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BEFORE THE CLEAN WATER COMMISSION
DEPARTMENT OF NATURAL RESOURCES
STATE OF MISSOURI

MEETING OF:
JANUARY 7, 2009

CONDUCTED BY:
VICE-CHAIR HARDECKE RON HARDECKE

TRANSCRIBED FROM AUDIOTAPES BY:
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2 P R O C E E D I N G S

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4 VICE-CHAIR HARDECKE: We will bring the Clean Water
5 Commission to order. And I'll begin with introducing the -
6 - this table. I'll start on my right, is Bill Easley, from
7 Cassville, we have Jan Tupper from Joplin, Sam Hunter from
8 Sikeston. I'm Ron Hardecke from Owensville, Vice-Chair.
9 And Ed Galbraith as Staff Director, Mary Bryan with the
10 Attorney General's Office and our secretary Malinda
11 Overhoff.

12 And on the phone we have Kristin Perry.

13 CHAIRPERSON PERRY: Good morning.

14 VICE-CHAIR HARDECKE: And Todd Parnell are you on the
15 phone?

16 (No response.)

17 VICE-CHAIR HARDECKE: I guess he may be joining us in a
18 little bit.

19 We'll begin with **Tab No. 1**, is a hearing on the
20 proposed 303(d) List. The Commission will begin its public
21 hearing on the Proposed 2008 303(d) Impaired Waters List.

22 The purpose of this public hearing is to provide the
23 public the opportunity to comment on the proposed list.
24 This public hearing is not a forum for debate or resolution
25 of issues. The Commission asks that testimony be to the

1 point and as brief as possible.

2 The Commission will first hear from the Department
3 staff and then the public will have an opportunity to
4 comment. We ask that all individuals providing comments
5 fill out an attendance card so our records are complete.

6 Please remember to show on the card
7 your desire to comment on the proposed 303(d) List so that
8 I can call you to the microphone. When you come forward to
9 present comments please speak clearly into the microphone
10 and begin by identifying yourself to the court reporter.

11 Following the public hearing, today, the Department
12 will review the comments, along with the written comments
13 on the proposed list received during the public comment
14 period that ends on January 14th, 2009. The Commission
15 plans to review the Department's final recommendations on
16 the proposed list at the meeting scheduled for March 4th,
17 2009.

18 The Commission will decide at that meeting whether to
19 accept the Department's recommendations.

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

24 (Public Hearing heard in regards to Proposed 2008 303(d)
25 List presented by John Ford, Water Quality Monitoring and

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

6 VICE-CHAIR HARDECKE: Thank you. Okay. I guess that
7 concludes the comments. The Commission will continue to
8 accept written comments on the Proposed 2008 303(d)
9 Impaired Waters List until 5:00 p.m. January 14th, 2009.

10 Please submit your written comments to Malinda
11 Overhoff, Secretary of the Missouri Clean Water Commission,
12 P.O. Box 176, Jefferson City, Missouri 65102.

13 On behalf of the Commission I thank everyone who has
14 participated in this process. The hearing is now closed.

15 I will move to **Tab No. 2**. We have another hearing.
16 The Commission will begin its public hearing on the
17 Proposed Amendment to Rule 10 CSR 20-7.050 to Remove
18 Reference to the 2006 Listing Methodology Document.

19 The purpose of this public hearing is to provide the
20 public the opportunity to comment on the proposed
21 amendment. This public hearing is not a forum for debate
22 or resolution of issues. The Commission asks that
23 testimony be to the point and be as brief as possible.

24 The Commission will first hear from the Department staff
25 and then the public will have an opportunity to

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

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

10 Following the public hearing, today, the Department
11 will review the testimony presented along with any further
12 comments on the proposed rule received during the public
13 comment period that ends January 14th, 2009. The Commission
14 plans to review the Department's final recommendation on
15 the proposed rule at the meeting scheduled for March 9th,
16 2000 -- March 4th, 2009.

17 The Commission will decide at that meeting whether to
18 accept the Department's recommendations.

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

23 (Public Hearing heard in regards to 10 CSR 20-7.050
24 Methodology for Development of Impaired Waters List
25 presented by John Ford, Water Quality Monitoring and

1 Assessment, transcribed by Ms. Monnie VanZant of Midwest
2 Litigation Services, 3432 West Truman
3 Boulevard, Suite 207, Jefferson City, Missouri, 65109.
4 Transcript of the public hearing proceedings will be found
5 in a separate transcript provided by Ms. Monnie VanZant.)
6 VICE-CHAIR HARDECKE: Since we have no comment cards. The
7 Commission will continue to accept written comments on the
8 Proposed Amendment to Rule 10 CSR 20-7.050 until 5:00 p.m.
9 January 14th, 2009.

10 Please submit your written comments to Malinda
11 Overhoff, Secretary of the Clean Water Commission, P.O. Box
12 176, Jeff City, Missouri 65102.

13 On behalf of the Commission I thank everyone who has
14 participated in this process. The hearing is now closed.

15 Okay. We'll move to **Tab No. 3**. It is the **minutes**
16 **from the November 5th meeting**; is there any comments or
17 questions on the minutes? If not, I'll entertain a motion.

18 **COMMISSIONER TUPPER: Vice-Chairman I'd move the minutes**
19 **from the November 5th meeting be approved?**

20 **COMMISSIONER HUNTER: Second.**

21 **VICE-CHAIR HARECKE: Malinda do you have the vote?**

22 **MS. OVERHOFF: And you seconded it? I'm sorry.**

23 **VICE-CHAIR HARDECKE: Jan.**

24 **MS. OVERHOFF: Commissioner Easley?**

25 **COMMISSIONER EASLEY: Yes.**

1 MS. OVERHOFF: Commissioner Tupper?

2 COMMISSIONER TUPPER: Yes.

3 MS. OVERHOFF: Did Commissioner Parnell ever join us?

4 VICE-CHAIR HARDECKE: I haven't heard him.

5 MS. OVERHOFF: Commissioner Hunter?

6 COMMISSIONER HUNTER: Yes.

7 MS. OVERHOFF: Commissioner Hardecke?

8 VICE-CHAIR HARDECKE: Yes.

9 MS. OVERHOFF: Chair Perry?

10 CHAIRPERSON PERRY: Yes.

11 Can you hear me?

12 MS. OVERHOFF: Yes.

13 VICE-CHAIR HARDECKE: Okay. We'll move to **Tab No. 4** is the

14 **minutes of the teleconference meeting.** Do you have

15 something?

16 MR. GALBRAITH: I think there was some discussion -- there

17 was some discussion about whether the minutes were complete

18 or not without having the vote to go out of closed session

19 so we've prepared a revised minutes that includes the roll

20 call and it was -- of course, a unanimous vote to come out

21 of closed session so I would suggest that if there is a motion to

22 approve that it they include an amendment to include the

23 roll call.

24 VICE-CHAIR HARDECKE: We'd entertain a motion to approve

25 minutes with the changes.

1 COMMISSIONER TUPPER: So moved.

2 VICE-CHAIR HARDECKE: Second?

3 COMMISSIONER HUNTER: Second.

4 VICE-CHAIR HARDECKE: Malinda, do you want to take the
5 vote?

6 MS. OVERHOFF: Commissioner Tupper?

7 COMMISSIONER TUPPER: Yes.

8 MS. OVERHOFF: Commissioner Hunter?

9 COMMISSIONER HUNTER: Yes.

10 MS. OVERHOFF: Commissioner Hardecke?

11 VICE-CHAIR HARDECKE: Yes.

12 MS. OVERHOFF: Commissioner Easley?

13 COMMISSIONER EASLEY: Abstain.

14 MS. OVERHOFF: Abstain?

15 Chair Perry?

16 CHAIRPERSON PERRY: Yes.

17 VICE-CHAIR HARDECKE: Okay. We'll move to **Tab No. 5,**
18 **Dismissal of Exide Technologies Appeal.**

19 MS. OVERHOFF: Is Shelley here?

20 MR. GALBRAITH: Shelley Woods from the Attorney General was
21 going to handle that for us. She is not here, yet. Can we
22 postpone this until she arrives?

23 (No response.)

24 MR. GALBRAITH: Thanks.

25 VICE-CHAIR HARDECKE: We'll move on to **Tab No. 6** it is the

1 **Dismissal of the Gessling Construction Permit**, and Marty
2 Miller.

3 MR. MILLER: Good morning, Commissioners. I'm Marty Miller
4 with the Department's Division of Environmental Quality.
5 And the issue before you here this morning, of course, is
6 the administrative appeal of the Gessling Construction
7 Permit that the Department issued to Mr. Gessling some time
8 ago.

9 I want to make sure that you understand that this is
10 different than the Gessling lawsuit, which is currently
11 still pending. The petitioners in this case are mostly
12 different than the parties in that case.

13 But essentially we are here today because we have a
14 recommendation from the Administrative Hearing Commission
15 that the construction permit at issue had expired and both
16 parties, the petitioners as well as the Department agreed
17 after the expiration of that permit that the case had become
18 mute. And in fact the Administrative Hearing Commission
19 issued an order to that affect.

20 So that's what you have before you here, today, is
21 the AHC's recommendation of dismissal on the basis of
22 muteness. And the Clean Water Commission rules provide an
23 opportunity for the parties to come before you and address
24 the AHC recommendation. So that's the purpose of it being
25 on the agenda here this morning.

1 It's my understanding, however, that counsel for
2 petitioners as well as outside counsel for the Department
3 here, a representative of that firm are here, if you have
4 questions. But it's my understanding that they don't
5 really have any presentation for you in addition to what
6 the AHC recommendation is.

7 So they can correct me if I'm wrong about that but
8 I believe they're here just to answer any questions you
9 have.

10 VICE-CHAIR HARDECKE: Okay. Thank you.

11 Any questions?

12 (No response.)

13 MR. GALBRAITH: Richard Brownlee he's the counsel for the
14 appellants.

15 VICE-CHAIR HARDECKE: Richard Brownlee, did you wish to
16 speak?

17 MR. BROWNLESS: Not unless you want me to.

18 VICE-CHAIR HARDECKE: Okay. Thank you.

19 I'd guess we'd entertain a motion to --

20 **COMMISSIONER EASLEY: I move that the Commission adopt the**
21 **AHC order and dismiss the appeal.**

22 **COMMISSIONER TUPPER: Second.**

23 **VICE-CHAIR HARDECKE: Malinda, will you call the vote?**

24 **MS. OVERHOFF: Commissioner Tupper?**

25 **COMMISSIONER TUPPER: Yes.**

1 MS. OVERHOFF: Commissioner Hunter?

2 COMMISSIONER HUNTER: Yes.

3 MS. OVERHOFF: Commissioner Hardecke?

4 VICE-CHAIR HARDECKE: Yes.

5 MS. OVERHOFF: Commissioner Easley?

6 COMMISSIONER EASLEY: Yes.

7 MS. OVERHOFF: Chair Perry?

8 CHAIRPERSON PERRY: Yes.

9 VICE-CHAIR HARDECKE: Okay. We'll move to **Tab No. 7**, it is
10 the **construction permit transfer**, John Rustige.

11 MR. RUSTIGE: Good morning. The first item, I have for you
12 this morning, relates to amendment to the Construction and
13 Operating Permits Rule, which is 10 CSR 20-6.010. What the
14 Department would like to do is make a small amendment to
15 that rule in Section 11 that will provide a mechanism to
16 transfer ownership of a construction permit without having
17 to go through a completely new construction permit
18 application, which is currently required by the rule.

19 And with the amendment the process would simply
20 require both parties to agree to the transfer by submitting
21 a properly executed transfer application. The rulemaking
22 would not establish any environmental conditions or limits
23 so a Regulatory Impact Report would not be required for
24 this action.

25 And if the Commission approves the filing of this

1 amendment, with the Joint Commission on Administrative
2 Rules, JCAR, and with the Secretary of State's Office we
3 would then plan to hold a public hearing at the next
4 Commission meeting here in March.

5 So any questions about our plans for that rulemaking?

6 (No response.)

7 VICE-CHAIR HARDECKE: Questions?

8 (No response.)

9 MR. RUSTIGE: It's a pretty straight-forward, minor --
10 well, with that done the Program would recommend that the
11 Commission approve the filing of that amendment with the
12 Secretary of State's Office and the Joint Committee on
13 Administrative Rules.

14 That's all.

15 VICE-CHAIR HARDECKE: Thank you.

16 We would entertain a motion to that affect.

17 **COMMISSIONER HUNTER: I move that the Clean Water**
18 **Commission approve the Department's request to file the**
19 **proposed amendment to 10 CSR 20-6.010, Construction and**
20 **Operating Permit Regulation.**

21 **COMMISSIONER EASLEY: Second.**

22 **VICE-CHAIR HARDECKE: Malinda, call the vote.**

23 **MS. OVERHOFF: Commissioner Hunter?**

24 **COMMISSIONER HUNTER: Yes.**

25 **MS. OVERHOFF: Commissioner Hardecke?**

1 VICE-CHAIR HARDECKE: Yes.

2 MS. OVERHOFF: Commissioner Easley?

3 COMMISSIONER EASLEY: Yes.

4 MS. OVERHOFF: Commissioner Tupper?

5 COMMISSIONER TUPPER: Yes.

6 MS. OVERHOFF: Chair Perry?

7 CHAIRPERSON PERRY: Yes.

8 MR. GALBRAITH: I'll pass down another -- what this is, is
9 called a finding of necessity. It just shows that the
10 Commission approves the moving forward with this
11 rulemaking.

12 VICE-CHAIR HARDECKE: Okay. **Tab No. 8, Proposed Amendment**
13 **for Stormwater Regulations.**

14 MR. RUSTIGE: Thank you. This is another rulemaking where
15 we'd like to proceed with the Stormwater Regulations, which
16 is 10 CSR 20-6.200. And the purpose of this rulemaking
17 would be to correct or clarify the definition of a
18 regulated, municipal, separate storm sewer system or MS4s
19 to exclude low population density non-urban geographies
20 that really weren't intended to be part of the program.

21 And although it's not currently clear in the
22 regulation, in practice the MS4 Program has been limited to
23 urban areas and non-urban areas with population densities
24 greater than 1,000 people per square mile. So what the
25 purpose of this rulemaking is, is to assure that that

1 practice is continued and to align that definition with
2 federal minimum requirements.

3 According to a strict reading of the current rule
4 there are some 39 unincorporated or 39 county governments
5 across the State of Missouri that would be subject to MS4
6 solely because they have a population that exceeds 10,000.
7 But many of these counties have no urbanized areas and/or
8 have areas that have exceed that 1,000 people per square
9 mile density.

10 So really they shouldn't be part of the program.
11 And, again, the purpose of the amendment would be to
12 exclude those counties and exclude those low -- low density
13 geographies in the MS4 Program.

14 I prepared -- we've prepared a poster here.

15 MALE SPEAKER: (Statement inaudible).

16 MR. RUSTIGE: Yeah.

17 Maybe sort of help illustrate the situation. A
18 couple of examples here real quick, first, you notice that
19 there are several counties, like, Texas County or
20 Washington County that have populations that exceed 10,000
21 but they have no urbanized areas in them. And so these
22 counties should be out.

23 The same goes for some of the counties that have
24 cities that are required to have MS4 Programs, but they
25 don't have any area outside those cities that have the high

1 density population areas, example, Howell County with West
2 Plains. West Plains would have a regulated MS4 but any
3 area in the county would not.

4 And so for -- the last thing I would mention, I
5 guess, is really that counties themselves wouldn't be
6 prohibited from extending their MS4 Programs beyond sort of
7 these minimums if they -- if the county themselves are so
8 inclined, for example, to address future growth or specific
9 community concerns about stormwater pollution.

10 So, again, the -- this MS4 Program is really intended
11 to regulate urban and urbanizing activities and not rural
12 or agricultural activities.

13 And so the amendment is to really just clarify what
14 we're currently doing and what the intention of the Program
15 is. So that's --

16 MR. GALBRAITH: Just to be clear. These areas with the
17 hash marks are -- if you interpret the rule the way it's
18 written now these will all be included in the -- in a
19 metropolitan separate stormwater sewer area. If we add
20 this population density factor to the definition then these
21 hashed areas will be removed. And we would just be back to
22 the truly urbanized areas, which is the intent of the
23 Program.

24 VICE-CHAIR HARDECKE: All right.

25 Any questions?

1 (No response.)

2 VICE-CHAIR HARDECKE: Do you have any cards for me?

3 MS. OVERHOFF: No, none.

4 MR. RUSTIGE: Again, then the Program recommends that the
5 Commission approve the filing of this amendment with the
6 Secretary of State's Office and the Joint Committee on
7 Administrative Rules and also, I guess, the finding of
8 necessity to move forward with the rulemaking.

9 VICE-CHAIR HARDECKE: Okay. Thank you.

10 Any discussion or we will entertain a motion.

11 COMMISSIONER EASLEY: I move that the Clean Water
12 Commission approve the Department's request to file a
13 proposed amendment to 10 CSR 20-6.200, Stormwater
14 Regulations.

15 COMMISSIONER TUPPER: Second.

16 VICE-CHAIR HARDECKE: Malinda, you want to take the vote.

17 MS. OVERHOFF: Commissioner Hunter?

18 COMMISSIONER HUNTER: Yes.

19 MS. OVERHOFF: Commissioner Hardecke?

20 VICE-CHAIR HARDECKE: Yes.

21 MS. OVERHOFF: Commissioner Easley?

22 COMMISSIONER EASLEY: Yes.

23 MS. OVERHOFF: Commissioner Tupper?

24 COMMISSIONER TUPPER: Yes.

25 MS. OVERHOFF: Chair Perry?

1 **CHAIRPERSON PERRY: Yes.**

2 VICE-CHAIR HARDECKE: Okay. We'll move to **Tab No. 9,**
3 **Regulatory Impact Report.** Boy you're just a regular.

4 MR. RUSTIGE: Yes. Thank you. This is the last issue I
5 have though. It's another rulemaking. It's the **Effluent**
6 **Regulations, which is 10 CSR 20-7.015.**

7 And what the program would like to do with these
8 three is address three main issues with this rule. The
9 first one is to provide a mechanism to place E. coli
10 limits, E. coli bacteria limits and effluent monitoring
11 requirements into permits to conform with Missouri's Water
12 Quality Standard for indicator bacteria.

13 The amendment will directly reference the Water
14 Quality Standards Rule. And this amendment would allow --
15 would allow us to place these E. coli limits in permits for
16 facilities that discharge into water bodies classified as
17 whole body contact or secondary recreational contact.

18 For situations where wastewater is being discharged
19 into unclassified streams two miles above the classified
20 segment or beyond the Program is proposing that permits --
21 (TAPE ONE, SIDE A CONCLUDED.)

22 MR. RUSTIGE: -- would be to require E. coli limits and it
23 would propose a decay equation as a method for establishing
24 those limits.

25 And then as drafted the rule would require all permit

1 holders that have these E. coli limits to collect one
2 effluent sample each week for analysis. And then to use
3 that data to calculate a geometric -- a monthly geometric
4 mean for comparison against the E. coli standard that's in
5 the Water Quality Standard Rule.

6 The second issue that we'd like to address with this
7 rulemaking is to incorporate a minor addition that would
8 allow alternative limits to be put in permits for
9 discharges to subsurface waters associated with, something
10 we heard at the last Commission meeting, the Risk-based
11 Corrective Action Project that's administered by the
12 Hazardous Waste Program. So long as those discharges pose
13 no unreasonable risk to human health or the environment.

14 And then the third issue we'd like to address with
15 this rulemaking would be to address water quality
16 conditions potentially impacted by the discharge of
17 overflows from combined sewer systems. It's commonly
18 referred to as CSOs, Combined Sewer Overflows. And what
19 the amendment -- what we'd like to do with the amendment in
20 this case is to just make the state's requirements
21 consistent with EPA's CSO control policy.

22 Now, after the briefing document was published our
23 attorney suggested a couple of minor changes. One was to
24 directly incorporate EPO's -- EPA's CSO Policy by reference
25 and make that a definitive incorporation by reference. And

1 then the other change he suggested was -- involved sort of
2 a wording or a style change in the way we do internal
3 references within the rule.

4 Again, these are relatively minor, but I did want to
5 make you aware that these have been suggested since the
6 publication of the briefing document.

7 Because this rule does establish environmental
8 conditions and limits a Regulatory Impact Report is
9 required. So what the Program is requesting this morning
10 is approval to publish that RIR and begin taking comments
11 on both the rule language and the RIR itself. We
12 have shared our draft rule with EPA on this. And they've
13 indicated that they will be providing comments particularly
14 about the E. coli monitoring provision and the two mile
15 approach.

16 So I just wanted to make you aware that we expect to
17 be working with them and perhaps other stakeholders to try
18 and polish up the rulemaking.

19 So if there are any questions about the process or
20 what the rules says, I'd be glad to take that. If not, if
21 there are more specific questions perhaps Rob Morrison or
22 Refaat Mefrakis could answer those for you.

23 VICE-CHAIR HARDECKE: Thank you.

24 MR. RUSTIGE: Any questions?

25 COMMISSIONER TUPPER: In the chart of Page 403 it's

1 estimated that the cost per sample will be \$50; is that
2 collection and analysis? It seems low to me.

3 MR. RUSTIGE: Yeah. I think, what's happening, is you'll
4 see that the price will come down to that. It may be a
5 little higher than that now, but as more and more
6 facilities are required to do this we expect the price to
7 be \$50, that's --

8 COMMISSIONER TUPPER: But the fact is it's going to cost
9 the treatment plants the higher number right now?

10 MR. RUSTIGE: It -- you -- yes, particularly to install the
11 equipment upfront. The \$50 analysis is kind of ballpark
12 figure that I -- we've been using.

13 COMMISSIONER TUPPER: But if we get a cost of a million and
14 a half using the low number so what's the real cost going
15 to be?

16 MR. RUSTIGE: We can look into that and polish that up.

17 VICE-CHAIR HARDECKE: Any other questions?

18 (No response.)

19 MR. RUSTIGE: The Department then would request that the
20 Commission would approve us proceeding with the
21 notice of the Regulatory Impact Report then.

22 VICE-CHAIR HARDECKE: Okay. Thank you.

23 Okay. We have a Phil Weeback (sic), I believe, or
24 Wayback (sic), Walsack. Sorry. You got to write --

25 COMMISSIONER TUPPER: You're gaining.

1 MR. WALSHACK: Good morning, Commissioners. My name is Phil
2 Walsack with Missouri Public Utility Alliance. We are
3 commenting this morning on two items.

4 The lack of linkage between a paragraph in your
5 meeting minutes, your package on Page 429, and the fact
6 that that reduction -- that elimination of that paragraph
7 does not show in the RIR.

8 It talks about the stormwater flows in municipalities
9 having to meet certain effluent criteria. And we're very
10 concerned that this has a major impact to municipal
11 utilities, particularly small ones and particularly medium
12 size ones. I bring only, this morning, the case of a
13 community called Ava, down in the south central part of the
14 state where they are built to do exactly what is being
15 proposed to be eliminated.

16 They have a treatment plant, they treat human waste
17 and then during storm events they have a lagoon that holds
18 stormwater flow that could be construed as combined rain
19 water and sewage. They don't have a combined system. But
20 it does hold rain water and sewage at the same time. It's
21 a 3.4 million gallon pond. And they're required to meet a
22 45/45, right now, when they discharge. However, the
23 elimination of this paragraph means that they would have to
24 then come to their normal permit standards, which are much
25 less than that. So that would be very arduous on that

1 community to go ahead meet those kinds of standards when
2 you eliminate this paragraph.

3 We would like to see the RIR consider what kind of
4 impact there will be when we eliminate this language on
5 Page 429. That sums up my comments this morning. Thank
6 you very much.

7 VICE-CHAIR HARDECKE: Okay. Thank you.

8 Mary West.

9 MS. WEST: Thank you, Commissioners. My name is Mary West.
10 I work for Jacobs Engineering in St. Louis.

11 I also would like to comment on the fact that the RIR
12 missed the cost. For the last count, I knew about, was
13 about 100 facilities in the state who have peak-flow
14 treatment facilities clarifiers or lagoons that have a
15 direct discharge that does not get blended back with their
16 plant effluent before being discharged to the receiving
17 waters.

18 It's my understanding that the cost to either blend,
19 and that's not a foregone conclusion according to EPA, or
20 to do full secondary treatment of that peak-flow wastewater
21 would be quite considerate or considerable. And the RIR
22 does not discuss this change at all.

23 In fact, if you look at the background this change is
24 not even in the summary. So that is -- is of a great
25 concern. In regard to your costs about E. coli

1 testing costs, I think, it's important to note that E. coli
2 tests can only be held for 6 hours after sampling. So if
3 the facility does not have an onsite lab, in many cases
4 they're going to have to grab the sample earlier in the
5 morning and drive it to a remote lab someplace else.

6 So if it's an hour or two away, you could very easily
7 be looking at a half a day or a day of lost time for an
8 employee per week. That differs from drinking waters
9 standards because most of those samples have a 36 hour hold
10 time where you can use a courier service or something like
11 that. So these facilities will probably have to install
12 onsite testing.

13 The other thing that I would point out to you is that
14 the E. coli testing for wastewater will be more stringent
15 in many cases for small utilities, more stringent than the
16 frequency that they're required to test their drinking
17 water.

18 Thank you.

19 VICE-CHAIR HARDECKE: Thank you.

20 Trent Stober.

21 MR. STOBBER: Good morning. Trent Stober, with MEC Water
22 Resources, I represent several municipalities in the sewer
23 districts. And I believe the issue with the wet weather
24 discharge has been adequately addressed by the previous
25 presenters.

1 I would confirm several of my client's affirmations
2 to the inclusion of the EPA CSO long-term control policy as
3 well as the various aspects or the other aspects of the
4 effluent regulation.

5 So with that I would like to see this go forward.
6 Thank you.

7 VICE-CHAIR HARDECKE: David Brock.

8 MR. BROCK: Good morning. I'm David Brock, Public Works
9 Director for the City of Republic and would like to express
10 a concern with the proposal and not the stated intent on
11 the fecal coliform testing, but of what's previously been
12 mentioned the elimination of 45/45 limits for periodic
13 discharge permits. The City of Republic does operate a
14 stormwater clarifier. And the concern would be that this
15 is not addressed in the Regulatory Impact Report. And I'd
16 like to see it do so.

17 Thank you.

18 VICE-CHAIR HARDECKE: Thank you.

19 Any other comments or questions?

20 MR. MORRISON: Well, can I --

21 VICE-CHAIR HARDECKE: Yes.

22 MR. MORRISON: -- can I make a comment?

23 Good morning, Commissioners. My name is Rob
24 Morrison. I thought you weren't going to be seeing me
25 today, but I felt the need to come up and perhaps address a

1 couple of issues in the Regulatory Impact Report.

2 We understand the concerns over E. coli testing,
3 Commissioner Tupper, and we will certainly address those
4 costs in a more thorough version of the RIR.

5 Just a reminder to the Commission the effluent rule
6 is in response to a standards change that you-all approved
7 some time ago. So it -- and that was in what --

8 MR. GALBRAITH: It was November of 2004, so only Tom and
9 Kristin will remember that.

10 MR. MORRISON: Yeah. So in the November 2004 rulemaking
11 the Commission made a decision to go forward. So the
12 testing and the requirements that you see here are merely
13 an implementation of that rulemaking. So the additional
14 costs, that we certainly can go forward with that but it --
15 just to let you know that that decision to convert to E.
16 coli was made back some time ago.

17 So this rule is in response to that. As you'll
18 further remember we are proposing to eliminate fecal or
19 fecal is going to be eliminated from our standards. So
20 this is just a way of reminder in this particular
21 rulemaking package.

22 The other thing that I want to take a moment to
23 address has to do with the 45/45 --

24 MR. GALBRAITH: Oh. That was covered.

25 MR. MORRISON: -- limits.

1 MR. GALBRAITH: Sorry.

2 MR. MORRISON: That's okay. The Regulatory Impact Report
3 is as -- was mentioned by John, previously, is to cover
4 changes in regulations, standards, conditions, et cetera,
5 et cetera that are brought about through state initiatives.
6 This particular initiative is brought about from a federal
7 mandate.

8 EPA has informed us, and I have brought this
9 information to you before, that they will no longer approve
10 permits that have 45/45 weekly averages for BOD and total
11 suspended solids. So we are no longer allowed to issue
12 permits with those limits in them.

13 So while you see that it's not in the Regulatory
14 Impact Report this was viewed as a federal mandate
15 therefore it's not required for us to supply the costs of
16 that in this Regulatory Impact Report. I won't argue that
17 this cost will be considerate to communities. However,
18 this is a condition and a standard that is being prescribed
19 by the federal government.

20 So I just wanted to bring that to your attention. I
21 know John feels badly that he neglected to mention that in
22 his remarks. But I did want to clarify that and leave --
23 and leave no -- leave no doubt or make sure that you
24 understood clearly that it was not an oversight on our
25 part. It was a conscious decision of how to move forward

1 in the Regulatory Impact Report.

2 So with -- if you have any questions, I'll be happy
3 to answer them.

4 COMMISSIONER TUPPER: Rob, I have no objections to the
5 changes and I understand the mandates from EPA. But I
6 think as a Commission we owe it to the citizens in Missouri
7 to go into this with our eyes open and a true idea of what
8 costs we're laying on the citizens. And we have not done
9 that here in my opinion.

10 MR. MORRISON: That's correct. I would agree with that. I
11 mean, I would agree that we did not develop cost estimates.
12 If you would like for us to do that we certainly can do
13 that. And -- but, again, understanding this is not
14 necessarily Department initiative.

15 COMMISSIONER TUPPER: I agree.

16 MR. MORRISON: This is -- this is a mandate that's being
17 required on the State of Missouri by the federal
18 government.

19 COMMISSIONER TUPPER: I understand that, but I want to see
20 the true numbers before I can vote, yes.

21 VICE-CHAIR HARDECKE: Other questions? Mary?

22 (No response.)

23 VICE-CHAIR HARDECKE: Thank you.

24 Anything else, Robert?

25 MR. MORRISON: Well, I just -- oh, go ahead, Mary.

1 MS. WEST: I didn't know I would be dancing this morning.
2 Because of my change in jobs I have had the opportunity to
3 review some permits in Illinois. And in many of those
4 permits the following language appears: excess flow
5 facilities if applicable shall not be utilized until the main
6 treatment facility is receiving its maximum practical flow.
7 I'm aware that other states allow these facilities and
8 they're permitted in different ways and I just -- I think,
9 that Missouri needs to maintain all of its options and make
10 sure that we're not doing more than is actually required by
11 the federal government.

12 Sometimes we get, just as we do different regions in
13 Missouri, different regions with EPA say different things.
14 So I just want to make sure that all of the flexibility is
15 retained because the effectiveness of this rule is going to
16 put those 100 facilities out of compliance with their
17 permits immediately.

18 Thank you.

19 MR. GALBRAITH: Mary, could I -- could you provide us with
20 some examples -- those examples from Illinois?

21 MS. WEST: I would be happy to.

22 MR. GALBRAITH: Okay. Thank you.

23 MR. MORRISON: And I would agree with Mary. I have seen
24 other examples from other states. And we have pointed that
25 out to our EPA colleagues to no avail. As many of you

1 understand the workings of the federal government, the EPA
2 regional offices are not necessarily bound by decisions of
3 other regional offices. So this is the method that our
4 region has chosen to take. And that is what they have
5 applied to us.

6 As much as we would like to work through these
7 issues, the fact of the matter is, we are not allowed to
8 issue permits with 45 weekly limits. So that is the fact
9 of the matter to date.

10 So I can appreciate the sentiment and the desire
11 to do that, but I guess my response and my request to you
12 is that understanding without some direction we continue to be
13 parked having permits that are sitting without being able to be
14 issued and we do not have clear direction for our communities.
15 We need to somehow move forward here. I would ask that you would
16 allow us to publish the report and allow us to bring you a revised
17 report back to you for additional consideration. Thank you.

18 MR. WALSHACK: Phil Walsack from Missouri Public Utility
19 Alliance. I would like to echo Rob's sentiment about
20 moving forward with the RIR and the information that's
21 currently -- and start working on this out in the public
22 forum. That's what we need to do here. So I encourage the
23 Commission to go ahead and approve getting this process started.

24 I also feel Commissioner Tupper's angst about the
25 real cost, the whole cost and all of them. And the only

1 way to do that is to get it all the way out. And I feel
2 Rob's pain also when he says this is a federal mandate and
3 they were not required to put it in the RIR, but, yet, it's
4 a federal, um, I won't go so far as to say unfunded mandate
5 but we're getting awfully close, gentleman and ladies.

6 We need to prepare the costs so that we know what our
7 communities are up against. And it's not DNR that's
8 wearing black hat on this one.

9 Thank you.

10 VICE-CHAIR HARDECKE: Thank you.

11 Any other comments or questions or are you ready for
12 a motion?

13 CHAIRPERSON PERRY: Ron, I have one.

14 VICE-CHAIR HARDECKE: Okay.

15 CHAIRPERSON PERRY: On the lines of what Commissioner
16 Tupper was saying, is the numbers in this impact report so
17 off -- far off that we are misleading the public to the
18 point that it's not just a matter for public comment that
19 can be amended but actually something that would require a
20 new rulemaking?

21 VICE-CHAIR HARDECKE: Rob?

22 MR. MORRISON: Commissioner Perry, I wish I was there in
23 Hawaii as well. I think that'd be a nice place to be.

24 COMMISSIONER TUPPER: So do I wish you were there.

25 (Laughter.)

1 MR. MORRISON: All right. You zinged me a good one there,
2 Jan.

3 The --

4 MR. GALBRAITH: Request denied.

5 (Laughter.)

6 MR. MORRISON: I think there is some sort of meeting out
7 there. Maybe I will have to explore that a little more.

8 Commissioner Perry, your question is a good one. And
9 we -- remember on the Regulatory Impact Report that we are
10 not actually in the rulemaking process yet. And I -- you
11 know, we haven't -- we're not asking for you to approve a
12 proposed rule, today. We're just asking for permission to
13 proceed with the publication of the Regulatory Impact
14 Report.

15 I think what we could do is that we could insert a
16 statement in this particular version of the report that
17 indicates that we are going to developing although not
18 required by statute to do that, that we are going to
19 develop some cost estimates that would be the impact of
20 removing the 45/45 limits. And that we can try to get
21 those put together and put out for public -- you know, for
22 public notice in a timely fashion.

23 So I -- you know, that way, I think, maybe we can
24 inform folks that we're working on this issue and that
25 we'll get that information put together quickly.

1 COMMISSIONER TUPPER: One thing that's driving me, Rob, is
2 I have met recently with the county auditor and with our
3 city tax collector and things don't look good. I mean,
4 they look bad. And I think we need to go in knowing
5 exactly what we're laying on folks at a time when they
6 can't afford it.

7 MR. MORRISON: I completely agree with you, Commissioner
8 Tupper, again, this is not a Department initiated effort.

9 COMMISSIONER TUPPER: I agree.

10 CHAIRPERSON PERRY: But it does show the need, as
11 Commissioner Tupper mentioned, for these numbers to be as
12 accurate as possible.

13 MR. MORRISON: I agree with you Commissioner Perry. And
14 I'm hopeful that we can get this process moving forward.
15 And that this -- this Regulatory Impact Report will spur
16 some further debate on this issue.

17 VICE-CHAIR HARDECKE: Other questions, Kristin?

18 CHAIRPERSON PERRY: No.

19 **COMMISSIONER TUPPER: Mr. Chairman, I move that we approve**
20 **the public notice for open comment on the Regulatory Impact**
21 **Report with the stipulation that the staff review the cost**
22 **figures.**

23 **COMMISSIONER HARDECKE: Second?**

24 **COMMISSIONER HUNTER: Second.**

25 **VICE-CHAIR HARDECKE: Malinda, will you take the vote?**

1 MS. OVERHOFF: Commissioner Hardecke?
2 VICE-CHAIR HARDECKE: Yes.
3 MS. OVERHOFF: Commissioner Easley?
4 COMMISSIONER EASLEY: Yes.
5 MS. OVERHOFF: Commissioner Tupper?
6 COMMISSIONER TUPPER: Yes.
7 MS. OVERHOFF: Commissioner Hunter?
8 COMMISSIONER HUNTER: Yes.
9 MS. OVERHOFF: Chair Perry?
10 CHAIRPERSON PERRY: Yes.
11 VICE-CHAIR HARDECKE: Okay. I'll think we'll go back to
12 **Tab No. 5, the dismissal of Exide** and Shelley Woods.
13 MS. WOODS: First, let me apologize, profusively, for being
14 late.
15 I will say that this permit has had a long and
16 tortuous history. Fortunately, for today's purposes we
17 don't have to go through that.
18 Sufficed it to say, that several years ago, the
19 Department issued a permit renewal for the Exide facility
20 in Canon Hollow, Exide appealed several of the terms and
21 conditions primarily dealing with pollutant selenium. That
22 appeal was basically stayed, while we attempted to work out
23 a settlement.
24 In the interim the permit expired or would have of
25 expired but for the fact that Exide applied for another

1 renewal. The Department did recently issue a renewed
2 permit, which I believed muted out the earlier permit
3 appeal that was before you. After some discussion with
4 Exide they agreed and you have before you both our, the
5 Department's motion to dismiss and Exide's motion to
6 dismiss the, I believe, it's Appeal No. 368.

7 VICE-CHAIR HARDECKE: Okay.

8 MS. WOODS: And it would be our recommendation that -- and
9 request both us and Exide that you go ahead
10 dismiss that earlier appeal.

11 VICE-CHAIR HARDECKE: Okay. Thank you.

12 MS. WOODS: Are there any questions?

13 VICE-CHAIR HARDECKE: Any questions?

14 (No response.)

15 MS. WOODS: I'm sorry.

16 CHAIRPERSON PERRY: Mary, I'm trying to -- is Mary there?

17 MS. BRYAN: Yes.

18 CHAIRPERSON PERRY: I'm trying to remember if we didn't
19 have something a while back where these motions to dismiss
20 are really not up to the Commission to grant.

21 MS. WOODS: This one -- if I may, this one, Commissioner
22 Perry, is a little different. This was one -- a very old
23 appeal, comparatively speaking, that was before the
24 Administrative Hearing Commission became the hearing body
25 for these appeals. This one was not before them. This one

1 was actually before this Commission.

2 CHAIRPERSON PERRY: Oh. Okay.

3 MS. WOODS: So there is no dismissal by the AHC, this time.

4 CHAIRPERSON PERRY: Okay. I'm good, then.

5 COMMISSIONER EASLEY: I move that the Commission grant the
6 motion to dismiss.

7 COMMISSIONER TUPPER: Second.

8 VICE-CHAIR HARDECKE: Malinda vote -- take the vote.

9 MS. OVERHOFF: Commissioner Easley?

10 COMMISSIONER EASLEY: Yes.

11 MS. OVERHOFF: Commissioner Tupper?

12 COMMISSIONER TUPPER: Yes.

13 MS. OVERHOFF: Commissioner Hunter?

14 COMMISSIONER HUNTER: Yes.

15 MS. OVERHOFF: Commissioner Hardecke?

16 VICE-CHAIR HARDECKE: Yes.

17 MS. OVERHOFF: Chair Perry?

18 (No response.)

19 MS. OVERHOFF: Chair Perry?

20 CHAIRPERSON PERRY: Yes. Can you hear me?

21 MS. OVERHOFF: Yes. Thank you.

22 MS. WOODS: Thank you.

23 VICE-CHAIR HARDECKE: We'll take a ten minute break before
24 we proceed. And so we'll see you in a few minutes.

25 (BREAK IN PROCEEDINGS.)

1 (VICE-CHAIR HARDECKE LEFT PROCEEDING; HEREIN AFTER, MEETING
2 CONDUCTED BY COMMISSIONER JAN TUPPER.)

3 COMMISSIONER TUPPER: We're at Item No. 10.

4 Commissioner Hardecke became ill. And has left, but
5 we have a temporary chair fill-in. I told Kristin it was a
6 mutiny. So we're --

7 (Laughter.)

8 COMMISSIONER TUPPER: **Item No. 10** is Phil Schroeder.

9 MR. SCHROEDER: Thank you and good morning. I'm glad to be
10 able to come to you today and propose what we feel are
11 changes that would be appropriate to our Water Quality
12 Standards. This has been a real work in progress. This
13 whole effort started back when our last Water Quality
14 Standards were approved in 2005. And we've gone through a
15 lot of very good discussions with our stakeholders. Some
16 of which were long and challenging, but I think we are at
17 the point where we're ready to propose something that
18 should be refined through the official rulemaking process.

19 So at the end of my presentation, today, my
20 recommendation will be to you to get your approval or to
21 approve us to file the proposed revisions to the Water
22 Quality Standards.

23 What I'd like to do is, first, explain a little bit
24 of the history -- you know, what milestones we've
25 accomplished thus far with respect to the rulemaking. And

1 then I'd like to go through a summary of the major parts
2 and key elements of the changes we are proposing to the
3 rule. And then I'd like to explain to you some of the
4 significant and what I would consider critical comments
5 that we got on the preliminary proposed rule and the
6 Regulatory Impact Report that was posted for this rule.

7 Then I'd like to review with you the actually rule
8 language itself and some of the things that we're changing
9 there so that you can see that, first hand, and have an
10 opportunity to ask some questions about that. And then at
11 the end of this portion of the packet there's our draft
12 fiscal notes that we put together to kind of try to help
13 understand the fiscal impact associated with this proposed
14 rule.

15 So with that, a little bit of history we have gone
16 through the effort of drafting a Regulatory Impact Report
17 that was published back in May, I believe. It went through
18 a public comment period of 60 days. Along with the
19 preliminary draft rule itself. We received quite a few
20 comments on that. We were lucky to get the comments that
21 we did and we've fully considered those comments. And
22 we've made some changes to what we had preliminarily
23 proposed. And I'll describe some of those changes to you
24 as we go through this.

25 We had a public hearing on this rule, proposed rule

1 or no -- I'm sorry -- on the Regulatory Impact Report on
2 July 2nd. So we've had plenty of opportunity, I believe, to
3 gather comments and ideas about how to continue to advance
4 with this -- these changes.

5 So with that I think I'd like to go ahead and start
6 stepping through a brief summary of some of the major parts
7 of the rule that we're changing. I've sort of organized
8 this by describing the changes in the tables that are part
9 of the Water Quality Standards, as you probably know, the Water
10 Quality Standards consists of two parts. There's a narrative
11 section, kind of describes the standards and then there's
12 Tables A thru currently that'd be J that has numeric
13 Water Quality Standards and very specific parts signifying
14 what kind of standards apply to what specific segments of
15 waters in the state.

16 But, you know, most of the discussion and most of the
17 changes we've made to the Water Quality Standards exists
18 within those tables so that's why I'm kind of discussing it
19 from that perspective.

20 Table A, the first table in the Water Quality
21 Standards, we took a hard look at the copper and zinc
22 standards there. Basically, what we are wanting to do is
23 bring those standards up to or into line with the federal
24 guidance that was published back in 2006. That was after
25 our last water quality standards revisions. So as we step

1 through the actual changes you'll see some changes in the
2 numeric water quality criteria for those two metals.

3 In addition to that and because of recent discussions
4 about the bacteria criteria we have also made some changes
5 in Table A with respect the numeric water quality criterion
6 for E. coli. You recall that, one, the Commission approved
7 back in 2005 for Category A, whole body contact recreation
8 was 548 colonies per 100 milliliters of water. Recent
9 discussions with EPA would indicate that the highest
10 numeric criterion approvable by them would be 206.

11 So we have recommended that the Commission adopt the
12 206 as the criterion for whole body contact recreational
13 use in Category B.

14 Table B2 and B3 were also changed to reflect federal
15 guidance. Simply we took what was in the federal guidance
16 and put it into our rules. There was really nothing there
17 that came from our own, working with stakeholders, this is
18 simply, again, adoption of what's in the federal guidance.

19 Tables G and H; Table G lists on the classified lakes
20 in the state and all the designated uses that apply to
21 those. Table H lists all the streams, classified streams
22 in the State of Missouri and uses designated to those. We
23 made some changes in a number of ways to those two tables.
24 One, is that a lot of the names of these water segments
25 have changed over the years or we've discovered there's a

1 different and a better way to describe or identify those
2 water segments.

3 We're not adding anymore waters in Tables G or H at
4 this time. We're just simply reflecting more of the recent
5 nomenclature, if you will. Also, we've changed a lot of
6 legal descriptions to be more accurate in terms of
7 describing where the classified segment is. Again, our
8 intent is not to increase the classification of waters of
9 the state through these changes but rather be more accurate
10 in terms of describing where that start and end points are
11 for those classified waters.

12 We had originally contained or put some waters in
13 there that staff and some of our stakeholders had proposed
14 for classification, but we have since removed those because
15 we didn't describe those in the Regulatory Impact Report.
16 And basically there were some lakes that were owned by the
17 Missouri Department of Conservation that were used by the public.
18 We felt that these uses need to be protected, of course.
19 But we'll take that up in our next Water Quality Standards
20 revisions process. And we'll bring those to you and make
21 sure we address those issues in the next Regulatory Impact
22 Report.

23 We have proposed some new tables within the Water
24 Quality Standards. Tables L and M contain the criteria
25 that was developed through a stakeholder workgroup for

1 nutrient criteria on lakes. This is a significant effort
2 on the part of that workgroup. We feel this is a big step
3 for the State of Missouri. One, it has been the aim of our
4 state as well as EPA for quite some time. We are very
5 pleased to be able to bring to you that recommendation to
6 include those within the Water Quality Standards.

7 We added a Table N as well, which addresses some
8 comments we received about the nutrient criteria on lakes.
9 Table N contains the site specific total phosphorous
10 criteria for certain arms of major reservoirs within the
11 State of Missouri, where the arms of these larger
12 reservoirs may actually react differently to nutrient
13 inputs than the main body of those lakes.

14 And then we are also proposing adding a new Table K.
15 Table K is for where the state has been able to develop
16 site specific criteria for a specific pollutant on a
17 specific water body. So this is a table that would house,
18 where there's exceptions made to the Table A standards that
19 apply generally to classified waters. In Table K the
20 waters that we're specifically addressing there are East
21 Fork Locust creek and the Little East Fork Locust Creek up in
22 Sullivan County and the West Fork Sni-A-Bar and Sni-A-Bar
23 Creeks in Jackson and Lafayette County.

24 And then at lastly, of course, we always take the
25 opportunity to correct a number of typographical errors in

1 the Water Quality Standards themselves. So you'll see
2 throughout the rule misspellings being corrected and
3 grammar being improved and such things like that.

4 Okay. I think from there unless you have some
5 questions about just generally those key points of where
6 we're trying to address some revisions I'm going to
7 describe to you some of the comments that we had
8 received on the rule or on the Regulatory Impact Report as
9 well as the rule. Those start on Page 453 of your packet.

10 I had thought at one point to actually provide to you
11 the actual copies of all the comments that we'd received on
12 the Regulatory Impact Report, but in order to try to keep
13 this packet under 100 pounds, I decided not to include
14 those in here. We had received comments, I think, 12
15 individuals and/or groups. And then over, like, 500, I
16 think, it was 459 comments to be exact on the use
17 attainability analyses that were conducted on waters for
18 recreational uses. So there was a significant amount of
19 information that we had received. I think the total number
20 of comments were 42 or 43 comments that we addressed in
21 the responses.

22 So hopefully the responses that we've contained in
23 your packet appropriately and fully address all the
24 comments we had received, and the responses that we made to
25 those comments.

1 Instead of going through all 43 of those comments,
2 what I thought I'd do is point out the ones that met three
3 different criteria, one, is that whether or not that
4 comment and the response we made to that comment still has
5 a potential for indicating a continuing disagreement about
6 what should be in the rule. So that's one criteria I used
7 in pulling out to mention the comment. The second one is
8 whether or not there's a substantial cost that may not have
9 been fully vetted in the Regulatory Impact Report that the
10 comment brought to our attention. I just want to explain
11 the response we made to that. And then if it resulted in
12 some change to the rule itself that we had preliminary
13 proposed. I think that's important for you to understand
14 as well. So with those three criterions I found several comments
15 I thought I should bring to your attention.

16 The first one starts on Page 457 and its Comment No.
17 12. And by the way each one of the comments, I've put the
18 abbreviations of the person or group that commented. If
19 you aren't familiar with the abbreviation, I think, you'll
20 be familiar with most of them but if you aren't you'll find
21 the abbreviations at the end of this section on the
22 comments. I think that's Page 468.

23 Comment 12 was that we had recommended that the River
24 Des Peres in the St. Louis area be designated for whole
25 body contact recreation. That was done because we --

1 there's a rebuttable presumption, which I think we've
2 already had a lot of discussions about that issue that
3 these recreational uses exists until a use
4 attainability analysis is demonstrated that the uses are
5 unattainable. And we applied the rebuttable presumption
6 inappropriately here because we are designating that
7 use in some upper tributaries. And we thought since those
8 uses are designated up there then everything that follows
9 downstream also had that use as well. Well, that was a
10 misapplication of proper logic, if you would call it. We
11 had UAA that was conducted on River Des Peres. It was done
12 back several years ago, probably, in 2005, I think, that
13 clearly demonstrates that the River Des Peres does not,
14 cannot attain a whole body contact recreational use. So we
15 agree with the comment that that should be respected and
16 that the River Des Peres not be designated for whole body
17 contact recreational use. So we have since removed that
18 from our recommendation.

19 The second comment that has some significance is
20 Comment 15, I think. This is a summary, I guess, basically
21 of all the comments we had received on the UAAs, themselves
22 throughout the state. What's significant about the
23 comments we had received on the UAAs is that it brought to
24 attention that there are a number of waters out there that
25 while our UAA process may indicate because of depth doesn't

1 attain a whole body contact recreational use. That through
2 the comments we received by the people who live near or
3 utilize -- use that stream they do engage in activities
4 that could be considered as whole body contact recreation.
5 And so, therefore, we felt that it's necessary for us to
6 recognize these existing uses of these waters and protect
7 those existing uses. Also, as we received comments it
8 became apparent that a good number of these waters that
9 UAAs are conducted on do support a secondary contact
10 recreational use and so therefore we took the opportunity
11 to recommend that secondary contact use be designated. So
12 it can also be protected.

13 The next comment that I'd like to bring to your
14 attention is Comment 17. This was a comment relating to
15 the fiscal impact that the rule might have specifically
16 with respect to where we're recommending whole body contact
17 recreational use in waters within the service area of the
18 Metropolitan Sewer District in St. Louis. They brought it
19 to our attention that these designations may have a
20 significant fiscal impact on that district. And so they
21 were -- they gave us an estimate of what that fiscal impact
22 may be and what we have done is basically presented that
23 fiscal impact in these responses so that the public fully
24 understands it. That's a fiscal impact that we missed with
25 the Regulatory Impact Report, but we want the public to

1 know that that fiscal impact does potentially exists.

2 The next comment is Comment 19. This is a comment
3 made to the nutrient criteria on lakes. I mentioned
4 earlier that our original proposal didn't include site
5 specific criteria for the arms of some major reservoirs and
6 how those arms react to nutrient inputs. The workgroup had
7 -- was aware of that potential, but hadn't really finished
8 its business, so to speak, on that aspect but did go ahead
9 and re-meet and re-discuss that issue and have since
10 proposed what could be site specific criteria for the major
11 arms of several reservoirs. And so that led to the
12 development of Table N, as a response to that comment.

13 The next comment appears in 466. I think that it
14 might be worth mentioning. This is a comment on the new
15 Table K where we're recommending site specific criteria for
16 dissolved oxygen on several streams. I mentioned this one
17 because there seems to be a continuing potential for
18 disagreement as to whether or not the criteria that's being
19 proposed here are protective of aquatic life within those
20 water bodies. We, in our response, feel as though as we've
21 appropriately addressed that issue. But I would expect
22 that as we go into the rulemaking process and during the
23 public comment period on this specific recommendation we're
24 going to hear additional comments about that proposal.

25 Also, Comment 41 goes along the same line. So you

1 may want to take some time and look at that as well.

2 Well, those are the comments, I think, are of most
3 importance, I guess, if that's the right word to use that
4 we received that led to some hard thinking about this rule.
5 But we think we've responded to those appropriately and
6 hopefully that we're in a point where we're on the right
7 track in that any additional comments received during the
8 rulemaking process won't bring any significant new issues
9 to us.

10 So unless you would like to discuss some of those
11 comments and our responses on those, I'm ready to proceed
12 now on to the actual rule language itself that starts on
13 471.

14 (No response.)

15 MR. SCHROEDER: Okay. As I stated earlier, the first part
16 of the Water Quality Standards are the narrative parts.
17 That proceeds through Page 486. And the only thing I
18 really want to mention there is that we included the
19 nutrient criteria on Page 481. This is a significant new
20 addition to the narrative portion of the rules. This
21 narrative is really necessary to fully understand the Table
22 L, M and N later in the packet.

23 And I'm going to describe a little about the nutrient
24 criteria. I won't go into a whole lot of depth. But as we
25 get into those tables, I'll tell you a little bit about how

1 that works.

2 But I'd like to go ahead and proceed now into Page
3 489, this is the start of Table A and point out to you
4 where the bacteria criteria has been modified or proposed
5 to be modified. Again, you see the -- about half way down
6 the page the E. coli bacteria criteria for whole body
7 contact B, Category B is being changed from 548 to 206 as
8 we mentioned.

9 If you proceed onto the next page, you'll see some
10 changes in just the spellings of some of these pollutants.
11 But the next significant change would be on 490 where we're
12 changing the copper and zinc criteria to reflect the latest
13 in the federal guidance.

14 The next change of significance is on Page 497 where
15 we're changing the ammonia criteria. We're revamping those
16 tables to again reflect what's in the federal guidance. So
17 nothing there that's more stringent than what the federal
18 requirements are.

19 Table G starts on Page 501. As you can see there's a
20 lot --

21 (TAPE ONE, SIDE B CONCLUDED.)

22 MR. SCHROEDER: -- correct some of the names and more
23 accurate figures in size and location.

24 So with that we can proceed on to Table H, which is
25 on Page 515. This is the list of the classified stream

1 segments. Again, our first change in this is just changing
2 the names to reflect the most current names you use for
3 these water bodies, correcting mileage figures but not
4 changing the actual classified lengths. Also, these --
5 this table will reflect a lot of the results of the UAAs
6 that were conducted on water bodies where the whole body
7 contact recreational use or secondary contact uses are
8 being changed. An example of that would be Page 516,
9 Bachelor Creek. It's right near the top. I think it's the
10 fifth down from the top of that page. Its name is being
11 changed to Roth Creek, but as you can see there's a new
12 Category B being added. And this is difficult to see for
13 some, that B is bolded there. I hope you can see that.
14 But the Secretary of State's Office basically requires that
15 we use this process to identify these new changes.

16 Another change of another type is on the next page,
17 Bear Creek, which is about a third of the way down, that's
18 in Boone County, you'll see a little X over there under
19 secondary contact recreation use. That's a bold X, hard to
20 recognize because the bold is harder -- hard to see, but,
21 again, that's a result of the UAA. We discovered the
22 secondary contact recreational use is existing.

23 And then just shortly, like, four down from that,
24 there's one that's bracketed out. That's where Category B
25 whole body contact is being removed from another Bear Creek

1 this time in Henry County. So that's just an example of
2 how this rule signifies the changes.

3 So let's move off of Table H then. And Table K is on
4 Page 613. This presents the site specific criteria for
5 dissolved oxygen for those four water bodies. Again, we
6 expect to get some additional comments on that.

7 Page 615 is Table L. I thought I'd just take just a
8 second and describe what this table describes or shows.
9 You see that there's three different lake eco-regions
10 that's being addressed by the nutrient criteria and within
11 each one of those lake eco-regions there's three different
12 types of criteria. There's what they call total
13 phosphorous reference criteria, a prediction value and then
14 site specific criteria. And the easiest way for me to
15 really understand what's going on here, is what you do is
16 you look at the prediction value, first. Now, this is an
17 equation and as you look through those equations you see an
18 A, B and C that represent these factors that affect how
19 nutrients react within an impoundment.

20 A is the percentage of the watershed originally in
21 prairie, in other words, how much of that watershed was of
22 a prairie type. So it has probably a prairie type soil in
23 its watershed, which has some bearing on the type of
24 nutrients that might be coming into that impoundment.

25 B is the hydraulic residence time or how much time

1 that water resides within an impoundment during -- you
2 know, as it flows through.

3 And the C represents the dam height, which is the
4 surrogate for the depth of that lake, which also can have
5 effect of how nutrients react within a lake.

6 So these equations based on these factors basically
7 determine how nutrients react within impoundments and what
8 you can expect in terms of nutrient levels, phosphorous
9 levels within these impoundments.

10 If those prediction values do not exceed what's to
11 the left there in terms of the reference value then you use
12 the reference value because that reference value indicates
13 a conservative figure of what a quality -- a good quality
14 lake in that region should be able to achieve.

15 If the prediction value exceeds the reference value
16 then basically we have some factors within that lake that
17 makes it an exception. They can't be quite as good of
18 quality as the lakes that have -- in that region. So you
19 use a prediction value where that prediction value exceeds
20 the reference value.

21 The site specific criteria are set for lakes that are
22 unique, that for some reason they defy the logic, if you
23 will, of how nutrients react and are of a higher quality.
24 And we want to protect that higher quality within those.

25 Unique approach, Missouri is the only one that really

1 has taken this type of approach. And -- but it seems to
2 apply good science. It went through lengthy stakeholder
3 discussion. And we're really happy to be able to produce
4 this product for you to consider for nutrient criteria for
5 lakes.

6 And then Table N is the site specific criteria.
7 These are the lakes that actually have site specific
8 criteria recommendations on them. These are our better
9 quality lakes within those regions that we want to protect
10 at that level. And then in Table N are the arms of major
11 reservoirs where site specific criteria would be applied
12 because of the potential for differing conditions within
13 those arms.

14 And that's it. That's all there is to the Water
15 Quality Standards.

16 MR. GALBRAITH: That's it.

17 MR. SCHROEDER: That's it. It's that simple.

18 So the rule schedule is presented next. We -- if you
19 approve for staff to file this as a proposed rule then, of
20 course, we'll have a hearing on that. That hearing will
21 take place at the May meeting. And then shortly following
22 that will be the end of the public comment period. But if
23 everything stays on this schedule then we would hope to
24 have affective Water Quality Standards in accordance with
25 what we're proposing or at the end anyway in October of

1 2009.

2 And then at the end of this packet of material there
3 is the fiscal notes that were developed both on the private
4 entities potentially affected by this proposed rule and the
5 public entities. And I won't go -- belabor this, a whole
6 lot unless you have some questions about it. But we
7 basically identified how many of the different entities
8 might be affected by each of the major parts of the rule.
9 What types of entities are there, in other words,
10 municipalities, by size. And then what are the potential
11 costs both from construction of new treatment systems as
12 well as the operation of those new treatment systems if
13 those were likely to be required.

14 So the cost figures are anywhere between, it looks,
15 like, about \$31 million for fiscal impact to our private
16 entities. For public entities it's going to be
17 significantly more. The figure we came up with was \$329
18 million. So there is some significant potential fiscal
19 impacts. I think those figures are somewhat conservative
20 in some respects. But nevertheless I think they give the
21 public an understanding of what fiscal impact could be.

22 We will be filing these fiscal notes along with the
23 proposed rule. So the public will have the opportunity to
24 take a look at those and comment on those as well.

25 That concludes my remarks.

1 COMMISSIONER TUPPER: Questions from the Commission?

2 COMMISSIONER EASLEY: No.

3 COMMISSIONER TUPPER: Thank you, Phil.

4 MR. SCHROEDER: Okay. Thank you.

5 MR. HERRMANN: Chairman I have a question.

6 MR. GALBRAITH: Are you requesting a --

7 MR. SCHROEDER: Yeah. I guess. If you don't mind, I --

8 let me restate our recommendation. We are asking the

9 Commission to approve and direct staff to file these

10 proposed changes with the Secretary of State's Office as a

11 proposed rule. So if you accept our recommendation, we

12 would ask for that motion.

13 COMMISSIONER TUPPER: Thank you.

14 Thomas.

15 MR. HERRMANN: I'd like to ask Ed, if any of these

16 proposals or any of these inclusions are considerate of the

17 discussions recently with the Clean Water -- with the

18 drinking water people?

19 It seems to include all of the streams that were

20 under discussion at that time and no consideration was

21 given to elimination or modification of any of those

22 included streams.

23 MR. GALBRAITH: Okay. Yeah. I can answer that. What Tom

24 is referring to is the effort to identify discrepancies

25 between our drinking water designations and the Clean Water

1 Law and those drinking water designations in Missouri is
2 drinking water census which is maintained by the Safe
3 Drinking Water Commission. And Jan and Frank Shorney, Tom
4 and I met with John Witherspoon of the Safe Drinking Water
5 Commission, we had a meeting on that, I prepared a draft
6 paper that you have reviewed and I originally had intended
7 to cue that up for this meeting, but because of the length
8 of the agenda it was one of the things that we did not
9 include in this meeting.

10 The reason I want to move forward with this without
11 taking those into consideration is because they haven't
12 been subject to Regulatory Impact Report. These rules are
13 ripe. They've been through the Regulatory Impact process.

14 So I guess our recommendation would be to move
15 forward on these rules and take that issue up during the
16 next rule process.

17 COMMISSIONER TUPPER: What's your pleasure?

18 MR. HERRMANN: That will make it five years.

19 MR. GALBRAITH: I hope not.

20 MR. HERRMANN: If not then four.

21 MR. GALBRAITH: I understand. The next agenda item is on
22 the risk based correction action rule, which was on the
23 eight year fast track. So we're moving pretty speedily on
24 this side of the house.

25 COMMISSIONER HUNTER: Kristin, do you have any comments?

1 (No response.)

2 COMMISSIONER TUPPER: Kristin, did you have any comments?

3 CHAIRPERSON PERRY: No. I didn't quite hear in that last
4 part where Ed was talking with Tom Herrmann; why are we
5 waiting to take that issue up?

6 MR. GALBRAITH: Because we haven't -- we haven't -- that
7 hasn't gone through -- we're basically at an earlier point
8 in the process with that, Kristin. We have not gone
9 through any stakeholder discussions, we haven't prepared a
10 Regulatory Impact Report, so our recommendation is to move
11 forward with what we have that's cued up and not hold the
12 train but take that up at the next -- you know, through the
13 next cycle. And it shouldn't have to -- you know, I don't
14 see that it would have to take four years, if -- you know,
15 it just depends on what the Commission -- you know, how
16 they feel about the issue.

17 I'm talking a little bit in a vacuum because Jan and
18 Frank have prepared a set of recommendations, which hasn't
19 been shared with the Commission because it was one of the
20 things that was removed from today's -- today's agenda
21 because of the length of it.

22 So I don't know if -- did I answer your question?

23 CHAIRPERSON PERRY: Yeah. Well, I guess my question is do
24 we have to wait until the next Water Quality Standard cycle
25 to amend those things or can they be amended in the

1 interim?

2 MR. GALBRAITH: Well, the rule would be -- as long as this
3 rulemaking -- for that period of time where Table H is
4 open, we couldn't reintroduce a new rule. But as soon as
5 table -- that was closed and there was a new rulemaking
6 affective, we could move -- you know, the day after that
7 effective date. And these rules the schedule is to be
8 effective on --

9 MR. SCHROEDER: October of 2009.

10 MR. GALBRAITH: -- October of 2009. So conceivably if we
11 worked on that in the interim, Kristin, we could be ready
12 to go -- you know, November of 2009. But that would be the
13 earliest.

14 COMMISSIONER TUPPER: Other questions?

15 (No response.)

16 COMMISSIONER TUPPER: Do we need a motion for this?

17 MR. GALBRAITH: We do need a motion. And its -- there's a
18 sample motion if you want to --

19 **COMMISSIONER EASLEY: I move that the Department file a**
20 **proposed amendment to the Water Quality Standards 10 CSR**
21 **20-7.031 as proposed by the Department staff.**

22 **COMMISSIONER TUPPER: We have motion by Mr. Easley. Do we**
23 **have a second?**

24 **COMMISSIONER HUNTER: Second.**

25 **COMMISSIONER TUPPER: Call for the vote, please.**

1 MS. OVERHOFF: Commissioner Tupper?
2 COMMISSIONER TUPPER: Yes.
3 MS. OVERHOFF: Commissioner Hunter?
4 COMMISSIONER HUNTER: Yes.
5 MS. OVERHOFF: Commissioner Easley?
6 COMMISSIONER EASLEY: Yes.
7 MS. OVERHOFF: Chair Perry?
8 CHAIRPERSON PERRY: Yes.
9 MR. SCHROEDER: Thank you.
10 COMMISSIONER TUPPER: Thank you, Phil.
11 We're ready for **Tab No. 11**.
12 MR. GALBRAITH: Tim Eiken is here from the Hazardous Waste
13 Program. I'll just prolog with a little bit of history on
14 the Petroleum Tank Program in Missouri, the Program dates
15 back to the early '90s.
16 It was originally -- there's two parts of this
17 Program, there's the regulatory, sort of, pollution
18 prevention side and there's the clean-up side. Originally
19 the Program and the law was put in the Clean Water Law and
20 administered by the Clean -- and the -- what was then the
21 Water Pollution Control Program and this Commission. In
22 '97 the Program was moved to the Hazardous Waste Program.
23 And in 2004 the jurisdiction for the regulations was moved
24 to the Hazardous Waste Commission.
25 This is the first major rulemaking, maybe the first

1 rulemaking since 2004. So, basically, what I think the --
2 what they're looking for today is not approval for a
3 rulemaking, but kind of your concurrence, since these rules
4 now have your name on them as it were, the Clean Water
5 Commission's name on them, to move them to amend them to
6 say under the authority of the Hazardous Waste Management
7 Commission, which is what the law says. We just wanted to
8 cover any basis and make sure that this Commission knew
9 what was going on and -- you know, because your name is
10 attached to them as they currently exist.

11 The second part of this is, as I mentioned, the Risk-
12 based Corrective Action Rule, that's kind of the marquee
13 rule among the many changes that they're contemplating and
14 I think that's what Tim wants to explain to you a little
15 bit further.

16 MR. EIKEN: That's correct, Ed. And thank you for that
17 background information. My name is Tim Eiken. I'm the
18 Rule Coordinator for the Hazardous Waste Program. And I'm
19 here on behalf of Tim Chibnall who's our Technical
20 Specialist in the Hazardous Waste Program. He couldn't
21 make it today so I've got his speaking points and I'm going
22 to go through those. I've also got copies of the
23 background paper that's included in your Commission packet.
24 So if there's anybody here who doesn't have a packet, who
25 wants a copy of that information, I have copies available.

1 Basically, we just kind of wanted to explain in some
2 detail but not a whole lot of detail what it is that we're
3 proposing to do. And as Ed mentioned just to kind of let
4 you know and ask for your concurrence with our plans for
5 moving our existing tank rules from Division 20, which is
6 Clean Water Commission to a newly created Division 26,
7 which will be titled Petroleum and Hazardous Substance
8 Storage Tanks that would contain all Department rules
9 related to underground and above ground storage tanks both
10 financial responsibility rules, clean-up rules and the
11 newly created Risk-based Corrective Action Rule.

12 As far as specifics the existing rules are found in
13 Division 20 of the CSR Chapters 10, 11, 13 and 15. And all
14 rules in those chapters are going to be moved to a newly
15 created Division 26.

16 The basis for that as, Ed mentioned, is to reflect
17 statutory changes in authority over those rules in Chapters
18 10, 11 and 13 from the Water Commission to the Hazardous
19 Waste Management Commission.

20 And authority over the above ground storage tanks
21 rules will remain with the Clean Water Commission because
22 that statute has not changed. But in order to be
23 consistent with moving all tank related rules to one
24 location, we propose to move those rules into this new
25 division also. And we'll clarify in the applicability

1 statement for these new rules which rules remain under
2 authority of the Clean Water Commission and which will be
3 under the authority of the Hazardous Waste Management
4 Commission.

5 This process began with our development of a rule
6 related to risk-based correction action clean-up for
7 petroleum storage tanks. In the process of doing that we
8 developed four brand new rules that do not currently exist
9 and we developed substantial changes to four existing rules
10 that cover parts of the process that's included in the
11 risk-based corrective action document.

12 So we're amending four existing rules and creating four new
13 rules and then also amending other existing rules because they --
14 we have to update those references in the new division after
15 we move the rules. Our reasoning for doing that is basically
16 while the rules are open it just made sense to move all those
17 rules to reflect the change in the statutory authority and house
18 them in a central location for easy access.

19 Many of the Chapter 10, USD technical rules are being
20 significantly amended in addition to being moved from one
21 division to the other. And those amendments are as I
22 stated, previously, almost entirely related to our newly
23 created risk-based correction action process. And other
24 rules within Chapter 10 are only being changed to reflect
25 the new division and update the citations.

1 Again, Chapter 10 rules are going to move to Division
2 26, Chapter 2. And the rules currently in Division 20,
3 Chapters 11, 13 and 15 are being moved without modification
4 except for correcting rule references. Those -- we'll
5 correct those references from Division 20 to Division 26.
6 And within chapter -- the new Division 26, Chapter 11 rules
7 will move to Chapter 3. Chapter 13 rules moved to Chapter
8 4 and Chapter 15 rules will move to Chapter 5.

9 That really concludes my brief discussion and
10 background of what's entailed with these rules. Our
11 request is that you concur with our plans to move these.
12 I'll be glad to answer any questions that you might have.
13 There are some more details and specifics on this in your
14 packet if you want to refer to those, but if you have questions
15 I'll entertain those. And at this time that really
16 concludes my prepared remarks. So if you have any
17 questions.

18 COMMISSIONER TUPPER: Thank you, sir.

19 Any questions?

20 (No response.)

21 COMMISSIONER TUPPER: Do we have a motion?

22 **COMMISSIONER HUNTER: I move that the Commission approve**
23 **the Department's proposal to move existing tank rules**
24 **currently found in Title 10, Division 20, Chapters 10, 11,**
25 **13 and 15 of the Code of State Regulations from their**

1 current location with other Clean Water Commission rules
2 into a newly created Division 26 including approval of the
3 minor formatting and/or language changes to the AST Release
4 Response Regulations that are necessary as a result of this
5 move.

6 COMMISSIONER EASLEY: Second.

7 COMMISSIONER TUPPER: We have a motion from Mr. Hunter and
8 a second from Mr. Easley, please, call the vote.

9 MS. OVERHOFF: Commissioner Tupper?

10 COMMISSIONER TUPPER: Yes.

11 MS. OVERHOFF: Commissioner Hunter?

12 COMMISSIONER HUNTER: Yes.

13 MS. OVERHOFF: Commissioner Easley?

14 COMMISSIONER EASLEY: Yes.

15 MS. OVERHOFF: Chair Perry?

16 CHAIRPERSON PERRY: Yes.

17 Did you hear me okay?

18 MS. OVERHOFF: Yes. Thank you.

19 MR. EIKEN: Okay. Thank you.

20 COMMISSIONER TUPPER: Thank you.

21 **Tab No. 12, Stormwater Grant and Loan Program.**

22 MR. BOLAND: Good morning. I'm Joe Boland with the
23 Financial Assistance Center within the Water Protection
24 Program. I know you've already heard one issue on the
25 stormwater this morning, but this has to do with our grant

1 and loan program, the regulations that drive it.

2 Because we amended the Article 3, Section 37H
3 of the Constitution, which defines our Stormwater Grant and
4 Loan Program. That amendment was passed this November
5 through a Constitutional Amendment No. 4. And because of
6 that change we now have to amend our rules to reflect those
7 changes. And we are just coming before you this morning to
8 let you know as a courtesy that we will be coming -- excuse
9 me. Coming before you in March with our proposed rule and
10 we'll be asking your permission at that time to move
11 forward.

12 So that's about all I have unless you have any
13 questions.

14 COMMISSIONER TUPPER: Any questions for Joe?

15 (No response.)

16 MR. BOLAND: All right. Very good. Thank you.

17 COMMISSIONER TUPPER: Thank you.

18 **Tab No. 13 is the Small Borrower Loan Program for**
19 **Hartville.**

20 MR. BOLAND: Hartville is asking for \$100,000 in a small
21 borrower loan to make some wastewater treatment system
22 upgrades. The specific items are listed in your briefing
23 packet. Basically, for a new duplex lift station,
24 valve pit, some reversible pumps and electrical system.
25 They're going to be matching that \$100,000 loan with

1 \$63,000 of their own funds.

2 So at this time we're asking for your approval to

3 make that small borrower loan.

4 COMMISSIONER TUPPER: Any questions for Joe?

5 (No response.)

6 COMMISSIONER EASLEY: I move to approve the small borrower

7 loan of \$100,000 to the City of Hartville.

8 COMMISSIONER HUNTER: Second.

9 COMMISSIONER TUPPER: Did you say something Kristin?

10 CHAIRPERSON PERRY: No. Sorry. (coughed)

11 COMMISSIONER TUPPER: Oh. We have a motion by Mr. Easley

12 and a second by Mr. Hunter, please, call for the vote.

13 MS. OVERHOFF: Commissioner Hunter?

14 COMMISSIONER HUNTER: Yes.

15 MS. OVERHOFF: Commissioner Easley?

16 COMMISSIONER EASLEY: Yes.

17 MS. OVERHOFF: Commissioner Tupper?

18 COMMISSIONER TUPPER: Yes.

19 MS. OVERHOFF: Chair Perry?

20 CHAIRPERSON PERRY: Yes.

21 MR. BOLAND: Thank you.

22 COMMISSIONER TUPPER: **Tab No. 14.**

23 MR. GARRETT: Good morning. I'm Doug Garrett with the

24 Financial Assistance Center, Deputy Director. We have been

25 notified by the Environmental Protection Agency of two

1 issues that affect our Intended Use Plan funding amount or
2 available funds.

3 One, is they've asked us to amend the IUP to reduce
4 the anticipated 2008 federal capitalization grant by
5 \$100,000, which will be set aside for an independent audit
6 of the SRF. Secondly, in December we received notice of
7 the federal continuing resolution that we would be -- have
8 available to us another \$8.3 million.

9 If you look at Page 685 and 686 in your packet you'll
10 see we have revised the pages from the Intended Use Plan to
11 reflect changes to available funds and the affect on funds
12 that would have been available for our Leverage Loan
13 Projects is an increase of approximately \$12 million. So
14 we would have available then \$192,542,394.

15 And at this time we would like -- you know, we're
16 asking the Commission to approve amending the IUP with
17 these changes.

18 COMMISSIONER TUPPER: Any questions?

19 (No response.)

20 COMMISSIONER TUPPER: Any questions Kristin?

21 CHAIRPERSON PERRY: No.

22 **COMMISSIONER HUNTER: I move that the state fiscal year**
23 **2009 Clean Water State Revolving Fund Intended Use Plan be**
24 **amended as proposed.**

25 **COMMISSIONER EASLEY: Second.**

1 COMMISSIONER TUPPER: We have a motion by Mr. Hunter, a
2 second by Mr. Easley that we proceed, please, call for the
3 vote.

4 MS. OVERHOFF: Commissioner Hunter?

5 COMMISSIONER HUNTER: Yes.

6 MS. OVERHOFF: Commissioner Easley?

7 COMMISSIONER EASLEY: Yes.

8 MS. OVERHOFF: Commissioner Tupper?

9 COMMISSIONER TUPPER: Yes.

10 MS. OVERHOFF: Chair Perry?

11 (No response.)

12 MS. OVERHOFF: Chair Perry?

13 CHAIRPERSON PERRY: Yeah.

14 MS. OVERHOFF: Thank you.

15 CHAIRPERSON PERRY: You're welcome.

16 COMMISSIONER TUPPER: Thank you.

17 **Tab No. 15**, is also Doug.

18 MR. GARRETT: As we are proposing revisions to the 2009
19 Intended Use Plan Project list. We've had several
20 communities that have made progress on their projects to be
21 placed either on the carryover fundable list or the
22 fundable list.

23 Those are Calvey Creek Sewer District's Crestview
24 Area project for just over \$1 million or over \$1.5 million.

25 The City of El Dorado Springs, they have an ongoing

1 \$8.2 million project that they have taken out some interim
2 financing and have already begun construction. We're
3 working with them to refinance that project.

4 And the City of Reeds Spring has also met the
5 requirements to be placed on the fundable list.

6 And, finally, we also have the City of Warrensburg.
7 They were in a prior loan closing and have
8 completed two projects already under that first loan
9 closing and currently have two other ones that are
10 ongoing. We have been working closely with this city and
11 their consultant. And they're making excellent project
12 progress on Phase 1. And are desiring to began their
13 Phase 2, this spring. So in an analysis of their funding
14 needs, they are requesting an increase in the eligible loan
15 amount from \$4.6 million to \$8.5 million and
16 subsequently close on that loan this spring. This will
17 enable them to complete all the projects that they have in
18 the pipeline at this time.

19 So we are requesting that the Commission approve
20 amending the 2009 IUP Project list by moving El Dorado
21 Springs, Calvey Creek, and Reeds Springs to the appropriate
22 fundable list, and increasing the eligible project amount
23 for the City of Warrensburg.

24 COMMISSIONER TUPPER: Any questions?

25 (No response.)

1 COMMISSIONER TUPPER: What's your pleasure?

2 COMMISSIONER EASLEY: I move that the Commission approve a
3 revision to the SFY 2009 Clean Water State Revolving Fund
4 Intended Use Plan to move the Calvey Creek Sewer District's
5 Crestview project from the planning project list to the
6 carryover fundable project list.

7 That the City of El Dorado Springs project be moved
8 from the contingency project list to the fundable project
9 list.

10 That the Reeds Spring project be moved from the
11 planning list to the fundable list.

12 And increase the eligible project amount for the City
13 of Warrensburg from \$4,611,000 to \$8,550,000.

14 COMMISSIONER HUNTER: Second.

15 COMMISSIONER TUPPER: I have a motion from Mr. Easley, a
16 second from Mr. Hunter, please, call for the vote.

17 MS. OVERHOFF: Commissioner Easley?

18 COMMISSIONER EASLEY: Yes.

19 MS. OVERHOFF: Commissioner Tupper?

20 COMMISSIONER TUPPER: Yes.

21 MS. OVERHOFF: Commissioner Hunter?

22 COMMISSIONER HUNTER: Yes.

23 MS. OVERHOFF: Chair Perry?

24 CHAIRPERSON PERRY: Yes.

25 MR. GARRETT: Thank you.

1 COMMISSIONER TUPPER: Tab No. 16.

2 MR. GALBRAITH: Let me check on this.

3 I would recommend that we put off Tab No. 16 until

4 after lunch.

5 COMMISSIONER TUPPER: Oh. Okay.

6 MR. GALBRAITH: I mean lunch is here. We could knock out a

7 few more or break for lunch now or whatever your pleasure.

8 COMMISSIONER TUPPER: Whatever.

9 MR. GALBRAITH: We could move on to a couple of these

10 enforcement actions.

11 COMMISSIONER TUPPER: Let's do that.

12 MR. GALBRAITH: And get a couple of those out.

13 MR. MORRISON: Do you want me to see if anyone is here?

14 MR. GALBRAITH: Well, okay.

15 MS. OVERHOFF: We have no cards for any of them.

16 MR. GALBRAITH: We have no cards for any of them, so --

17 COMMISSIONER TUPPER: Let's move to **17**.

18 MR. GALBRAITH: Seventeen. Kevin.

19 MR. MOHAMMADI: Good morning. The first item on the agenda

20 for the enforcement referrals are **Jason Becker**. Mr. Jason

21 Becker owns approximately 65 undeveloped lots in an older

22 subdivision surrounding a 38 acre Lake Carmel in Cole

23 County.

24 The subdivision is served by a wastewater treatment

25 facility own and operated by Aqua Missouri, Inc., a

1 Missouri Public Service Company, regulated utility that it
2 is currently operating near capacity.

3 Mr. Becker has declined to enter into a developer's
4 agreement with Aqua Missouri to expand the wastewater
5 treatment facility to provide service to the undeveloped
6 lots he owns in the subdivision.

7 Missouri Department of Natural Resources informed Mr.
8 Becker on numerous occasions, over a period of several
9 years, of the requirement for improvement of wastewater
10 disposal in this housing development.

11 But in 2007 Mr. Becker is installed an onsite wastewater
12 treatment at a house he constructed in development without
13 Department approval. On August 2008 the Department sent a
14 letter to Mr. Becker offering to settle past violations
15 through out of court settlement.

16 On August 27, 2008, Mr. Becker responded to
17 Department staff by telephone and has stated that he was
18 not going to connect the house he constructed in the Lake
19 Carmel Subdivision, the Department approved the wastewater
20 treatment system and he was not going to pay any civil
21 penalty for violation of law.

22 Therefore, staff recommends the matter to be referred
23 to office of Attorney General Office for appropriate legal
24 action to require the compliance with Missouri Clean Water
25 Law and payment of civil penalty.

1 COMMISSIONER TUPPER: Why does he think his development is
2 exempt from regulation?

3 MR. MOHAMMADI: He believes because there is a PSC utility
4 company already in the subdivision he does not have to
5 comply with our requirement. Our requirement is, there is
6 a continuing authority, there is a PSC utility company that
7 he has to connect to in order to be in compliance with us.

8 COMMISSIONER TUPPER: Any questions of Kevin?

9 (No response.)

10 COMMISSIONER TUPPER: What's your pleasure?

11 COMMISSIONER HUNTER: I move that the Missouri Clean Water
12 Commission request the Missouri Attorney General to
13 institute a civil action against Mr. Jason Becker on behalf
14 of the Missouri Clean Water Commission and the Missouri
15 Department of Natural Resources to require compliance and
16 civil penalties for past violations and to obtain any
17 relief deemed appropriate by the Office of the Attorney
18 General.

19 COMMISSIONER EASLEY: Second.

20 COMMISSIONER TUPPER: Motion by Mr. Hunter, second by Mr.
21 Easley, please, call the vote.

22 MS. OVERHOFF: Commissioner Tupper?

23 COMMISSIONER TUPPER: Yes.

24 MS. OVERHOFF: Commissioner Hunter?

25 COMMISSIONER HUNTER: Yes.

1 **MS. OVERHOFF: Commissioner Easley?**

2 **COMMISSIONER EASLEY: Yes.**

3 **MS. OVERHOFF: Chair Perry?**

4 **CHAIRPERSON PERRY: Yes.**

5 **COMMISSIONER TUPPER: Tab No. 18.**

6 **MR. MOHAMMADI: Stinnett Grease Service** operated a grease
7 storage and transfer facility located on 1 acre site in
8 alluvial plain of Missouri River.

9 Stinnett operation consists of several large tanks
10 and roll off containers that sit outside exposed to the
11 elements. On February 2008 Department staff inspected the
12 site and observed that the material contained in several of
13 the tanks was seeping from the drain ports and oil residue
14 on the ground below the drain ports. Staff, also, observed
15 several areas at this site that were stained with grease.
16 Due to violation observed during this inspection Department
17 issued a notice of violation.

18 On May 2008 Department staff conducted a complaint
19 inspection of the site and observed large pool of grease
20 on the ground and a hose connected to one of the tanks that was
21 actively discharging onto the ground. Due to the violation
22 observed the Department staff issued an NOV to Stinnett and
23 referred the matter for enforcement.

24 On August 2008 Department sent a letter to Stinnett
25 offering to resolve the past violation through an out of

1 court settlement agreement. According to U.S. Postal
2 Services this letter was received on August 11, 2008. The
3 Department staff did not receive response and since sent a
4 second letter dated September 5th, 2008, offering to resolve
5 this matter through an out of court agreement. According
6 to U.S. Postal Services this letter was received on October
7 1st, 2008. To date Mr. Stinnett has not responded to the
8 NOV or the Department's letter offering to resolve this
9 matter.

10 It is important to note that this is a joint
11 enforcement case with the Solid Waste Management Program.
12 The Solid Waste Management Program referred this to the
13 office of Attorney General Office in December of 2008.
14 Staff recommends the matter be referred to the Office of
15 Attorney General to require compliance with Missouri Clean
16 Water Law and payment of civil penalty for past violation.

17 COMMISSIONER TUPPER: Any questions?

18 (No response.)

19 COMMISSIONER HUNTER: Motion?

20 COMMISSIONER TUPPER: Motion.

21 **COMMISSIONER EASLEY: I move that the Missouri Clean Water**
22 **Commission request the Missouri Attorney General to**
23 **institute appropriate legal action against Stinnett Grease**
24 **Service, LLC and Mr. Zane Stinnett on behalf of the**
25 **Missouri Clean Water Commission and the Missouri Department**

1 of Natural Resources to require compliance with the
2 Missouri Clean Water Law, payment of civil penalties for
3 past violations and any relief deemed appropriate by the
4 Attorney General's Office.

5 COMMISSIONER HUNTER: Second.

6 COMMISSIONER TUPPER: We have a motion by Mr. Easley, a
7 second by Mr. Hunter, please, call the vote.

8 MS. OVERHOFF: Commissioner Hunter?

9 COMMISSIONER HUNTER: Yes.

10 MS. OVERHOFF: Commissioner Easley?

11 COMMISSIONER EASLEY: Yes.

12 MS. OVERHOFF: Commissioner Tupper?

13 COMMISSIONER TUPPER: Yes.

14 MS. OVERHOFF: Chair Perry?

15 CHAIRPERSON PERRY: Yeah.

16 COMMISSIONER TUPPER: Tab No. 19.

17 MR. MOHAMMADI: Walkers Salvage, Lawrence County. Mr.

18 Ralph and Mrs. Linda Walker own and operate a salvage yard

19 known as Walkers Salvage located in Pierce City,

20 Missouri. Stormwater runoff discharging from the salvage

21 yard to an unnamed tributary to Spring River without

22 Missouri State Operating Permit.

23 Since 2003 the Missouri Department of Natural

24 Resources conducted several complaint investigations at the

25 salvage yard. The Walkers are operating a salvage yard

1 without a permit for stormwater discharges.

2 Since 2004 the Department has sent several letters
3 and inspection reports to Walkers requesting that they
4 apply for a permit to cover their salvage yard. Despite
5 several letters and phone calls the Walkers have not
6 responded to the Department's offer of out of court
7 settlement or applied for a permit.

8 Therefore, staff recommends the matter to be referred
9 to the office of Attorney General Office for appropriate
10 legal action to require permit and payment of civil
11 penalties.

12 COMMISSIONER TUPPER: Any questions?

13 (No response.)

14 COMMISSIONER TUPPER: What is your pleasure?

15 COMMISSIONER HUNTER: I move that the Missouri Clean Water
16 Commission request the Missouri Attorney General to
17 institute appropriate legal action against Mr. Ralph Walker
18 and Mrs. Linda Walker on behalf of the Missouri Clean Water
19 Commission and the Missouri Department of Natural Resources
20 to require payment of civil penalties for past violations,
21 compliance with the Missouri Clean Water Law and any relief
22 deemed appropriate by the Attorney General's Office.

23 COMMISSIONER EASLEY: Second.

24 COMMISSIONER TUPPER: We have a motion by Mr. Hunter, a
25 second by Mr. Easley, please, call the vote.

1 MS. OVERHOFF: Commissioner Hunter?
2 COMMISSIONER HUNTER: Yes.
3 MS. OVERHOFF: Commissioner Easley?
4 COMMISSIONER EASLEY: Yes.
5 MS. OVERHOFF: Commissioner Tupper?
6 COMMISSIONER TUPPER: Yes.
7 MS. OVERHOFF: Chair Perry?
8 CHAIRPERSON PERRY: Yes.
9 COMMISSIONER TUPPER: Having accomplished that let's break
10 for lunch.
11 CHAIRPERSON PERRY: One of us is breaking for breakfast.
12 COMMISSIONER TUPPER: That's terrible.
13 MR. GALBRAITH: Will 45 minutes be long enough for
14 everybody to eat and come back or do you want an hour? Do
15 you want it shorter or longer? Let's go 45 minutes.
16 COMMISSIONER TUPPER: Let's go 45 minutes.
17 COMMISSIONER HUNTER: Yeah.
18 COMMISSIONER TUPPER: I have 11:30.
19 MR. GALBRAITH: We need a motion to go into closed session.
20 COMMISSIONER TUPPER: We need a motion to go into closed
21 session, please.
22 COMMISSIONER EASLEY: I move that the Clean Water
23 Commission go into closed session to discuss legal,
24 confidential or privileged matters under Section
25 610.021(1), RSMo.

1 COMMISSIONER HUNTER: Second.

2 COMMISSIONER TUPPER: We have a motion by Mr. Easley, a
3 second by Mr. Hunter, please, call the vote.

4 MS. OVERHOFF: Commissioner Easley?

5 COMMISSIONER EASLEY: Yes.

6 MS. OVERHOFF: Commissioner Tupper?

7 COMMISSIONER TUPPER: Yes.

8 MS. OVERHOFF: Commissioner Hunter?

9 COMMISSIONER HUNTER: Yes.

10 MS. OVERHOFF: Chair Perry?

11 CHAIRPERSON PERRY: Yes.

12 COMMISSIONER TUPPER: Motion carried. Thank you.

13 (BREAK IN PROCEEDINGS.)

14 MR. MOHAMMADI: Are we on?

15 (No response.)

16 MR. MOHAMMADI: **St. James Estates, L.L.C.**, owned and
17 developed --

18 COMMISSIONER HUNTER: Ah, what tab?

19 MR. MOHAMMADI: **Twenty.**

20 COMMISSIONER TUPPER: Twenty.

21 COMMISSIONER HUNTER: Twenty.

22 MR. MOHAMMADI: St. James Estates, L.L.C., owned and
23 developed St. James Estates located in Lincoln County. St.
24 James is a subdivision development consisting of 40
25 privately owned residential lots.

1 In July 2007 the staff conducted a complaint
2 investigation and observed that best management practices
3 were not adequate to control the transfer of soil off the
4 site. During subsequent site inspection on January 14 and
5 22, 2008, staff observed mud, industries and stormwater
6 outfalls and observed the perennial ground cover had not
7 been established. Records also indicate that the
8 Department has not received the weekly and after rainfall
9 inspection reports since the issuance of an operating
10 permit, a copy of the soil pollution prevention plan or
11 renewal application for St. James Estates.

12 Since August 2007 the Department has issued two
13 letters of warning and one notice of violation in an
14 attempt to bring the site into compliance. On August 15th,
15 2008, Department sent a letter to Mr. Joseph Kortkamp,
16 registered agent for the company and developer of St. James
17 offering to resolve past violations through an out of court
18 settlement agreement.

19 And on September 12, 2008, Department staff met with
20 Mr. Kortkamp to discuss a process to resolve this matter.
21 Despite several letters between Mr. Kortkamp and the
22 Program we have not reached an agreement.

23 Therefore, staff recommends the matter to be referred
24 to the office of Attorney General Office for appropriate
25 legal action to require compliance with Missouri Clean

1 Water Law and payment civil penalty.

2 COMMISSIONER TUPPER: Any questions of Kevin?

3 COMMISSIONER EASLEY: No.

4 CHAIRPERSON PERRY: I have -- can you guys hear me? I have
5 a question.

6 COMMISSIONER TUPPER: Okay.

7 CHAIRPERSON PERRY: I didn't quite hear are we talking
8 about St. James Estates?

9 COMMISSIONER TUPPER: Yes.

10 MR. MOHAMMADI: Yes.

11 CHAIRPERSON PERRY: Kevin, do we have the permit in their
12 individual names as well as in the L.L.C. name?

13 MR. MOHAMMADI: I believe the permit is in L.L.C. name, I
14 have -- Commissioner Perry, I have the file over here. I
15 can look it up.

16 CHAIRPERSON PERRY: Actually, this is a legal question for
17 Mary too. I'm wondering if we have jurisdiction to go
18 after these people in their individual names when they get
19 the permit in the name of an L.L.C. In this case, the
20 L.L.C. is dissolved.

21 MS. BRYAN: Well, if the L.L.C. is dissolved, we can go after
22 the people that set up the L.L.C.

23 CHAIRPERSON PERRY: They don't have -- they don't have
24 protection as an L.L.C.

25 MS. BRYAN: Not complete protection, like, I mean, -- I

1 mean, you would have to look at the facts of this thing a
2 little more closely too. But I think a limited liability
3 company that they would be protected from something like
4 this. I don't think that a court of law would be -- would
5 want to say, Oh. Well, you can't find -- you can't sue
6 them because the L.L.C. has been dissolved. I mean, if
7 they did that anytime somebody got in trouble with an
8 L.L.C. they'd just dissolve it and walk away from it. And
9 the court is not going to let that happen. So I think that
10 there is a very real possibility that you can go after the
11 people that set it up.

12 MR. MOHAMMADI: Commissioner Perry, the permit was issued
13 to L.L.C.

14 CHAIRPERSON PERRY: Yeah. Well, you know, that's why
15 people set up limited liability corporations. Is so they
16 can only be sued to the assets of the L.L.C.

17 COMMISSIONER EASLEY: If they had not dissolved the L.L.C.
18 would they still have protection under it? Is it still
19 current? Do they have personal protection?

20 MS. BRYAN: They might have, but it might be possible --
21 it's kind of like if somebody sets up a corporation there's
22 always a possibility that you can pierce the corporate veil
23 and go after the individuals. There might be some kind of
24 facts. In this situation where you can say that you've
25 kind of pierced the L.L.C. veil and go after the

1 individuals and not just the L.L.C. But like I say that
2 would be very fact dependent and I don't have those facts
3 here in front of me to make that call.

4 CHAIRPERSON PERRY: Well, it's come up in the last -- one
5 of the ones we already did and then this one and I was just
6 curious whether that ought to be kept in mind that we
7 should -- those that we issue to L.L.C. we should also
8 require the individual owners to sign on just like a bank
9 would.

10 (TAPE TWO, SIDE A CONCLUDED.)

11 COMMISSIONER HUNTER: -- something that you-all look at
12 right now or is it maybe something we need to look at in
13 the future?

14 MR. MORRISON: You mean as far issuing them to the
15 individuals --

16 COMMISSIONER HUNTER: Well, --

17 MR. MORRISON: -- in addition to the L.L.C.

18 COMMISSIONER HUNTER: Right.

19 MR. MORRISON: Well, that's a good question. No. We
20 don't. I mean, you know, the owner is listed as the L.L.C.
21 and the president or owner of the L.L.C. signs the
22 application as the continuing authority. So I think we
23 have to look at that. I don't know if I can say, today,
24 that, yes, we can do that. We can look into that issue,
25 but right now, today, I don't know if we can do that or

1 not.

2 MR. MOHAMMADI: The L.L.C. still has some assets. I mean,
3 there are still some unsold lots on their L.L.C. name, so
4 that the Department or State can go after.

5 COMMISSIONER HUNTER: Your turn or mine?

6 COMMISSIONER EASLEY: I guess it's mine.

7 MR. GALBRAITH: Make Kristin do it.

8 COMMISSIONER EASLEY: I move that the Missouri Clean Water
9 Commission request the Missouri Attorney General to
10 institute appropriate legal action against St. James
11 Estates, L.L.C., Mr. Joseph Kortkamp and Mr. Thomas
12 Kortkamp in a court of competent jurisdiction on behalf of
13 the Missouri Clean Water Commission and the Missouri
14 Department of Resources to require payment of civil
15 penalties for the past violations and any relief deemed
16 appropriate by the Attorney General's Office.

17 COMMISSIONER HUNTER: Second.

18 COMMISSIONER TUPPER: We have a motion by Mr. Easley, a
19 second by Mr. Hunter, please, call the vote.

20 MS. OVERHOFF: Commissioner Tupper?

21 COMMISSIONER TUPPER: Yes.

22 MS. OVERHOFF: Commissioner Hunter?

23 COMMISSIONER HUNTER: Yes.

24 MS. OVERHOFF: Commissioner Easley?

25 COMMISSIONER EASLEY: Yes.

1 MS. OVERHOFF: Chair Perry?

2 (No response.)

3 MS. OVERHOFF: Chair Perry?

4 CHAIRPERSON PERRY: Yes.

5 MS. OVERHOFF: Thank you.

6 MR. MOHAMMADI: The next item is **Dixie Country Acres**, Mr.
7 and Mrs. Marcellous Kronk developed property in Callaway
8 County known as Dixie Country Acres. The site is
9 approximately 340 acres of which 18 acres were disturbed,
10 stormwater runoff from the site discharges to an unnamed
11 tributary to Muddy Creek and unclassified perennial
12 tributary of the Middle River pursuant to Missouri State
13 Operating Permit.

14 On October 29 and November 20th, 2007, and March 3rd
15 and April 11th, 2008, staff conducted complaint
16 investigations at the site and observed a large amount of
17 sediment in the creek and that the best management
18 practices were not adequate to keep sediment eroding into
19 creeks. As a result, the Department issued two notices of
20 violation to Mr. and Mrs. Kronk. On at least three
21 occasions the staff met with Mr. Kronk in person and
22 explained the violation and the corrective action
23 necessary.

24 On August 8th, September 5th and October 17th, 2008,
25 Department sent letters to Mr. and Mrs. Kronk that offered

1 to resolve the violations through an out of court
2 settlement. The letters further requested that they
3 contact the staff to discuss the steps necessary for an out
4 of court settlement.

5 To date the property is not stabilized. Mr. and Mrs.
6 Kronk have not responded to the Department's offer,
7 therefore, staff recommends matter to be referred to the
8 office of Attorney General Office for appropriate legal
9 action.

10 COMMISSIONER TUPPER: Any questions?

11 (No response.)

12 COMMISSIONER TUPPER: What's your pleasure?

13 COMMISSIONER HUNTER: I move that the Missouri Clean Water
14 Commission request the Missouri Attorney General to
15 institute appropriate legal action against Mr. and Mrs.
16 Kronk on behalf of the Missouri Clean Water Commission and
17 the Missouri Department of Natural Resources to require Mr.
18 and Mrs. Kronk to stabilize the property and pay civil
19 penalties for past violations.

20 COMMISSIONER EASLEY: Second.

21 COMMISSIONER TUPPER: We have a motion from Mr. Hunter, a
22 second from Mr. Easley, please, call for the vote.

23 MS. OVERHOFF: Commissioner Hunter?

24 COMMISSIONER HUNTER: Yes.

25 MS. OVERHOFF: Commissioner Easley?

1 COMMISSIONER EASLEY: Yes.

2 MS. OVERHOFF: Commissioner Tupper?

3 COMMISSIONER TUPPER: Yes.

4 MS. OVERHOFF: Chair Perry?

5 (No response.)

6 MS. OVERHOFF: Chair Perry?

7 (No response.)

8 COMMISSIONER TUPPER: Kristin?

9 (No response.)

10 COMMISSIONER TUPPER: Did we lose you?

11 (No response.)

12 MR. GALBRAITH: She abstains.

13 (Laughter.)

14 COMMISSIONER TUPPER: Maybe she did abstain.

15 MR. GALBRAITH: I guess we'll have to table the vote -- what are

16 we going to do table the vote and take it up when we get a quorum?

17 (Discussion held amongst Commission.)

18 MR. GALBRAITH: Okay. Let's table the vote and move back

19 to -- move onto something.

20 COMMISSIONER HUNTER: Do you want to try and call her

21 again?

22 MR. GALBRAITH: Well, -- let me see if I can grab my -- get

23 her on the phone.

24 CHAIRPERSON PERRY: I'm sorry.

25 MS. OVERHOFF: There she is.

1 COMMISSIONER TUPPER: She's back.

2 CHAIRPERSON PERRY: I'm sorry.

3 COMMISSIONER TUPPER: Did you hear the motion?

4 CHAIRPERSON PERRY: I'm assuming it's the motion on Dixie,
5 right?

6 COMMISSIONER HUNTER: Yes.

7 COMMISSIONER TUPPER: Yes.

8 CHAIRPERSON PERRY: Yes.

9 COMMISSIONER TUPPER: Did you hear the motion?

10 CHAIRPERSON PERRY: Yes.

11 COMMISSIONER TUPPER: Then we're in the process of voting.

12 MS. OVERHOFF: Chair Perry?

13 CHAIRPERSON PERRY: Yes.

14 COMMISSIONER TUPPER: Thank you.

15 **Twenty-two.**

16 MR. MOHAMMADI: Kristin, don't do that again.

17 (Laughter.)

18 MR. MOHAMMADI: Next item **Dequire Subdivision**. Mr. Mark
19 Edgar owns 13 undeveloped lots which are part of the
20 Dequire Subdivision located in Madison County. According
21 to the Madison County Recorder's Office, the subdivision
22 was platted on January 12, 1970 and consists of 23
23 residential lots.

24 Wastewater from these homes, a church, a fire station
25 and a service station are treated by a single cell lagoon

1 that was likely constructed in early 1970. Effluent from
2 the lagoon discharges to an unnamed tributary to Twelve
3 Mile Creek pursuant to Missouri State Operating Permit.

4 On August 20, 2007, Department staff conducted a
5 routine compliance inspection of the lagoon serving the
6 subdivision. During this inspection staff observed that
7 wastewater in the lagoon was grey in color and had a septic
8 odor indicating that the lagoon is organically overloaded
9 and has exceeded its design life.

10 Staff also noted that the Department has not received
11 renewal application for state operating permit, which
12 expired by its own term in February 2008. Department staff
13 collected a sample of the effluent and results show the
14 effluent violated the permitted effluent for biochemical
15 oxygen. Records also indicate that the Department has not
16 received annual discharge monitoring reports and annual
17 sludge reports for past three years.

18 On June 3rd, 2008, the Department received a renewal
19 application from Mr. Edgar. However, the Department cannot
20 renew the permit because there is not a valid continuing
21 authority to operate and maintain the wastewater treatment
22 facility.

23 Since July 2008, the Department has sent two
24 certified letters to Mr. Edgar offering to resolve the
25 violation through an out of court settlement agreement. On

1 November 3rd, 2008, Department staff contacted Mr. Edgar by
2 phone and discussed the process to resolve this matter and
3 requested a return response to the Department offer.

4 To date the Department has not received a response to
5 its offer. Therefore, staff recommends matter to be
6 referred to the Office of Attorney General for appropriate
7 legal action.

8 COMMISSIONER TUPPER: Any questions?

9 (No response.)

10 COMMISSIONER EASLEY: Well, here it indicates that Mr.
11 Edgar does not have the continuing authority to operate
12 this but then he says that he has contacted the residents
13 and they refuse to form a homeowners association. Isn't he
14 sort of caught in a bad situation?

15 MR. MOHAMMADI: Well, it's -- if you recall, Commissioner,
16 Easley at the last Commission we had a case called
17 Prairie Veil Subdivision. John, name of the sub --

18 MR. ARTER: Prairie Heights.

19 MR. MOHAMMADI: Prairie Heights Subdivision, it was pretty
20 much the same situation, that you had to owner who owned
21 the wastewater treatment facility and you had the residents
22 in the subdivision that use the system but system was not
23 meeting our requirement and there wasn't approved continuing
24 authority to issue the permit. The owner of the lagoon did
25 not have means to upgrade the treatment facility to meet

1 our requirement. And residents in this subdivision were
2 not willing to pay their fair share of costs of disposing
3 their sewage. And what happened is the entire subdivision
4 and the owner and all the parties were referred to the
5 office of Attorney General Office.

6 So I imagine --

7 COMMISSIONER EASLEY: Suing the property owners in addition
8 too?

9 MR. MOHAMMADI: Right. I imagine at some point the
10 Attorney General Office, once they get the case if it's
11 appropriate they may involve the residents as well.

12 COMMISSIONER TUPPER: Any other questions?

13 (No response.)

14 COMMISSIONER TUPPER: What's your pleasure?

15 COMMISSIONER EASLEY: Is it my turn?

16 CHAIRPERSON PERRY: I have a question. I don't know if I
17 was on mute or un-mute. I'm getting kind of confused. Is
18 this -- has there actually been a discharge here or is it a
19 lack of filing their reports?

20 MR. MOHAMMADI: There is a discharge and also the fact that
21 the lagoon discharge does not meet our requirement. It's
22 an unpermitted facility and the monitoring reports have not
23 been submitted.

24 CHAIRPERSON PERRY: And I judge by the title we're --
25 you're also going after the -- this says the subdivision.

1 Some of those owners will also be accountable.

2 MR. MOHAMMADI: Well, that might be the case if Attorney
3 General Office decides to pursue that.

4 CHAIRPERSON PERRY: Right. Okay.

5 COMMISSIONER EASLEY: Okay. I move that the Missouri Clean
6 Water Commission request the Missouri Attorney General to
7 institute a civil action against Mr. Mark Edgar and the
8 property owners connected to the lagoon on behalf of the
9 Missouri Clean Water Commission and the Missouri Department
10 of Natural Resources requiring Mr. Edgar and the property
11 owners to comply with the Missouri Clean Water Law; pay
12 civil penalties for past violations; and any relief deemed
13 appropriate by the Attorney General's Office.

14 COMMISSIONER HUNTER: Second.

15 COMMISSIONER TUPPER: I have a motion from Mr. Easley, a
16 second from Mr. Hunter, please, call for the vote.

17 MS. OVERHOFF: Commissioner Hunter?

18 COMMISSIONER HUNTER: Yes.

19 MS. OVERHOFF: Commissioner Easley?

20 COMMISSIONER EASLEY: Yes.

21 MS. OVERHOFF: Commissioner Tupper?

22 COMMISSIONER TUPPER: Yes.

23 MS. OVERHOFF: Chair Perry?

24 CHAIRPERSON PERRY: Yes.

25 MR. MOHAMMADI: The next item is **Wheeler Estates**

1 **Subdivision, Dunklin County.** Mr. Joe Wheeler owns and is
2 developing property known as Wheeler Estates Subdivision located
3 near Kennett in Dunklin County, Missouri.

4 Mr. Wheeler has subdivided the property into 46 lots
5 that vary in sizes from 9,492 square feet to 13,200 square
6 feet without centralized sewer or approval for onsite
7 system from the Department of Natural Resources or the
8 County Department of Health. Improperly treated sewage
9 from the site could potentially impact a shallow southeast
10 lowlands Aquifer.

11 In November 2007, the Department initiated
12 environmental assistance with Mr. Wheeler to get him
13 voluntarily compliance, and the discontinuation of any
14 further development until the compliance issues were
15 resolved. Mr. Wheeler has continued to construct homes
16 within the subdivision, installing onsite septic system
17 without approval from Department of Health.

18 Mr. Wheeler has not responded to the Department's
19 request and the Wheelers Estate Subdivision continues to be
20 in violation. Therefore, staff recommends the matter to be
21 referred to the office of Attorney General for appropriate
22 legal action.

23 COMMISSIONER TUPPER: Any questions?

24 COMMISSIONER HUNTER: All of these homes that they're
25 building in this subdivision have their own septic tanks?

1 MR. MOHAMMADI: They have -- yes, onsite.

2 COMMISSIONER HUNTER: And no centralized system at all?

3 MR. MOHAMMADI: No.

4 COMMISSIONER HUNTER: And, now, is there -- refresh my
5 memory; is there a certain size lot below which you cannot
6 use a septic tank in a subdivision?

7 MR. MOHAMMADI: They have to submit to us a soil study and
8 then based on that we can determine what size lot is
9 adequate for an onsite system.

10 COMMISSIONER HUNTER: What -- do you know where their water
11 supply comes from?

12 MR. MOHAMMADI: I do not.

13 COMMISSIONER HUNTER: Do they use pumps, wells, or do they
14 have a water district that they get water from?

15 MR. MOHAMMADI: I'm not certain. I have staff over here.

16 MS REDDEN: It's district water.

17 COMMISSIONER HUNTER: District water. Okay.

18 MR. MOHAMMADI: District water.

19 COMMISSIONER HUNTER: So they're not pumping water out of
20 the ground --

21 MR. MOHAMMADI: No.

22 COMMISSIONER HUNTER: -- next to somebody's septic tank.

23 COMMISSIONER EASLEY: It's a rural water department; is
24 that what it is?

25 COMMISSIONER HUNTER: Rural water district. Yeah. Okay.

1 COMMISSIONER TUPPER: How many of the 46 lots are built on,
2 Kevin? About?

3 MR. MOHAMMADI: I don't know, Commissioner Tupper.

4 COMMISSIONER TUPPER: Oh, --

5 COMMISSIONER HUNTER: Ready?

6 COMMISSIONER EASLEY: Would they be required to connect to
7 a centralized system, the owners that are presently on a
8 septic tank?

9 MR. MOHAMMADI: It -- it depends. They need to get a
10 consulting engineer to look at the entire subdivision, soil
11 profile and they might be able to consolidate, for example,
12 two or three homes on one septic system or if that doesn't
13 work it, yeah, it would be a centralized sewer system and
14 just one treatment plant.

15 CHAIRPERSON PERRY: I didn't hear the response. How many
16 houses were built?

17 MR. MOHAMMADI: I don't know, Commissioner Perry, the
18 answer to that.

19 CHAIRPERSON PERRY: Oh. Okay. And if there are 46 lots of
20 this size it looks like they're all smaller than an acre. And
21 isn't the Department's health regulations say that you
22 can't have an onsite on a new construction for less than 3
23 acres?

24 MR. MOHAMMADI: Well, the development is in
25 violation of both the Missouri Clean Water Law and local

1 county health department because they are not getting
2 approval from the local health department for use of an
3 onsite system.

4 COMMISSIONER HUNTER: So really this enforcement action is
5 just to get Mr. Wheeler off the fence and make him do
6 something; is that right?

7 MR. MOHAMMADI: Absolutely.

8 COMMISSIONER HUNTER: I move that the Missouri Clean Water
9 Commission request the Missouri Attorney General to
10 institute appropriate legal action against Mr. Wheeler on
11 behalf of the Missouri Clean Water Commission and the
12 Missouri Department of Natural Resources to require Mr.
13 Wheeler to immediately discontinue any further development
14 in Wheeler Estates Subdivision until a central wastewater
15 treatment facility is available; construct a Department
16 approved central wastewater treatment system for the
17 subdivision and pay civil penalties for past violations.

18 COMMISSIONER EASLEY: Second.

19 COMMISSIONER TUPPER: I have a motion by Mr. Hunter, a
20 second by Mr. Easley, please, call for the vote.

21 MS. OVERHOFF: Commissioner Easley?

22 COMMISSIONER EASLEY: Yes.

23 MS. OVERHOFF: Commissioner Tupper?

24 COMMISSIONER TUPPER: Yes.

25 MS. OVERHOFF: Commissioner Hunter?

1 **COMMISSIONER HUNTER: Yes.**

2 **MS. OVERHOFF: Chair Perry?**

3 **CHAIRPERSON PERRY: Yes.**

4 MR. MOHAMMADI: Next item is **Indian Ridge Resort, Inc.,**
5 **Stone County.** Mr. James Shirato of Springfield doing
6 business as Indian Ridge Resort, Inc., is developing 850
7 acres on State Highway 76 in Branson West.

8 The Indian Ridge Resort Community when completed will
9 consist of hundreds of home, eight story condominium hotel,
10 a water park, and 18-hole golf course, a conference center
11 and retail shopping and restaurants. Of the 600 acres to
12 be disturbed on this site, construction has begun on
13 approximately 240 acres pursuant to a provision of Missouri
14 State Operating Permit. The receiving stream for the
15 stormwater discharge from the site is an unnamed tributary
16 to North Indian Creek, a losing stream that flows to Table
17 Rock Lake within 1.5 miles.

18 On August 16, 2006, Department staff observed that a
19 large area on the site was being cleared without first
20 installing erosion control measures. And the Department
21 issued notice of violation to Indian Ridge Resort, Inc. for
22 the violations observed.

23 Since the initial inspection staff has issued two
24 letters of a warning and another notice of violation to
25 Indian Ridge Resort, Inc. for failure to implement and

1 maintain adequate best management practices to control
2 erosion of the sediment off site.

3 On September 2008, the Department sent a letter to
4 Indian Ridge Resort, Inc. offering to resolve the violation
5 through an out of court agreement. Mr. James Shirato
6 responded by phone and letter and later his attorney
7 responded to the Department in a letter. They denied that
8 violations have occurred and declined to negotiate a civil
9 penalty with the Department.

10 On October 2008, the Department sent a second letter
11 offering to settle the past violations but no response to
12 the Department's offer was received.

13 Due to the failure of Indian Ridge Resort, Inc. to
14 respond to the Department offer, staff recommends the
15 matter to be referred to the Office of Attorney General for
16 appropriate legal action.

17 COMMISSIONER EASLEY: Kevin, do you know is this
18 corporation is in bankruptcy?

19 MR. MOHAMMADI: I don't think they are. We have not heard.
20 We heard rumors from other developers in the area that they
21 are at the brink of bankruptcy. But when we checked they
22 were not. They haven't filed for bankruptcy, yet.

23 COMMISSIONER EASLEY: But have you checked to see if
24 they've filed bankruptcy?

25 MR. MOHAMMADI: We have. And they have not filed for

1 bankruptcy.

2 COMMISSIONER EASLEY: They have not.

3 COMMISSIONER TUPPER: Other questions?

4 (No response.)

5 COMMISSIONER TUPPER: What's your pleasure, gentlemen?

6 COMMISSIONER EASLEY: I move that the Missouri Clean Water
7 Commission request the Missouri Attorney General to
8 institute a civil action against Indian Ridge Resort, Inc.
9 on behalf of the Missouri Clean Water Commission and the
10 Missouri Department of Natural Resources to pursue a court
11 order requiring Indian Ridge Resort, Inc. to stabilize the
12 property and pay civil penalties for past violations.

13 COMMISSIONER HUNTER: Second.

14 COMMISSIONER TUPPER: Motion by Mr. Easley, second by Mr.
15 Hunter, please, call for the vote.

16 MS. OVERHOFF: Commissioner Hunter?

17 COMMISSIONER HUNTER: Yes.

18 MS. OVERHOFF: Commissioner Easley?

19 COMMISSIONER EASLEY: Yes.

20 MS. OVERHOFF: Commissioner Tupper?

21 COMMISSIONER TUPPER: Yes.

22 MS. OVERHOFF: Chair Perry?

23 (No response.)

24 MS. OVERHOFF: Chair Perry?

25 CHAIRPERSON PERRY: Yes.

1 MS. OVERHOFF: Thank you.

2 MR. MOHAMMADI: The last item is **Urbana Stockyards**. Ms.
3 Amy Knight owns and operates Urbana Stockyard located on
4 the south side of Urbana in Dallas County. The stockyard
5 hosts weekly cattle sales with an additional feeder cattle
6 sale the first Saturday of each month.

7 About 430 head of cattle are sold at each
8 sale. Cattles are boarded in the earthen and outdoor pens,
9 which cover about 4 acres. Stormwater runoff from this
10 property discharges at the northwest corner of the property
11 and flows into the unclassified east branch of Cahoonie
12 Creek entering the stream on the south side of the Urbana.
13 Stormwater runoff from the site potentially contaminated
14 with manure enters the stream immediately before it flows
15 through Urbanna's downtown area.

16 In April 2006, the Department initiated environmental
17 assistance with Ms. Knight to gain voluntarily compliance
18 by identifying areas that could potentially lead to
19 violation of Missouri Environmental Law and regulations and
20 offered technical assistance to correct any issues that
21 were identified.

22 Ms. Knight has completed some of the recommended
23 improvements but has not completely contained contaminated
24 soil on her property and has not developed a waste
25 management plan for the stockyard as requested.

1 In July 2008, the Department initiated negotiations
2 with Ms. Knight to reach an agreement on the schedule to
3 resolve the stormwater violations at the stockyards.
4 Negotiations with Ms. Knight have come to a stand still.
5 And contaminated stormwater continues to runoff the
6 stockyard property.

7 Therefore, staff recommends the matter to be referred
8 to the Office of Attorney General for appropriate legal
9 action.

10 COMMISSIONER TUPPER: Any questions from the Commission?

11 COMMISSIONER HUNTER: Kevin, in the normal course of an
12 operation like this, a stockyard or sale barn operation;
13 what would they do? Would they build a lagoon to contain
14 this?

15 MR. MOHAMMADI: Well, there are a number -- Darrick Steen
16 is over here and he has more experience than I do. But
17 normally they have several options. They can put some of
18 the operation under the roof that prevents and reduces
19 amount of stormwater runoff that they have. That's one
20 option, in combination with proper diversion, and having a
21 lagoon on the site, that carries the stormwater in to it,
22 and stores it and discharges it.

23 COMMISSIONER HUNTER: And she didn't -- she didn't do
24 anything?

25 MR. MOHAMMADI: No. She had -- she didn't. She did some

1 improvement but still the problem hasn't been solved. And
2 actually we received a complaint from the mayor of -- mayor
3 of town several times that she was unhappy with the odor
4 and the manure running through town.

5 COMMISSIONER EASLEY: And they're not required to have a
6 permit; is that correct?

7 MR. MOHAMMADI: They are not.

8 COMMISSIONER TUPPER: Typically, the hog pens are roofed.
9 It is very rare to see any uncovered in this day and time.

10 COMMISSIONER HUNTER: Um-huh.

11 COMMISSIONER TUPPER: Any questions?

12 (No response.)

13 COMMISSIONER TUPPER: What's your pleasure?

14 **COMMISSIONER HUNTER: I move that the Missouri Clean Water**
15 **Commission request the Missouri Attorney General to**
16 **institute appropriate legal action against Ms. Knight on**
17 **behalf of the Missouri Clean Water Commission and the**
18 **Missouri Department of Natural Resources to require Ms.**
19 **Knight to obtain an engineering evaluation of the site's**
20 **stormwater flows with recommendations for developing and**
21 **implementing a stormwater and waste management plan for the**
22 **site and pay civil penalties for past violations.**

23 COMMISSIONER EASLEY: Second.

24 COMMISSIONER TUPPER: Motion by Mr. Hunter, second by Mr.
25 Easley, please, call for the vote.

1 MS. OVERHOFF: Commissioner Easley?

2 COMMISSIONER EASLEY: Yes.

3 MS. OVERHOFF: Commissioner Tupper?

4 COMMISSIONER TUPPER: Yes.

5 MS. OVERHOFF: Commissioner Hunter?

6 COMMISSIONER HUNTER: Yes.

7 MS. OVERHOFF: Chair Perry?

8 CHAIRPERSON PERRY: Yes.

9 MR. MOHAMMADI: Thank you.

10 COMMISSIONER TUPPER: Thanks, Kevin.

11 Let's go back and do Darrick's now.

12 MR. GALBRAITH: Yeah. Yeah. Let's do that. Number --

13 MS. OVERHOFF: Sixteen.

14 COMMISSIONER TUPPER: Sixteen.

15 MS. OVERHOFF: Yes.

16 COMMISSIONER TUPPER: **Tab No. 16.**

17 MR. GALBRAITH: Okay.

18 MR. STEEN: Good afternoon, Commissioners, and good

19 morning, Chair Perry. Today, I come before you to bring

20 what has been termed the nutrient -- **CAFO Nutrient Management**

21 **Technical Standard** for you, primarily, for informational

22 only.

23 The purpose of this discussion is primarily to give

24 you a background and a briefing on this document. In

25 advance of approval, which we're hoping to get in February,

1 and I'll explain, maybe at the end, why that approval is
2 necessary so quickly.

3 I might also start out by saying that I think we have
4 in the audience, today, some of the other folks that worked
5 with the Department on this document; those being some
6 staff from the University of Missouri, Extension and staff
7 from DNRCS and Natural Resource's Conservation Services.
8 So if there are questions that I can't answer that you may,
9 I may call on them to help me out on some of the nutrient
10 management side of things.

11 To start out with I'm going to give you a little bit
12 of purpose as to what this document is for and how it will
13 be used. The Department recently promulgated new CAFO
14 regulations that require the development and implementation
15 of a field specific nutrient management plan. This is the
16 rule changes that you approved back in our November
17 Commission meeting and it will be effective in February,
18 next month.

19 I believe at that Commission meeting I had referenced
20 that in January that I would have before you a technical
21 standards document and that's what this is.

22 The Department developed this standard to provide a
23 framework for the protocols and the methods that CAFOs
24 should utilize when determining the form source, amount, timing
25 and the method of application on individual land application

1 fields. The regulations as they were revised state that --
2 state some specific things that CAFOs must address and
3 implement into their nutrient management plan at their
4 site. And, although, they have some specificity to them,
5 they don't go into detail as to how, for example, how
6 they're to take soil samples or how they're to take manure
7 samples or really how they're supposed to calculate an
8 agronomic application rate.

9 And so that's what this standard is about. It's
10 essentially filling in the gaps as far as good -- the
11 guidance the Department is offering to them as to how to
12 comply with our new regulation.

13 I also want to point out that we've included as much
14 flexibility as possible to ensure that CAFOs have the
15 opportunity to use an alternative protocol that may not be
16 in this standard or may be different than this standard.
17 But in doing so, we will require that they
18 demonstrate that some -- that alternative protocol that
19 they may want to utilize is reliable and technically sound.
20 And so they have to justify that and demonstrate that to
21 the Department.

22 The way that I see this being implemented is, is that
23 this document, this technical standard document, will
24 essentially be incorporated, if you will, into our CAFO
25 General Permit. Okay. So, for example, in the future in

1 order to obtain a general permit for CAFO, you'll have to
2 comply with this standard. These are sort of what we're
3 calling the baseline -- the base -- the base
4 requirements, if you will. And if you meet those, you can
5 obtain the general permit. However, if maybe you have
6 something else you want to do is slightly different or is
7 significantly different than this standard, we will allow
8 that. However, we may have to work that into a site
9 specific permit.

10 It would be my expectation that, in general, most of
11 the larger CAFOs, the Class 1As are the ones that are going
12 to do that. They're the ones that have the expertise and
13 have the resources, if you will, to put together their own
14 protocols. And they already have a site specific permit.
15 So I think that'll work out well in that fashion.

16 So as it relates to permits, this standard will
17 follow the regulation which comes -- which goes into effect
18 in February. And for any permit -- construction permits
19 that we issue after February 26th, of next month, those
20 CAFOs will be expected to follow this standard. And
21 they'll have to have this in place before we issue them an
22 operating permit, which typically is four to six months
23 after we issue the construction permit. So that's the
24 expectation that we've set for the CAFOs.

25 So what I want to do next is just briefly kind of

1 skim over the standard. I'm not going to go into detail.
2 However, you know, obviously I'll elaborate on any parts
3 that you have questions on or you want me to. But I'm just
4 going to kind of briefly skim over this.

5 I'm on Page 711, now. So mainly -- there's basically
6 two parts to this standard. There's Part A, which
7 essentially describes the methods, procedures or the
8 protocols; soil and manure testing -- you know, how to
9 develop an application rate. That's in Section A. And
10 then Section B essentially spells out what the records are
11 that we would expect will be needed to document
12 the compliance with Section A.

13 So to start with in Section A, we've got soil and
14 manure testing, requirements and fertilizer recommendation
15 requirements. So this is just basically giving you
16 guidance on how you are to take soil samples and the
17 procedure for doing that. Soil samples will be required
18 once every five years on any give field or if within a
19 certain time period you've exceeded a 500 pound per acre
20 phosphorous surplus, we would also require you to take --
21 resample, primarily just to assess the phosphorous levels
22 to make sure they haven't exceeded a threshold.

23 Under 2, there, it's the fertilizer recommendation so
24 basically what we're saying is in order to develop your
25 recommendation for let's say corn fertilizer recommendation

1 you need to use field specific goals, justified yield
2 goals, you need to use your current soil test. And we say
3 that you need to use University of Missouri fertilizer
4 recommendation for development of those rates.

5 On the next page, 713, under 3, it describes how
6 you're to sample the manure. We require that each unique
7 source of manure be sampled yearly for nutrient levels.
8 When I say unique source, I mean, if an operation has three
9 identical deep-pit hog operations they don't need to take a
10 sample under each pit. There's only one unique source
11 there. They only need to take one sample. But if they had
12 a lagoon and they had a deep-pit and they had a chicken
13 barn; they would have three unique sources of manure
14 that would need to be sampled per year. And then it
15 explains what they need a sample for.

16 Under A2, this starts the section about how they're
17 to calculate the rates for land application. And it
18 explains how they're to develop a nitrogen rate. Much of
19 this is not really new. We've always -- on the nitrogen
20 side we require that they develop or calculate plant
21 available nitrogen, which is actually the nitrogen that's
22 available to the plants in that given year. And that's
23 what they are suppose to use. So much of this is not really new
24 per say, as it is, it's all been centralized and organized
25 into one document.

1 Next page, 715, under 2, towards the top, we start
2 really getting into the meat of the matter as far as how to
3 -- how one is going to develop a rate, primarily, and how
4 it will be based. Will it be based on nitrogen or will it
5 be based on phosphorous? And this is where the P Index
6 comes into play. And so, basically, when you take a soil
7 test, you get a rating associated -- you can develop a
8 phosphorous -- a soil test phosphorous rating along with
9 that soil test. And depending on that soil test
10 phosphorous rating that will dictate your next step. Okay.

11 So in this case if it's a very low, low, medium or
12 optimum you're allowed to go -- you're allowed to go
13 forward with nitrogen based application rates. But if that
14 P -- I'm sorry. That soil test phosphorous rating is high
15 or very high you have to either use phosphorous based
16 management meaning that you have to -- you can only apply
17 the phosphorous amount -- the agronomic phosphorous amount
18 or you have to go to the next step, which is do a
19 phosphorous index -- you have to go through with a
20 phosphorous index calculation.

21 So the P Index or the Phosphorous Index will take
22 into account a variety of things including erosion
23 potential, tillage type, actually just even the geographic
24 location in the state, I think, plays a factor in that.
25 It's slightly more restrictive in the southern part. So it

1 takes into account a lot of different factors. And it is -
2 - it is a fairly in depth piece of software. But if they
3 go forward with that and the index shows that it's low or
4 medium, which is basically a risk rating; then they'll be
5 allowed to go forward with nitrogen based rates. However,
6 if it comes out high then they're restricted to phosphorous
7 based rates.

8 And, again, the whole point of this is to minimize
9 the movement of phosphorous and other nutrients into
10 surface waters. That's why these restrictions, if you will,
11 have been put in to place.

12 And then there are occasions where, maybe, no manure,
13 at all maybe, -- may not be allowed. If the P Index rating
14 is very high or the soil test phosphorous rating is very
15 high and you haven't done a P Index sheet you won't be
16 allowed to land apply on that particular field, which
17 basically indicates that you've got plenty of phosphorous
18 there in that field adding more is not going to provide any
19 additional crop response, if you will. So there's no
20 agronomic sense to continue to land apply on that field for
21 now until those levels can be depleted.

22 There is a provision for multi-year phosphorous
23 application. And I'll just be honest with you at this
24 point in time. We're still analyzing that particular
25 section which is under 2C. Right now, it's -- the way that

1 we're going forward with this is, is it's sort of a looking
2 back scenario where if you can go back four or five years
3 and show that you've had a deficient -- a deficiency in
4 phosphorous applications you can make that up this year.
5 So you can sort of bring you back up to a neutral -- an
6 even phosphorous balance.

7 There's another way of doing it, which is going
8 forward and looking -- planning for the next four or five
9 years. And I'll just be honest. Right now, it's like
10 this. But we're still analyzing that to determine which is
11 the best way to go, and the final decision will be in the
12 final document that you see next month.

13 Okay. Section 3, is really -- again, there's nothing
14 really new in Section 3. These are really already in our
15 permits. These are sort of some best management practices
16 regarding the placement or the application of manure
17 itself, setbacks. We don't allow manure to be land applied
18 on slopes exceeding 20 percent. We don't allow it to be
19 surface applied on frozen, snow covered or saturated
20 ground. These are all things that are currently -- that
21 are currently required.

22 Table A1 on Page 717, 717 is a table of all our land
23 applications setbacks. This was a point of discussion in
24 prior Commission meetings. I know Commissioner Parnell had
25 particular interest in some of these at one point in time.

1 And I had told him that these setbacks would be included in
2 this document.

3 And so these are -- currently our setbacks that are
4 in our permit. And I think there was some question about
5 losing streams and sink holes and springs, I believe. And
6 so anyways the setback is 300 feet as I had indicated
7 before for those types of sensitive features.

8 On Page 719 you get in to Section B, which is the
9 recordkeeping part and I'm not going to go through that
10 except that it hits all those majors areas and basically
11 allows documentation of -- to show compliance with -- that
12 you're going -- that you're utilizing those methods and
13 utilizing them correctly. And that a way that if they keep
14 these records and we have an inspection at a site or
15 something they can pull these and show us that they're
16 doing it correctly. So the recordkeeping is certainly an
17 important component.

18 That kind of concludes my little brief overview of
19 it. And, again, I the way that this was
20 structured was, today, I wanted to just kind of make you
21 aware that this was coming. I wanted to get you a little
22 bit familiar with it.

23 Certainly, if you have specific questions, I want to
24 answer those. But what I would ask is that, and some time
25 by mid February, that we have a special conference meeting

1 probably to gain formal approval on this document. The
2 reason why the approval is necessary by mid February is
3 that I need these in place before our regulation becomes
4 effective on February 28th, and because these really explain
5 how one is to implement or to follow those regulations.

6 And so this is all -- this all kind of came together
7 quickly, and that's why, actually, I'm not asking for
8 approval, today, because I wanted to give the public and
9 others that might be here today an opportunity to give
10 comment back to both you and to the Department staff about
11 -- you know, tweaks or changes to any -- they might like to
12 see, so. And that has happened, in fact, I have -- since
13 this has gone in your booklet I have received comments on
14 it. And so there will likely be some tweaking that's done.
15 And I'll have some further discussion with some of our
16 stakeholders on this in the next couple of weeks.

17 So with that I'll just entertain any questions. And,
18 again, I've got -- I've got people here that can answer
19 some in depth technical questions if need be.

20 COMMISSIONER TUPPER: Any questions?

21 COMMISSIONER HUNTER: Darrick, I have one question. This
22 rule is made for CAFOs that apply their own manure to
23 either their own or an adjacent landowners land, right?

24 MR. STEEN: Correct. The terminology, of course, is
25 important when reading this and when reading regulations.

1 In our regulation the term land application area is a
2 defined term. And what that term means is: land
3 application area, is an area that's owned or under the
4 control of the permittee or the CAFO owner.

5 And so what this will apply to is a CAFO that's land
6 applying manure themselves on their own land or if they
7 have a spreading agreement on an adjoining land. If
8 they're doing -- if the manure is under their control and
9 their land applying it, the permit applies, the permit
10 conditions apply. Its when the manure is sold or given
11 away or transferred to third parties and they are no longer
12 under -- they no longer have control of that manure is when
13 the permit no longer applies to those land application
14 activities. So that is an important point to make.

15 COMMISSIONER HUNTER: That's -- well, that's my question.
16 What happens -- is -- do we or does the permit lose control
17 once it's transferred to another owner? Is that a crack
18 here that things are going to fall through?

19 MR. STEEN: Well, that is -- first off, that's a true
20 statement, that, essentially, the permit is no longer
21 applicable to those conditions.

22 Is it a crack, well, it certainly -- certainly it
23 could be seen as sort of a way around the regulations in a
24 way.

25 You know, in the poultry industry especially when

1 we're dealing with dry manure, this is a fairly common
2 thing, it's been common for quite some time for litter to
3 be -- for poultry litter especially to be brokered around
4 different areas, outside counties, outside of -- moves
5 across state lines even, and when it does that, of course,
6 the permit conditions no longer apply. That's pretty
7 normal, right now. It's been going on for quite some time.

8 When we're dealing with liquid manure especially in
9 the -- with the hog farms and some -- and the dairy farms,
10 it's more difficult because you can't transport liquid
11 manure very far economically. And so -- and it's also a
12 little more specialized as far as the equipment it takes to
13 land apply it. So usually the CAFO owner is the only one
14 that's going to have that equipment.

15 And so we don't see that nearly as much on the liquid
16 side. So I don't expect that to be a major problem. It's
17 always been an issue on the poultry side. I don't really
18 see this necessarily expanding that significantly more.
19 But certainly it's going -- it could aggravate it a little
20 bit, that sort of loophole if you will.

21 COMMISSIONER HUNTER: Right. In other words, rather than
22 comply with all this just say --

23 MR. STEEN: Just sell it.

24 COMMISSIONER HUNTER: -- okay. Well, I'll give it Joe.

25 MR. STEEN: Yeah. And, you know, a lot of the applications

1 that we received in the last year or two, poultry
2 application in particular, often times the application
3 really doesn't have a nutrient management plan because they
4 are -- they are selling all their manure.

5 COMMISSIONER HUNTER: Right.

6 MR. STEEN: There's a pretty good structure in place in
7 southwest Missouri, business structure, whereas there's
8 brokers that literally -- that competitively bid the manure
9 out of barns. And the CAFO owner will -- you know, it's a
10 money making business for him. He makes money on selling
11 the manure. And he's no longer sort of liable for the
12 spreading of it.

13 So that's -- you know, that's something that we do
14 have to deal with.

15 CHAIRPERSON PERRY: Darrick, I have a question.

16 MR. STEEN: Yes.

17 CHAIRPERSON PERRY: Can anyone write a nutrient management
18 plan?

19 MR. STEEN: Yes. Currently, we do not have any particular
20 certification requirements, if you will, for writing a
21 nutrient management plan for a CAFO.

22 Now, we do have requirements on our permit
23 applications -- you know, generally, speaking there's an
24 engineer involved at some point in time, certifying
25 engineering plans and certifying that the facility has been

1 built and is operated correctly before we issue them an
2 operating permit. But the engineer isn't necessarily
3 obligated to write the plan.

4 CHAIRPERSON PERRY: The reason I asked that question, as
5 I've brought up before, we have a Certified Crop Advisor
6 Program in our state. And I'm concerned that there's going
7 to be some tremendous weight placed on DNR for enforcing
8 these because there's a lot of requirements here and I'm
9 not sure how you're going to audit them or make sure that
10 these requirements are met. However, if you have a
11 certified crop advisor who had gone through the
12 certification program similar to the way that you have
13 engineers having to support the plan for a facility you --
14 (TAPE TWO, SIDE B CONCLUDED.)

15 MR. STEEN: -- that and to some extent fairly strong view
16 points on both sides, really. And so I'm not sure -- I'm
17 not sure, at this point, what my recommendation would be
18 because I don't think that I've quite got a good enough
19 handle on it. I have approached the Certified Crop Advisor
20 Board or Association, I should say, about this idea. And
21 so I know that they're thinking about it. They don't meet
22 very regularly so I haven't heard back from them. But I
23 certainly -- I have mentioned it to them. And we're going
24 to further discuss this, I know, in Phase 2 rulemaking
25 because that's the time when we would address that.

1 Certainly, by certifying plans it sort of takes a
2 little bit of load off of the Department's back because we
3 have some creditability behind the plans, if you will, but
4 at the same token we also don't want to tie the hands of
5 the farmers to -- you know, to -- you know, to mandate that
6 they use a particular person.

7 And so, because in some cases it may be feasible for
8 a farmer to write his own plan, certainly, in some cases
9 it's going to be fairly technical, so. It's something
10 we're going to continue to research.

11 CHAIRPERSON PERRY: Do you currently accept those plans for
12 an operation that's not a certified engineer?

13 MR. STEEN: I missed the first part of that question.

14 CHAIRPERSON PERRY: Do you currently -- you know, when they
15 submit a construction permit application can they do that
16 without the use of a certified engineer?

17 MR. STEEN: Right now, we require an engineer to certify
18 the application.

19 CHAIRPERSON PERRY: So why wouldn't they have to have
20 someone who has knowledge of nutrient management to certify
21 that their nutrient management plan makes sense?

22 MR. STEEN: Well, I think that you've got good points with
23 that. And we've -- I think we've got a variety of avenues
24 that -- I can tell you the EPA leaves it open. They don't
25 require it but -- and they've essentially asked states to

1 work that out by themselves. But, you know, another avenue
2 that we could take is we could ask that the engineers
3 certify that -- you know, that the plan is been
4 appropriately written. But we really haven't got a complete
5 handle on that issue, yet. But I recognize your points.

6 CHAIRPERSON PERRY: Yeah. Well, I don't think the
7 engineers have gone through the agronomic training that the
8 certified crop consultants have.

9 MR. STEEN: Right.

10 CHAIRPERSON PERRY: I have --

11 MR. STEEN: Well, what -- yeah. My -- where I was going
12 with that was that the engineer would certify that the plan
13 was written by an appropriate person trained in nutrient
14 management. That was kind of the idea that I had behind
15 that, but.

16 CHAIRPERSON PERRY: Again, I don't know that they go to the
17 CCA meetings and know that. There's just one other little
18 detail on Page 5 or 713. I don't understand why you need
19 to do a percent moisture on a manure sample.

20 MR. STEEN: Okay.

21 CHAIRPERSON PERRY: It's under 3B.

22 MR. STEEN: Under 3B. Okay. So we require -- we're
23 requiring the manure sample to be tested for a percent of
24 certain moisture or dry matter.

25 Well, from regulatory standpoint it's actually -- it

1 is important to an extent although I might call on John to
2 maybe, Dr. John Lory, I think, is in the audience, today,
3 to maybe enlighten us to the reasons why. But the
4 regulations will likely differentiate the difference
5 between liquid and manure handling systems. And that
6 differentiation will be based upon moisture content in the
7 manure. And so having that data will be important in the
8 near future as to distinguish what type of system it has.

9 CHAIRPERSON PERRY: But these regulations don't make that
10 distinction, do they?

11 MR. STEEN: No. They do not. It will be the Phase 2.

12 CHAIRPERSON PERRY: Oh.

13 MR. STEEN: Of course, those aren't -- those haven't been
14 drafted, yet. But we've been working on ideas in the
15 workgroup and so that's one of the ideas that we've run
16 through the workgroup.

17 CHAIRPERSON PERRY: Okay.

18 MR. STEEN: There are -- if John Lory would like to
19 elaborate on the -- you know, as why the percent moisture
20 is important, I'd be happy for him to come up and do that.
21 If that -- Kristin, Commissioner Perry; is that okay?

22 COMMISSIONER TUPPER: I have a couple of questions for you,
23 before you leave the stand.

24 As I understand Al, anybody can collect the samples
25 but they must be analyzed by an accredited lab?

1 MR. STEEN: That's correct. As long as the -- yes. We
2 give them the procedures that they're to utilize to collect
3 that sample. And essentially it's the recommendation of --
4 coming out of the University of Missouri Extension, but
5 they do have to utilize accredited labs to do that testing
6 both on the soil --

7 COMMISSIONER TUPPER: You're not concerned that you could
8 drive the result? I could. Depending on where I took my
9 sample.

10 MR. STEEN: Oh. Well, the guidance in the -- the MU
11 guidance is going to direct you how to take that sample
12 appropriately. And so, I mean, that's -- I mean, we
13 certainly put a lot of -- a lot of that work or -- there's
14 no way really for us to check that, if you will, without
15 taking the samples ourselves. We put forth the procedure.

16 COMMISSIONER TUPPER: Well, there's people in the -- you
17 know, there's soil scientist in the business --

18 MR. STEEN: Right. Right.

19 COMMISSIONER TUPPER: -- that have some credentials, but
20 just to let any employee go out and say, Here's the book go
21 do it like that. It seems to me like we're giving away the
22 farm.

23 MR. STEEN: Okay. Well, one of the things I might point
24 out is that this standard was closely based upon the
25 current 590 Standard of Natural Resource Conservation

1 Service and because the NRCS through their programs they've
2 developed a lot of plans already and we did not want all
3 those existing plans to sort of be null and void as it
4 relates to the state rules because of something that we did
5 that was inconsistent with the 590. And so a lot of this
6 was for that. A lot of this was wrote to be consistent
7 with the 590 Standard. And we don't want those plans to
8 not fulfill the requirements, so.

9 COMMISSIONER TUPPER: Any other questions?

10 (No response.)

11 COMMISSIONER TUPPER: Thank you.

12 MR. STEEN: Okay.

13 COMMISSIONER TUPPER: Robert. Is Robert Brundage still
14 here?

15 (No response.)

16 COMMISSIONER TUPPER: Boy. We waited him out.

17 **Tab No. 26.**

18 MR. MEFRAKIS: Good afternoon.

19 COMMISSIONER TUPPER: Afternoon.

20 MR. MEFRAKIS: Okay. Permits and engineering reports begin
21 on Page 765.

22 This is a typical table for NPDES permits. I
23 have included an additional table, that's the second table,
24 to give you the yearend production of operating permits for
25 2008. As you can see we have issued approximately 3,000

1 permits in 2008 for both site specific and general permits.

2 We've also given you a trend on aging permits on the
3 last two tables, one for site specific permits and the
4 other is for general permits.

5 On the last table you'll see a trend, increasing
6 trend for general permits that's due to some -- a couple of
7 general permits that haven't been renewed but we're working on
8 renewing. One of those general permits are Ag-Chem. And
9 we're working with MOAG to get those renewed, so.

10 Any questions on the first page?

11 (No response.)

12 MR. MEFRAKIS: If not, we'll move on to the second page.

13 I have the construction permits for CAFOs and Ag-Chem.
14 It seems that we are making a progress here. If you look
15 at the very last six permits it indicates they are under
16 review. The three PSF permits are actually now on hold
17 based on the applicant's request for possible design
18 changes. The very last one is already issued, the Neil
19 Weiler.

20 And there's one Ag-Chem facility here that is -- they
21 possibly have to go through an antideg review because it's
22 a new facility. And we're working with
23 MOAG on coming up with a general permit that satisfies the
24 antideg requirements.

25 Any questions on CAFO reports?

1 (No response.)

2 MR. MEFRAKIS: The third report is our water quality review
3 assistance report. We've made a few changes here. One is,
4 in the past we have only included a list of facilities that
5 are active, that we're currently reviewing.
6 What we -- the change we made here is we also included the
7 ones that we have already completed. So the sixth column,
8 which says status, it indicates whether the review was
9 completed or still active. Some of those have -- that are
10 indicated active have been completed since I generated
11 this report, for example, the DOE determination for antideg
12 that was completed.

13 Okay. No questions, I'll move on to water quality
14 certification.

15 I have two columns here, just for comparison, the
16 total completed certifications in 2007 and in 2008.
17 Individual certifications had significantly dropped. In
18 2008, we issued 146 in comparison to 2007, which is 216.

19 The last part of the report is the master general
20 permits for MOGs and that's the status of our general
21 permits as indicated earlier that we are currently working
22 on renewing the Ag-Chem permit here. And we've got a
23 couple here that have already expired that we're working
24 with EPA and allowing EPA the 90-day comment period before
25 we issue them, so.

1 CHAIRPERSON PERRY: Excuse me. I didn't quite hear that
2 last part. I think you're talking about the general
3 permits.

4 MR. MEFRAKIS: Yes. The general permits.

5 CHAIRPERSON PERRY: Okay.

6 MR. MEFRAKIS: Um-huh.

7 Okay. On the general permits we have a couple of
8 permits that haven't been renewed, yet. One of them is the
9 Ag-Chem general permit that we're working with
10 MOAG to renew.

11 CHAIRPERSON PERRY: Right. And that's the one I don't see
12 on the list. What's the status of that?

13 MR. MEFRAKIS: The status of that is, for all existing
14 facilities, we have, already, a general permit that's
15 completed and we're waiting on MOAG to give us their final
16 comments before we issue it.

17 And at the same time we're working on creating a
18 general permit to satisfy new facilities that may have to
19 go through antideg review. And so you would have a general
20 permit that addresses the antideg requirements so that not
21 every facility will have to do that. They will be all done
22 upfront.

23 CHAIRPERSON PERRY: Again, I'm really having a hard time
24 hearing you. But I'm looking on that back page on R240 and
25 R241.

1 MR. MEFRAKIS: Okay.

2 CHAIRPERSON PERRY: Can we -- if they have no discharge --

3 MR. MEFRAKIS: Okay.

4 CHAIRPERSON PERRY: -- and Ag-Chemical facility has no
5 discharge at all, do they need a permit?

6 MR. MEFRAKIS: If they have a no discharge they won't need
7 a permit per say. The R241 was -- it's not actually a
8 general permit as we speak, right now. We were looking at
9 a possible way of addressing antideg. And one of the --
10 thoughts that or -- one of the things that
11 antideg requires is a no discharge alternative. We have
12 provided MOAG with this option. And they have disagreed
13 with us. And they decided to conduct their own antideg
14 review and address other alternatives. So what you see,
15 right now, the 241 as being no discharge that might change.
16 It will be a different permit with a different title that
17 addresses the antideg and other alternatives as well, so.
18 And MOAG is working on developing that alternatives
19 analysis for us.

20 CHAIRPERSON PERRY: Okay.

21 MR. MEFRAKIS: So currently we only have R240 that's been
22 completed and we will be able to renew all the general
23 permits for R240. The R241 that's something new that we're
24 trying to create another general permit so not every
25 individual Ag-Chem have to go through antideg review. It

1 will just be a one document that will be utilized by all
2 new facilities. And that's -- we're still working with
3 them. And we don't have a final determination yet.

4 COMMISSIONER TUPPER: Any other questions?

5 (No response.)

6 COMMISSIONER TUPPER: Thanks.

7 MR. MEFRAKIS: Thank you. I appreciate it.

8 COMMISSIONER TUPPER: **Tab No. 27.**

9 MR. BOLAND: Good afternoon. We're back to more exciting
10 agenda topics, money, Joe Boland, again, from the Financial
11 Assistance Center.

12 Just to give you, like, we're doing on every
13 Commission meeting a quick update on our \$50 million bond
14 sale. We have, to date, received about 229 applications
15 for a total of about \$92 million in projects. And we have
16 gotten \$15.9 or \$16 million in awards out the door. So
17 we're very happy about that. That was our one year
18 anniversary. We were required to get about \$15 million of
19 that \$50 million out the door to meet IRS regulations. So
20 we're very happy about that.

21 If you don't have any questions on the Bond Program
22 we can move on to the more meaty discussion on the stimulus
23 package that I wanted to give you a quick brief on. As you
24 know, Congress is looking at several stimulus packages.
25 And one that's being discussed that would affect us would

1 be economic recovery dollars for water and wastewater
2 infrastructure. And what's being discussed, right now, or
3 what we're hearing directly from EPA is this stimulus package is
4 based on HR7110 at this time. And that would mean \$6.5
5 million for wastewater and \$1 billion additional for
6 drinking water nationwide.

7 For the State of Missouri that means about \$180
8 million in wastewater for us and \$114 million in drinking
9 water. And that's additional funds that they're looking to
10 push through the SRF system.

11 So that's a major concern for us because they're
12 looking at a timeline of 120 days from inaction or enacting
13 that legislation. So if that does happen we will probably
14 be before you amending our IUPs, again, and requesting the
15 addition of several projects onto our list. So it will
16 take action by the Commission.

17 Now, that's -- I think, it's more than fair to say
18 those numbers are very preliminary at this time. That's
19 from discussions we've had with EPA. We've been on several
20 teleconferences with EPA, Region 7 and headquarters and as
21 of right now what we're hearing is the stimulus money is
22 coming as loans through the SRF. However, there's all the
23 national associations and ECOS and ASWIPCA, SEFA, all these
24 national associations for water and wastewater are pushing
25 for a much larger package. And some of the numbers being

1 thrown around are at least \$10 billion a piece. And if
2 that's the case we'd be looking at pushing through almost
3 half a billion dollars within 120 days.

4 And that'd be a whole other challenge for
5 us. So we're hoping that Congress takes a more realistic
6 approach to this. We understand the effects on economic
7 recovery and economic stimulus needing to be in a short
8 period of time. However, as you know developing
9 infrastructure projects takes more than three months from
10 beginning to end.

11 But, anyway, we just wanted to put you on notice that
12 there will be some actions required by the Commission if we
13 do see something from Congress. And when it's going to
14 happen, we're not sure. Both houses will have to agree on
15 it, obviously, and get it to the president. But there are
16 -- they're saying that the president will sign it as soon
17 as it's passed. So realistically I think we're looking at
18 something spring, maybe late spring.

19 So -- are there -- that's very, very brief. But are
20 there any questions I can try an answer at this time?

21 (No response.)

22 MR. BOLAND: One of the biggest benefits of this package is
23 that they are waving the state match that's normally
24 required for this. So it would be -- we would not have to
25 come up with the 20 percent match that's typically required

1 for our capitalization grants, so.

2 But it's a large amount of money to try and push
3 through within such a short period of time. And we're
4 beating the bushes, right now, and as matter of fact it's
5 been probably one of the greatest marketing programs for
6 us. We haven't done anything and we've got communities
7 coming out of the woodwork, calling us and wanting to know
8 how much of the stimulus is going to be allocated to them.
9 So that's another thing we'll have to work through as well.

10 But, anyway, I just wanted to bring that up to you
11 and let you know that's going to be coming, so any
12 questions?

13 (No response.)

14 MR. BOLAND: All right. Thank you.

15 COMMISSIONER TUPPER: Thank you, Joe.

16 Excuse me. The next item is the **legal report**. Mary.

17 MS. BRYAN: I don't have a report.

18 COMMISSIONER TUPPER: Mr. Galbraith obviously has
19 something.

20 MS. BRYAN: Always.

21 MR. GALBRAITH: It's a standing item, that's why I'm
22 standing.

23 Thank you. First of all, I wanted to let you-all
24 know that we're losing a very valuable member of our team
25 who's been working with the Commission for two years; Sarah

1 Garoutte, is moving on to bigger and better things. She's
2 got a job with a house communications office, but we really
3 -- she's one of those employees that everyday I felt
4 privileged and lucky to have her on board and just glad to
5 have her for one more day. Well, those days are coming to
6 an end this week. So, Sarah, thank you for your service.
7 And we wish you the very best.

8 COMMISSIONER TUPPER: We're a whole lot nicer than those
9 guys.

10 (Laughter.)

11 MR. GALBRAITH: I want to commend the Commission on getting
12 through a lot of material, today, very efficiently. And
13 we, the staff and Malinda all work very hard to try to
14 present the information in a way that's efficient for you
15 and readily understandable. If there's anything that we
16 can do to make the experience easier or make -- present the
17 materials better either in the packets or how we present up
18 here. I hope that you'll let me know. And we'll endeavor
19 to constantly improve because we really tax you guys and
20 gals a lot. And we appreciate the work that you do and we
21 want to make it as easy as possible.

22 COMMISSIONER TUPPER: This was well done. When I first
23 lifted it, I was scared to death.

24 (Laughter.)

25 COMMISSIONER TUPPER: After I went through it, I saw that

1 it was manageable.

2 MR. GALBRAITH: Well, we do want you to stay in shape.

3 CHAIRPERSON PERRY: I would like to commend both, Ron and
4 Jan for doing such a fine job of moving this through. Its
5 way ahead of lunch time for me, so I think that's great.

6 (Laughter.)

7 MR. GALBRAITH: Hear, hear.

8 CHAIRPERSON PERRY: I do want to bring up one thing, Ed,
9 publically to the Commission that as many people know the
10 Corps spent \$658,000 of taxpayer money to do a -- to have a
11 review, a scientific review by the National Academy of
12 Science. And they had a series of meetings at which they
13 discussed the nutrient and sediment issues.

14 At the first meeting there was no one from EPA
15 present. And that seems to be also the case at the second
16 meeting where the agenda is once again dominated by the
17 Corps. And the person who is going to speak on nutrients
18 is a member of -- is an employee of the Corps of Engineers.
19 And I'll just put this statement boldly I believe that to be the
20 fox reporting on the chicken report.

21 I encourage all citizens to keep careful eye on how
22 that progresses.

23 O that, that's it. Sorry.

24 MR. GALBRAITH: Okay. Thank you.

25 I wanted to just -- there's couple of things in your

1 blue packets that I just want to explain briefly. The
2 first one is this letter from the State of Iowa. This is
3 just to point out to the Commission that occasionally we
4 have enforcement actions across state lines in the case of
5 a city that has jurisdiction on both sides of the state
6 line.

7 I don't really know the particulars of this case.
8 But just because it does cross state lines, I just wanted
9 to generally let the Commission know that we do have these
10 that come up.

11 We do work with those states on those cross-state
12 compliance issues. This normally would not be a
13 very weighty matter that would become before the Commission
14 unless and until it was time to refer it. And we're not at
15 that point. But because it's across state lines I just
16 wanted to include it as a point of general information.

17 The other thing I wanted to bring to your attention
18 is there was a final decision by the Cole County Circuit
19 Court on the Niesen case. If you'll recall the Neisen's
20 had appealed a permit issued by our Department, by our
21 Program for a wastewater treatment plant from, I think, it
22 was a mobile home park that had located next to them. They
23 appealed that permit. The decision came before this
24 Commission. I think we drafted a very good decision with
25 Tom and Mary's help. And, apparently, --

1 MS. BRYAN: Tim. I didn't draft it.

2 MR. GALBRAITH: Oh. Okay.

3 CHAIRPERSON PERRY: Duggan.

4 MR. GALBRAITH: One of us. It was Tim. Okay.

5 One of our -- one of our many excellent, assistant
6 attorney generals assisted with this.

7 And, apparently, Richard Callahan agreed that it was
8 a good decision as well. So I just want to let you know
9 the rest of the story on that. And I don't believe that
10 decision has been appealed or at least I haven't heard that
11 it has.

12 We do have an ongoing issue with the Teva
13 Pharmaceutical Company and the Mexico Wastewater Treatment
14 Plant. I know that I've communicated with both Kristin and
15 Ron on this. I don't have a presentation on it.
16 I actually had thought it was sort of put to bed a couple
17 of weeks ago. But it's apparently not put to bed and we
18 are still having ongoing problems.

19 Given the late -- well, it's not really late, but it
20 feels late. I think what I'll do, is rather than brief you
21 now, I might prepare a memo to the Commissioners giving
22 them the status report on that, so that you're just kept up
23 to date on that issue.

24 Basically, it's a green water issue and the -- well,
25 a branch of the Salt River that flows into the Mark Twain

1 Lake. We thought we had the problem fixed, but between the
2 City of Mexico, the Department and Teva Chemical we're
3 still trying to sort it out. So I'll just prepare a
4 briefing for you on that to keep you up to date on that.

5 That's all I have unless there's anything I can
6 answer or do for you.

7 COMMISSIONER TUPPER: Tom's got something.

8 MR. HERRMANN: Your statement about the cooperation with
9 Iowa. I take you back about half a dozen or a few more
10 years ago; there was a consulting engineer and an
11 engineering firm who had their license suspended in
12 Missouri and Iowa both for actions taken in a design of a -
13 - and construction of a CAFO in northern Missouri, based on
14 the action of your Missouri Clean Water Commission and
15 recommendations to Iowa. So there has been a good
16 cooperation.

17 But one thing I wanted to address the Commission
18 about; Sam, with your question and Kristin's follow up, I'm
19 worried that it got swept underneath the rug. We really
20 don't have a worry about nutrient management if the
21 perpetrator or the generator of the waste gives it or sells
22 it to someone else. And he's absolved of all
23 responsibility.

24 COMMISSIONER HUNTER: Who ultimately is responsible?

25 MR. HERRMANN: There you go. That's the -- that would be

1 my concern. Who's responsible for it? And to say that,
2 Well, this doesn't take place. I know of one instance, at
3 least, the City of Cape Girardeau is still taking their
4 sludge to -- they were and I assume they still are, taking
5 their sludge down into Scott County for disposal in Scott
6 County. And I don't know how many others around the state
7 are doing the same thing.

8 But I can speak to you as the past president of the
9 State Engineering Society when the question was asked,
10 Well, you have to have an engineer to do -- to design
11 facilities submitted to the Clean Water Commission or the
12 Department. Yes. That is state law.

13 And I'm concerned that -- Kristin, also brought up
14 that there is a group, which has qualifications for
15 determining the acceptable conditions of a nutrient
16 management plan. And we're not, we, being the Clean Water
17 Commission and the Department aren't utilizing these
18 talents. It was suggested, well, maybe the engineer can
19 certify it. Well, one of the things of the engineers
20 responsibility under registration is you're not supposed to
21 practice outside of the limits of your knowledge and your
22 expertise.

23 And that would wash probably 99 percent of the
24 engineers that I know, out of anything to do with nutrient
25 management planning. If there is a group and if there is,

1 as Kristin says there is, who has expertise in this group;
2 why is not the Department and the Commission availing
3 themselves of this opportunity to establish proper
4 credentials? I suggest that the Commission should direct
5 the Department that in this upcoming revision that serious
6 consideration be given to that condition; the utilization
7 of that -- those properly qualified individuals to
8 establish a proper nutrient management plan and the
9 implementation of that plan.

10 COMMISSIONER TUPPER: Thank you, Tom.

11 MR. HERRMANN: You're welcome.

12 MR. GALBRAITH: I believe that we agree that we should
13 address the issue of the Certified Crop -- I forget the
14 right title. But I think that is part of what's under
15 consideration for this next phase of the rulemaking.

16 So that -- I think that recommendation will come back
17 before -- but it will take a rule change to require that.
18 It doesn't prevent anybody from utilizing that now but in
19 order to require it, I believe, it will take a change to
20 our regulations.

21 As far as -- in the issue of what happens when the
22 manure gets passed off to the next person, of course, Clean
23 Water Law still does hold that person accountable if they -
24 - you know, if they cause a water quality violation and
25 that can be demonstrated of their mismanagement. So if

1 it's not -- it doesn't -- its not get out of jail free. We
2 can't require -- we can't put place permitting requirements
3 on them such as they have to prove to us that they're
4 handling -- you know, it's kind of the reverse. We have to
5 prove that they are mishandling it. And I agree that this
6 is a gap.

7 One of the things that we are working with on this
8 group too is this concept of some kind of a
9 certification process for applicators -- you know, those
10 folks, those second generation people that take that. And
11 I don't know how far that we've gotten with that. But
12 that's something we're looking into as well.

13 So that is on the table. And I don't think that we
14 brought that up before, so.

15 COMMISSIONER TUPPER: Anything else?

16 MR. GALBRAITH: I think that's it.

17 Thank you-all.

18 COMMISSIONER TUPPER: We have a **presentation on TMDLs**.

19 MR. GALBRAITH: The genesis of this presentation
20 was at the conclusion of the last meeting when we were
21 talking about the upcoming 303(d) List and it was in that
22 context, I believe, that there was a request made to do a
23 presentation on TMDL development and what -- kind of what
24 happens after a water gets listed, then what are the
25 consequences, what do we do with that. Originally, we had

1 talked about doing a workshop. But because of weather and
2 travel and other things, I think, we decided to add it to
3 this agenda, if time allowed. Given that it's two o'clock
4 we're happy to do this, now. We can obviously for the -- I
5 realize several Commissioners aren't here. So I thought I
6 would leave it up to the Commissioners that are here to
7 decide is this the right time to do this or would it be
8 better to wait or do it twice or whatever. It's entirely
9 up to you-all.

10 COMMISSIONER TUPPER: What'd you think?

11 COMMISSIONER EASLEY: How long of a presentation is it?

12 MR. GALBRAITH: How long, John?

13 MR. HOKE: It's very brief, probably, 15-20 minutes max,
14 depending on questions.

15 COMMISSIONER EASLEY: Go ahead.

16 MR. GALBRAITH: Go ahead. Okay.

17 MR. HOKE: All right. Thank you, Commissioners. My name
18 is John Hoke. I'm the TMDL Unit Chief in the program's
19 Water Quality Monitoring and Assessment section. Ed kind
20 of outlined why the Commission requested this presentation.
21 So I'll go ahead and move forward.

22 Coming from a top-down approach, the TMDL process,
23 like all of the program's processes follow a water quality
24 based process. We set our goals in our water standards.
25 Those are -- you know, designated use for waters of the

1 state -- water quality criteria to protect those uses and
2 then Antidegradation Implementation Procedures to ensure
3 those waters do not degrade anymore than they have to be.

4 Then as a Program we implement strategies to protect
5 and restore water quality through our NPDES State Operating
6 Permit Program, through our 319 Grant Program, through the
7 State Revolving Fund to help upgrade facilities to achieve
8 compliance with the water quality standards. So we have a
9 lot of strategies that we use to implement our water
10 quality based processes.

11 And we conduct the monitoring. John Ford, and his
12 monitoring assessment unit, as you know, conduct monitoring
13 of waters of the state and then make an assessment whether
14 or not those waters are meeting water quality standards.

15 If, yes, we move on; we mark them for future
16 monitoring and move on to other waters. If, not, as you
17 know, we develop a 303(d) List of impaired waters, which is
18 the to-do list, so to speak, for my staff to write Total
19 Maximum Daily Loads or TMDLs.

20 Where there's another process where if it's not
21 meeting standards we can move back to implementation
22 strategies. Those are usually minor tweaks to permits to
23 achieve water quality based effluent limits or enforcement
24 actions to achieve compliance with standards.

25 But the focus of this presentation, today, as

1 requested, is through the TMDL process. So I'll move
2 forward to that.

3 A TMDL or Total Maximum Daily Load is just basically
4 the amount of specific pollutant a water body can receive
5 and still meet water quality standards. As I alluded to,
6 our targeted waters are the 303(d) List of impaired waters
7 that John Ford assesses and the Commission approves and EPA
8 approves.

9 EPA in federal guidance gives a time frame from which
10 TMDLs need to be completed. It's generally 8 to 13 years
11 from the date of initial listing. Once waters find
12 themselves on the list they're both federal and state
13 priorities on how soon a TMDL gets developed.

14 Currently the Environmental Protection Agency and the
15 State of Missouri through a memorandum of understanding are
16 under a consent decree that was a result of a lawsuit that
17 was filed against EPA for not doing TMDLs in an expedited
18 manner. So since about 1998 we have been under a consent
19 decree and that has basically dictated the TMDLs that get
20 developed off of that original list.

21 I'm happy to report that 2009 is the last year of
22 that consent decree. So we will be finishing up that list
23 of waters this year, by the end of the year. And after
24 that we're free to set our own priorities as far as TMDL
25 development.

1 And those priorities will basically depend on our
2 certainty of the impairment and the source of that
3 impairment whether we believe we have enough data to
4 accurately and proficiently run a model or make an
5 allocation of pollutants. And so additional data
6 collection needs are required. We may need to collect more
7 data to make a more certain modeling effort. And often
8 times we often group TMDLs by region or pollutant. So
9 often we can get an economy of scale by doing a large
10 number of bacteria TMDLs. For example, that may be within
11 the same watershed. We can get a lot of -- economy of
12 scale by doing that.

13 There are some core elements to a TMDL. These are
14 kind of spelled out by EPA. The first is that all sources
15 of that pollutant must be identified within the watershed
16 or area of concern. Maximum pollutant loads needs to
17 calculated for that water body to ensure compliance with
18 the Water Quality Standards

19 And that maximum pollutant load is then allocated out
20 to the various point sources and non-point sources that
21 were identified in the source assessment portion of the
22 TMDL.

23 Two other items that a TMDL requires are margins of
24 safety to account for any uncertainty in either data
25 collection or modeling to give a buffer and a margin of

1 safety to ensure compliance with the Water Quality
2 Standards. And then all TMDLs are required to address
3 seasonality and how a potential TMDL would vary by the
4 season.

5 An example, of that would be temperature. If we had
6 a temperature TMDL we would need to make sure that it met
7 the seasonal requirements for temperature for that
8 particularly water body.

9 And the equation at the bottom is just basically a
10 TMDL, which is basically, the sum of all the loads that you
11 give to point sources, plus, the sum of all the loads the
12 non-point sources get and then, plus, that margin of safety
13 to account for uncertainty.

14 As an example I've put up a -- it's a TMDL scenario
15 for a bacteria pollutant impairment. It's an impairment of
16 recreational use for the practice of this analysis its
17 whole body contact. The TMDL developer identifies all the
18 point sources and non-point sources within the watershed,
19 determines the appropriate water quality criterion. And in
20 this case we've listed 206 colonies per 100 milliliters of
21 E. coli. And a margin of safety is chosen. It's one of
22 those required elements to account for uncertainty.

23 There are two types of margin of safety. There's an
24 implicit margin of safety in which we have taken as
25 conservative approach in the modeling and the monitoring in

1 the TMDL development that we can. And we don't feel that
2 we need to reserve an additional margin of safety, because
3 the approach has been so conservative.

4 And then there's an explicit margin of safety that is
5 basically a stray allocation right off the top. And it's
6 usually anywhere between 10 and 20 percent of the available
7 load to account for that uncertainty. And a case of this
8 for example a lot of bacteria TMDLs because the variability
9 of bacteria in the environment it's an explicit margin of
10 safety and 10 percent of 206 is 21 colonies per 100
11 milliliters.

12 So the TMDL target concentration that the TMDL
13 developer and the modelers will go for is -- you know, the
14 point source load, plus, the non-point source load, plus,
15 that margin of safety, in this case 21 has to equal the
16 Water Quality Standard, which is 206 colonies per 100
17 milliliters.

18 The TMDL takes that concentration and converts it
19 into a load or a Total Maximum Daily Load. And a load is
20 basically just a concentration times a flow. And in this
21 case we're looking at the flow from a facility or group of
22 facilities which is represented by -- you know, Q is
23 discharge for facilities, plus, any stormwater runoff that
24 would enter the stream and add to the flow. And because of
25 the way the bacteria TMDLs are structured, at very low

1 flows when there is no stormwater runoff the entire
2 allocation for the pollutant goes to point sources.

3 But as you increase flow in the stream the load to
4 non-point sources increases much, much faster and
5 ultimately the permanent facilities receive the same load
6 across all flows. So we usually give them their -- the
7 first crack at the load and everything else would go to the
8 non-point sources.

9 I'll kind of give you a pictorial, visualization of
10 this. This is a fictional TMDL scenario where we've got E.
11 coli data plotted in blue, blue dots that goes through time
12 at the bottom. And it is shaded up the graph. I've got
13 the recreational season when the actual bacteria criteria
14 apply indicated. And then the green line is a
15 running E. coli geometric mean because the Water Quality
16 Standard for bacteria E. coli is geometric mean during the
17 recreational season. And so that running a geometric mean
18 allows staff to look at where the running geometric mean is
19 during the recreational season compared to the Water
20 Quality Standard, which is the green line of 206.

21 And as you can see during the first recreational
22 season all data and the geometric mean are below the
23 standards so the water body is in compliance during that
24 recreational season. But during the second recreational
25 season there are two storm events that drive the bacteria

1 in stream above the geometric mean for 206. So it would be
2 the job of the modelers and TMDL development staff to
3 reduce that running geometric mean that purple line below
4 the green line. And once that's done we'll have compliance
5 with the Water Quality Standard.

6 So all the modeling and all the data, all the
7 allocations and loads are packaged together into TMDL --
8 into a TMDL document that goes on public notice. As you
9 know, you receive a copy of that as well as affected
10 municipalities and permittees and county commissioners and
11 people of that nature. They receive these TMDLs as part of
12 our 30-day public comment period. After the public comment
13 period it's the responsibility of the Department to respond
14 and resolve all comments. If there are comments that are
15 submitted that require a change in loading or change in
16 waste allocations, we will put that TMDL back out for
17 public notice to get additional due process since it would
18 be a substantial change. If not, the comments, the TMDL,
19 our responses to comments are packaged up and sent to EPA
20 for their approval.

21 Once approved by EPA, the Department and interested
22 stakeholders can begin the process of actually implementing
23 it.

24 (TAPE THREE, SIDE A CONCLUDED.)

25 MR. HOKE: -- it's where they may have technology based

1 limited but our water quality based limit is required.

2 Our Department staff both in the TMDL Unit and the
3 Permits Unit in the central office and the region will
4 ensure that Missouri State Operating Permits are modified
5 to come into compliance the TMDL giving that each schedule
6 of compliance for those new requirements and the permit.

7 Our non-point source, our watershed protection
8 program will utilize the 319 Grant Program to ensure that
9 best management practices are implemented in the watershed
10 to reduce pollutant loading from non-point sources. Our
11 staff, my staff in the TMDL Unit as well as the non-point
12 source staff work with watershed groups to help them
13 organize, and help them implement some of these best
14 management practices and give them support along the way.
15 As we've found, especially for non-point sources, local,
16 active groups can go a long way in helping to solve the
17 problem and restore these waters back into compliance with
18 the standards.

19 And then internally we do our own follow up
20 monitoring to see how these different implementation
21 strategies are working and whether or not we need to go
22 back and tweak a TMDL to perhaps modify a permit that may
23 not be performing as necessary or go to some sort of
24 enforcement action to compel them to do so. It's part of
25 the phase and interim process of a TMDL that continues

1 until we find that the water is assessed as being in
2 compliance with the applicable Water Quality Standards and
3 then it gets removed from the category and the intergraded
4 report to one that is actually attaining the Water Quality
5 Standards.

6 This slide captures our TMDL progress for about the
7 past eight years. This past year we completed eight TMDLs,
8 which brings are grand total on the consent decree up to
9 154. Next year or this year actually, now that we're into
10 2009, as I alluded to the consent decree is over this year.
11 We have finished out all the waters that are remaining. We
12 have 35 water body segments that need TMDLs established by
13 the end of this year. Our staff are working diligently and
14 aggressively to meet that schedule. We're getting some
15 help with contractor funding through EPA Region 7 to get
16 some modeling and some additional data collection done.
17 And with the hard work from our staff I'm confident that
18 we'll meet this goal by the end of the year.

19 Like I said it's a very brief presentation, but it
20 kind of gives you an overview of sort of the nuts and bolts
21 of the TMDL develop process and then what we do from an
22 implementation standpoint. And as we develop and establish
23 more TMDLs we have more and more TMDLs that we have to
24 follow the implementation on. So as -- hopefully we get
25 more TMDLs in the done pile and we can track those

1 implementation efforts and start to bring forward more
2 success stories in how we're actually bringing these waters
3 back into compliance with the standards.

4 And with that if there are any questions I will
5 gladly entertain them.

6 Sir?

7 MR. HERRMANN: John, I'll ask the same question I asked
8 last month and several months before that. There are 27
9 streams listed as pollution unknown, pollutant source
10 unknown. How the devil are you going to write a TMDL on an
11 unknown pollutant in an unknown polluted stream?

12 And why are they on the 303(d) List in the first
13 place, 27 of them?

14 MR. HOKE: Right.

15 Why they are on the 303(d) List that's kind of
16 outside my area of jurisdiction. So I'm not --

17 MR. HERRMANN: Ah. You passed the buck, again.

18 MR. HOKE: -- I'm going to pass the buck on that one.

19 But the 303(d) List is our to-do list as I alluded to.
20 And I agree, it's definitely a challenge to write a TMDL
21 for an unknown pollutant and from an unknown source.
22 Fortunately, EPA guidance gives us 8 to 13 year period to
23 figure out what that unknown is and where it's coming from.
24 So we spend a lot of time, once it's on the list finding
25 out what it's not in order to find out what it is.

1 MR. HERRMANN: EPA also gives you a 305(b) List which
2 requires further study to determine something.

3 MR. HOKE: Um-huh.

4 MR. HERRMANN: Why aren't those 27 streams on that 305(b)
5 List?

6 MR. HOKE: That's a good question. It all --

7 MR. HERRMANN: Yeah. I never get an answer though.

8 MR. HOKE: Okay.

9 MR. GALBRAITH: Yeah. There's an -- go ahead, Rob.

10 MR. HOKE: And you won't get from me. That's probably a
11 good question --

12 (Laughter.)

13 MR. HOKE: Thanks, Tom.

14 MR. MORRISON: Thanks -- thanks, Tom.

15 I just want to address Tom's question and it iss a good one.
16 But just because we cannot identify the source of the
17 impairment, if we determine that the stream is not meeting
18 the chemical criteria EPA says we have to put it on the
19 list irregardless of whether we can identify a source of
20 pollution or not, we must put it on the list. And it can
21 be as simple as that.

22 And that is some of the things that has plagued us
23 with dissolved oxygen, as you know, we have several streams
24 that have low DO --

25 MR. HERRMANN: (Statement inaudible.)

1 MR. MORRISON: There are several streams and there are
2 several other issues that we have out there we can't
3 identify the source of pollution. That -- as long as the
4 stream is not meeting a chemical criteria or if it's a
5 narrative problem in the stream we must put it on the
6 303(d) List.

7 MR. GALBRAITH: Well, there's also -- the case that Tom is
8 specifically referring to is not only is the pollutant
9 unknown but the source. They're both unknown. And that
10 mostly derives from our biological criteria and they're not
11 criteria in the strict sense, but we say we do, do
12 biological sampling and if we find that a stream compared
13 to a reference stream of similar properties appears to not
14 be clearly supporting the sample level of diversity or
15 abundance then EPA guidance would say that -- you know,
16 there's a point at which you have to say it's impaired and then
17 find out what's causing the impairment and where it's coming
18 from. It's very unsatisfying, I agree, Tom, to put
19 something on the list that's unknown and unknown but there
20 it is.

21 MR. HOKE: Yeah. And to kind of follow up on that point;
22 we've had some success. We've given it -- we've got this
23 period to work from especially for some of the biological
24 ones with the unknown sources, unknown pollutants where
25 we've taken some time and gone back out and sent our

1 environmental services department out to take new biology.
2 And maybe the first time they went out, you know all the
3 critters were washed away by a storm event that went
4 through and they weren't there. So you got to poor a
5 rating on the aquatic life use.

6 But they go back out over a number of
7 years and they take more samples, the bugs come back that
8 they're okay. With that data and with those scores showing
9 attainment we can submit through a formal listing process
10 to EPA or through another letter request that that water
11 body be removed from the category 5 or the impaired waters
12 list to A, which is -- it's now meeting those standards
13 based on additional time and additional biological studies.

14 We've had some success with that. But it does take
15 time and it does take resources. And so in addition to the
16 TMDL development my staff works diligently to -- where
17 we've got those unknowns as to try to find a way to
18 convince EPA that, Hey, they don't need to be on this list.
19 And, you know, what we're seeing out there is what is
20 naturally there, so.

21 COMMISSIONER TUPPER: Other questions for John?

22 (No response.)

23 COMMISSIONER TUPPER: Thank you, sir.

24 MR. HOKE: Very good. Thank you.

25 COMMISSIONER TUPPER: We have come to that point where

1 anyone that wishes to comment or question, we will hear you
2 now.

3 (No response.)

4 COMMISSIONER TUPPER: Hearing none.

5 MR. GALBRAITH: As far as the business of future meetings.

6 We have all the rest of the meetings scheduled with

7 locations except for the November meeting. Given that

8 we're in Cape Girardeau and then Springfield in the

9 proceeding for July and September, might I suggest that we

10 have the November 2009 Commission meeting in Jeff City, so

11 we can start getting that set up.

12 COMMISSIONER EASLEY: Okay.

13 MR. GALBRAITH: Is that okay?

14 COMMISSIONER HUNTER: Okay.

15 COMMISSIONER TUPPER: That works.

16 CHAIRPERSON PERRY: But I didn't hear where you said.

17 MR. GALBRAITH: Jefferson City.

18 COMMISSIONER TUPPER: Jeff City.

19 CHAIRPERSON PERRY: I'm fine with that.

20 MR. GALBRAITH: Or the big island, either one.

21 (Laughter.)

22 CHAIRPERSON PERRY: So I'll try to be home for that.

23 MR. GALBRAITH: Okay.

24 COMMISSIONER TUPPER: Does that need to be voted on?

25 MR. GALBRAITH: It doesn't require a vote. No.

1 COMMISSIONER TUPPER: Do we need to go back into closed
2 session?

3 MR. GALBRAITH: Yes. If there's any of these
4 reports in here that you want to discuss at this point we
5 can go back into closed session.

6 COMMISSIONER TUPPER: Can we have a motion to go back into
7 closed session?

8 COMMISSIONER HUNTER: Need one?

9 COMMISSIONER EASLEY: I move that the Clean Water
10 Commission go into closed session to discuss legal,
11 confidential or privileged matters.

12 COMMISSIONER TUPPER: I thank the rest of you. Excuse me.

13 COMMISSIONER HUNTER: Is he done?

14 COMMISSIONER EASLEY: Yeah.

15 COMMISSIONER HUNTER: I second it.

16 COMMISSIONER TUPPER: I have a motion from Mr. Easley, a
17 second from Mr. Hunter, please, call for the vote.

18 MS. OVERHOFF: Commissioner Easley?

19 COMMISSIONER EASLEY: Yes.

20 CHAIRPERSON PERRY: Can I --

21 MS. OVERHOFF: Commissioner Tupper?

22 COMMISSIONER TUPPER: Yes.

23 MS. OVERHOFF: Commissioner Hunter?

24 COMMISSIONER HUNTER: Yes.

25 MS. OVERHOFF: Chair Perry?

1 CHAIRPERSON PERRY: Did he say the reason that we're going
2 into closed session?
3 MS. BRYAN: Yes.
4 MR. GALBRAITH: You did?
5 COMMISSIONER EASLEY: Legal, confidential or privileged
6 matters under Section 610.021(1), RSMo.
7 CHAIRPERSON PERRY: Just wanted to check. Yes, thanks.
8 (TAPE THREE, SIDE B CONCLUDED.)
9 COMMISSIONER HUNTER: I make the motion to come out of closed
10 session.
11 COMMISSIONER EASLEY: Second.
12 Ms. Overhoff called for vote.
13 COMMISSIONER TUPPER: Yes.
14 COMMISSIONER HUNTER: Yes.
15 COMMISSIONER EASLEY: Yes.
16 CHAIR PERRY: Yes.
17 COMMISSIONER HUNTER: I make the motion to adjourn meeting.
18 COMMISSIONER EASLEY: Second.
19 Ms. Overhoff called for vote.
20 COMMISSIONER HUNTER: Yes.
21 COMMISSIONER EASLEY: Yes.
22 COMMISSIONER TUPPER: Yes.
23 CHAIR PERRY: Yes.
24
25

1 CERTIFICATE OF REPORTER

2

3 I, DANIELLE Y. MOSER, within and for the State of
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15 DANIELLE Y. MOSER, Notary Public

16 Commission # 07398805

17 Commission Expires 01-08-2011

Respectfully Submitted,

Earl Pabst
Acting Director of Staff