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BEFORE THE MISSOURI CLEAN WATER COMMISSION
STATE OF MISSOURI

MISSOURI CLEAN WATER COMMISSION PUBLIC HEARING

10 CSR 20-6.200

TRANSCRIPT OF PROCEEDINGS

May 6, 2009

10:15 a.m.

Department of Natural Resources

Lewis & Clark State Office Building

LaCharrette/Nightingale Creek Conference Rooms

1101 Riverside Drive

Jefferson City, MO 65102

COMMISSIONERS PRESENT:

- Ms. Kristin Perry, Chair
- Mr. William Easley, Jr.
- Mr. Frank Shorney
- Mr. Samuel Hunter
- Mr. Ron Hardecke

REPORTED BY: Monnie S. VanZant, CCR, CSR, RPR
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TRANSCRIPT OF PROCEEDINGS

COMMISSIONER PERRY: And as one door closes,
another one opens. The Commission will begin the public
hearing on the proposed rule changes to the storm water
regulations in 10 CSR 20-6.200.

These rule changes were published for public
comment in the Missouri Register, Volume 34, No. 5, on
March 2nd, 2009.

The purpose of this public hearing is to provide
the Department the opportunity to present testimony and to
provide both the Department and the public the opportunity
to comment on this proposed rule-making.

The public hearing is not a forum for debate or
resolution on issues. The Commission asks that testimony
be brief and to the point.

The Commission will first hear testimony from
the Department. Following the Department's testimony, the
Commission will give the public an opportunity to comment.
We ask that all individuals present fill out an attendance
card so our records are complete.

If you wish to present verbal testimony, please
indicate that on your attendance card. The Commission is
holding this hearing to assist the public in commenting on
the proposed rule-making.

The public comment period will close on May

1 13th, 2009 at 5 p.m. When you come forward to present
2 testimony, please speak into the microphone and begin by
3 identifying yourself to the court reporter. The court
4 reporter will now swear in anyone wishing to testify at
5 this public hearing before the Clean Water Commission
6 today. All those wishing to provide testimony, please
7 stand.

8 (All people present wishing to testify were sworn to tell
9 the truth, the whole truth and nothing but the truth.)

10 COMMISSIONER PERRY: We will begin with
11 Staff. Are you still with us, Jan?

12 JOHN RUSTIGE,
13 being first duly sworn to testify the truth, the whole
14 truth, and nothing but the truth, testified as follows:

15 MR. RUSTIGE: Good morning, Commissioners.

16 COMMISSIONER PERRY: Good morning. My name is
17 John Rustige. I'm an Engineer in the Permits and
18 Engineering section. And the purpose of this rule-making
19 is to correct or clarify the definition of regulated
20 municipal and separate storm sewer systems, MS-4s. And
21 it's to exclude low population density areas in non-urban
22 geographies that really aren't intended to be part of the
23 program.

24 Although currently not in the regulations in
25 practice, the MS-4 program has been limited to areas

1 wherein the population densities are greater than a
2 thousand people per square mile. And what we're intending
3 to do with the rule-making is just to ensure that that
4 practice is continued, and we'll align the definition with
5 the federal minimum requirements.

6 So according to a strict reading of the current
7 regulation, there are 39 county governments across the
8 State that would be subject to MS-4 solely because they
9 have a population greater than 10,000 people.

10 But many of these counties don't have any
11 urbanized areas, areas that have population densities
12 above a thousand people per square mile, so they really
13 shouldn't be in the program.

14 Again, the purpose of the amendment is just to
15 assure that that current practice in the way the program
16 is being run now is continued to exclude those counties,
17 exclude these low density geographies.

18 I brought a couple of low-tech posters instead
19 of -- put them up here. You can see that. Do you see
20 that? Just -- just a couple of illustrations, a couple of
21 examples.

22 You'll notice that there's several counties. A
23 good example would be Texas or Washington County that have
24 -- clearly have populations that exceed thirty thousand people.
25 But there aren't any urbanized areas in those counties, so

1 those counties really should be excluded from the MS-4
2 program.

3 The same goes for counties that have cities that
4 are in the MS-4 program but don't have any geography or
5 areas outside those cities that are urbanized. An example
6 of that would be down south in Howell County. West Plains
7 is -- the City of West Plains is required to have an MS-4
8 program, but the County itself doesn't have any of these
9 urbanized areas. So they should be exempt.

10 And then the last example is Boone County. The
11 population of Boone County, obviously, is well above
12 10,000. But the unincorporated areas of the county that
13 have population densities exceeding a thousand people per
14 square mile is really just limited to the edges around the
15 city limits of Columbia.

16 So the City of Columbia is required to have an
17 MS-4 program, but the only geography in Boone County that
18 would be required to have MS-4 program would be those
19 specific areas with those high population densities.

20 And, again, the whole purpose of this is just to
21 align the State's definition with the federal definition.
22 That -- that's all I have. Any questions of what we're
23 trying to do with the rule?

24 COMMISSIONER PERRY: Okay. We have -- are there
25 any questions? Then thank you very much.

1 MR. RUSTIGE: All right.

2 COMMISSIONER PERRY: I like having the maps, by
3 the way. Karen Miller?

4 KAREN MILLER,
5 being first duly sworn to testify the truth, the whole
6 truth, and nothing but the truth, testified as follows:

7 MS. MILLER: Good morning, Madam Chair and
8 Commissioners. I, too, have a power point. So,
9 hopefully, you should be presented with one of those
10 folders for each one of you. It has a large map in it
11 that I'm going to kind of explain.

12 I am from Boone County, Missouri, so I kind of
13 have a different perspective than the Staff presented just
14 a few moments ago. And I'm here to speak in opposition of
15 the proposed rule-making in which we have -- we have just
16 heard.

17 But -- inside is a power point, so we can get
18 started on it, along with the map. So -- there's five
19 points that I wanted to discuss with you. One is the
20 difficulty in using the UA to define an MS-4.

21 And, secondly, it's the difficulty in using the
22 minimum population density requirement to define an MS-4.
23 Third, non-delegation. Four, back-sliding. And five,
24 proposed solution.

25 In the difficulty in using urbanized -- or UA to

1 define MS-4, one, you have the UAA only accounts for
2 existing development. It does not take into effect future
3 development.

4 In the past ten years, Boone County has grown by
5 20.5 percent. So we would have 20.5 percent kind of
6 outside that UA until the next census. And using this
7 approach, it is very reactive versus proactive.

8 The density requirement is continuously moved,
9 is a continuously moving target. It's also cheaper to
10 develop storm water controls when you have new development
11 and put it in at that time rather than trying to retrofit
12 once it fits into the UA and the taxpayers have to fix the
13 problem and disrupt the neighborhoods in which they are --
14 there are problems.

15 It also -- in the Columbia and Centralia, UA
16 excludes 50.91 square miles of unincorporated Boone County
17 that is zoned for urban density. That's what your map
18 shows. It's all those orange blocks are already zoned for
19 urban density.

20 However, the -- some of them are developed.
21 Some of them are not. And they would not be covered under
22 this. The education campaign that's required under Phase
23 2 requirements, imagine how confusing it is to try to
24 educate the citizens of what's required when you can't
25 define the areas of regulation.

1 You know, it's -- imagine presenting piece-meal
2 regulations to voters when you're trying to propose a -- a
3 utility to manage storm water. As this is an unfounded --
4 unfunded federal mandate. We are required to implement --
5 without any funds, we are going to have to get a utility
6 eventually to complete the full program.

7 And so we need -- we need to be able to explain
8 to our citizenry who is under the regulation and why and
9 things that need to be done. There's -- if you look at
10 your -- your slide presentation, there is a slide that
11 talks about -- that has graphs. And it shows the urban
12 density zoning that we have in Boone County.

13 This is -- this is Boone County's zoned urban
14 density area. Then the next column is the urban density
15 outside the UAA. The third column is Boone County UAA
16 currently. And the fourth is the Boone County UAA with urban
17 density zoning. So we're covering everything that is in
18 the current UAA, but we would be excluding that 50.9 square
19 miles.

20 As you look at your large map, the -- that I
21 told you the orange -- that is original zoning. We've had
22 that in place since 1973. So it was not something that's
23 just come up currently.

24 No. 2, in looking at the difficulty in using a
25 minimum population density, the density component is

1 ambiguous and vague. It's not clear at what level it will
2 be applied. You know, the uncertainty for -- for the
3 county and the development community will only create
4 constant tension.

5 You know, there's already tension. And so when
6 you have uncertainty, it just adds -- it feeds that fire.
7 You know, at some point, the whole state will be under
8 Phase 3 and will have to do these regulations anyway.

9 It just makes sense when we are starting a
10 program that we do a program for our whole county so that
11 it's easier for us to implement and to manage. What we
12 have is we'll have developments across the road from each
13 other.

14 This development is in. So they'll follow the
15 regulations. This development is out, and they won't have
16 to. So they'll have an unfair cost advantage because
17 they're not going to be putting money in any storm water
18 infrastructure, but this development has to because it's
19 in that imaginary line of the UA.

20 Those are the kinds of issues that we see are a
21 real problem. We work very hard to develop our
22 regulations consistent with the City of Columbia so that
23 we don't have developments leap-frogging outside the city
24 just to circumvent the regulations that they are under in
25 the city.

1 And so that's why we have -- we strongly oppose
2 this. We have had a joint task force by the city
3 accounting which is very diverse, environmental,
4 educational folks in the development community, and
5 they've worked since 2002 to develop our regulations to
6 submit to the County.

7 And when we took that up, the -- we are -- keep
8 going. Okay. Stop right there. That -- that area -- all
9 the black dots are what the thousand -- you are can't
10 hardly see it, but they're all over the place. Those are
11 the population density of a thousand. So those are the
12 regulated areas because of population density.

13 But they're just sporadic throughout the whole
14 county, and they're not -- they would be very hard to --
15 to manage.

16 The next slide, please. This slide is a good
17 example of why the UA doesn't work. As you can see, that
18 white in that orange, the white block is the UA, which is
19 required to be managed under this program. But all the
20 orange is not.

21 But you can see right next to it, there's a very
22 dense development that would not have to be regulated
23 that's already there. And all the rest of that land is
24 zoned for urban dense population.

25 So eventually, its going to be developed. And I

1 don't expect that we will grow any less than we have over
2 the last ten years in the next ten years. And so it just
3 makes sense that we kind of get ahead of this program.

4 No. 3, the non-delegation. You know, you have
5 the authority to determine the boundaries of the regulated
6 MS-4, you know, vested with you. And the vagueness of the
7 proposed definition, delegates this authority to US Census
8 and our citizens who move in and out of areas and develop
9 that dense area. So we -- we really feel that -- that
10 that is circumventing maybe some of your authority to
11 another agency.

12 No. 4, back-sliding. I heard you, Madam Chair,
13 talk about back-sliding. And the DNR staff frequently
14 cites that as an issue that you can't back-slide. Well,
15 as I told you, we have this task force and we worked on it
16 for several years, and then we were challenged about what
17 did the regulation cover.

18 I wrote DNR, got a letter in my file from June
19 '06 which states, The State of Missouri has defined
20 regulated MS-4 in part an MS-4 which says a population of
21 10,000 or more elsewhere in the state. The regulation
22 does not include the additional EPA criteria population density of
23 a thousand people per square mile. Therefore, the
24 regulation, 10 CSR 200.6 -- or dash 6.2001 would define all
25 of Boone County as regulated MS-4.

1 So we have worked under those presumptions this
2 whole time. And acting in good faith, we have adopted a
3 stream buffer ordinance for the whole county. As you know,
4 agricultural lands are exempt, so it doesn't affect our
5 farm community, but it allows us to get a hold on anybody
6 that is going in and disturbing the land and managing
7 that.

8 We are about 80 percent finished with our land
9 disturbance ordinance. We have had over 20 meetings with
10 the Commission, the engineering community, our consultants
11 going word for word through the ordinance, so we
12 understand when we implement it who is affected, how
13 they're affected and what's going on.

14 For us now, we need to know where we're going to
15 be regulating this. And if we have to change our
16 regulation from the whole county to this specific areas,
17 it will have -- it will just set us back. We will be
18 back-sliding because we'll be going backwards instead of
19 forwards.

20 So in conclusion, the UA portion of the
21 definition, as I said, includes 51 square miles of the
22 unincorporated area that's zoned for dense development.
23 That's equivalent to the size of the City of Columbia.

24 So when you put it in that perspective, we are
25 ignoring the City of Columbia, that large of a land mass

1 that's zoned for urban density or is already zoned --
2 already developed.

3 We have -- we have a solution, a couple
4 solutions we'd like to propose. Can you go a couple more?
5 First, eliminate the population density requirement.
6 That's just too hard to manage. When you think of it,
7 it's kind of like spot zoning. It's always controversial
8 because you'll have this little piece you're going to
9 regulate. You're not going to regulate this little piece
10 because it just didn't quite meet that thousand. And it's
11 very hard to manage as an organization.

12 Also, replace the current population requirement
13 so that it -- level goes up so you can exclude the Howell
14 Counties, Texas Counties, those that were never intended
15 to be under Phase 2 from the federal and state perspective
16 but kind of got pulled in with those numbers.

17 You know, this allows us to have a more
18 comprehensive plan and a much significantly improved water
19 quality program for Boone County. So we would just ask
20 that you consider this testimony today and consider the
21 ramifications that it will put on those of us who have
22 worked very hard to develop a program for our whole county
23 and then try to turn it into a shotgun approach after the
24 fact.

25 And I thank you for allowing me to testify. I'd

1 be glad to answer any questions. I have staff here that
2 could also answer the technical questions if I can't.

3 COMMISSIONER PERRY: Did you want to discuss
4 your proposed language?

5 MS. MILLER: Oh, I'm sorry. Did I leave one
6 out? Yeah. The proposed language is just take MS-4 when
7 it serves a population of 1,000 or more within an
8 urbanized area or an MS-4 which serves a population of was
9 10,000, move that up to 30,000. That will exclude those
10 rural counties and allow those first class urban counties
11 within the State to be included. So that's a proposal.
12 Thank you, Madam Chair.

13 COMMISSIONER PERRY: Thank you.

14 MS. MILLER: I'd be glad to answer any
15 questions.

16 COMMISSIONER HARDECKE: You stated that -- I
17 think it was how many acres outside of --

18 MS. MILLER: It's square miles.

19 COMMISSIONER HARDECKE: Square miles. Okay.
20 Now, did that include the ag. land or --

21 MS. MILLER: No. That's the urbanized zoned
22 areas outside. It does not include any ag. land. That's
23 our -- that's our concern is we have a lot of area that's
24 original zoning out there.

25 And, as you know, zoning is a right. It's a

1 bundle -- you have a bundle of rights with your land that
2 -- so we can't down zone it. And it's been there since
3 '73.

4 And when the market starts coming back, it will
5 be the most logical places for people to -- to develop.

6 COMMISSIONER EASLEY: 1,000 seems to be awfully
7 low. What if that was moved up to, say, 5,000? Would
8 that --

9 MS. MILLER: Well, from our perspective, we
10 think that maybe if you want to capture some of those
11 rural areas, just the thousand, let them have that
12 thousand density area if they only want to capture a
13 subdivision here or there.

14 But if you do a whole county, take that thousand
15 out. Just allow it to be anything that's under the 30,000
16 would -- or over the 30,000 and over, and it would take
17 care of everything, and you wouldn't need that thousand
18 density because you're covering everything.

19 COMMISSIONER EASLEY: Just eliminate the
20 entire --

21 MS. MILLER: For those larger counties. But if
22 you want to use that thousand density for those rural
23 counties, for those one or two subdivisions they might
24 have that you want to regulate, that would be fine. But
25 if your county is covered by the 30,000 or more, then you

1 wouldn't have the density because you're covering the
2 whole county anyway.

3 COMMISSIONER PERRY: Any further questions?

4 COMMISSIONER HARDECKE: Thank you.

5 MS. MILLER: Thank you very much. And I'm sorry
6 the power point didn't work so well, but, hopefully, this
7 took care of it. And I think those large maps will help
8 you to just really --

9 COMMISSIONER PERRY: I think you did a very nice
10 job in laying out your issues.

11 MS. MILLER: Thank you very much.

12 COMMISSIONER PERRY: Was there anyone else to
13 testify on this matter? The Commission will receive
14 written testimony on these proposed rule changes until
15 5 p.m. on May 13th, 2009.

16 You may submit written testimony to John
17 Rustige, Missouri Department of Natural Resources, Water
18 Protection Program, P.O. Box 1776, Jefferson City,
19 Missouri, 65102, prior to that deadline.

20 On behalf of the Commission, I thank
21 everyone for participating in this process. This hearing
22 is now closed.

23 (The proceedings were concluded at 10:26 a.m. on
24 May 6, 2009.)

25

1 REPORTER'S CERTIFICATE

2

3 STATE OF MISSOURI)
) ss.
4 COUNTY OF OSAGE)

5

6 I, Monnie S. VanZant, Certified Shorthand Reporter,
7 Certified Court Reporter #0538, and Registered
8 Professional Reporter, and Notary Public, within and for
9 the State of Missouri, do hereby certify that I was
10 personally present at the proceedings as set forth in the
11 caption sheet hereof; that I then and there took down in
12 stenotype the proceedings had at said time and was
13 thereafter transcribed by me, and is fully and accurately
14 set forth in the preceding pages.

15

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal on May 11, 2009.

18

19

20

21 Monnie S. VanZant, CSR, CCR #0539

22

Registered Professional Reporter

23

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