes, saw
10 dust and wood -- and food waste on 2 acres of a
11 former barrow area of a closed landfill as a pilot
12 project from Department of Natural Resources- --
13 Department Solid Waste Management Program and Water
14 Pollution Control Branch. Pursuant to Missouri Clean
15 Water Commission regulation yard waste composting
16 facilities less than 2 acre in size and which do not
17 discharge storm water are exempt from the requirement
18 of a general permit.

19 This approval was contingent upon the following
20 condition, one, the pilot project may be -- may be
21 conducted for one year and then Black Oak must submit
22 a written request to continue the project. Number
23 two, within 60 days of completing construction of the
24 clay pad, Black Oak submit as built drawings to the
25 Department. Number three, deviation to the project

00056

1 must be approved by the Department prior to
2 implementation. Number four, if Black Oak expands or
3 reuses biosolids in the future Black Oak may be
4 required to obtain a site-specific storm water
5 permit. Number five, within 60 days of completing
6 the pilot project the company must submit a report
7 outlining the procedures used during the project.

8 In August 2006, the Solid Waste Management
9 Program gave Black Oak permission to accept eggshell
10 and waste -- waste wash water from American
11 Dehydrated Foods, ADF. The Department has received
12 numerous odors complaint about the facility and Staff
13 conducted investigation in June and August 2007 and
14 observed the storm water contaminated with leachate
15 flowing from the compost piles to the retention basin
16 and discharges to a losing tributary of Honey Creek.

17 During these inspections Staff determined that
18 general permit exemption was no longer applicable and the
19 Department required Black Oak to obtain a site-
20 specific storm water permit.

21 Because the grinding, loading and unloading of
22 -- unloading area of the composting facilities are
23 greater than 2 acres, 30 percent biosolids are being
24 mixed into the composting piles and the facility is
25 discharging contaminated storm water from retention

00057

1 basin.

2 After the inspection in August 2007, the
3 Department Solid Waste Management Program required
4 Black Oak to cease accepting the ADF eggshell waste.
5 On November 2007 the Department received an
6 application for construction permit for construction
7 of no-discharge retention basin and composting
8 facility.

9 On December 2007, Black Oak executed a
10 compliance agreement between Black Oak and the
11 Department. In this agreement, the Department
12 allowed Black Oak to accept egg waste on certain
13 conditions. Such conditions includes completing
14 construction of all facilities approved in the permit
15 within 365 days of the date the Department issued the
16 construction permit, applying for Missouri State
17 Operating Permit and submitting a statement of work
18 completed.

19 On May 12th, 2008, the Department issued a
20 construction permit to Black Oak. On May, 2009,
21 Department Staff conducted a construction inspection
22 of the composting facility and documented that
23 construction of the new facility had not begun. On
24 May 2009, the Department received a request for 180
25 days extension to complete construction.

00058

1 Since June 2007, the Department has issued
2 Black Oak one Letter of Warning and one Notice of
3 Violation for the violation of Missouri Clean Water
4 Law. Effective August 1st, 2009, Black Oak no longer
5 receives ADF eggshell waste. On August 2 -- August
6 25, 2009, the Solid Waste Management Program sent
7 correspondence to Black Oak revoking its approval for
8 the operation of a composting facility at this site
9 and demanded that the site be returned to pre-
10 composting condition.

11 On August 26th, 2009, the Department sent a
12 draft abatement order on consent to Black Oak in an
13 effort to reach an agreement. This abatement order
14 and consent required Black Oak to cease accepting all
15 waste or material from all sources. Cease
16 discharging processed wastewater or storm water to
17 waters of the state and properly close existing
18 retention basin.

19 On September 23rd, 2009, Department Staff met
20 with representative of Black Oak to discuss a draft
21 abatement order and consent. Black Oak informed
22 Staff that they had not reviewed the abatement order
23 and consent and proposed its plan for a new
24 composting facility in the same location.

25 To date Black Oak has failed to bring facility

00059

1 into compliance with Missouri Clean Water Law and we
2 have not been able to reach an agreement. Therefore,
3 Staff recommends the matter to be referred to the
4 office of Attorney General Office for appropriate
5 legal action.

6 CHAIRMAN HARDECKE: Okay.

7 MS. LEANNE TIPPETT MOSBY: We have some people from Solid
8 Waste Management here.

9 CHAIRMAN HARDECKE: Craig Post? Hello.

10 MR. CRAIG POST: Good morning. My name is Craig
11 Post. I'm one of the members of Black Oak Organics.
12 The last document with which the, I think, this is
13 the best place to start. The last document of the
14 inspection of our facility on October 2nd, I was
15 present at the facility.

16 Megan Hart did the inspection. Megan Hart came
17 up to me told me that she was here to see that the
18 facility was being abated nothing was relayed in
19 conversation that our facility was having an
20 inspection. She did make mention to me at that
21 meeting that, yes, it looked liked you were abating
22 the property and that everything seemed to be looking
23 good, that she wanted to take some pictures.

24 We received the pictures enclosed here under a
25 Sunshine request with which there was communication

00060

1 with Joan Doerhoff in reference to; it doesn't look
2 like the facility was being cleaned off quick enough.
3 There were orange barrels; did you by chance talk to
4 Mr. Post on what was happening at the facility?

5 No where in any of those communications are no
6 documentation that we had an inspection. Most of
7 these items that are in here were items that have
8 been on the property since Megan Hart's site visit in
9 July of '08 which was a site visit just to -- to
10 assist, an assist site visit to assist us and, you
11 know, anything that we needed to do at the facility
12 and none of these things with which were brought up
13 in here posed any problem to her at that point.

14 A couple of things that Joan made mention of in
15 -- in -- in the review here and they -- everything is
16 in your document. We have attached documents. We
17 have attached a time line which shows a different
18 position that the state has had in our eyes than what
19 the state has given you as to what our facility is.

20 On June 6th of 2006, the revised operating plan
21 which was a 7 acre facility was approved by both
22 Solid Waste and Water on the location of the
23 materials that were in question in the pictures.

24 In -- in -- in their remarks to a meeting to sit
25 down and discuss the facility; Black Oak requested

00061

1 the meeting in September of this year to provide,
2 which is -- which I submitted in our appeal to the
3 board a revised construction plan to get our facility
4 constructed. That September meeting was premised by
5 a document on July 14th, by Rob Morrison which is not
6 on the time line but which is -- is highlighted in
7 your packet that Rob's recommendation was, is that we
8 have to go through a process here. What we want to
9 do is put a time line with which to get the existing
10 construction permit constructed and a compliance plan
11 for a time date so that if you don't meet those there
12 will be certain costs associated with them.

13 When we received the July 14th document I did
14 contact Joan Doerhoff. She asked me at that point,
15 are you willing to continue with this? And I say,
16 yes, I disagree with the three initial items that we
17 were contaminating the waters of the state but I'm
18 willing to work with you on a compliance schedule.
19 No where in the August 26th abatement order on
20 consent did it list out any of the things with which
21 I agreed to in the July 14th letter. No where in the
22 documentation from the state is there a switch of
23 position till the August 26th -- August 25th and 26th
24 orders to revoke our pilot project because we did not
25 have a water permit because that had been rescinded

00062

1 because we had missed our construction time line.

2 We list out in the packet here a complete time
3 line that there were multiple times with which we
4 could get the facility constructed if the time lines
5 by the state were met. We would be able -- would have
6 been able to -- to go for an extension once we
7 received certain documentation which was agreed upon
8 by both Solid Waste and Water at the August 7th -- at
9 the August 7th meeting with which we sat down to
10 discuss a construction plan for the facility.

11 In that business plan it had certain documents,
12 had certain volumes, had certain revenues, that would
13 substantiate construction of the facility. Those
14 documents took from September 9th of '08 when we saw
15 the deficiencies in the documentation that was
16 written till approval after the Notice of Violation.
17 We were approved for that material two weeks after.
18 In communications with Charlene Fitch; Charlene
19 Fitch's reason for giving us that approval was to
20 expedite construction of the facility so that, you
21 know, we could move forward and that -- and that was
22 in a comment with her.

23 The picture here and we have and I have another
24 item here that I want to pass out after I get done
25 talking. We had a test done. There is a retention

00063

1 pond directly south -- directly north of the transfer
2 station with which we sit in front of. We, on our
3 behalf, had the water tested on a release coming from
4 that retention pond which because of the rainfalls
5 everything falls down to our facility. We have -- we
6 have tested our facility and in the parameters of --
7 in the parameters of the new construction permit we
8 met those tolerances on the last water release that
9 we provided the water -- the Water Division.

10 This shows a different picture of the type of
11 material which is rolling on to our facility. When
12 you get excessive rain events which can't be handled,
13 you know, by the surrounding, you know, farming
14 areas. I would like, and what I would like to do is
15 pass on to my partner Alan which hopefully will give
16 you a -- I want to give a, just a verbal view of what
17 Black Oak is so that you as a board can make your
18 decision, you know, on what needs to be done here.

19 The -- what we are asking is plain and simple
20 what we came to the Water Commission for in September
21 to construct a much reduced size facility with which
22 has already been permitted by the state that we can
23 then be compliant with both Solid Waste and Water and
24 provide the services which we have been providing
25 since '05.

00064

1 CHAIRMAN HARDECKE: I got one question.

2 MR. CRIAG POST: Sure.

3 CHAIRMAN HARDECKE: You did get a permit issued in
4 May of '08, right?

5 MR. CRAIG POST: Yes.

6 CHAIRMAN HARDECKE: And had that permit for a year?

7 MR. CRAIG POST: Yes.

8 CHAIRMAN HARDECKE: Okay. Okay. You want to turn it
9 over to Alan for the rest of the time?

10 MR. CRAIG POST: Yes.

11 CHAIRMAN HARDECKE: Okay. Alan Chappell?

12 COMMISSIONER TUPPER: Thank you, sir.

13 MR. ALAN CHAPPELL: Thank you, again, for the
14 opportunity.

15 CHAIRMAN HARDECKE: You got about four minutes left.

16 MR. ALAN CHAPPELL: Okay. The -- this who is Black
17 Oak Organics is in your packet and a -- and, again, I
18 understood your question to Craig about having the
19 permit for a year. At the August 7th meeting that he
20 referenced we were very clear with Staff that was
21 there that if we were allowed to accept a volume of
22 material for a period of year it would generate the
23 revenue to construct that facility.

24 What happened was there was a wording glitch in
25 the operations agreement we submitted to M- -- MDNR

00065

1 probably 60 days into that permit period to have that
2 wording clarified; not asking for more material
3 simply a wording clarification and that never took
4 place in that we were told it would. We was told
5 that there was a letter ready. We were told it
6 lacked one signature and we received it -- we would
7 received that; we never in 12 months received that
8 from MDNR in 30 days or a few weeks after the
9 expiration of the construction permit we were then
10 sent that letter.

11 We were denied the -- the opportunity to build a
12 facility by not receiving the revenue by MDNR not
13 making good on their commitment in that manner. And
14 that is one of the -- and those things are all
15 outlined in this -- in this packet. And many of
16 these allegations by -- by Staff have completely
17 changed in the last 60 days since the issuing of the
18 -- of the August 26th letter. And we have provided
19 numerous pieces of information that show that Staff's
20 tone, their support of this project, their -- all of
21 their approvals; we are on a clay pad at that
22 facility and, yet, they stand and tell the Commission
23 we're not.

24 All of these things we have documented and those
25 were all documents that were excluded to the

00066

1 Commission. You did not receive those from Staff but
2 we have included those to refute numerous of these
3 allegations. And I -- I think, I'm not going to be
4 able to read this in four minutes, basically, this
5 talks about Black Oak, our ability, what we have done
6 is built and organics recycling market which is much
7 more than a compost facility in southwest Missouri.
8 A compost facility is not sustainable if you don't
9 develop and build that market to sustain it.

10 We have done that and now have 25 grocery
11 stores, numerous restaurants, MSU (State university),
12 Drury University, school systems are participating in
13 this solely because of Black Oak's efforts in this --
14 in this region. We included an article that just
15 came out in August issue of BioCycle Magazine that
16 talks about the progressiveness of this state, in
17 this green activity, in the organics recycling. It
18 talks about Black Oak Organics. It talks about the
19 state of Missouri. It talks about MoDNR Staff in a
20 very favorable light.

21 And, basically, we have received numerous awards
22 from construction organizations in that we take those
23 materials create compost and erosion control
24 materials and return them back to construction sites.
25 We have helped to create that entire leads market in

00067

1 southwest Missouri. All of this is in your packet.
2 All documented. And the fact is that because not
3 being able to construct this facility does not
4 mitigate all of the support and approvals we've had
5 from Staff up to that point.

6 We're asking that this Commission direct Staff
7 back to the table, look at the drawings we have
8 submitted and approve those so that we might
9 construct and continue this work in southwest
10 Missouri.

11 Thank you.

12 COMMISSIONER TUPPER: Question. You say you're on a
13 clay pad. How was it constructed? What degree of
14 compaction? What was the --

15 MR. ALAN CHAPPELL: I -- we --

16 COMMISSIONER TUPPER: -- in the lifts?

17 MR. ALAN CHAPPELL: Are the -- are the drawings in
18 there? Or are they the same -- are they the same
19 compaction and lifts as our original pilot project?

20 MR. CRAIG POST: That's the original pilot project.

21 MR. ALAN CHAPPELL: Okay. They will -- we have
22 included the drawings --

23 COMMISSIONER TUPPER: Who did the inspection?

24 MR. ALAN CHAPPELL: Carl's with?

25 MR. CRAIG POST: Carl's with Andrew's Environmental.

00068

1 MR. ALAN CHAPPELL: Andrew's Environmental, sir.

2 COMMISSIONER TUPPER: Do you have that information?

3 MR. ALAN CHAPPELL: Yes. It's -- it's in your

4 packet. And those were the -- that's the same

5 engineering firm that our environmental legal

6 representation sent the letter to MDNR Staff in July,

7 mid July, late July setting the meeting for September

8 23rd. We spent tens of thousands of dollars on these

9 new drawings, said we want to come and talk to you

10 about this, they set that meeting and when we showed

11 up we were told they would not discuss those.

12 COMMISSIONER TUPPER: What -- what's this August

13 letter you talk about? What does it look like?

14 MR. ALAN CHAPPELL: It's the AO.

15 COMMISSIONER TUPPER: You guys don't date anything?

16 MR. ALAN CHAPPELL: I'm sorry, sir?

17 COMMISSIONER TUPPER: You don't date any of your

18 correspondence.

19 MR. ALAN CHAPPELL: All of it.

20 COMMISSIONER TUPPER: A couple of times I found a

21 date when it was faxed and one of them has a date

22 written in, in pencil but this letter right on the

23 front, no date.

24 COMMISSIONER HUNTER: That's the way mine was, too.

25 MR. ALAN CHAPPELL: I can't -- I don't -- I can't

00069

1 speak to that.

2 COMMISSIONER TUPPER: I mean, we can't -- we can't
3 tell a whole lot from all this stuff you sent us if
4 we don't know when it was written.

5 MR. ALAN CHAPPELL: Well, the document that includes
6 their correspondence to us is dated. It highlights
7 their correspondence and then everything that follows
8 is dated. And then hard copies are behind that.

9 COMMISSIONER TUPPER: Well, not necessarily 'cause
10 there's several duplications in this packet.

11 MR. ALAN CHAPPELL: Okay.

12 COMMISSIONER TUPPER: Several things are in there two
13 and three times.

14 MR. ALAN CHAPPELL: Okay.

15 CHAIRMAN HARDECKE: I've got a question --

16 MR. ALAN CHAPPELL: Yes, sir.

17 CHAIRMAN HARDECKE: -- back on your original permit.
18 You said that you -- you were awarded the permit in
19 May of '08 and then there was some letter that you
20 were supposed to get from DNR --

21 MR. ALAN CHAPPELL: No.

22 CHAIRMAN HARDECKE: -- that you never got?

23 MR. ALAN CHAPPELL: No. During August of '07 the --
24 the meeting we were -- were, in -- in working with
25 DNR on the compliance --

00070

1 (Tape One, Side B Concluded.)

2 CHAIRMAN HARDECKE: -- '08.

3 MR. ALAN CHAPPELL: Staff at the table, we -- they in
4 turn -- you know, they say to you this is basically a
5 compliance agreement and you're agreeing to construct
6 this facility within 365 days and I said, yes. And
7 at the same time, what we -- what has been included
8 in this is a volume of material which carries an
9 amount of revenue into this facility and you are
10 committing that we can receive this volume -- this
11 volume of material and revenue.

12 And if both of those things happen, absolutely,
13 we have -- we have the revenues to construct. What
14 happened was within 30 days or so of -- of starting
15 that 12 month construction period the hauler found a
16 wording glitch and indicated to us they were not
17 going to deliver those volumes because of this
18 wording glitch at which time Craig began immediately
19 to discuss, and I think it was with J.P., initially,
20 that we have to clarify this wording glitch --

21 CHAIRMAN HARDECKE: A wording glitch in the permit?

22 MR. ALAN CHAPPELL: In the operations agreement,
23 which is, I think, part of -- incorporated as part of
24 the permit.

25 MR. CRAIG POST: It's part of the permit.

00071

1 MR. ALAN CHAPPELL: And we ask -- we asked for that
2 for a period of eight or nine months from MoDNR and
3 did not receive it.

4 After the construction permit expired within
5 four to five weeks, I think, it was from Charlene
6 Fitch --

7 MR. CRAIG POST: Yes.

8 MR. ALAN CHAPPELL: -- we received a letter stating
9 we could now -- that they -- they repaired that and
10 we can now accept those materials.

11 MR. CRAIG POST: On --

12 CHAIRMAN HARDECKE: I guess, what --

13 MR. ALAN CHAPPELL: And --

14 CHAIRMAN HARDECKE: -- concerns me about your
15 statement is you needed that revenue to be able to
16 construct, well, if you recall the previous
17 discussion of the -- the other ARRA funds those
18 entities were all required to have their funding
19 taken care of upfront before they got their -- their
20 funding or their permits.

21 MR. ALAN CHAPPELL: Um-huh.

22 CHAIRMAN HARDECKE: So I don't -- I don't think that
23 we're in the business of allowing you to operate to
24 get the revenue to do the construction. Now, you'd
25 have to go borrow the money like the rest of us would

00072

1 to do your construction within the given time frame
2 of your permit.

3 MR. ALAN CHAPPELL: And -- and I absolutely agree
4 with that as a normal business procedure. When you
5 are a composting facility and you're building food
6 waste recycling markets; go to a bank and see how
7 much money they'll loan you because they say if
8 something goes bad, what do you have? And you say
9 dirt. And that -- we are building a market and the
10 fact is that during this 12 month period we have
11 built the actual food waste market through these
12 grocery stores, through these restaurants, through
13 these universities, through these school systems to
14 the point we do not need AD- -- ADF waste, which has
15 always been the source of concern as far as any
16 perceived potential contamination to the waters of
17 the state.

18 We don't need that and we don't receive it now
19 nor will we ever receive it. We are not going to
20 take that waste. And we have told Staff that. What
21 we are going to accept is food waste; lettuce,
22 tomatoes, bread and that is not a potential threat to
23 the waters of the state.

24 CHAIRMAN HARDECKE: Okay. But my -- my comment is in
25 regard to the funding I don't know that DNR's allowed

00073

1 to give you a permit contingent on you making enough
2 money to -- to construct it.

3 MR. ALAN CHAPPELL: That was the -- but they sat at
4 the table and made that agreement in '07. The fact
5 is, today, we do not need that. Our revenues come
6 from food waste. We don't need any agreement for
7 volume. The drawings that we have submitted, the
8 greatly reduced size facility, all of the features,
9 like, the retention basin that they bring up have
10 already been approved in the previously issued
11 construction permit.

12 And we don't need any additional funding to
13 build that. We just need the approval and a permit
14 and given the weather we would be constructed in 60
15 days.

16 COMMISSIONER TUPPER: What did you get completed
17 within the 365-day period that was on the permit?

18 MR. CRAIG POST: We -- we did diversion from the
19 landfill; from water coming from the landfill on to
20 our facility and reduced -- reduced our --

21 COMMISSIONER TUPPER: Tell me how.

22 MR. CRAIG POST: By a diversion berm going down our
23 entrance road and then a diversion berm which
24 directed the water away from our compost facility.

25 COMMISSIONER TUPPER: Okay.

00074

1 What else?

2 MR. CRAIG POST: That is it.

3 COMMISSIONER TUPPER: In a year?

4 MR. CRAIG POST: Yes.

5 COMMISSIONER SHORNEY: Did you ask if your engineer
6 would make a presentation today?

7 MR. CRAIG POST: Did not.

8 MR. ALAN CHAPPELL: But you have his drawings, his
9 cover letter, his explanation. Every bit of that is
10 it the packet as to what -- what we've sent. And it
11 is the same drawings, the same features that have all
12 been approved. It's sounded to me when listening to
13 MDNR Staff like we have done all of this without any
14 approval at all. If you will look at the
15 documentation we have provided, we have been approved
16 to do absolutely everything we've done.

17 And our pilot project was caveatted at the end
18 by a sentence saying that we would be allowed to
19 continue operation if we were under negotiations or
20 in a permitting process. So the one year time line
21 was a bit mitigated by that caveat.

22 And the fact is, that everybody was involved in
23 the beginning pilot project they're not -- they're
24 not with MDNR; Scott Waltrip, Jim Hull. Many of
25 these people who understood this vision and the fact

00075

1 of growing the market and how one -- one supports the
2 other and sustains the other and how you have to do
3 it all. All of those things -- those people are
4 gone.

5 So there's been a lot of miscommunications and
6 misinformation because there's not been a consistency
7 in what's been going on here.

8 CHAIRMAN HARDECKE: Is that document you referred to
9 with that caveat in --

10 MR. ALAN CHAPPELL: Yes, sir. The pilot project
11 approved.

12 CHAIRMAN HARDECKE: Pilot project approval; is that
13 in here?

14 MR. CRAIG POST: The pilot project, no, this -- this
15 documentation follows the dates of the submittal to
16 Clean -- to -- to you from --

17 MR. ALAN CHAPPELL: We can certainly provide that --
18 that without any problem whatsoever to the members.

19 CHAIRMAN HARDECKE: Any other comments or questions?

20 COMMISSIONER TUPPER: Well, I think, the fact that
21 the construction permit was issued is attributable to
22 the engineering drawings that you're talking about,
23 but at that point you dropped the ball and nothing
24 was done.

25 MR. ALAN CHAPPELL: Well, sir, I -- I understand --

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1 COMMISSIONER TUPPER: If you drove on to the site,
2 you would say nobody's been there in five years.

3 MR. ALAN CHAPPELL: Well, and the other point that
4 comes out in all the documentation is, number one,
5 they did not indicate that was an inspection; whether
6 that's here or there. They -- they come to the site
7 after what, the actual construction permit if you
8 look in the wording terms, a catastrophic rain event.
9 They show up after 15 inches of rain in ten days or
10 14 days and then walk on the site. One of the
11 initial dates where they did the initial inspection
12 was after a rain event of, I think, like 9 inches.

13 And the very next day they were there taking
14 pictures and I'm saying in our construction permit it
15 -- it -- the wording indicates that that is not a
16 discharge if it's behind a catastrophic event. The -
17 - the constructed facility is constructed for a
18 certain design to hold a certain amount of storm
19 water and every time the -- the -- when these doc- --
20 when this documentation is made it's behind an event
21 that exceeds that design.

22 So -- so the constructed facility would have
23 looked the same behind that catastrophic rain event.
24 And there would have been a discharge and we would
25 have been asked to test the water that discharged,

00077

1 which we do anyway and when we -- when we turn those
2 in we're not exceeding parameters. So it's this idea
3 of a potential contamination, is just that.

4 That's why words like potential are being used.
5 If there was so much contamination it would seem
6 there would be -- there would be tests that would be
7 showing that. Where we have the water tests that
8 show we have not contaminated. And those are the
9 things we're doing, but we -- you know, we couldn't
10 build the facility because the business plan that was
11 agreed to by MDNR Staff and by Black Oak was not
12 adhered to.

13 And my -- my question that, I guess, I'm trying
14 to get across is: If Staff wouldn't approve the
15 clarification modifying the wording so that we could
16 receive the material, they had approved us to
17 receive, and make that revenue and construct. Why
18 after an NOV? Why after the construction permit has
19 been -- has expired? Why would Staff send us a
20 letter approving us to take that material? The thing
21 that now they stand before you and say is so
22 detrimental to the waters of the state.

23 CHAIRMAN HARDECKE: Now, are you talking about the
24 material from ADF? Is that what's in question with
25 this?

00078

1 MR. ALAN CHAPPELL: Our -- the material from ADF was

2 --

3 CHAIRMAN HARDECKE: No. I'm talking about -- you

4 said there was a glitch in the --

5 MR. ALAN CHAPPELL: Yes. Yes, sir. Yes, sir.

6 CHAIRMAN HARDECKE: That was referring only to the --

7 MR. ALAN CHAPPELL: Eggshell.

8 CHAIRMAN HARDECKE: -- material from ADF?

9 MR. ALAN CHAPPELL: Eggshell. Yes, sir.

10 And the fact is we have not accepted eggshell

11 since July 31st. And that everything that we have

12 submitted for approval includes no ADF waste

13 whatsoever. We have enough client base and enough

14 revenue from grocery stores, university cafeterias,

15 those types of things that we don't need ADF waste

16 nor do we wish to take it anymore.

17 CHAIRMAN HARDECKE: Leanne?

18 MS. LEANNE TIPPETT MOSBY: I would just like to point

19 out to the Commissioners we do have a representative

20 here available from our Solid Waste Management

21 Program, which is the other program that's been

22 involved in this issue. His name is Chris Nagel.

23 And if it pleases the Commission he's willing to come

24 up and answer questions and provide information.

25 COMMISSIONER SHORNEY: So you contend that your

00079

1 windrows are setting on a clay base?

2 MR. CRAIG POST: As per the submittal in the package
3 they are -- we had a clay base compacted with a 2
4 inch layer of lime rock compacted and then on top of
5 that is 2 to 4 inches of wood material. So on the 2
6 acres --

7 COMMISSIONER SHORNEY: Now, when was -- when was that
8 done?

9 MR. CRAIG POST: That was constructed before we
10 started composting.

11 COMMISSIONER SHORNEY: What time, what month, what
12 year?

13 MR. CRAIG POST: I believe '05.

14 MR. ALAN CHAPPELL: Summer of '06.

15 MR. CRAIG POST: Summer of '06.

16 In the -- in the August -- in the August 6th
17 approval for the expanded facility for the process of
18 materials, you know, in front and the compost in the
19 back the -- the -- it shows on the drawing we -- we
20 constructed the pad in stages. It had first -- first
21 -- first part completed, second part completed, third
22 part to be completed.

23 COMMISSIONER SHORNEY: And you -- those original --
24 that original construction did that have -- was that
25 done by an engineer, engineering drawings which were

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1 sealed by an engineer?

2 MR. CRAIG POST: It was, I believe, in our pilot
3 project we submitted how we were going to construct
4 the pad. They were not in a sealed packet.

5 COMMISSIONER SHORNEY: They were not sealed by a
6 registered engineer in Missouri?

7 MR. CRAIG POST: No.

8 MR. ALAN CHAPPELL: They were compliant with the
9 pilot project approval. And unless I'm mistaking the
10 pilot project doesn't require that. Whatever we were
11 asked to do by Solid Waste and Water in getting -- in
12 seeking and getting the pilot project approval, we --
13 we did. We complied with.

14 CHAIRMAN HARDECKE: Could I have the person from
15 Solid Waste come up?

16 COMMISSIONER TUPPER: Yeah.

17 MR. CHRIS NAGEL: Mr. Chairman, Commissioners as
18 Leanne said my name is Chris Nagel. I'm the
19 Compliance Enforcement Section Chief with Solid Waste
20 Management Program.

21 I'd like to answer any questions you have or if
22 you'd like I can give you an overview of our general
23 solid waste exemption process. And give you a little
24 bit of background behind this particular facility
25 here as well.

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1 CHAIRMAN HARDECKE: That'd be helpful. Thank you.

2 MR. CHRIS NAGEL: Okay.

3 First off, I'll caveat I probably can't provide
4 every detail for you but I'll give you a good
5 overview of the site as far as the progress has
6 happened there since around 2005 to today.

7 This facility originally started out as an
8 exemption site. Basically, a site smaller than 2
9 acres in size is an exemption from the water
10 permitting requirements and so forth. Basically,
11 that's a site that is 2 acres total materials
12 everything all that's two sit- -- 2 acres or less.

13 Our exemption criteria are very clear in our
14 Solid Waste Management Laws you must comply with all
15 regulatory requirements regarding environmental
16 regulations; cannot cause a public health or safety
17 threat. And they're very specific about the Clean
18 Water Commission regulations and so forth about
19 maintaining compliance with permits and regulations.

20 That is our authority basically to allowing an
21 exemption. Those exemptions are tied to composting
22 facilities. And this particular one here is under 10
23 CSR 80-2.020, Section 9. It's our permit exemptions
24 and Subsection D is to where we're allowed to allow
25 an exemption for a composting and a food waste, which

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1 is what this particular entity here started out as.

2 It went from an exemption process as part of
3 that exemption process and the pilot program we
4 required a operational plan --

5 COMMISSIONER SHORNEY: Are we still -- are we still
6 talking about an operation that's under 2 acres?

7 MR. CHRIS NAGEL: Yes. Yes, which required an
8 operational plan; that operational plan has been in -
9 - I would say it's been in modification states from
10 day one.

11 COMMISSIONER SHORNEY: Was that not -- when you have
12 2 acres, you're not supposed to have any runoff at
13 all from that 2 acres; --

14 MR. CHRIS NAGEL: That is correct.

15 COMMISSIONER SHORNEY: -- is that correct?

16 MR. CHRIS NAGEL: That is correct, Your Honor (sic) -
17 - or Commissioner.

18 This particular site grew in size. 2007 it had
19 grown beyond normal pilot status as it was. We
20 started having some complaints at the regional office
21 level regarding odors. At that time we had a number
22 of Staff from both the Solid Waste Management
23 Program, some of the director's office Staff and
24 regional office Staff from Water Protection and so
25 forth who went to the site, visited it to verify --

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1 COMMISSIONER SHORNEY: How did -- how did it grow in
2 size from 2 acres?

3 MR. CHRIS NAGEL: Facility basically expanded.

4 COMMISSIONER SHORNEY: How did it expand?

5 MR. CHRIS NAGEL: The footprint of the facility, the
6 number of windrows, the size of the windrows, the
7 storage areas for the --

8 COMMISSIONER SHORNEY: Under -- under what authority
9 did it expand?

10 MR. CHRIS NAGEL: That is the issue in question. It
11 did not have the authority under the exemption until
12 it had received approval later on. The exemption --
13 or -- excuse me -- the pilot program itself does not
14 have the authority to allow them to do that.

15 It grew -- as a result of the investigation we
16 had on -- 2007 when we went there based on complaints
17 and met with Mr. Chappell and Mr. Post basically at
18 the site, reviewed the site, looked at as basically
19 as a result of the odors, but during the
20 investigation we did find that the site was extremely
21 larger than what the original pilot program was.

22 We also noted that there was some issues in - --

23 CHAIRMAN HARDECKE: How large is it now?

24 MR. CHRIS NAGEL: -- water.

25 MR. CHRIS NAGEL: At this point in time I think he

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1 said his current permit application indicates its 8
2 acres.

3 CHAIRMAN HARDECKE: Eight?

4 MR. CHRIS NAGEL: Eight.

5 COMMISSIONER TUPPER: You found it to be larger.
6 They didn't ask for an increase?

7 MR. CHRIS NAGEL: Correct. Correct.

8 At the point in time we realized they were
9 beyond the expansion of the current pilot project at
10 that point we said, hey, you can't operate under the
11 existing pilot project you're going to have to go
12 through and get a new exemption to expand the
13 facility and comply with the Water Protection
14 requirements.

15 The water Staff at that time noted that there
16 were some concerns about the water runoff from the
17 composting area. At that time they were -- that's
18 what basically drew them in to the requirements to
19 apply for the general permit; is that correct?

20 MR MOHAMMADI: Site-specific.

21 MR. CHRIS NAGEL: Site-specific, site-specific
22 permit. That's what started the process at which
23 you've been aware of now where they basically had to
24 comply by submitting an application for site-specific
25 permit, were granted a year to construct that and so

00085

1 on.

2 I would like to explain a little bit about the
3 operational plan, too.

4 CHAIRMAN HARDECKE: I don't mean to interrupt, but I
5 got to keep this straight. That's what precipitated
6 the need for the construction permit that was issued
7 in May of '08.

8 MR. CHRIS NAGEL: It was a complaint investigation.
9 Yes.

10 CHAIRMAN HARDECKE: But, I mean, the growth beyond
11 the size of 2 acres.

12 MR. CHRIS NAGEL: Yes.

13 COMMISSIONER SHORNEY: So until this time they were
14 composting on what kind of ground -- I mean, what
15 kind of pre-prepared ground, any?

16 MR. CHRIS NAGEL: The operational plan required a --
17 a scarified and compacted clay liner. I'm not the
18 engineer that was in charge of that. I cannot verify
19 if that was ever actually done. I thought that was -
20 -

21 COMMISSIONER SHORNEY: Was there any engineering
22 drawings required of that?

23 MR. CHRIS NAGEL: I'm not sure on that.

24 COMMISSIONER SHORNEY: By -- by a professional
25 engineer?

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1 MR. CHRIS NAGEL: Yes. In order to verifying
2 compacted clay liner or clay pad we do require that a
3 professional engineer document how it's constructed.
4 Basically, the proctor limits (moisture content)
5 compaction ratio, et cetera, has to be documented and
6 demonstrated.

7 COMMISSIONER SHORNEY: So that should have -- should
8 have been done?

9 MR. CHRIS NAGEL: That would have been a basic -- a
10 basic demonstration that the pad was constructed.

11 MR. KEVIN MOHAMMADI: Commissioner Shorney, the
12 requirement was that they would submit as built plans
13 and specs after the complete construction of the clay
14 pads.

15 COMMISSIONER SHORNEY: Afterwards?

16 MR. KEVIN MOHAMMADI: As built plans and specs that
17 may -- has to be signed and sealed by PE.

18 COMMISSIONER SHORNEY: Right. Was that -- did that
19 actually happen then?

20 MR. KEVIN MOHAMMADI: We haven't got anything.

21 COMMISSIONER SHORNEY: There never were -- there
22 never were draw- -- engineering drawings submitted as
23 -- as constructed?

24 MR. CHRIS NAGEL: To my knowledge the engineering
25 drawings to verify that there was a compacted clay

00087

1 liner built and constructed by a professional
2 engineer and submitted, no.

3 COMMISSIONER SHORNEY: Never -- never done?

4 MR. CHRIS NAGEL: Nothing to -- to my knowledge.

5 COMMISSIONER EASLEY: And because of that you're
6 saying that there is no clay lining? There's no --

7 MR. CHRIS NAGEL: There's not an engineered clay
8 liner that can be demonstrated to be in compliance --

9 COMMISSIONER EASLEY: Okay. Okay. And you require
10 an engineered clay liner?

11 MR. CHRIS NAGEL: Correct. It's got to be a
12 scarified and compacted clay liner. It's not just
13 take the sub-base of the clay that was existing in
14 the barrow pit, pack it down and call that your
15 liner; you can't --

16 COMMISSIONER EASLEY: So you're saying that would
17 have to be torn out and redone?

18 MR. CHRIS NAGEL: Correct.

19 COMMISSIONER EASLEY: Do you understand -- did they
20 understand that?

21 MR. CHRIS NAGEL: I can't speak for what they're
22 understanding, sir.

23 COMMISSIONER EASLEY: Do you understand that?

24 MR. ALAN CHAPPELL: Yes, sir.

25 COMMISSIONER EASLEY: And you're willing to do that?

00088

1 MR. ALAN CHAPPELL: Yes, sir.

2 COMMISSIONER EASLEY: Within that 60-day period?

3 MR. ALAN CHAPPELL: Given the weather. Yes, sir.

4 And the only reason I keep saying weather is if we
5 have another 15 inches of rain up until last week in
6 about a three-week period again. We're 20 miles,
7 basically, 25 to Monett -- (complete statement
8 inaudible do to sound.)

9 MS. MALINDA OVERHOFF: Can you have him come to the
10 mic?

11 CHAIRMAN HARDECKE: Could you -- could you come to
12 the microphone, please?

13 MR. ALAN CHAPPELL: Yes, sir. Absolutely.

14 Absolutely. That's why when we sent the letter
15 to Staff, the meeting was pushed back a couple of
16 weeks because their Staff was out on vacation. The
17 meeting was set for September 23rd. We spent tens of
18 thousands of dollars on the new drawings
19 understanding that all of this would have to be
20 constructed. Our understanding is that under the
21 pilot project approval we did not have to have
22 certified engineered drawings and Mr. Post tells me
23 that in your packet we have the approval from Solid
24 Waste to expand our facility before we ever did,
25 which I just heard from some- -- from them that we

00089

1 didn't have that approval. And then, number two,
2 that we did send Solid Waste the as-built drawings.

3 But under pilot -- pilot project is a completely
4 different animal than a construction permit, an
5 operating permit, a storm water permit in that you
6 didn't have to have engineered drawings for that
7 pilot project. We certainly understand we do to do
8 this -- this construction of this reduced size
9 facility that will only handle food waste. We
10 understand that. And we already have those drawings.
11 And we've submitted them to Staff, but they wouldn't
12 discuss it with us.

13 CHAIRMAN HARDECKE: Okay. You said the -- your
14 correspondence on your expansion beyond the pilot
15 project size is in here?

16 Can you find that?

17 MR. CRAIG POST: Yes. Its - it's Andrews
18 Environmental with the approval date from Solid
19 Waste.

20 COMMISSIONER SHORNEY: Is that the letter dated June
21 6th?

22 MR. CRAIG POST: June 6th, 2006.

23 COMMISSIONER SHORNEY: 2006?

24 MR. ALAN CHAPPELL: And, again, the only one left in
25 Solid Waste that was involved with this project from

00090

1 the beginning is J.P. Boessen, who is absent today.
2 The main people who were involved from MoDNR in this
3 proj- -- that's why we talk about in our information
4 miscommunication and misinformation.

5 MR. CRAIG POST: If -- if I can speak on one other
6 item that Chris brought up. In conversations with
7 J.P. Boessen who is my case supervisor; in our
8 conversations he has made it clear numerous times
9 that he got in trouble because his assumption of a 2
10 acre pilot project was the area with which you
11 composted on. That anything outside of that, you
12 know, should have been on the pad. So from the
13 initial onset when -- you know, when we set up this 2
14 acre pilot project our case supervisor was unclear
15 about what a 2 acre pilot project should encompass.

16 MR. ALAN CHAPPELL: You know, we're -- we -- again,
17 we have spent a lot of money and time building a
18 market down there and a part of being able to do that
19 entire function is a composting facility.

20 We or -- the picture that I see painted here is
21 not a true rendition of who Black Oak is or what
22 we've achieved. And I didn't want to take the time
23 to read this, Who is Black Oak? Simply because I
24 think there's much more urgent matters to address for
25 this -- for this committee but the award -- we

00091

1 were visited by the -- the -- the head of Waste
2 District O not a few months ago and he was elated,
3 elated to the point that we just received a grant
4 from them a couple of months ago.

5 This facility has been supported by state grant
6 money somewhere in the neighborhood of \$190,000 for
7 equip- -- for assistance with equipment. Most of
8 that is a 50/50 match. So once again Black Oak has
9 invested heavily in time and money in -- in this
10 company, growing this company, growing these markets.

11 I mean, if you want somebody to look at you like
12 you're from Mars walk in and tell them you want their
13 food waste. This is not an easy sale. I mean, this
14 is a very difficult thing to do to change habits and
15 mindsets.

16 And, yet, we -- we as a state in this -- in this
17 national article are being portrayed as very
18 progressive in supporting doing these green
19 activities and we are the ones in southwest Missouri
20 doing that. We -- we have no desire whatsoever in
21 any way to contaminate anything. The actual
22 materials that we make revitalize the environment.

23 There is -- there is a tremendous amount of
24 organic erosion control being used in southwest
25 Missouri and somebody said very sensitive area with

00092

1 our lakes, our karst geology. And this erosion
2 control is being used because we make the products
3 that they're using. We're taking their construction
4 waste, recycling it and returning it to those
5 construction people and it allows them to be much
6 more -- much higher lead certified. We've received
7 awards for these activities. I mean, we are very
8 active in this and we just want the chance to set
9 down with Staff, have the drawings of the much reduce
10 sized facility approved and get on with constructing
11 our facility and get back to doing what we know how
12 to do. That's all we're asking is for the
13 opportunity to do that.

14 CHAIRMAN HARDECKE: Okay. Kevin?

15 COMMISSIONER TUPPER: Understand where we are. You
16 had the chance to sit down with Staff and you did.

17 MR. ALAN CHAPPELL: Yes, sir.

18 COMMISSIONER TUPPER: And then you broke every rule
19 in the book.

20 MR. ALAN CHAPPELL: I --

21 COMMISSIONER TUPPER: So, you know, all well and good
22 but why should we give you a second chance?

23 MR. ALAN CHAPPELL: Because we didn't break every
24 rule in the book and because we -- there is a
25 business formulated at that meeting of which there's

00093

1 very few -- I'll tell you who was there, Cindy
2 Davies, the director of the Southwest Regional
3 Office. And she sent communication to Charlene Fitch
4 and to Kevin Mohammadi saying, can we give these guys
5 an extension?

6 If she -- and -- and part of that reasoning in
7 her discussions with Craig and in Charlene's
8 discussions with Craig is we know that we committed a
9 certain amount of material and volume and we didn't
10 get you the letter clarifying that.

11 That was also her explanation of why she sent us
12 that letter after the construction permit was sent.

13 COMMISSIONER TUPPER: But you tripled the size of the
14 facility without telling anybody, that's one.

15 MR. ALAN CHAPPELL: We didn't do that, sir. It's --
16 the approval is in there. We had approval to do
17 that. It is in there, in writing, documented. There
18 is -- there is a serious problem with communications
19 between Departments in MDNR.

20 CHAIRMAN HARDECKE: Okay. Kevin, do you want to make
21 a comment?

22 MR. KEVIN MOHAMMADI: (Statement inaudible.)

23 MR. ALAN CHAPPELL: Sure. Absolutely.

24 MR. KEVIN MOHAMMAADI: I'm just going to make one
25 comment, Mr. Chairman, earlier you-all hear, this

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1 Commission heard that recent sample collected by
2 Black Oak Organic was in compliance. Did you-all
3 hear that?

4 (No response.)

5 MR. KEVIN MOHAMMADI: The recent sample collected
6 from discharge was in compliance. That was a
7 statement that was made by Black Oak Organic; did
8 you-all hear that earlier?

9 (No response.)

10 MR. KEVIN MOHAMMADI: Okay.

11 Here are the sample results. I'm going to read
12 it to you. For bio-chemical oxygen demand: their
13 limit is ten and this is what they reported it to us.
14 This is their samples, not our sample; 120 milligram.
15 That's 120 times over their limits.

16 Total suspended solids: their limit is 15.
17 They told you that they were in compliance. What
18 they reported it was 74.

19 The fecal coliform: their limit is 400. They
20 told you that their sample showed compliance. What
21 they reported was 6,000 -- 60,000.

22 Ammonia: their limit is 2.6. They reported it
23 as 62. It just goes on and on. I just wanted to
24 provide you this information with regard to the
25 statement that Black Oak -- Black Oak Organic had

00095

1 been making before you.

2 CHAIRMAN HARDECKE: Okay. What were the -- what's
3 the limit on BOD?

4 MR. KEVIN MOHAMMADI: BOD: their limit is 10 and
5 they're reporting 120.

6 CHAIRMAN HARDECKE: And TSS?

7 MR. KEVIN MOHAMMADI: Their limit is 15, they're
8 reporting 74.

9 COMMISSIONER SHORNEY: Fecal coliform?

10 MR. KEVIN MOHAMMADI: Their limit is 400, they're
11 reporting 60,000.

12 COMMISSIONER HUNTER: Greater than?

13 MR. KEVIN MOHAMMADI: Greater than 60,000. Correct.

14 COMMISSIONER HUNTER: Don't we have an older one of
15 these in this packet somewhere? Can somebody tell me
16 that?

17 MR. KEVIN MOHAMMADI: One of the sample results?

18 COMMISSIONER HUNTER: Yes. Don't we have a sample
19 results from '06?

20 MR. KEVIN MOHAMMADI: This is what's collected on
21 September 22nd, 2009; do you have that?

22 COMMISSIONER HUNTER: Do we -- do we have one from
23 '06?

24 COMMISSIONER TUPPER: It may be in this other file.

25 MR. KEVIN MOHAMMADI: Mr. Chairman, members of the

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1 Commission what Black Oak Organic is asking from this
2 Commission is business as usual. Allow us to
3 operate, violate the law, pollute waters of the
4 state, so we can make money in order to come into
5 compliance. The program Staff cannot support such a
6 position nor can actually explain or defend to the
7 public to the state of Missouri.

8 This has been going on for too long. And the
9 story has always been the same. Things just go
10 around and around and around. And message is not
11 getting across. That's why we are before this
12 Commission to refer this matter to the office of
13 Attorney General Office, start with the litigation,
14 get a lawsuit in place and get an injunction to make
15 the place clean, remove everything and if they want
16 to come back and build a new composting facility we
17 are all for it.

18 They have to start brand new. They have to
19 apply for construction permits, submit engineering
20 plans and specs, obtain a permit, construct
21 everything and then get operating permit. That's --
22 that's what the issue is.

23 CHAIRMAN HARDECKE: Okay. I want to go back to Solid
24 Waste; did -- we interrupted your comments and I'm
25 sorry.

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1 MR. CHRIS NAGEL: Probably the take home message is
2 to have an operational plan they have to have as part
3 of their project. That thing's been in evolution.
4 We've been chasing down because changes are made
5 before we have chances to approve. That's the big
6 issue we've had from this facility from day one.

7 We've continued to work with them, and we do
8 agree, they offer a great service. And we've been
9 very amenable in trying to work with them in the
10 past. That's why we've done a lot of different
11 things to help them out and assist them.

12 The one thing that I do find a little bit
13 confusing as far as, you know, they claim they needed
14 a certain type or certain volume of ADF in order to
15 develop the funds in order to build this retention
16 basin or whatever it is; my understanding of the
17 difference between what was originally approved for
18 them to take on the ADF and what they were looking
19 for was simply, originally there was a number of
20 loads they could receive with a total tonnage and
21 what they're going to receive later on was basically
22 to -- flexibility on the number of loads, still
23 maintaining the same tonnage. What the difference
24 was is they were getting some partial loads that were
25 coming in as opposed to full loads.

00098

1 Whether that differenced -- that -- and I'm not
2 think- -- I don't believe we're talking about a
3 substantial difference but if that difference is --
4 but the question mark is, is whether they're claiming
5 that the difference would have been enough to
6 basically cover the cost of -- you know, engineering
7 evaluation, engineering drawings and construction of
8 a retention basin and also this stuff was probably in
9 the six figure range.

10 Since I'm not sure if -- if that difference in
11 price would have been there or not. But that's one
12 of the arguments that I have a little bit of an issue
13 over. Yes, that it did take a long period of time in
14 order to approve that. And the reason why it did
15 was, the efforts we've had, in the past, was -- is we
16 always have a moving target and we're trying to
17 approve stuff. Every time we got ready to approve
18 it, we found out additional things had been changed,
19 things had been modified, they want to be something
20 different.

21 So we're always chasing our tails as far as
22 trying to get an approval on their operational plan.
23 So we're very reticent in order to approve an
24 additional change on things like that.

25 CHAIRMAN HARDECKE: So that is the same letter that

00099

1 they're referring to that didn't come until after the
2 permit had expired?

3 MR. CHRIS NAGEL: Correct.

4 I'd like to answer on that as well. There was a
5 delay in us, in the Solid Waste Management Program
6 receiving the Notice of Violation that was issued by
7 the Water Protection Program from the Southwest
8 Regional Office.

9 At the time, we were talking with Cindy Davies
10 and so forth about their request to get a
11 modification on what they can take on the ADF.
12 During that discussion we had not yet been made aware
13 there was a Notice of Violation issued. Granted that
14 was several weeks after that had actually been
15 issued. If we had known at that point in time that
16 letter from Charlene Fitch that went out amending and
17 allowing them to have additional ADF materials,
18 clarified what they could take would not have gone
19 out.

20 And reason why, we would have had to go -- point
21 back to our section 9 of 80.2 -- 80.2.020 that
22 requires us to have compliance with the water
23 requirements and so forth before us to issue an
24 exemption. Under our own regulations we would not
25 have been allowed to discuss it any further. It

00100

1 would have been here's your revocation of your
2 exemption we can no longer move forward with you on
3 this any further. And that letter was -- there was a
4 similar letter of that nature that came a few months
5 later once things were clarified.

6 I'm rambling around here. Do you understand --
7 (statement inaudible; audio fades).

8 CHAIRMAN HARDECKE: -- understanding of what's --
9 what's going on here. And Commissioners did you have
10 any other questions of him?

11 COMMISSIONER SHORNEY: Obviously, we have a water
12 quality violation, right?

13 MR. CHRIS NAGEL: In a summary basically what we have
14 is, we have a facility that was permitted to
15 construct a basin in order to control water
16 pollution. Basin wasn't constructed in the time
17 period. We have ongoing violations. That's where
18 we're at.

19 COMMISSIONER SHORNEY: All the runoff from this
20 facility should be contained in a structure; is that
21 correct?

22 MR. CHRIS NAGEL: Correct. Correct.

23 COMMISSIONER SHORNEY: And it shouldn't -- shouldn't
24 be on geologic formations which have features,
25 cracks, sinkhole-type karst topography?

00101

1 MR. CHRIS NAGEL: Yeah. After finding that this site
2 has a losing stream and some other stuff I'm sure
3 the Solid Waste Management Program and engineering
4 Staff would probably have some reticent feelings
5 about reissuing another operational permit for this
6 place just due to this location and the fact it does
7 have some concerns.

8 That losing stream issue was something I didn't
9 learn about until the Notice of Violation was issued
10 and that was determined. That was very interesting.
11 And the fact that this site is a have- -- does have a
12 discharge and is not being controlled through a
13 sediment basin this leaves us to have more concerns
14 about the operation of the facility.

15 MS. JOAN DOERHOFF: I may just add that as far as
16 their draft operating permit they are also required to add
17 monitoring wells, groundwater monitoring wells since
18 the location is in a losing stream area.

19 CHAIRMAN HARDECKE: Losing stream discharges to a
20 sinkhole; is that --

21 MS. JOAN DOERHOFF: (Statement inaudible.)

22 CHAIRMAN HARDECKE: Any further questions? Comments?

23 COMMISSIONER SHORNEY: I was curious as to what those
24 orange barrels contained.

25 MR. CHRIS NAGEL: As I wasn't the inspector I can't

00102

1 verify, but based on the reading on the outside and
2 what it looks like, like fats from either cooking or
3 food production. Just a guess though.

4 COMMISSIONER SHORNEY: And Alan Chappell, what --
5 what's your relationship with Black -- Black Oak?

6 MR. ALAN CHAPPELL: I'm -- I'm the partner in Black
7 Oak.

8 COMMISSIONER SHORNEY: You're a partner?

9 MR. ALAN CHAPPELL: Yes, sir.

10 And -- and if we might the parameters that Mr.
11 Mohammadi just read to you --

12 MALE SPEAKER: We have a non-engineer working on
13 this.

14 (Laughter.)

15 MR. ALAN CHAPPELL: -- sits above our facility that
16 when they have rain events that apparently are -- are
17 more sizeable than what they're designed for and they
18 release, this is their release from their transfer
19 station. This is not from our facility. We do have
20 testing that has been provided in your packet that
21 show the parameters of the water from our -- which we
22 have provided to the state over and over again.
23 Those parameters that are off the charts or -- I
24 don't remember his words came from the transfer
25 station that sits above --

00103

1 CHAIRMAN HARDECKE: I thought you just told us that
2 this was your water quality test?

3 MR. CRAIG POST: That was a test taken from the
4 retention pond above our facility.

5 MR. ALAN CHAPPELL: Which is from the transfer
6 station, solid waste transfer station. This entity -
7 -

8 COMMISSIONER TUPPER: Whose retention pond?

9 MR. ALAN CHAPPELL: Whose -- who owns the -- that
10 facility?

11 MR. CRAIG POST: It's owned by WCA. Their -- their
12 retention pond for the transfer station flows down to
13 a pond which sits directly above our facility. The
14 breaching water coming from that pond is what I
15 tested here.

16 MR. ALAN CHAPPELL: And we left it with the colored
17 header so that it would be distinguishable. The
18 other --

19 MR. CRAIG POST: We -- we did --

20 MR. ALAN CHAPPELL: -- test in your packet --

21 MR. CRAIG POST: -- on 5/11 after a release at our
22 facility and submitted to Joan Doerhoff and had it
23 reviewed, you know, for its compliance under the --
24 under the permit guidelines for releases from our --

25 MR. ALAN CHAPPELL: And that was the one that I was

00104

1 referencing that our releases in the data we have
2 supplied the state are within compliance of what
3 release would be if under our -- under our previously
4 issued construction permit.

5 CHAIRMAN HARDECKE: Now, you just -- when you handed
6 this out you said this was your test of your
7 discharge so -- to prove that you were in compliance.
8 Now, you're telling us that it's someone else's. So
9 that's a different story here at the site of a few
10 minutes.

11 MR. ALAN CHAPPELL: I -- I understood Craig to say
12 that this was the -- was the retention basin above
13 our facility and it's a retention basin for a
14 transfer.

15 CHAIRMAN HARDECKE: See that's irrelevant to your --

16 MR. ALAN CHAPPELL: Not if that runs on to our
17 facility. Not if it runs on to our facility.

18 CHAIRMAN HARDECKE: They discharge on to you?

19 MR. ALAN CHAPPELL: Yes, sir.

20 CHAIRMAN HARDECKE: Or into the creek?

21 MR. CRAIG POST: On to us.

22 COMMISSIONER TUPPER: I thought you told me you had
23 installed a berm to keep it from running on you?

24 MR. CRAIG POST: I installed the berm on the side of
25 the landfill area where the landfill comes in. We

00105

1 get water which comes in from above us and to the --
2 to the east of us.

3 MR. ALAN CHAPPELL: We installed what Solid Waste
4 asked us to install. And then the other thing is,
5 again, I heard it represented that we're asking you
6 to allow us to operate to make revenue to construct.
7 If those drawings are approved today as long as we
8 don't get these 15 inch rains we will be constructed.
9 We have the revenue to construct this facility. It
10 is a much smaller facility. It doesn't not handle
11 ADF waste. It handles lettuce and tomatoes --

12 CHAIRMAN HARDECKE: But the point -- the point is you
13 had the permit for a year and didn't construct. And
14 I think in fairness to the other permit holders --

15 MR. ALAN CHAPPELL: If you were in the meeting of
16 August 7th, sir, and you said to them, when they tell
17 you this is compliance and you have to do what you're
18 signing and we say by the same token this is -- this
19 is a business plan. And -- and this revenue --

20 COMMISSIONER TUPPER: We don't do business plans.

21 MR. ALAN CHAPPELL: But Staff -- but Staff did that,
22 sir, in that meeting. And that is exactly --

23 CHAIRMAN HARDECKE: That was for the pilot project.

24 MR. ALAN CHAPPELL: -- why Cindy Davies --

25 CHAIRMAN HARDECKE: That was the pilot project

00106

1 though.

2 MR. ALAN CHAPPELL: No. This was when we went --
3 when we were negotiating from the pilot project to
4 the -- to the construction permit.

5 MR. CRAIG POST: In an August -- in an August 8th
6 meeting with all department heads, water --

7 MR. ALAN CHAPPELL: Jim -- Jim Bell was there, Scott
8 Waltrip was there, Cindy Davies was there. I don't
9 know if Charlene was there, but in Charlene's
10 discussions with Cindy Davies she conveyed to Craig
11 that's why she issued the letter after the
12 construction permit had expired was because she
13 understood from Cindy there was commitment made by
14 DNR. And that they had dropped the ball by not
15 simply issuing a letter clarifying wording. We
16 didn't ask for more material. We asked to be able to
17 receive the amount of material that we had discussed.
18 That was all.

19 CHAIRMAN HARDECKE: Well, I think, we're -- there's
20 been a lot of accusations made both ways here today
21 and I don't think that we're going to get this
22 resolved. I think at this point it will be up to the
23 Commission whether to refer or not, but if it's
24 referred then possibly you can work this out and come
25 to a meeting and -- and get this resolved with the

00107

1 help of the Attorney General's Office.

2 MR. ALAN CHAPPELL: Yes, sir. Or the other option
3 would be since we have actually included so much
4 documentation refuting and showing that Staff -- if
5 Cindy Davies was concerned about issues to the water
6 -- to waters of the state; why would she send a
7 document saying can we give them an extension? If
8 Charlene Fitch was concerned about contamination to
9 waters of the state; why would she give us a letter
10 30 days after the construction permit expired?
11 Saying you can now take the eggshell waste.

12 I mean, -- I mean, my point is Staff has --

13 CHAIRMAN HARDECKE: Well, I understand that. But I
14 don't --

15 MR. ALAN CHAPPELL: -- I'm just saying we actually
16 have a lot of documentation refuting and including
17 documents that have been excluded by Staff to paint
18 this picture. This is not a bad facility.

19 CHAIRMAN HARDECKE: I -- I understand that and I
20 appreciate that. And -- and we can appreciate what
21 you're trying to do, but we have to be within
22 compliance of the law. And we have to be in
23 compliance the way we expect others to be. So I
24 think we'll see what the Commission wants to do and
25 if -- if it's referred I encourage you to get your

00108

1 documents together, present your case and hopefully
2 you can sit down and get something worked out to
3 where you can get your facility in compliance.

4 MR. ALAN CHAPPELL: I appreciate your --

5 CHAIRMAN HARDECKE: Other comments or questions?

6 COMMISSIONER EASLEY: Let me ask a question to Staff;
7 is there room for negotiations on this over the next
8 30 to 60 days say?

9 MR. KEVIN MOHAMMADI: Commissioner Easley, no. This
10 has been very, very difficult entity to work with as
11 you even notice today going around and around and
12 around constantly. We cannot get the message across.
13 We cannot have meeting of the mind.

14 It's -- it's been extremely frustrating, again,
15 here is the sample result, it says, Client: Black
16 Oak. It says it was date collected at; location of
17 the site, composting facility and then they say,
18 well, this is not ours.

19 It's somebody else's. It just -- no. Answer is
20 absolutely not. Litigation is what we recommend and
21 actually sure and swift something that we ask
22 Attorney General to give high priority to it. We are
23 talking about groundwater contamination and we are
24 accountable to the public. Public is asking us; what
25 are you doing? This facility has been out of

00109

1 compliance for many years and we can't just say we're
2 negotiating with them, we are working with them, we
3 are holding their hands. That is not going to fly.

4 MR. ALAN CHAPPELL: Sixty days. That's what we're
5 asking for to construct.

6 CHAIRMAN HARDECKE: Any other questions or comments?

7 COMMISSIONER EASLEY: I'd like to hear from Rob. Do
8 you have any comments? I know this is your last day,
9 but --

10 MR. ROB MORRISON: I don't know how you think I could
11 resist such a juicy debate.

12 Well, good morning, Commissioners. I think what
13 you have before you today is -- is indicative of --
14 of the work that has went on. There's a lot of
15 information. There are some opposing views. And
16 when I -- I think, what you're hearing today is that
17 there is a need to move this case forward one way or
18 the other.

19 I think that Kevin is correct; we have taken
20 some steps to try to negotiate with the facility. I
21 -- I think, there are different expectations.
22 Certainly, you've heard today that they -- they want
23 to focus on getting the facility constructed. I
24 think, what you've heard from our Staff is that they
25 want to focus on getting this site mitigated and in a

00110

1 stable condition that is not posing a risk to -- to
2 human health or the environment.

3 So from -- from my perspective I don't see the
4 downside to a referral. I think, the negotiation,
5 Commissioner --

6 (Tape Two, Side A Concluded.)

7 MR. ROB MORRISON: -- to litigation. And I -- I
8 think, that that could be a good thing, some fresh
9 perspectives and that sort of thing. And I -- I
10 don't see -- I don't think that we are 100 percent
11 destined for litigation but it certainly would, I
12 think, provide additional weight and effort to the --
13 to the -- the whole affair by -- by getting the
14 Attorney General involved.

15 So with that --

16 COMMISSIONER EASLEY: If a referral is made; how
17 quickly would the Attorney General's Office start
18 some kind of negotiation?

19 MR. ROB MORRISON: Well, I -- looking --

20 COMMISSIONER EASLEY: Is it going to sit there for
21 months and months?

22 MR. ROB MORRISON: -- back there at Jack McManus who
23 is the -- he's the boss over the AGs Office. And I
24 don't want to put Jack on the spot, but -- they do
25 have a lot of cases as Kevin mentioned this is a high

00111

1 priority case for us. So I -- Jack, unless you want
2 to offer something else, I think, -- I think, soon
3 would be the --

4 MR. JACK MCMANUS: Again, with this being a high
5 priority case we'll get -- we'll try to get a
6 (inaudible) out very quickly. They already know that
7 it's coming so it's not going to be a surprise to
8 them. I think, we can get started on the discussions
9 quickly and that's when we get an attorney assigned.
10 If I discuss with that attorney what the best
11 approach would be and also with the Kevin and the
12 Staff at DNR to get a sense of what's the best
13 approach to move this towards a resolution very
14 quickly. I would expect to get a (inaudible) very
15 quickly.

16 COMMISSIONER EASLEY: So it'd probably be to both
17 sides advantage to -- to refer it and get a third
18 party involved.

19 CHAIRMAN HARDECKE: If it's referred to the Attorney
20 General will there still be an opportunity for -- in
21 your negotiations with them for them to get this
22 construction done and go ahead with their operation?

23 MR. JACK MCMANUS: I -- I can't answer that because I
24 don't know enough about --

25 MR. ROB MORRISON: And I'm going to agree with Jack.

00112

1 I think, you know, what you've heard today is that we
2 -- we definitely have some things that we want to see
3 accomplished. And I -- and it will be a negotiation.
4 And they certainly have some things they want to get
5 accomplished out there. So, I think, as long as,
6 again, if we sure -- ensure that the site is
7 mitigated and appropriately managed in a condition
8 that we feel comfortable with, certainly.

9 As Kevin mentioned we -- we are fully supportive
10 of constructing a facility out there that is -- is
11 going to conduct this activity. It's a good
12 activity, it just needs to be done in a manner that
13 we believe is protective of the environment.

14 COMMISSIONER TUPPER: I agree. But it needs to be
15 done properly and it has not been.

16 I think there's another reason to send it to the
17 AG because -- you know, we're Water Program. Solid
18 Waste has got an axe to grind here, too. And I don't
19 think we're in a position to make a decision for
20 them; are we?

21 CHAIRMAN HARDECKE: No. They would need a Solid
22 Waste permit as well to continue operation?

23 MR. CHRIS NAGEL: That's correct. We would require a
24 Solid Waste permit.

25 CHAIRMAN HARDECKE: And we can't address that issue?

00113

1 COMMISSIONER TUPPER: No.

2 COMMISSIONER EASLEY: No.

3 MR. ALAN CHAPPELL: If we might make one more
4 statement. Is that, again, in building the market
5 for this and going to these people and talking them
6 into removing these materials, segregating them from
7 their solid waste and beginning to recycle it. This
8 now-time that is going to be added on is -- will be
9 very dangerously close to completely killing the
10 market in southwest Missouri. I mean, that -- nobody
11 addresses that from a business standpoint, but, we,
12 as a business address that.

13 CHAIRMAN HARDECKE: Right. I understand and that's
14 why I asked the question. I mean, you understand
15 that we're only the Water Commission and Solid Waste
16 is involved here as well to get you up and running in
17 a permitted fashion.

18 MR. ALAN CHAPPELL: Yes, sir. And Solid Waste was
19 the one that sent letters to Water saying -- giving
20 us the -- asking if they could give an extension. So
21 it's basically been the Water that has said, no.
22 And, I think, that probably this losing stream is a
23 -- is a big concern and for anybody to say nobody
24 knew about is absurd.

25 It's been addressed in every document relative

00114

1 from the very pilot project on. And the fact that
2 it's all been approved and you build a business and
3 you put -- you put all this money and time into it
4 and then at some point somebody on Staff says, well,
5 there's a losing stream and now we're concerned.
6 And it kills a business, I think, is totally unfair
7 by the state.

8 And, again, no ADF waste. Nobody will address
9 that. There is no ADF waste. There has been none
10 since July 31st. And there will never be any. We're
11 now talking about nothing but tomatoes, lettuce and
12 bread --

13 CHAIRMAN HARDECKE: Food waste?

14 MR. ALAN CHAPPELL: -- we have -- yes, sir. And we
15 have not accepted anything since we received those
16 letters on -- at the first part of September. What's
17 out there is finished compost, which is exactly the
18 same material that people put on their yards to seed
19 and they use an organic erosion control that Price
20 Cutter Market sales in front of their stores.

21 So to --

22 CHAIRMAN HARDECKE: Well, I -- I would --

23 MR. ALAN CHAPPELL: -- this implication that there's
24 a huge risk to the waters just is not so. It is not
25 so.

00115

1 MR. CRAIG POST: Can I make one comment before you
2 make a decision?

3 CHAIRMAN HARDECKE: Yes.

4 MR. CRAIG POST: In a -- in a clarification on --
5 from Charlene Fitch on her August 25th revoking of our
6 pilot permit she outlined that the reason she had to
7 pull our pilot permit which allowed us to continue
8 operations while we constructed the facility was that
9 our Water Protection Permit we did not have.

10 So in addressing what you said about Solid Waste
11 if the board today said, you got 60 days to
12 construct. Solid Waste would -- would then go back
13 to the pilot project and then we would as we -- as it
14 states in the approved construction permit on May 11th of
15 '08 we would then have to submit to Solid Waste same
16 time line, same parameters -- you know, to get that
17 from them.

18 CHAIRMAN HARDECKE: Okay. Thank you.

19 (An off record discussion was held by the
20 Commission.)

21 CHAIRMAN HARDECKE: I think we're going to take our
22 lunch break and we'll resume this after lunch.

23 CHAIRMAN HARDECKE: And you might refer that we will
24 not discuss this during lunch.

25 COMMISSIONER HUNTER: Not discuss this particular --

00116

1 CHAIRMAN HARDECKE: Well, this -- this action, yes.

2 (An off record discussion was held by the

3 Commission.)

4 CHAIRMAN HARDECKE: Okay. We don't have anything for

5 closed session so we'll have lunch break and we'll

6 meet back at 12:30.

7 COMMISSIONER TUPPER: Okay.

8 CHAIRMAN HARDECKE: Thank you. (Break in proceedings)

9 **Closed Session**

10 CHAIRMAN HARDECKE: I think we have a motion on the

11 Black Oak Organics.

12 COMMISSIONER EASLEY: Yes. I move that the

13 Commission refer this matter to the Attorney

14 General's Office for appropriate legal action in

15 order to compel compliance, pursue a civil penalty

16 and/or seek any other appropriate form of relief.

17 The Commission further recommends that the

18 Attorney General's Office engage the Company in

19 negotiations to resolve any outstanding issues of

20 fact for a period of 30 days prior to instigating

21 litigation.

22 COMMISSIONER HUNTER: Second.

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

24 MS. MALINDA OVERHOFF: Commissioner Hunter?

25 COMMISSIONER HUNTER: Yes.

00117

1 MS. MALINDA OVERHOFF: Commissioner Easley?

2 COMMISSIONER EASLEY: Yes.

3 MS. MALINDA OVERHOFF: Commissioner Shorney?

4 COMMISSIONER SHORNEY: Yes.

5 MS. MALINDA OVERHOFF: Commissioner Tupper?

6 COMMISSIONER TUPPER: Yes.

7 MS. MALINDA OVERHOFF: Chair Hardecke?

8 CHAIRMAN HARDECKE: Yes.

9 Okay. We move on to **Tab No. 10, Permits and**

10 **Water Quality**, Darrick.

11 MR. DARRICK STEEN: Afternoon, Chairman Hardecke and
12 members of the Commission. Something I do know a
13 little something about is permits. So I'd like to
14 take a little bit of time here to give you some
15 updates on permitting and one of the things, I think,
16 we're trying to do is rotate Staff through within the
17 permit section to give this update so that we can
18 provide some extra, maybe some extra emphasis on our
19 specific area. And certainly that's what I intend to
20 do today.

21 So after I kind of go through the -- the -- the
22 worksheets here, I'm going to give you a status
23 update on a few other agricultural related items.

24 I guess the first sheet here that is Page No.
25 240 shows our backlog, permit backlog in a graphical

00118

1 manner. And as you can see it shows that our -- our
2 backlog with permits has gone down and appears to
3 continue to go -- to go down in some manner.

4 Please keep in mind that each year is a new year
5 and as permits specifically even general permits
6 expire and -- and must be renewed that -- that those
7 numbers will fluctuate. Of course, next year in 2010
8 I know that we have a number of general permits that
9 are expiring and so we'll -- we'll see some changes
10 I'm sure in that -- we'll do our best to try and keep
11 on top of those though.

12 Page 242 shows some of the numbers as the -- as
13 they relate to aging. The first -- the first chart
14 on top shows our potentially percent of permits
15 issued on time. That's a rolling average since 2006.
16 The bottom table titled Monthly Aging Report
17 specifically those -- that table speaks to the amount
18 of time that's transpired since the permit
19 application was submitted. Not necessarily when the
20 permit expired.

21 So that -- those categories of -- of time
22 frames, the 181, 240 days equates to the amount of
23 time that's transpired since the app- -- permit
24 applications were received.

25 May be of noteworthy here under the public

00119

1 notice required table it looks like in June there was
2 339 that were -- total that were sort of aged and in
3 October that's 332. That number hasn't gone down
4 significantly but I'm told that lots -- a number of
5 those permits are related to continued peak flow
6 clarifier issues with those permits and other permit
7 related objections that are slowing those permit
8 issuances down.

9 Re- -- in the public notice not required table
10 that number's gone down significantly. There's been
11 a nice decrease in that from 339 to 119. That's
12 probably a result of a number of general permits that
13 had expired being nearly all issued and taken care
14 of. So when we have general permits that are issued
15 to a number of facilities often times you'll see
16 those large peaks in volume in those numbers.

17 As I'm aware the only general permit that we
18 currently expired that we're -- that we're still
19 working on getting updated, renewed is a -- is a
20 general permit for clay pits. It's not one of my
21 permits. I don't know much about it though.

22 The next page at Page 244 the water quality
23 review report which we've started Antideg reviews.
24 What I see on this chart is that we have 21 active
25 requests currently in the section and 14 of those

00120

1 came since your last meeting. So I see that they've
2 gotten a number of them in just since our last
3 meeting. So it looks like that particular work has
4 seen an up taking in the amount of activity that
5 they've had.

6 Is there any questions at this point?

7 (No response.)

8 MR. DARRICK STEEN: Okay. The next page -- the next
9 report which is Page 248 is the CAFO and Agrichemical
10 Construction Permit Report. This report shows a
11 number of permits still under review.

12 Most of those have actually been issued since --
13 since this particular table was produced in October.
14 In fact, the only ones that haven't either been
15 issued or -- are very near issuance are the PSF
16 permits, a Sharpe Land and Cattle permit. And I
17 believe UAP, which is a fertilizer plant.

18 The PSF permits -- the construction permits were
19 received a long -- quite some time ago but their
20 permits expired, their -- their operating permits had
21 expired. So we've been working on the operating
22 permits and we can't actually issue the construction
23 permit until we get those operating permits on public
24 notice. And so that's something we're actively
25 working on. And likely they'll be some status

00121

1 change on that by the next Commission meeting on
2 those PSF permits.

3 The same goes for the Sharpe Land and Cattle.
4 Their operating permit has expired and so we're not
5 only issuing a construction permit but we're trying
6 to work -- work on their operating permit at the same
7 time. Those are site-specific permits. They're Class
8 1A CAFOs so they're slightly more complicated than
9 your average CAFO permit.

10 Is there any questions on that page?

11 (No response.)

12 MR. DARRICK STEEN: Hearing none.

13 Page 250 is the last -- last page it is -- it
14 speaks to certification, 401 certifications.
15 Basically, this chart shows that we're having a
16 pretty typical year as it -- as it relates to 401
17 certification as far as the number that we received
18 as compared to last year. Those are all issued
19 within 60 days of receiving them.

20 Okay. If there's no other questions on -- on
21 the permit reports, I'd like to kind of change focus
22 here for a minute and talk about two specific items
23 that -- that you're going to see before you in the
24 coming 12 months probably.

25 One of them relates to future changes with

00122

1 regard to CAFO regulations and the second one is
2 related to future changes as it relates to NPDES
3 permitting of pesticide applications. I think, I'll
4 start with pesticides.

5 If you remember a year ago we had before you a
6 rule, a rulemaking that related to exempting the
7 application of pesticides from the NPDES program or
8 essentially from -- from permitting. Well, that
9 stemmed from a November 27th, 2006, EPA rule where
10 they codified, basically, that very same exemption if
11 you will.

12 However, in January of 2009 that -- that rule
13 had been -- had been petition- -- had been taken to
14 court and in January of 2009 the Sixth Circuit Court
15 of Appeals ruled in that particular case and they
16 ruled that NPDES permits are required for all
17 biological pesticide applications and chemical
18 pesticide applications that leave a residue in the
19 water when such applications are made in or over
20 including near waters of the U.S. That was
21 essentially the Court ruling.

22 Well, that basically put into -- put into act a
23 requirement for certain pesticide applications to --
24 to require an NPDES permit. Well, because no state
25 or very few states had -- had really ventured into that

00123

1 arena and near it and neither at EPA, EPA asked the
2 Court for a two-year stay on their decision.

3 That stay was granted. And on June -- so on
4 June 2009 the Court granted a two-year stay to allow
5 EPA two years essentially to develop a permitting
6 program for this particular activity, which
7 previously had -- had not been under any type of
8 federal NPDES authority.

9 So EPA's plan with regard to this is they're --
10 they're proposing to issue a general -- they're
11 proposing to iss- -- a public notice of general
12 permit around April of 2010. And then issue that
13 nationwide or EPA model permit by the end of next
14 year. Now, EPA only has delegated authority or --
15 they issue permits in really two states. So they're
16 -- they're creating this permit essentially to be a
17 model in some -- in some respects for State agencies
18 that we can develop in a permit. The problem with
19 this is, is that, that only leaves states with about
20 four months after that model permit is finalized to
21 then develop their own and get it in -- and get it on
22 the street because the Court mandate, the two-year
23 stay ends in April of 2011.

24 EPA expects their model permit to be out in
25 December of 2010. That's not going to leave a lot of

00124

1 time. So that's got us con- -- a little bit
2 concerned about how we're going to essentially manage
3 this new activity with -- you know, with really no
4 additional Staff or -- or resources coming in. So
5 you're going to see some activity on this in the next
6 -- certainly in the next 12 months within the
7 Department.

8 We'll have to put essentially a permit together
9 but before we can even do that we've got to change
10 the rule. Again, we -- last year we put that --
11 before that Court decision came out we put that rule
12 -- exemption in our own State rules. So we're going
13 to have to go back and remove that. So those are
14 things that you're going to see.

15 To give you a little detail, a little more info-
16 -- a little more details on what EPA has in mind with
17 regard to pesticide applications, I'm going to read
18 from some of their PowerPoint slides that they've --
19 that they've handed out.

20 They claim or -- they're currently saying that
21 the general -- permitting requirements will cover
22 pesticide applications when they're applied to -- to
23 water or over water including near water and that is
24 going to include activities, for example, such as
25 mosquito control which would probably be the largest

00125

1 group of industries or applicators out there, aquatic
2 weed control, control of vegetation along ditch banks
3 and irrigation canals, pesticides used to control
4 wide area insect suppression or aquatic invasive
5 plant species. And I know that one of them -- one of
6 the ones that have kind of came up in that discussion
7 is the boll weevil in southwest Missouri -- excuse me
8 -- southeast Missouri.

9 Pesticides used in forestry programs when
10 applied over U.S. waters, products applied to water
11 to kill fish, mussels or other invasive aquatic
12 species. Those are the specific categories they've
13 identified up to this point that -- that are probably
14 going to be targeted with this permit.

15 EPA's estimated that, I think, it was 300 --
16 365,000 applicators nationwide will -- will be
17 subject to this -- this new -- this new permit. The
18 permits will not necessarily have numeric limits, but
19 they will most likely rely strictly on BMPs. And
20 BMPs really at this point derive from best
21 professional judgment on -- on the -- on the part of
22 the Department. It will also probably include, this
23 is with regard to, the EPA's model permit anyway, it
24 will also include fairly significant monitoring and
25 record keeping requirements for the applicators.

00126

1 Okay. So I bring that to your attention mainly
2 just so you know that this is something that's
3 coming. And it's something we're trying to still
4 sort of get our arms around. EPA is obviously
5 working on it, too. And we've got some decisions to
6 make on how quickly we want to sort of ramp that up.

7 Are there any questions on the pesticides?

8 COMMISSIONER HUNTER: Darrick?

9 MR. DARRICK STEEN: Yeah.

10 COMMISSIONER HUNTER: There's no mention of general
11 crop dusting activities in there?

12 MR. DARRICK STEEN: No. And EPA has -- has
13 specifically pointed out that the general
14 agricultural storm water exemption and the irrigation
15 return flow exemption will -- will still be in place.
16 And what that means is that when the average corn
17 farmer or soybean farmer applies some type of
18 pesticide to its crop, to the soil, if you will, that
19 if it rains or if he comes back with a center pivot
20 and has runoff from that field that that will not
21 subject him to any new regulatory requirements.

22 So that's the -- that's good news because that
23 obviously would -- the scope then would be -- you
24 know, would be gigantic as far as the number of
25 permittees. So it is -- they focused strictly on

00127

1 pesticide applications really directly to waters or -
2 - or to -- to stream ditches. Mosquito -- the -- the
3 health departments I know, in particular, are very
4 concerned about this which are engaged in mosquito --
5 mosquito control programs. I've talked with them.
6 They're engaged at the State level along with
7 Department of Health and County Health Departments.
8 I've talked with them. Of course, they've got -- a
9 number of them have got active programs and likely
10 they'll have to become permitted in the near future.

11 So, of course, mosquito control programs and the
12 health departments are -- one of their major concerns
13 is West Nile, controlling West Nile virus and other
14 viruses that are spread by mosquitoes. So it is --
15 it is something we need to keep an eye on and make
16 sure that whatever we implement is something that is
17 -- you know, that can be implemented in an affective
18 manner.

19 Okay. Shift gears a little bit to CAFOs. If
20 you remember we just got done essentially finalizing
21 the new CAFO rule back in -- well, it actually became
22 final in February of this year. That was a rule that
23 -- that you essentially acted on the end of 2008.
24 Well, about the same time that we finalized that rule
25 EPA finalized a revision to their rule.

00128

1 And so that revision became effective in
2 December of 2008. So it's time now again to make
3 revisions to our rule in response to that. We've had
4 an ongoing workgroup process although it's -- it
5 slowed down earlier this year it will -- it will
6 certainly pick back up. We had a meeting a month ago
7 in September. We'll continue to have workgroup
8 meetings to work out sort of the details of -- of
9 some of these rule changes. Some of them are going
10 to be given because we have to adopt -- we'll really
11 have to adopt certain provisions of the -- of the new
12 EPA rule.

13 The EPA provisions really focus on Nutrient
14 Management Plans and how we will -- how we will deal
15 with them, for example, it's going -- it's going to
16 require the NMP to be enforceable, an enforceable
17 part of the permit. That's not really that big of a
18 deal to me. We've always sort of had construction
19 permit applications that were -- there were part of
20 the permit, but now there's very specific terms that
21 they've identified in those plans that will have to
22 be identified in the permit, specifically identified,
23 for example, crops and yields and nutrient --
24 nutrient requirements, land base, different things
25 like that.

00129

1 It also will require us to public notice those.
2 So even with a general permit which typically
3 wouldn't go through a public notice process we'll
4 have to adjust our -- our issuance process for those
5 terms, those permits will have to go through a public
6 -- a 30-day public notice process. So that will be
7 something different. We'll have to also have those
8 Nutrient Management Plans available for public review
9 if -- if anyone requests that.

10 The main change in the EPA rule was that CAFOs
11 that -- the -- let me backup. Only CAFOs that
12 discharge or propose to discharge are required to
13 seek coverage under a federal NPDES CAFO permit. So
14 that's different from before which required all CAFOs
15 to get permits. So they -- you'll also see that
16 reflective in our rules though our State law
17 obligates all CAFOs in Missouri to get a permit. The
18 rule will be likely revised so that the CAFO will
19 have to choose whether they get a federal NPDES
20 permit or whether they'll get a State, what will
21 likely be termed as just a State no-discharge permit.
22 They'll have to get a permit nonetheless.

23 But they'll have to choose which one and it will
24 really revolve around whether they discharge or
25 propose to discharge. Well, none of our CAFOs

00130

1 discharge in Missouri or directly discharge, but some
2 of them may propose to discharge. And the devil is
3 in the details obviously with that. But certainly
4 open manure storage structures, lagoons, those type
5 of -- those type of systems will likely need an NPDES
6 permit. But a lot of that decision is going to be up
7 to the producer.

8 We also intend to promulgate a design-standard
9 rule for CAFOs. In the past we've relied on Chapter
10 8 essentially the domestic and industrial wastewater
11 treatment facility design guides for CAFOs. Some of
12 it's applicable, much of it is not so we intend to
13 promulgate our or -- draft, our own design guides for
14 CAFOs. It will probably be located in Chapter 8.
15 And so that's something else that we're working on.

16 Those are all rulemakings that will likely come
17 before you in the next year as we -- as we get our --
18 as we work our way through the workgroup process.

19 I think I've taken up enough time. So if
20 there's any questions I'd be happy to answer them,
21 otherwise --

22 (No response.)

23 CHAIRMAN HARDECKE: Thank you.

24 MR. DARRICK STEEN: -- I'll move along.

25 CHAIRMAN HARDECKE: Okay. **Tab No. 11**, Joe.

00131

1 MR. JOE BOLAND: Good afternoon, members of the
2 Commission, Joe Boland with the Water Protection
3 Program. I'll be very brief.

4 The first issue here is just an update on the
5 Fifty Million Dollar Bond Sale from the fall of 2007.
6 We've, to date, received about 266 applications for a
7 total of \$108,000,000 in projects. We have actually
8 awarded a little over \$29,000,000 of that. We've
9 earned interest of about \$5,000,000 so instead of the
10 original \$50,000,000 we now have \$55,000,000 we have to
11 distribute. But we're certainly well on our way.

12 And we do have all of that money committed to
13 one project or another. So there is some interplay
14 between the ARRA funding and our State grant and loan
15 funding as projects move on and off and we try and --
16 we may try and pick one here or there that we
17 couldn't fund through ARRA. So that is going on.

18 And then moving on to the ARRA update, to date,
19 we've closed on four deals and that's the City of
20 Houston, City of Tipton, Calvey Creek Sewer District
21 and Cameron. Now, Cameron is a drinking water
22 project but a lot of the same Staff worked on all
23 these so I'm just giving you a general overview.

24 And when I say these deals are closed that means
25 we have the -- all the loan documents, the bond

00132

1 documents, executed and our grant executed as well
2 and the deal has -- has been closed by our bond
3 council. So they're ready to start construction.

4 Now, in the process we already have five more
5 deals signed, documents signed in our Department and
6 that would be City of Neosho, Blue Springs which is a
7 \$33,000,000 project, City of Drexel, Liberty
8 and Clinton County Public Water District No. 3. And
9 Clinton County and Drexel are drinking water projects
10 as well, but we're happy to get Blue Springs well on
11 its way. That's one of our green projects, a large
12 green project. And, again, those are just probably a
13 week or two away from closing so we're -- we're happy
14 about that.

15 Now, in addition to those we also have five more
16 in the process of being signed and that would be the
17 City of Ava for drinking water, Clarence Cannon
18 Wholesale Water Commission which is obviously a
19 drinking water project, City of Parkville, Duquesne
20 and Springfield. And Springfield is another major
21 green project for about 13 to \$16,000,000. So as we
22 -- we continue to work very, very closely with all
23 these projects and monitoring the engineering, make
24 sure everything is getting there, everybody should be
25 out to bid right now; if they're not we're really

00133

1 riding them hard to get their projects out to bid so
2 we can get everything back in time.

3 And, again, that's -- that's really all I had on
4 ARRA other than the IUP changes we made this morning.
5 One other general bit of information, to share with
6 you about the program overall; the federal budget for
7 the environmental programs was passed earlier this
8 week and for the SRF programs it looks like a major
9 increase in funding especially on the wastewater
10 side. They're looking to increase it by about three
11 times what we got in 2009.

12 So that -- that is good news in itself that
13 we'll continue a good influx of funding for projects
14 that we didn't get to touch through stimulus. One
15 other provision of that funding, it does look like
16 there may be some special provisions for certain
17 allocation of that money that may go towards grants
18 or principal forgiveness or negative interest loans.
19 All -- all that hasn't been flushed out, yet, but as
20 we know more we -- we will keep you informed.

21 So any other questions for me?

22 (No response.)

23 MR. JOE BOLAND: All right. Thank you very much.

24 CHAIRMAN HARDECKE: Thank you.

25 Jenny, do you have anything?

00134

1 MS. JENNIFER FRAZIER: I just wanted to report to the
2 Commission that I went with Leanne earlier or -- last
3 month to attend the National Academy of Science
4 meeting in Kansas City. It was one of their
5 information gathering meetings regarding the sediment
6 study that they're doing for Missouri River.

7 And I think Leanne is going to talk about that
8 so I'll just hold any comments until later.

9 CHAIRMAN HARDECKE: All right. It's your turn.

10 MS. LEANNE TIPPETT MOSBY: Good afternoon, ladies and
11 gentleman in the audience and Commissioners. Well, I
12 stand before you today wearing a different hat, yet,
13 again.

14 I wanted to update you on some of the changes
15 that have occurred in the Department in case you haven't
16 read -- read it in the papers already. The Division
17 of Environmental Quality and the Field Services
18 Division have merged to become once again the
19 Division of Environmental Quality. So we are working
20 through those transition issues.

21 As part of that -- as part of those changes I've
22 been named the acting director of the Division of
23 Environmental Quality. And Scott Totten has agreed
24 to be your acting director. To be the acting
25 director of the Water Protection Program, so I'm very

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1 pleased that Scott agreed to do that. And, I think,
2 given Scott's knowledge of the program and history
3 with the program, I think, that will provide some
4 continuity for the Staff that will be much
5 appreciated by them.

6 And with that I would like to acknowledge the
7 Staff once again they have -- they've been through a
8 lot in the past several months. They've been through
9 a lot of transition. They've been through a lot of
10 spotlight in the media on various issues and they
11 just keep coming to work everyday and plugging away
12 and working hard and being very supportive of me and
13 the rest of the managers in the program. And so I
14 just wanted to thank them for that.

15 I think you are already aware that Phil
16 Schroeder was retired effective last week. And so we
17 have a nice reception for him earlier this week and
18 had several people from other programs as well as
19 outside the Department come and that was quite a
20 testament to Phil's service to the Department over
21 the years and how well thought of he is.

22 I just -- just for those of you who don't know
23 Mr. Totten. I would just like to read a quick bio,
24 so that you'd know a little bit about his history.
25 Scott received his Bachelor's in science and geology

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1 and a Master of Arts in geography from the University
2 of Missouri. Scott began working for the Department
3 of Natural Resources as a student intern in 1976
4 working in the Water Resources Program. He's also
5 worked for Water Pollution Control Program and in the
6 administrative of the Division of Environmental
7 Quality as the director of the Water Protection and
8 Soil Conservation Division formerly and the
9 Department director's office. So I know that you
10 will get along very well with Scott. I've know Scott
11 for a number of years and he's great to work with.

12 Some of the things -- and I wanted to say the
13 reason I decided to come to the meeting today is
14 because all these changes just occurred last week I
15 didn't fear -- feel that it would be fair to
16 Scott to just ask him to -- to come and try to lead
17 the Staff through this meeting given the short time
18 frame.

19 I just wanted to let you know of a few things --
20 a few changes that we're looking at in the program
21 and kind of seek your concurrence for moving forward
22 on those changes. One of the things, I think, I
23 discussed with you a little bit at the last meeting
24 was changes in our -- to our rulemaking. How we
25 carryout our rulemaking procedures and trying to

00137

1 bring rules to the Commission at -- at fewer times or
2 -- I should say fewer steps of the process being
3 brought to the Commission.

4 And what I mean by that, I think, what you have
5 been seeing is we've come -- we come to you for the
6 necessity finding. We come to you to -- for approval
7 to post the Regulatory Impact Reports. We come to
8 you, again, with the proposed rule and then for the
9 public hearing. And what we're looking at, it would
10 be to come to you at the beginning before we start
11 for a necessity finding, explain to you, of course,
12 what the purpose of the rulemaking is, why we are
13 seeking to do a rule and -- and then not --
14 essentially not bring the rule to you again until it
15 was ready for public hearing.

16 And what we would do on the flip side is we
17 would keep you informed every step of the way and we
18 would engage stakeholders and try to work through as
19 many issues as we can in terms of working through any
20 controversial issues or anything of substance and
21 then hopefully by the time the rule gets to you we've
22 narrowed down any controversial, difficult issues to
23 very few. And we've worked through most of -- of the
24 rule and have agreement on -- on most of the
25 substance and parts of the rule.

00138

1 I'm hoping that will lesson the burden on the
2 Commission. And, you know, it -- I think, it'll
3 hopefully to help improve the relationships with our
4 stakeholders and if we're -- if we're trying to work
5 out -- work through those issues in a stakeholder
6 process. So if -- if you agree with that we can
7 proceed with that and I can give you a more formal
8 kind of idea of what we're doing at the -- at the
9 next meeting or Scott can give you that if you're
10 amenable to -- to us looking for those changes.

11 COMMISSIONER HUNTER: Do we need a motion to approve?

12 MS. LEANNE TIPPETT MOSBY: No. No. I just think
13 just kind of your general concurrence or --

14 COMMISSIONER HUNTER: Sure.

15 MS. LEANNE TIPPETT MOSBY: -- if anyone had any
16 concerns, I just -- okay. Very good. Oh. I'm
17 sorry.

18 COMMISSIONER SHORNEY: I guess issues that come up we
19 -- we definitely want to know those.

20 MR. PHIL WALSACK: This is Phil Walsack for the
21 record from Missouri Public Utility Alliance.

22 As you well know the RIR process is a piece of
23 this puzzle that we have been concerned with, with --
24 as it relates to municipals. So not including that
25 in the public forum would be hard to swallow at this

00139

1 moment.

2 Because, I think, what you're asking for is a
3 motion to approve this process change --

4 COMMISSIONER HUNTER: No.

5 MR. PHIL WALSACK: -- is that what you're suggesting
6 Mr. Hunter?

7 COMMISSIONER HUNTER: No. Right?

8 MS. LEANNE TIPPETT MOSBY: No. I'm not looking for a
9 motion.

10 COMMISSIONER HUNTER: No.

11 MS. LEANNE TIPPETT MOSBY: I was just looking for a
12 general 'cause we'll bring you a formal --

13 COMMISSIONER HUNTER: She's looking for ways --

14 MS. LEANNE TIPPETT MOSBY: -- process.

15 COMMISSIONER HUNTER: -- to simplify the process.

16 MS. LEANNE TIPPETT MOSBY: And -- and I would clarify
17 the -- the RIR is required by law to go through a
18 public notice period and we -- we would not change
19 that of course because that's required under the
20 statute.

21 MR. PHIL WALSACK: Public notice --

22 MS. LEANNE TIPPETT MOSBY: And comment.

23 MR. PHIL WALSACK: -- process is not a public hearing
24 process in front of the Commission?

25 MS. LEANNE TIPPETT MOSBY: Right. It's not required

00140

1 to go through a public hearing process. It is
2 required to go through a public comment process. So
3 we post the RIR, we take comment, we have to respond
4 to those comments, make any changes that would be
5 necessary and then post the final document.

6 MR. PHIL WALSHACK: At this moment I would have
7 heartburn with that so I'd like to be able to
8 consider that --

9 CHAIRMAN HARDECKE: That's fine.

10 MR. PHIL WALSHACK: -- in the future. Thank you.

11 MS. LEANNE TIPPETT MOSBY: Okay. If there's any
12 other questions about that?

13 (No response.)

14 MS. LEANNE TIPPETT MOSBY: I'll move on.

15 On the, of course, as you well know, I think, I
16 reported at the last meeting and most -- most of our
17 stakeholders are quite well aware that we're dealing
18 with some very significant funding shortfalls; not
19 only in Water Protection Program but in four of our
20 five media programs in the Division of Environmental
21 Quality. And so as part of that -- part of the
22 process of looking for where we might reduce
23 expenditures we're thinking about a couple of things
24 and we just also wanted to -- to ask the Commission
25 what their feelings on these couple of items.

00141

1 One, being we -- we were looking to have all of
2 the Commission meetings in Jefferson City that could
3 be -- that could save probably several thousand
4 dollars per year because we could save on lodging
5 costs for Staff. And I would -- one caveat to that
6 the -- the January meeting already has a contract for
7 St. Louis so we would not change that because we
8 already have a signed contract for that meeting. But
9 it would be any subsequent meetings for the
10 foreseeable future.

11 There may be a time in -- in the far future
12 where we might be in a better funding situation where
13 we may be able to resume traveling around the state.
14 There are obviously benefits to that because we can
15 get -- get to -- get around to other stakeholders in
16 various parts of the state, but at this time we
17 thought it may be prudent to try to reduce those
18 expenditures.

19 And I do actually have -- and we wouldn't
20 require obviously a decision today, but I do have
21 some cost information that you may want to consider.
22 So we will -- we'll bring that back to you at the
23 next Commission meeting and ask for your -- for your
24 thoughts on that.

25 Okay. Another -- another cost saving measure

00142

1 we're looking at, but we don't have a proposal yet is
2 the -- what our Soil and Water Conservation Program
3 actually has started taping meetings and -- and that
4 reduces on them having to have minutes done. What we
5 do now we -- we audio tape the meetings and then we
6 have them transcribed and that -- that is a
7 substantial cost to the program. And if we started
8 taping the meetings it would be a one time cost
9 obviously for the equipment to be able to do that.

10 But it would then get rid of the cost it -- for
11 transcribing the minutes. So we would just have the
12 tapes available that then could be copied if people
13 needed a -- would -- wanted a copy of the -- of the
14 information or a copy of the meeting. And we could -
15 - Malinda, wants to add to this because she's been
16 looking into this for us.

17 MS. MALINDA OVERHOFF: Yeah. I've been looking at --
18 we would still have minutes that had all the motions
19 and the vote in it. We would still be providing
20 those we just wouldn't have everything else. But we
21 would still have minutes with all the -- the votes
22 that were taken; the motions and the votes in hard
23 copy.

24 COMMISSIONER HUNTER: How much of a cost saving are
25 you talking about?

00143

1 MS. LEANNE TIPPETT MOSBY: Well, we -- we haven't
2 determined that yet, but we were -- we would be
3 bringing -- if Malinda is going to evaluate it; she's
4 actually going to try to attend one of the Soil and
5 Water Conservation meetings and see how it works.
6 And then we'll put together some figures for your
7 consideration. But it would cut down -- it would cut
8 down on the size of the briefing packets as well.
9 That's a little bit of a savings and cut down on
10 paper. I know Commissioner Parnell at the last
11 meeting asked if we could consider doing more
12 electronically as opposed to having so much paper.

13 So we wouldn't pull the trigger until we -- we
14 received your concurrence, but I just -- we can look
15 into that if you're interested in it.

16 Okay. Okay. Just an update on our Lake of the
17 Ozarks initiative; as you are aware Governor Nixon
18 came up with a plan to -- for the Department to do a
19 very intensive investigation of Lake of the Ozarks
20 and that involved inspecting 420 facilities. All
21 those inspections were completed by our Southwest
22 Regional Office and our Kansas City Office had about
23 16 of those. And they're in proc- -- in the process
24 of getting all the inspection reports completed. The
25 inspections are done. They're in the process of

00144

1 getting all the sample results in and so far, I
2 think, Kevin has received 29, Kevin? We've received
3 29 referrals from those inspections.

4 Most of -- most of the referrals, what we're
5 doing is offering an abatement order on consent to
6 the party to sign that puts them on a compliance
7 schedule, has an upfront civil penalty and has
8 stipulated penalties if they fail to meet the various
9 milestones that are in the compliance schedule.

10 So we offer that to them to sign and to
11 negotiate, I mean, we do offer a meeting for them to
12 negotiate the terms of the agreement. But if they
13 don't --

14 (Tape Two, Side B Concluded.)

15 MS. LEANNE TIPPETT MOSBY: -- we ended up referring
16 those directly over to the Attorney General's Office
17 to be able to sort out those issues for us.

18 Our Environmental Services Program
19 which is our lab also a conducted a fairly extensive
20 sampling effort and they're now in the process of --
21 of working through all those samples as well.

22 I'm pleased to say that they Staff really rose
23 to the occasion. They actually completed all of this
24 work a week ahead of schedule. And we will be comp-
25 -- compiling all of the information of the results of

00145

1 these inspections and providing a report to Governor
2 Nixon by the end of the year.

3 Are there any questions on that initiative?

4 (No response.)

5 MS. LEANNE TIPPETT MOSBY: Okay.

6 Another thing we're working on, somewhat related
7 to the Lake of the Ozarks at least that's what
8 brought it into the limelight, is our sewage bypass
9 protocols that's both internally and externally.
10 We're looking at how we respond to when we receive a
11 notification of a sewage bypass what we do with that
12 information whether or not we go out and take a look
13 and inspect or take samples and also what we expect
14 the permittees to do when they have a -- a bypass
15 occur.

16 So we're actually having a meeting tomorrow to
17 try to hammer out some of these details and make
18 things clear to everyone what -- what we're expect- -
19 - what the expectations are. I know I was at MPUA
20 conference a month or so ago and mentioned this
21 issue and I know Mary West actually brought up the
22 fact that there's a lot of confusion out there among
23 the permittees about what -- what the requirements
24 are and what their -- what they need to do.

25 So that's part of the thing that we're trying to

00146

1 -- to -- to get very clear and then once we -- you
2 know, get the protocols in place then we'll let
3 everyone know and make it a very clear and
4 transparent process to all of our stakeholders.

5 MS. MARY WEST: Is the stakeholders meeting
6 tomorrow?

7 MS. LEANNE TIPPETT MOSBY: No. It's -- it's an
8 internal Department.

9 MS. MARY WEST: But you-all meet.

10 MS. LEANNE TIPPETT MOSBY: Right.

11 MS. MARY WEST: Okay.

12 MS. LEANNE TIPPETT MOSBY: The -- and as Jenny
13 mentioned she and I went to the National Academy of
14 Sciences National Research Council meeting on the
15 Missouri River. It was their fourth of five meetings
16 to discuss this issue of sediment in the river.

17 I guess the essential question before them is:
18 Is sediment good or is sediment bad? There was a lot
19 of questions from the committee about what -- where
20 the data -- where data resides in the various
21 agencies and how accessible it was and how much
22 information is actually out there.

23 Another significant part of the -- of the
24 meeting was a presentation by EPA and the committee
25 asked numerous questions of EPA. And a lot of

00147

1 discussion with the EPA focused on the kind of the
2 tension between sediment in the river and nutrients
3 in the river and whereas the Missouri River has
4 historically had a lot of sediment in it and maybe
5 that was required for species in that river. The
6 endangered species that we're concerned about,
7 particularly in this case the Pallid Sturgeon, versus
8 -- you know, the nutrients that might be associated
9 with the sediment in the river.

10 The -- the gentleman who was there from EPA was
11 not able to answer the question of: Is sediment good
12 or is sediment bad? But he did recognize that there
13 is a tension between -- on this issue between the
14 Endangered Species Act and the Clean Water Act and
15 that he did assure us that the Environmental
16 Protection Agency and USGS and Fish and Wildlife
17 Service were all aware of that tension and were in
18 active discussions in making sure they're
19 communicating with each other.

20 And, I think, that's all I have for -- for today
21 unless you have any questions of me.

22 CHAIRMAN HARDECKE: Any questions?

23 COMMISSIONER SHORNEY: On the sewer bypass
24 situations, I guess, I've noticed in the paper
25 there's been more public information than several

00148

1 places; has it -- in the past has this been kind of
2 low key, but now it's more public? Is that one of
3 the things that's happening?

4 MS. LEANNE TIPPETT MOSBY: Yes. That's very
5 perceptive of you to pick up on that. As matter of
6 fact, that is definitely something that's happening.
7 We are putting out more press releases for instance
8 when we have a sewage bypass. I actually personally
9 last Saturday spent about seven or eight hours
10 dealing with a bypass and trying to get a press
11 release out in the Kansas City area, actually, it was
12 Lake Weatherby so you might of heard of -- heard of
13 that or -- heard about that on the -- on the news.

14 That is part of the issue -- I mean, there's
15 been a lot of scrutiny on the Department and a lot of
16 concern that maybe the information we have, we're not
17 -- we're not getting enough information out to the
18 public, and so part of the discussion that we're
19 going to have at the meeting, tomorrow, is to come up
20 with a more systematic way of doing that. Right now,
21 it's kind of we're looking at everything at a case-
22 by-case basis. So we're going to be coming up with
23 some criteria for when we -- when we do a press
24 release or when we go out and investigate the site.
25 COMMISSIONER SHORNEY: There's -- in the Kansas City

00149

1 area, I know, in the Kansas City Star there's been an
2 awful lot of, I guess, kind of -- I don't know how to
3 say this right, but kind of negative comments on the
4 actions of the water quality monitoring. And a
5 thought just occurred to me that, oh, you know, over
6 the last two years this Department and this
7 Commission have approved a tremendous amount of Water
8 Quality Standards and I don't -- I was just wondering
9 about some kind of a press release maybe summarizing
10 what we've done in the last couple of years 'cause
11 it's been to me a tremendous effort by DNR and Staff
12 and it's -- I think, we're making progress in what
13 you're doing, but I'm just thinking, you know, the
14 general public doesn't know this maybe. And all they
15 see is a headline in the paper where there's a sewage
16 overflow someplace, some fish kills.

17 I just thought to throw it out as maybe a
18 possibility of some kind of a positive press release.

19 MS. LEANNE TIPPETT MOSBY: Right. I will definitely
20 -- I will bring that back to our director and have
21 him take that into consideration, I think, he would
22 certainly be amenable to looking at something that.
23 I think that's a very good suggestion.

24 CHAIRMAN HARDECKE: Any other questions?

25 (No response.)

00150

1 CHAIRMAN HARDECKE: Just a minute we'll get you.

2 MS. LEANNE TIPPETT MOSBY: There is just one more
3 thing. We had anticipated this meeting would be
4 shorter today and that's why we put a couple
5 presentations on at the end. A presentation on MS4s.
6 We do want to do the UAA. We feel we need to notify
7 you about that issue, but the presentation on fees
8 and the presentation on MS4s if you would prefer to
9 defer that to a later meeting that's fine. There's
10 nothing, you know, pressing in terms of time about
11 that.

12 CHAIRMAN HARDECKE: Okay.

13 MS. LEANNE TIPPETT MOSBY: So let's consider that.

14 CHAIRMAN HARDECKE: Did you have any other comments
15 on the Missouri River meeting?

16 MS. JENNIFER FRAZIER: No. No.

17 COMMISSIONER TUPPER: Is December a real meeting or a
18 conference call?

19 MS. MALIDNA OVERHOFF: Conference call.

20 MS. LEANNE TIPPETT MOSBY: Oh. That's right.
21 December is a conference call for the -- the
22 IUP.

23 COMMISSIONER TUPPER: That's what I thought.

24 MS. LEANNE TIPPETT MOSBY: IUP. Sorry.

25 COMMISSIONER TUPPER: I thought maybe it changed.

00151

1 CHAIRMAN HARDECKE: Okay. Phil, you want to comment?

2 MR. PHIL WALSACK: We would be very interested in
3 working with the Department through the SSO, Sanitary
4 Sewer Overflow notification process. All of these
5 issues that are coming to us that are making news.
6 Certainly, Jeff Theerman from MSD is here who
7 participates at the national level on these issues
8 and we would encourage the Department to engage some
9 of us certainly the 100 Missouri municipals that
10 belong to our association and the 300 or so that
11 belong to the national association 'cause this is not
12 a Missouri issue at all. This is a national issue.
13 And we need some national clarity and I'm glad my
14 friends from the EPA are here today because we need
15 their involvement with DNR through this process.

16 This is not going to be something that is a slam
17 dunk. This is a very difficult process. And we
18 encourage the collaboration of all of these groups
19 together and not just -- you know, DNR whipping out
20 some- -- something overnight. This is a complex
21 issue and we would encourage them to engage us in
22 that discussion.

23 Thank you.

24 CHAIRMAN HARDECKE: Thank you.

25 MS. LEANNE TIPPETT MOSBY: I'd just like to comment.

00152

1 I appreciate Phil's offer and, of course, we're
2 always wanting to engage stakeholders and would be
3 very willing to -- to work with them on that issue.

4 CHAIRMAN HARDECKE: While Leanne mentioned the
5 National Academy of Science meeting I had distributed
6 to each of you a letter that I've written to Acting
7 Regional Administrator Rice asking for clarification
8 of the statements that were made at the Academy
9 meeting in regard to the hypoxia issue and the
10 sediment issue. So if -- if you've had time to
11 review that or --

12 MS. LEANNE TIPPETT MOSBY: And I just wanted to
13 comment that Jenny and I actually had a chance -- an
14 opportunity to review this at a break and, I think,
15 Jenny may have some suggestions about the letter.

16 MS. JENNIFER FRAZIER: Sure.

17 Well, the contents of this letter really go to
18 questioning some statements that were made by the EPA
19 representative, specifically, to the effect that they
20 were not going to be an impediment to the Corps
21 restoration projects which seemed sort of contrary to
22 what -- you know, they're supposed to be doing in
23 terms of setting nutrient standards that that should
24 be an independent process versus one that defers to
25 the Corps recovery restoration projects.

00153

1 So it's my understating that that's the gist of
2 this letter is trying to seek clarification and
3 express concern over that position. I -- I would
4 like the opportunity to possibly work with the
5 Chairman to focus that down a little bit and narrow
6 this letter a little bit to -- to really narrow the
7 concern to that particular issue.

8 I had some concerns about a few of the things
9 and I want to -- just -- just in terms of not knowing
10 enough myself, but I'd like to go back and check my
11 notes from that meeting to make sure that -- that
12 they're consistent with what's in the letter, so that
13 would just be my suggestion to you, is to have the
14 opportunity to -- to work on this letter a little bit
15 and possibly bring it back to you at the December
16 meeting. I'm not sure, I can't remember when the
17 next National Academy of Science meeting is, but I
18 think it's after December so there's -- we would have
19 time --

20 MS. LEANNE TIPPETT MOSBY: Yes. It is. They're
21 looking at the spring for the fifth and final
22 meeting. And then I meant to mention that, actually,
23 the report they're shooting for next summer to have
24 the report out.

25 So -- and I would point out the December meeting

00154

1 is on the IUP unless the Commission would decide to -
2 - to discuss another issue --

3 CHAIRMAN HARDECKE: Well, we could approve it.

4 MS. JENNIFER FRAZIER: Well, you could always add the
5 letter to the agenda.

6 MS. LEANNE TIPPETT MOSBY: Right. Right, if the
7 Commission, would want to add that to the agenda.

8 MS. JENNIFER FRAZIER: Approve the concept and then
9 let us work on the language certainly.

10 COMMISSIONER TUPPER: I really think, Jenny, we need
11 to get our response in quickly.

12 MS. JENNIFER FRAZIER: All right.

13 COMMISSIONER SHORNEY: I do, too.

14 COMMISSIONER TUPPER: Sitting around waiting is going
15 to let them decide they're right.

16 MS. LEANNE TIPPETT MOSBY: We -- we could work with
17 you by e-mail if you would like to do that and set an
18 earlier target in December.

19 COMMISSIONER TUPPER: I'm thinking days not weeks.

20 MS. JENNIFER FRAZIER: That's certainly doable. If
21 you want to approve the concept and we'll just work
22 on the language and get that approved.

23 COMMISSIONER SHORNEY: What was the issue again?

24 MS. JENNIFER FRAZIER: The issue, Leanne, stated it
25 very well. There is a conflict between the fact that

00155

1 the Endangered Species Act -- that there may be
2 evidence that sediment is needed in the rivers. We
3 all -- we know that there's not the historic loads of
4 sediment in the river today and what impact that's
5 having on the species in the river is possibly in
6 conflict with the whether or not sediment is good or
7 bad and that's the general question that the Academy
8 has sort of been posed with although they recognized
9 in the meeting that they may not be able to answer
10 that. And that may be very site-specific.

11 It may be bad -- sediment may be bad up behind
12 the dams; it may be good further down. It just --
13 it's a very complicated question. And there is some
14 conflict, but the statement that was of most concern,
15 I think, that Chairman Hardecke is picking up on is
16 sort of a deference that EPA is showing to the Corps
17 in terms of not wanting to interfere with their
18 recovery, but if their recovery is -- is impairing
19 the water quality that seems sort of inconsistent
20 with the mission of the Clean Water Act.

21 So that's the point that we're trying to make
22 is -- I think, that you're trying to make, --

23 CHAIRMAN HARDECKE: Right.

24 MS. JENNIFER FRAZIER: -- I don't want to speak for
25 you, this is your letter but expressing concern about

00156

1 any -- any deference or -- or relaxation of -- of
2 their goals under the Clean Water Act. They should
3 be acting independently so to speak. They should --
4 you know, there's some -- there's some interplay, but
5 -- but if their goal is to set nutrient standards,
6 Water Quality Standards for the river then -- then
7 that should be their focus.

8 CHAIRMAN HARDECKE: Well, the issue is the -- they
9 made a statement in addressing -- they said they were
10 not going to address the impact of the Corps projects
11 on hypoxia in the Gulf. Well, there's been a huge
12 reduction in the hypoxia area this year when the
13 Corps wasn't imple- -- or doing any of their
14 projects. So that's a correlation worth looking at.

15 The other issue is EPA continues to find
16 construction operations for sediment getting off of a
17 job site into the Missouri River or other waters and
18 the Corps is conducting a construction project and so
19 it only seems fair that we expect the same -- the
20 same enforcement for the Corps as well as other
21 citizens. So anybody want to make a motion on the
22 letter?

23 **COMMISSIONER SHORNEY: I move we proceed with the**
24 **letter and make adjustments to it as you -- you**
25 **mutually agree.**

00157

1 CHAIRMAN HARDECKE: Okay.

2 COMMISSIONER HUNTER: Second.

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

5 MS. MALINDA OVERHOFF: Commissioner Easley?

6 COMMISSIONER EASLEY: Yes.

7 MS. MALINDA OVERHOFF: Commissioner Shorney?

8 COMMISSIONER SHORNEY: Yes.

9 MS. MALINDA OVERHOFF: Commissioner Tupper?

10 COMMISSIONER TUPPER: Yes.

11 MS. MALINDA OVERHOFF: Commissioner Hunter?

12 COMMISSIONER HUNTER: Yes.

13 MS. MALINDA OVERHOFF: Chair Hardecke?

14 CHAIRMAN HARDECKE: Yes.

15 Okay. Thank you.

16 MS. JENNIFER FRAZIER: Thank you.

17 CHAIRMAN HARDECKE: Let's see here.

18 Are you doing the UAA?

19 MS. LEANNE TIPPETT MOSBY: Um-huh.

20 CHAIRMAN HARDECKE: Okay.

21 MS. LEANNE TIPPETT MOSBY: And then you could -- if
22 you -- if you want to defer these two, you can,
23 that's fine.

24

25 (An off record discussion was held by the

00158

1 Commission.)

2 MR. ROB MORRISON: Good afternoon, once again,
3 Commissioners. I want to direct your attention to
4 some information that you received in your packets
5 and earlier this week. It's the October 29th, 2009,
6 letter from the EPA in particular assistant
7 administrator Silva to our director, Mark Templeton,
8 regarding new and revised Water Quality Standards for
9 the 28.6 mile stretch segment of the Mississippi
10 River in the general St. Louis vicinity.

11 What I wanted to do, there's a couple of folks
12 here today that would also, I think, are going to
13 have a short statement about this decision. John
14 DeLashmit and some folks from EPA are also here and
15 would be available to answer any questions or make
16 any statements that they would like to and also Jeff
17 Theerman and his Staff from Metropolitan Sewer
18 District there in St. Louis are -- are here as well
19 and would like to have a few remarks.

20 So I will -- I will keep my remarks fairly
21 brief. I -- I hope each of you have had a chance to
22 read the letter. I just wanted to -- to touch on a
23 few things in the letter to give you just a flavor of
24 -- of the history that's went on and from there.

25 So with that you recall in the letter this was

00159

1 precipitated by the September 2000 letter from EPA to
2 the Department regarding Missouri's Water Quality
3 Standards. That letter outlined several portions of
4 Missouri's program that needed to be upgraded or
5 updated, if you will.

6 Some of them had to do with designated uses and
7 criteria to protect those uses. It also had to do
8 with Missouri's efforts under Antidegradation and --
9 and the like. And there were a few other issues that
10 were embodied in that letter. The Department perhaps
11 be seeing that I was in the Hazardous Waste Program
12 at the time I don't have first hand knowledge of
13 this, but apparently there were some issues with the
14 speed at which the Department was addressing those
15 issues.

16 There was a lawsuit that happened between the
17 Missouri Coalition for the Environment and the EPA.
18 That lawsuit was settled in December of 2004 and it
19 required Missouri to address certain portions of our
20 program. And it had to do with Antidegradation and
21 Missouri's Water Quality Standards that -- that we
22 have before you today.

23 As a result of that Missouri, you'll recall back
24 in 2004/2005 Missouri launched into an effort to
25 upgrade, update the waters of Missouri. We -- we at

00160

1 the time we only had about 5,000 miles of streams
2 that had whole body contact recreation use assigned
3 to them. At that point in time, the Commission and
4 the Department worked together to add about 20,000
5 miles of streams to -- to that list.

6 As part of that effort the Mississippi River was
7 put -- was considered and was part of that list. And
8 you'll recall that the history of this was that
9 during that time frame in 2005 the Metropolitan Sewer
10 District conducted a Use Attainability Analysis for
11 the 28.6 miles of Mississippi River there in the St.
12 Louis area. And that Use Attainability Analysis was
13 whether or not whole body contact recreation use was
14 attainable for the Mississippi River there in that
15 particular segment.

16 And -- and in that whole effort of evaluating
17 and analyzing it was -- it was the decision of the
18 Commission, a final decision of the Commission to
19 apply secondary contact only to the lower 190
20 miles of the -- of the Mississippi River. And that
21 was embodied and included in that 2005 rulemaking
22 effort.

23 So that's -- that's where we stood on the
24 Mississippi River on that time. In October, you'll
25 recall that we had -- the October 31st, 2006, letter;

00161

1 that was the infamous letter of the 99 water bodies,
2 we had 99 out of 141 water bodies that EPA indicated
3 that needed new and revised standards. That we had
4 some Use Attainability Analyses submitted that were
5 not going to be approvable as part of that 2005
6 rulemaking.

7 So we were required to start the process of
8 reevaluating and revamping those. The Mississippi
9 River was not included 28.6 mile segment was not
10 included in that particular letter. That was
11 deferred for a -- for a later date. The Commission,
12 I think, recognized during this -- this reevaluation
13 process that perhaps it -- would -- it was
14 appropriate to apply whole body contact recreation to
15 the lower 160 (sic) and that would be of the
16 Mississippi River. That would be from the Meramec
17 River to the confluence of the Ohio River there near
18 Cairo, Illinois. So that was the direction of the
19 Commission and that was included in the last
20 rulemaking package that was just effective here at
21 the end of October. This is the rulemaking package,
22 the triennial review package that we had produced in
23 2008 and 2009. We added back and with the Commission
24 approval, we added back those 160 miles of
25 Mississippi River for whole body contact recreation

00162

1 use.

2 During that time frame EPA had written us a
3 letter in 2008, December to be precise that indicated
4 that we needed to add that lower 160 back and
5 since we were already in the process of that the
6 timing seemed to work out pretty well.

7 As I mentioned what we have before you today is
8 the October letter that left us -- you know, after
9 the 2008 letter it still left the 28.6 miles of
10 Mississippi River between, basically, north
11 Riverfront Park there in St. Louis to the confluence
12 of the Meramec River. It left that particular
13 segment of Mississippi River with secondary contact
14 recreation only at this point.

15 EPA's letter indicates, in essence and to boil
16 it down, that -- that new and revised standards are
17 needed for those 28.6 miles of Mississippi River.
18 And what they've indicated in there is that the
19 Department, the state is I think how they precisely
20 term it has not made our case that -- that whole body
21 contact recreation use is not attainable on that
22 particular segment of river.

23 So where does that leave us today? And I -- I -
24 - I don't -- I will apologize, I wasn't -- I didn't
25 want to go in today to a lot of detail into the

00163

1 letter. There's quite a bit of discussion and
2 rational. There is -- there are things in here that
3 perhaps if one were writing it you could have
4 included lots of things. There was a lot of effort
5 that went in by MSD to trying to assess whether the
6 whole body contact was attainable. There was a lot
7 of analysis by EPA and it's hard to capture that in a
8 -- in a letter and -- so I did want to leave you with
9 the idea and the understanding that there was a
10 fairly robust effort on both sides of the table in an
11 effort to assess whether whole body contact
12 recreation use was attainable.

13 But be that as it may, where it leaves us today
14 and perhaps John can -- can elaborate on this as well;
15 but where it leaves us today, we have a couple of
16 options that the Commission and the Department need
17 to consider. First of all, there's -- there's a time
18 frame in this letter. It says 90 days. And that is
19 set out by federal regulation. Although, I -- I do
20 want to point out and I'm kind of looking at John
21 that the last time we got one of these letters in
22 2006 it took us three years to -- to get it fixed.
23 So there is some precedent. However, we -- we were
24 actively working on quote, unquote fixing the 2006
25 water bodies.

00164

1 And that's kind of why I wanted to throw that in
2 there is that it did take from October of 2006 until
3 October of 2009 to get all those 99 water bodies
4 corrected. So, anyway, that's just -- that's in the
5 for what it's worth department there, John.

6 But, anyway, the -- suffice it to say the state,
7 the Commission, the Department have some choices. We
8 can elect to proceed right a way to initiate a
9 rulemaking to enact whole body contact recreation use
10 on that 28.6 miles and simultaneously with that
11 process the letter clearly indicates in here that EPA
12 is willing to consider additional information.
13 Whether that information would be additional data
14 that's collected in regarding the attainment of the
15 use, whether that data is on the side of the
16 financial capability and there are -- and what I'm
17 getting at there is under 131.10(g) under the federal
18 regs there are six factors for use attainability.

19 One of them is financial. And it's an economic,
20 social economic impact. EPA clearly left the -- the -
21 - the door open for a use attainability based upon
22 social economic impact, so -- so that is there. So
23 that first option is, proceed right a way
24 simultaneously with additional information which I'm
25 sure EPA would be willing to consider.

00165

1 The other option regarding promulgation of new
2 and revised criteria involves promulgating the whole
3 body contact, but -- but we as a group decide we're
4 going to wait to the next triennial review in order
5 to actually promulgate those -- those standards.
6 That would take -- and what I mean is that we have a
7 scheduled triennial review in 2012 that would be
8 bringing you a rulemaking and update to our Water
9 Quality Standards at that time. That would -- that
10 would require some agreement by EPA that they would
11 be willing to wait another three years for -- for the
12 standards to be revised. So that -- that is a
13 possible option as well. That we -- we could -- we
14 could do that as well.

15 And then the other option that -- that you have
16 as what EPA has indicated in this letter is the state
17 could choose not to promulgate a rule and I'll just
18 require EPA to go through the promulgation process.
19 In my mind, I'm not very comfortable with that. I'm
20 kind of, I guess, I'm kind of a hometown Missourian;
21 I -- I would prefer that we -- we take care of our
22 own business and that we -- we take care and do
23 whatever we need to, to protect the waters of the
24 state of Missouri.

25 So my personal recommendation is that we not

00166

1 pursue that option at this point of -- of having EPA
2 promulgate the standard. And, obviously, I'm -- have
3 another -- well, I have another week with the
4 Department so -- so I don't think that decision will
5 be made in that time frame. But at any rate that is
6 an option although it may not be a robust option for
7 you to consider.

8 So -- so with that, I know, we're kind of
9 running -- running through this -- this whole thing
10 but I wanted to give you a sens- -- a flare and a
11 flavor of where -- where I saw the history coming
12 from and where we're headed. So if there are any
13 questions of me, if not, I think, I'm going to turn
14 the podium over to John DeLashmit to make a few
15 remarks with that.

16 Commissioner Shorney?

17 COMMISSIONER SHORNEY: Any social economic impact; no
18 idea what that might be?

19 MR. ROB MORRISON: Well, as part of the -- this has a
20 parallel track with regard to the St. Louis MSD and
21 the EPA and DNR and Coalition for the Environment are
22 involved in a lawsuit that is a separate lawsuit that
23 is related to the CSO, SSO issues in St. Louis.

24 There has been a lot of data developed in terms
25 of social economic costs to the -- to the citizens

00167

1 there in -- in St. Louis. And I -- I'll let Jeff and
2 his staff, he can expound on that much, much more
3 detail than I. But sufficed it to say in the interim
4 time frame between the 2006/2007, maybe early 2008
5 time frames until now there's been a lot of -- of
6 information developed for that long-term control plan
7 that -- that St. Louis MSD has been -- has been
8 working on. So it is possible that there is enough
9 data out there to -- to accomplish that -- that goal.

10 Any other questions for me?

11 (No response.)

12 MR. ROB MORRISON: John.

13 MR. JOHN DELASHMIT: Good afternoon, Commissioners.
14 My name is John DeLashmit. I'm chief of the Water
15 Quality Management Branch at EPA's Region 7 office.
16 Rob did a great job of -- of kind of summarizing how
17 we got here.

18 I can certainly answer questions. I guess, the
19 first thing I would talk is three years versus 90
20 days; is EPA's calendar just slow or what's the deal?
21 What happens is the statute actually says 90 days.
22 But EPA has in the past exceeded that. The one thing
23 that -- that I have to tell is once we go over that
24 90-day deadline we are vulnerable to a mandatory duty
25 lawsuit because this particular action is a

00168

1 determination. It's not promulgation. We are not
2 promulgating new rules for the state. We are
3 determining that new rules are necessary. And so
4 after the 90 days pass EPA's obligation is to
5 promptly propose and publish those new rules if the
6 state hasn't done so.

7 So we have gone beyond the 90 days but we are
8 very vulnerable at that time. So do you have any
9 questions of me about the determination?

10 (No response.)

11 MR. JOHN DELASHMIT: Thank you very much.

12 CHAIRMAN HARDECKE: Thank you. Jeff Thurman (sic)?

13 MR. JOHN THEERMAN: Yes. Jeff Theerman. Chairman
14 Hardecke, members of the Clean Water Commission my
15 name is Jeff Theerman. I'm the executive director of
16 MSD in St. Louis. To -- to say that we were
17 disappointed by the determination from EPA, I think,
18 would be a vast understatement. MSD has worked the
19 process of looking at use attainability in the 28
20 mile segment in St. Louis for years. In addition to
21 the 2005 UAA that's described in the letter you have received
22 MSD worked with a stakeholders group including EPA
23 and developed a second UAA in 2007.

24 Sparing no expense looking at whether the use of
25 whole body contact recreation was appropriate for the

00169

1 28 mile segment. And we concluded in our opinion
2 that it is not because of physical limitations in
3 that water body. Predominantly it's used in terms of
4 barge traffic and velocity and simply just the
5 inappropriateness of encouraging people to entertain
6 whole body contact recreation in that specific
7 segment.

8 Having said that in reading EPA's letter we
9 believe that there is the opportunity to meet with
10 the Department and the Agency and provide additional
11 information about what we've learned since 2007. And
12 it's certainly our willingness to do that. I've come
13 here today to suggest that you allow us to do that
14 and not take action on this issue until we have an
15 opportunity to meet with the regulators and provide a
16 different or additional information.

17 Rob mentioned our long-term control plan. It
18 has been developed and has been submitted to EPA. In
19 addition to that we are developing plans for
20 disinfection of five treatment plants in the Missouri
21 and Mississippi River and along with that in total
22 MSD is planning on a five to six billion dollar
23 capital program over the next several decades to
24 address water quality issues in the region.

25 The Commissioner asked about widespread

00170

1 economic impact. This is a significant issue. In
2 addition to the money I've already spoken about this
3 could add substantially to the compliance side for
4 MSD and it is a really open question whether the
5 community can afford to -- to make additional
6 improvements after we make the improvements that are
7 already on the drawing board.

8 So with that I'd be glad to answer any
9 questions.

10 COMMISSIONER SHORNEY: More than the five to six
11 billion over several decades?

12 MR. JEFF THEERMAN: We've submitted a long-term
13 control plan and in that -- in the development of
14 that plan we looked at options that might be needed
15 to address this issue on the Mississippi. A CSO
16 storage tunnel along the Mississippi River has a
17 price tag of approximately \$1.4 billion. That's
18 public information in our long-term control plan on
19 our website. It's certainly available for anyone to
20 look at.

21 Our -- the plan is submitted to not include that
22 particular option after we solicited comment from the
23 public and looked at the water quality gains that
24 could be achieved through other means we did not include
25 that in our -- in our long-term control plan.

00171

1 COMMISSIONER SHORNEY: How do you -- how do you -- I
2 mean, if you move forward and you go with the social
3 economic impacts -- I mean, how do you -- you present
4 the information, right of the costs? And then how is
5 the decision made that you get an exemption or
6 exception? How would that transpire?

7 MR. JEFF THEERMAN: That is some- --

8 COMMISSIONER SHORNEY: And has that been done -- has
9 that historically been done in any other cities?

10 MR. JOHN THEERMAN: I'm -- I'm at a little
11 disadvantage to answer that. This issue isn't apart
12 in our minds of the litigation that's going on with
13 EPA, the state and the Coalition for the Environment.
14 But economics is part of that discussion and -- and
15 I'm -- I'm a little bit at a disadvantage to -- to go
16 into the details as they've been discussed. It's my
17 impression that the sum total of information on the
18 program can be considered in -- in either a public or
19 a mediation setting. And there's the potential for
20 resolution.

21 COMMISSIONER SHORNEY: There's a possibility it might
22 work; is that what you're saying?

23 MR. JOHN THEERMAN: That's what I'm trying to say.

24 You said it more succinctly than I did though.

25 (Laughter.)

00172

1 CHAIRMAN HARDECKE: Any other questions?

2 (No response.)

3 CHAIRMAN HARDECKE: I think certainly with the
4 magnitude of this issue that all sides do need to sit
5 down before we go any further because there's too
6 much at stake here to just do something quickly.

7 MR. JEFF THEERMAN: All right. I -- I've already
8 asked the Department if they're willing to have a
9 conversation and they indicated that that was
10 definite that they would be willing to have that
11 conversation. I have no doubt that EPA would feel
12 the same way in Region 7 to have a similar
13 conversation, so --

14 CHAIRMAN HARDECKE: John indicates yes. So I think
15 that would be the proper way to proceed and I
16 certainly hope EPA is -- comes willing to negotiate.

17 MR. JEFF THEERMAN: That is our hope.

18 Thank you.

19 CHAIRMAN HARDECKE: Anything else?

20 MR. JEFF THEERMAN: No.

21 CHAIRMAN HARDECKE: Thank you. Mary?

22 MS. MARY WEST: Mary West, Jacobs Engineering. This
23 is personal opinion that I've seen in observing the
24 Commission and attending a number of Commission
25 meetings over the last five or six years. The

00173

1 concern that I have as a former permitted entity and
2 a certified wastewater operator is that in many of
3 the cases, in the cases of the 99 water bodies that
4 the Department did not assign beneficial use of whole
5 body contact recreation that EPA came back and
6 collected more data and now, again, in the case of
7 the Mississippi River, I think, what we've seen is
8 multiple Use Attainability Analyses conducted on the
9 same water bodies with different conclusions.

10 And in my opinion EPA kind of has an answer in
11 mind when -- when they go out and -- you know, it --
12 you're guilty until proven innocent basically. And I
13 -- I know that that's the rebuttable presumption so
14 before John gets up here and says that I -- I
15 understand that. But, I think, what would be
16 beneficial for the Commission and for permittees who
17 spend hundreds of thousands of dollars in some cases
18 to collect this data; we need a way and EPA I would
19 think would like or -- should agree about how we're
20 going to evaluate conflicting data. So that we know
21 that answer upfront before we decide whether or not
22 to actually pursue these measures.

23 With the TMDL process and Use Attainability
24 Analyses potential there. With the possibility of
25 classifying small streams for the same beneficial

00174

1 uses and the necessity to do Use Attainability
2 Analyses for those streams; this is a huge issue for
3 the permitted entities in the state of Missouri and I
4 think that we need an answer to that question sooner
5 rather than later.

6 If all the Use Attainability Analysis work that
7 we do is simply going to be rejected by DNR or -- by
8 EPA rather than it's really a flog process and E- --
9 we just -- we'd be better off not participating.

10 So, I think, we need to know that answer going
11 in. Thank you.

12 CHAIRMAN HARDECKE: And EPA would be the one to give
13 us that answer, right?

14 MS. MARY WEST: Well, to me I would -- I don't know
15 if Missouri could do a rule or procedure that says
16 this is how we evaluate the data because EPA, I
17 believe, has to assure that Missouri follows our own
18 rules -- you know, I don't think they can come into
19 the state and say, no, you have to do it our way.
20 There is some flexibility there.

21 But I just don't think it's a good use of public
22 money to continue to do Use Attainability Analysis
23 after Use Attainability Analysis after Use
24 Attainability Analysis until we get the answer that
25 we want. You know permittees when they go they do

00175

1 the Use Attainability Analysis, we present the date
2 to MDNR, that data is evaluate, the decision is made.
3 So either the process is flawed that we're using or
4 the decision-making process is flawed, but one way or
5 the other we need to fix it.

6 Thank you.

7 CHAIRMAN HARDECKE: Okay. Thank you. Rob?

8 MS. MALINDA OVERHOFF: He's going to read for Leslie.

9 MR. ROB MORRISON: I was asked to read a letter and a
10 statement by or -- just a statement by Leslie
11 Holloway who is the director of state and local
12 government affairs for the Missouri Farm Bureau.

13 She writes: Contrary to the statement by EPA in
14 the letter to DNR regarding the Mississippi River UAA
15 paren, Page 4, following this inaction by the state
16 and EPA, close paren. DNR announced plans for action
17 in the attached letter to the stakeholders March 26th,
18 2001, letter from Water Pollution Control Program
19 director, Ed Knight.

20 Clearly DNR initiated steps toward revising
21 State Water Quality Standards in response to EPAs
22 call for action in its September 2000 letter to DNR.
23 However, a lawsuit was filed subsequently which
24 produced the December 2004 Consent Decree and
25 Settlement. It is important that EPA statements in

00176

1 this regard are accurate and that the Commission have
2 accurate information on the record.

3 Thank you, Leslie Holloway.

4 CHAIRMAN HARDECKE: Thank you.

5 In -- in regard to the UAA and Mississippi River
6 issue I think when that meeting occurs we'd ask Jenny
7 to assist in any way that she can; the Department and
8 the Missouri entities. So do you have any comments
9 on the situation?

10 MS. JENNIFER FRAZIER: No.

11 CHAIRMAN HARDECKE: Okay. Thank you.

12 Anything else?

13 MS. LEANNE TIPPETT MOSBY: I just wanted to say
14 something about Rob whenever it's appropriate. Do
15 you want to?

16 CHAIRMAN HARDECKE: You -- you go ahead and you Rob
17 work it out.

18 (Laughter.)

19 MS. LEANNE TIPPETT MOSBY: You know more detail. I
20 may need help.

21 MR. ROB MORRISON: No. That's fine.

22 MS. LEANNE TIPPETT MOSBY: Let me do -- here.

23 Well, first of all, actually, thank you, Chair
24 Hardecke. I was remiss earlier when I was up here.
25 I forgot to mention Rob Morrison will be leaving us.

00177

1 I'm very sorry to say.

2 I just found this out last week so I was unable
3 to come up with a great presentation like Phil did at
4 the REGFORM Water Seminar but I do want to say that
5 Rob has been wonderful to work with. I've
6 appreciated his counsel over these last couple of
7 months. I've always found Rob to be -- he's always
8 very -- very clear. He's very informative. He knows
9 his business and he's also very pragmatic and I
10 appreciate the way he's always been willing to give
11 me advice and give me a complete picture on any
12 particular issue and I will miss him very much.

13 And we did have one additional issue --

14 (Applause.)

15 MS. LEANNE TIPPETT MOSBY: I will -- we'll let
16 everyone know when we're going to have a reception
17 for Rob. I'm sure there will be several people,
18 external stakeholders that will want to join us in
19 that as well.

20 We did have actually one additional issue that
21 didn't make the agenda. I don't know if -- if -- if
22 we would have time to discuss it. There were a
23 couple of projects that we are a little unclear
24 whether or not -- they're Missouri River projects,
25 mitigation projects. And we are a little unclear on

00178

1 whether or not -- these are projects that the
2 Commission would want to hear about. We went back
3 and reviewed some minutes from a previous, I think,
4 it was back in May and we are a little unclear on
5 whether or not these projects would qualify for
6 something the Commission wants to hear about in
7 advance so we can discuss those briefly if you would
8 like.

9 CHAIRMAN HARDECKE: That's fine.

10 MS. LEANNE TIPPETT MOSBY: Okay. I'm going ask --
11 I'm putting Refaat on the spot here 'cause I actually
12 thought about this, this morning and I wrote a note
13 to myself; do we need to mention Nishnabotna and
14 Corning, a couple of projects that we've received
15 applications on?

16 MR. REFAAT MEFRAKIS: Actually, I'm not prepared for
17 this.

18 CHAIRMAN HARDECKE: That's fine.

19 MR. REFAAT MEFRAKIS: I'll try to do my best here.
20 Maybe Ruth will help me out here. I think
21 Carrie Schulte is working on that. We've got two
22 requests for land disturbance permits in which the
23 Corps is doing some projects that are not really
24 designed erosion-type of projects for the notching of
25 banks and -- and allowing the sediment to erode into the

00179

1 Missouri River. And so we had several conversations
2 with the Corps to make sure that that's not the case
3 of what they're asking us for is really a true land
4 disturbance permit.

5 So we -- we have gotten indication that's not
6 the notching project that they've gotten permits
7 before under the 699, MOG 699. And what we have
8 drafted so far is to issue a general -- to issue a
9 land disturbance permit with the condition that to
10 indicate that this permit will not be construed as to
11 allow them -- to allow the Corps to conduct any
12 designed erosion, notching of banks or anything like
13 that.

14 And so to -- to kind of put some safe guards
15 that we are not allowing that, but truly focus that
16 this is a land disturbance on their project. I -- I
17 -- I wish I knew little more.

18 MS. LEANNE TIPPETT MOSBY: I -- if I may, and that's
19 my fault. I apologize for putting Refaat on the spot
20 like this, but I literally thought of this last night
21 about eight o'clock --

22 MR. REFAAT MEFRAKIS: I understand.

23 MS. LEANNE TIPPETT MOSBY: -- and felt we needed to
24 bring this up because I went back and reviewed the
25 minutes from a previous Commission meeting and I was

00180

1 -- and, I think, you know, Rob and I did -- Rob did
2 as well, and we were a little unclear on whether the
3 Commission would have wanted to hear about these
4 projects or not. So we thought we would ere on the
5 side of safety and -- and -- and bring them up.

6 MR. REFAAT MEFRAKIS: We don't want you to think that
7 we're finding a different way than the MOG 699,
8 here's a land disturbance, we're allowing that.

9 CHAIRMAN HARDECKE: Okay.

10 MR. ROB MORRISON: Right. And Refaat I appreciate
11 his willingness to step up to the podium here. I --
12 you know, on my way out, I guess I can start bailing
13 out early, but, no. That's only as a joke.

14 (Laughter.)

15 MR. ROB MORRISON: It's my dry sense of humor getting
16 me.

17 But, no, I believe -- what I recall from these
18 two projects, I believe, they would what I would term
19 flood plain reconnection projects. I don't think
20 that there is an effort. One of them is at the mouth
21 of the Nishnabotna and one of them is called the
22 Corning Site which are -- it's a -- it's a pool site
23 and they're trying to establish a reconnection when
24 the river gets up they want water to get up and get
25 impounded into the flood plain and so forth.

00181

1 Because they are habitat projects, my
2 understanding is that they don't involve any designed
3 erosion. They're not, obviously, certainly not
4 dumping any soil into the Missouri River with those,
5 so --

6 CHAIRMAN HARDECKE: So where -- where they going to
7 put the soil?

8 MR. ROB MORRISON: They're going to reuse it, I
9 think, they're just -- they're building structures
10 behind -- behind the levees. They'll be notching
11 those levees to allow flood waters to -- to enter
12 into the flood plain and then they'll be using them
13 to build pools and different -- they did something
14 similar, if I recall all this right, at the
15 Confluence State Park at -- up near -- it's near St.
16 Louis, where they would build various types of
17 varying depths of habitat when the water gets up and
18 gets into those flood plains.

19 CHAIRMAN HARDECKE: One was the Corning Site?

20 MR. ROB MORRISON: One is the Corning Site and the
21 other is the Nishnabotna.

22 MS. LEANNE TIPPETT MOSBY: I can spell that for you if you
23 want.

24 MR. ROB MORRISON: One thing if I may --
25 (Tape Three, Side A Concluded.)

00182

1 COMMISSIONER TUPPER: I'm skeptical and I think if we
2 try to get too specific and name notching and things
3 like that they're just going to change the name and
4 go ahead and do it. I think we need to just say, no,
5 sediment in the river, period.

6 MR. REFAAT MEFRAKIS: And that's exactly -- I mean,
7 that's exactly what the land disturbance is all
8 about. I mean, with the application being in-house
9 for over four or five weeks to just to make sure what
10 they're doing is not what -- that what they're doing
11 is what they wanted to do and not designed notching
12 of any erosions and sending sediment into the stream.

13 So we're asking them to develop a SWP -- a
14 (inaudible) of storm water prevention plan to flood -
15 - to flood then make sure that no erosion is
16 occurring. Now, they have mentioned that -- you
17 know, obviously some notching, you know, over time
18 will probably lead to some erosion and we'll share
19 that information with you -- with you. Okay?

20 MS. LEANNE TIPPETT MOSBY: Thanks, Refaat.

21 MS. JENNIFER FRAZIER: I just wanted to clarify some
22 advice I had given a few months ago. I just want you
23 to be careful and spec- -- clear about inserting
24 yourself into the permitting process versus being the
25 hearer of any appeals. And so I wasn't sure if

00183

1 you're directing them to -- if you're going to be
2 approving these land disturbance permits as a
3 Commission or you're just going to be sharing drafts
4 or --

5 MR. REFAAT MEFRAKIS: Just sharing drafts and sharing
6 what -- what information will be in the permit so the
7 permit is not construed to be as of -- for design but
8 it's actually a land disturbance permit.

9 MS. JENNIFER FRAZIER: But if the Commission has
10 concerns about the wording of the permit then they'll
11 be interjecting themselves into that process.

12 MR. REFAAT MEFRAKIS: Right. If there's any comments
13 we'll -- we'll -- if there's any clarification that
14 we need to make in the permit we will be --

15 MS. JENNIFER FRAZIER: So I just want to be clear.
16 That's your prerogative certainly. That may
17 jeopardize your ability to hear any appeals from this
18 permit. That's all I want to point out, so -- okay.

19 MR. REFAAT MEFRAKIS: So is that okay to send them --

20 MS. JENNIFER FRAZIER: Well, that's up to the
21 Commission, certainly.

22 CHAIRMAN HARDECKE: Thank you.

23 Okay. Is there anything else to come before the
24 commission?

25 (No response.)

00184

1 CHAIRMAN HARDECKE: Do I hear a motion to adjourn?
2 COMMISSIONER HUNTER: So moved.
3 COMMISSIONER SHORNEY: Second.
4 CHAIRMAN HARDECKE: Malinda, you can take the vote,
5 please.
6 MS. MALINDA OVERHOFF: Commissioner Tupper?
7 COMMISSIONER TUPPER: Yes.
8 (An off record discussion was held by the
9 Commission.)
10 MS. MALINDA OVERHOFF: Commissioner Hunter?
11 COMMISSIONER HUNTER: Yes.
12 MS. MALINDA OVERHOFF: Commissioner Easley?
13 COMMISSIONER EASLEY: Yes.
14 MS. MALINDA OVERHOFF: Commissioner Shorney?
15 COMMISSIONER SHORNEY: Yes.
16 MS. MALINDA OVERHOFF: Chair Hardecke?
17 CHAIRMAN HARDECKE: Yes.

18 Okay. Thank you.

19

20 (Tape Three, Side B Concluded.)

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

Respectfully Submitted,

Scott B. Totten
Acting Director of Staff