Missouri Clean Water Commission
Meeting

April 29, 2019

Department of Natural Resources
Lewis and Clark State Office Building
1101 Riverside Drive
Jefferson City, MO

MISSOURI DEPARTMENT OF NATURAL RESOURCES
WATER PROTECTION PROGRAM

Notice of Open Meeting

Missouri Clean Water Commission

To review minutes from previous meetings and learn about agenda items, please refer to the Department website at https://dnr.mo.gov/env/wpp/cwc/index.html

AGENDA

Lewis and Clark State Office Building
1101 Riverside Drive
LaCharrette / Nightingale Conference Rooms
Jefferson City, MO 65101
April 29, 2019
10:00 a.m.

A. Call to Order — Ashley McCarty

B. Approval of Minutes — Ashley McCarty
(Approval Needed)

1. July 16, 2018 Open Session Minutes
2. September 21, 2018 Open Session Minutes
3. October 18, 2018 Open Session Minutes
4. December 10, 2018 Open Session Minutes
5. December 10, 2018 Closed Session Minutes
6. January 9, 2019 Open Session Minutes
7. January 9, 2019 Closed Session Minutes

C. DNR Reports and Updates
(Information Only)

Director's Update — Chris Wieberg

D. Public Hearing
(Information Only)

Proposed Amendments to the 1978 St. Louis, Missouri Water Quality Management 208 Plan — Refaat Mefrakis

E. Recommended for Adoption and Actions to be voted on
(Approval Needed)

1. Election of Missouri Clean Water Commission Chair — Ashley McCarty

   Section 644.021 of the Missouri Clean Water Law requires election of a Chair and Vice-Chair at yearly intervals.

   Recommended Action: The Commission to vote and elect officers.

2. Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan Amendment — Hannah Humphrey

   Recommended Action: The Department recommends the Commission approve the amendment to the Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan as proposed.

3. Application for Award of Attorney's Fees Regarding Country Club Homes, LLC, Permit MOG10872, Appeal No. 18-0498 — Tim Duggan

   Recommended Action: The Department recommends the Commission consult with their legal counsel regarding further action of the application.

4. Application for Award of Attorney's Fees Regarding Country Club Homes, LLC, Permit MOG10872, Appeal No. 18-0501 — Tim Duggan

   Recommended Action: The Department recommends the Commission consult with their legal counsel regarding further action of the application.

F. New Business
(Information Only)

1. State Stormwater Grant and Loan Program — Emilie Peterson

2. Rulemaking Process — Jane Davis

G. Appeals and Variance Requests
(Approval Needed)

1. Administrative Hearing Commission's Recommended Decision Regarding Midwest Forest City, LLC Appeal No. 18-1238 — Jennifer Hernandez

   Recommended Action: The Department recommends the Commission hear from the attorneys of the parties and make a decision on the appeal.

H. Open Comment Session
(Information Only)

This segment of the meeting affords the public an opportunity to comment on any other issues pertinent to the Clean Water Commission.

I. Future Meeting Dates
(Information Only)

July 10, 2019
Lewis and Clark State Office Building
1101 Riverside Drive
LaCharrette / Nightingale Conference Rooms
Jefferson City, MO 65101

October 9, 2019
Lewis and Clark State Office Building
1101 Riverside Drive
LaCharrette / Nightingale Conference Rooms
Jefferson City, MO 65101

January 9, 2020
Lewis and Clark State Office Building
1101 Riverside Drive
LaCharrette / Nightingale Conference Rooms
Jefferson City, MO 65101

April 2, 2020
Lewis and Clark State Office Building
1101 Riverside Drive
LaCharrette / Nightingale Conference Rooms
Jefferson City, MO 65101

July 8, 2020
Lewis and Clark State Office Building
1101 Riverside Drive
LaCharrette / Nightingale Conference Rooms
Jefferson City, MO 65101

October 7, 2020
Lewis and Clark State Office Building
1101 Riverside Drive
LaCharrette / Nightingale Conference Rooms
Jefferson City, MO 65101

J. Closed Session

This portion of the meeting may be closed if such action is approved by a majority vote of the Clean Water Commission members who constitute a quorum, pursuant to Section 610.021, RSMo.

K. Meeting Adjournment Commission Chair
(Approval Needed)

People requiring special services at the meeting can make arrangements by calling 1-800-361-4827 or 573-751-6721. Hearing- and speech-impaired individuals may contact the department through Relay Missouri, 1-800-735-2966.

For more information contact:
Ms. Krista Welschmeyer, Commission Secretary, Missouri Clean Water Commission
Water Protection Program, P.O. Box 176, Jefferson City, MO 65102
Phone: 573-751-6721
Fax: 573-526-1146
E-mail: krista.welschmeyer@dnr.mo.gov

Tab A

Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Call to Order

Issue:

The Missouri Clean Water Commission meeting will be called to order.

Recommended Action:

None

List of Attachments:

None

Tab B

Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Approval of Minutes

Issue:

The Missouri Clean Water Commission will review the minutes from the past Clean Water Commission meetings.

Recommended Action:

The Department recommends that the Missouri Clean Water Commission vote to approve past meeting minutes.

Tab B1

Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Approval of Minutes

Issue:

Commission to review the Open Session minutes from the July 16, 2018, Missouri Clean Water Commission meeting.

Recommended Action:

Commission to approve the Open Session minutes from the July 16, 2018, Missouri Clean Water Commission meeting.

Attachments

Official transcripts

DRAFT MINUTES OF THE
MISSOURI CLEAN WATER COMMISSION MEETING
Lewis and Clark State Office Building
1101 Riverside Drive
Jefferson City, Missouri
July 16, 2018

Present at Lewis and Clark State Office Building
Ashley McCarty, Chair, Missouri Clean Water Commission
Ben Hurst, Vice-Chair, Missouri Clean Water Commission
Patricia Thomas, Missouri Clean Water Commission
Stan Coday, Missouri Clean Water Commission
Chris Wieberg, Director of Staff, Missouri Clean Water Commission
Tim Duggan, Legal Counsel, Missouri Clean Water Commission
Chelsey Bodenstab, Acting Secretary, Missouri Clean Water Commission

Michael Abbott, Department of Natural Resources, Jefferson City, Missouri
Robert Brundage, Newman, Comley, and Ruth, Jefferson City, Missouri
Tim Bull, Department of Natural Resources, Jefferson City, Missouri
David Carani, HDR Engineering, Columbia, Missouri
David Casaletto, Ozarks Environmental Services, Kimberling City, Missouri
Mary Culler, Stream Teams United, Shelbyville, Missouri
Kaylyn Dalbom, Department of Natural Resources, Jefferson City, Missouri
Sharon Davenport, Department of Natural Resources, Jefferson City, Missouri
Jane Davis, Department of Natural Resources, Jefferson City, Missouri
David Davison, Department of Natural Resources, Jefferson City, Missouri
Paul Dickerson, Department of Natural Resources, Jefferson City, Missouri
Joan Doerhoff, Department of Natural Resources, Jefferson City, Missouri
David Fraley, Diamond Sky Ventures, Springfield, Missouri
Ed Galbraith, Department of Natural Resources, Jefferson City, Missouri
David Greene, Kansas City Water, Kansas City, Missouri
Kimberly Guthrie, Newman, Comley, and Ruth, Jefferson City, Missouri
Darlene Helmig, Department of Natural Resources, Jefferson City, Missouri
Lacey Hirschvogel, Missouri Public Utility Alliance, Columbia, Missouri
John Hoke, Department of Natural Resources, Jefferson City, Missouri
Jay Hoskins, Metropolitan-St. Louis Sewer District, St. Louis, Missouri
Ramona Huckstep, Missouri Municipal League, Jefferson City, Missouri
Jeanne Heuser, Citizen, Jamestown Missouri
Rob Hunt, Department of Natural Resources, Jefferson City, Missouri
Errin Kemper, City of Springfield, Springfield, Missouri
Shirley Kidwell, Citizen, Fulton, Missouri

Cindy LePage, Department of Natural Resources, Jefferson City, Missouri
Leasue Meyers, Department of Natural Resources, Jefferson City, Missouri
Dave Michaelson, Department of Natural Resources, Jefferson City, Missouri
Lynn Milberg, Department of Natural Resources, Jefferson City, Missouri
Jan Millington, City of Springfield, Springfield. Missouri
Judy Morrison, Department of Natural Resources, Jefferson City, Missouri
Nick Muenks, Geosyntec Consultants, Jefferson City, Missouri
Alan Reinkemeyer, AGC of Missouri, Jefferson City, Missouri
Jill Sellenriek, Citizen, Fulton, Missouri
Trent Stober, HDR Engineering, Columbia, Missouri
Robert Voss, Department of Natural Resources, Jefferson City, Missouri
Roger Walker, REGFORM, Jefferson City, Missouri
Richard Waters, Department of Natural Resources, Jefferson City, Missouri
Tammy Wilson, Department of Natural Resources, Jefferson City, Missouri
Amanda Wolfgeher, Department of Natural Resources, Jefferson City, Missouri
Sally Zemmer, Department of Natural Resources, Jefferson City, Missouri

CALL TO ORDER

Chair McCarty called the meeting of the Missouri Clean Water Commission (CWC) to order on July 16, 2018, at 10:08 a.m., at the Lewis and Clark State Office Building, 1101 Riverside Drive, Jefferson City, MO.

Chair McCarty introduced the Commissioners, Staff Director, Legal Counsel, and the Commission Secretary.

ADMINISTRATIVE MATTERS

Approval of the April 4, 2018, Missouri Clean Water Commission Meeting Minutes
Agenda Item 1

Commissioner Coday moved to approve the April 4, 2018, meeting minutes as presented. Commissioner Reece seconded the motion. The motion passed with a roll call vote:

Commissioner Coday:	**Yes**
Commissioner Thomas:	**Yes**
Commissioner Reece:	**Yes**
Vice-Chair Hurst:	**Yes**
Chair McCarty:	**Yes**

Approval of the May 17, 2018, Missouri Clean Water Commission Teleconference Meeting Minutes
Agenda Item 2

Commissioner Thomas moved to approve the May 17, 2018, Teleconference meeting minutes as presented. Commissioner Reece seconded the motion. The motion passed with a roll call vote:

Commissioner Thomas:	**Yes**
Commissioner Reece:	**Yes**
Commissioner Coday:	**Yes**
Vice-Chair Hurst:	**Yes**
Chair McCarty:	**Yes**

Public Hearing on Clean Water Rule Amendment 10 CSR 20-2.010, Definitions
Agenda Item 3

Chair McCarty provided an overview about how the public hearing would proceed. Individuals wishing to testify as part of the public hearing were sworn in by the court reporter.

Leasue Meyers provided comments to the Commission regarding the amendment to the rule. The Department recommends that the Commission adopt the amendment as proposed.

Robert Brundage provided comments to the Commission regarding the definitions in the agri-chemical rule and the proposed amendment. Mr. Brundage also commented on the proposed definition of "losing stream".

Public Hearing on the 2018 303(d) List
Agenda Item 4

Chair McCarty provided an overview about how the public hearing would proceed. Individuals wishing to testify as part of the public hearing were sworn in by the court reporter.

Robert Voss, Water Protection Program, provided background, comments, and a summary of Department actions and changes as a result of public comments received from public availability meetings on the 2018 Missouri Section 303(d) List and recommended the Commission adopt the 2018 Missouri Section 303(d) List as proposed. Commissioner Thomas provided questions and comments.

Errin Kemper, City of Springfield, provided comments to the Commission regarding comments previously submitted by the City of Springfield to the Department.

2020 Missouri Listing Methodology Document Adoption
Agenda Item 5

Robert Voss, Water Protection Program, provided background, comments, and a summary of Department actions and changes as a result of public comments received from public availability meetings on the 2020 Missouri Listing Methodology Document and recommended the Commission adopt the 2020 Missouri Listing Methodology Document as proposed. Additionally Mr. Voss also asked the Commission to be open to approve an amended version of the 2020 Listing Methodology Document at a later date. This would allow the Department to have further discussions on topics stakeholders wish to be vetted further. Robert Brundage, Newman, Comley, and Ruth, provided comments. He stated that he would be satisfied if the Commission were to vote on the Listing Methodology and adopt it, but part of the motion be that additional issues, including the assessment of small streams, continue to be addressed, and for a recommendation to come back to the Commission later this year. Commissioners Thomas, Coday, Hurst, Reece, Chair McCarty, and Chris Wieberg provided comments. After hearing the sentiments of the Commission, Chair McCarty stated she felt it best to table this consideration and vote to adopt the 2020 Missouri Listing Methodology Document at a later meeting knowing that there are future meetings scheduled, and ask for stakeholder engagement in those meetings as well as Department updates.

Commissioner Coday moved to adopt the 2020 Listing Methodology Document as proposed. Commission Reece seconded the motion. The motion passed with a roll call vote.

Commissioner Reece:	**Yes**
Commissioner Coday:	**Yes**
Commissioner Thomas:	**No**
Vice-Chair Hurst:	**Yes**
Chair McCarty:	**Yes**

PRESENTATIONS

Water Quality Standards Rulemaking Update
Agenda Item 6

Chris Wieberg, Water Protection Program, provided background and comments on the continuing review by the Environmental Protection Agency (EPA). The EPA has been asking questions of the Department. The Department continues to be available to answer questions from the EPA.

Missouri Water Environment Association
Agenda Item 7

Lacey Hirschvogel, Missouri Public Utility Alliance, and Jay Hoskins, Metropolitan St. Louis Sewer District, provided information and comments letting people know what work the Missouri Water Association does.

Director's Update
Agenda Item 8

Chris Wieberg, Director, Water Protection Program, reported the following to the Commission:

- 2020 Missouri Listing Methodology Document Adoption
- Upcoming Red Tape Reduction efforts
- Upcoming Clean Water Forum on August 8, 2018
- Water Quality Standards changes

Public Comment and Correspondence
Agenda Item 9

David Casaletto, Ozarks Environmental Services, provided comments regarding the definition of "small" as it relates to a wastewater treatment facility. He also commented on permit limits that are required of operators at small wastewater treatment facilities.

Roger Walker, REGFORM, provided comments regarding the 10th Annual Missouri Water Seminar being held on September 12-13, 2018 in Columbia, Missouri. He extended an invitation to all present at the meeting. Mr. Walker also provided comments on the work that REGFORM does.

Missouri Clean Water Commission Meetings
Agenda Item 11

- September 21, 2018, Lewis and Clark State Office Building
- October 18, 2018, East Elm Street Conference Center
- January 9, 2019, Lewis and Clark State Office Building

ADJOURNMENT OF MEETING

Commissioner Reece moved the Commission adjourn the meeting. Commissioner Coday seconded the motion. The motion passed with a roll call vote.

Commissioner Coday:	**Yes**
Commissioner Thomas:	**Yes**
Commissioner Reece:	**Yes**
Vice-Chair Hurst:	**Yes**
Chair McCarty:	**Yes**

Commission adjourned the open meeting at 12:53 p.m.

Respectfully Submitted,

Chris Wieberg
Director of Staff

1 MISSOURI CLEAN WATER COMMISSION
2 PUBLIC HEARING
3 ON MISSOURI CLEAN WATER COMMISSION RULES
4 1101 RIVERSIDE DRIVE
5 JEFFERSON CITY, MISSOURI 65101
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10 DATE TAKEN: JULY 16, 2018
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24 (Starting time of the hearing: 10:00 a.m.)
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1 A P P E A R A N C E S:
2 MS. ASHLEY McCARTY, Chair
3 MR. BEN HURST, Vice Chair
4 MR. TIM DUGGAR, Member
5 MR. CHRIS WIEBERG, Member
6 MS. PATRICIA THOMAS, Member
7 MR. STAN CODAY, Member
8 MR. JOHN REECE, Member
9 MS. CHELSEY BODENSTAB, Acting Commission Secretary
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1 P R O C E E D I N G S
2 MS. McCARTY: I will read an opening
3 statement for this public hearing. We will begin
4 this public hearing on 10 CSR 20-2.010, Definition.
5 The purpose of this hearing is to provide the
6 Department the opportunity to present testimony and
7 to provide both the Department and the public the
8 opportunity to comment on the proposed amendment.
9 This public hearing is not a forum for debate or
10 resolution of issues. We ask that those commenting
11 limit testimony to five minutes and not repeat
12 comments that others have already made.
13 We will first hear testimony from the
14 Department. Following the Department's testimony, we
15 will give the public the opportunity to comment. We
16 ask all individuals present on this agenda item, as
17 well as others, to please fill out an attendance card
18 so our records are complete. And if you wish to
19 present verbal testimony, please indicate that on
20 your attendance card at the back of the room.
21 When you come forward to present testimony,
22 please speak into the microphone and begin by
23 identifying yourself to our court reporter this
24 morning. Following this public hearing, the
25 commission will review the testimony presented and

1 make appropriate modifications to the proposed
2 amendment, to 10 CSR 20-2.010. We plan to take final
3 action at our September 21st, 2018 meeting. And the
4 court reporter will now swear in anyone wishing to
5 testify at this hearing today. Will all those
6 wishing to comment, please stand?
7 COURT REPORTER: Do you swear to tell
8 the truth, the whole truth, and nothing but the truth
9 so help you God?
10 (All people testifying were sworn)
11 MS. MEYERS: Good morning,
12 Commissioners. My name is Leasue Meyers and I am an
13 engineer in the Engineering Section. I appreciate
14 the opportunity to present information to you this
15 morning on the current rulemaking effort related the
16 Definitions rule.
17 The hearing this morning is in regards to
18 the proposed amendments to 10 CSR 20-2.010,
19 Definitions. The proposed amendment was published in
20 the June 1, 2018 Missouri Register. The proposed
21 amendment contains administrative items of interest
22 to the Department, interested stakeholders, and the
23 general public.
24 The rule was last updated in 1996 and since
25 then, the definitions rule related to the

1 Department's water program have been updated or
2 changed in the state statutes, in the federal
3 definitions of 40 CFR, and in the Department's
4 regulations throughout Chapter 20.
5 This amendment serves to update the
6 definitions, provide clarity and to remove
7 duplication and unnecessary restrictions. As an
8 administrative rule, the amendment does not set
9 environmental requirements and a regulatory impact
10 report was not required.
11 Stakeholder meetings started in 2017 with
12 the goal of updating the definitions to improve
13 clarity and consistency through 10 CSR Chapter 20.
14 As the Department was in the midst of various
15 rulemaking efforts, it was identified that there were
16 a number of definitions present in the rules, but
17 those definitions were not included in the
18 Definitions rule.
19 Definitions were updated to reflect what is
20 currently in statute. Twenty-eight (28) definitions
21 now reference the revised Missouri statutes, with
22 most referencing Chapter 644.026, but there are
23 references to other chapters of the statutes, such as
24 the definition of wells, engineer, and soil
25 scientist. These changes removed duplication and

1 conflict between the regulations and the state
2 statutes. Five definitions now reference the federal
3 definitions.
4 Definitions were added as a result of
5 stakeholder meetings, including the definition for
6 blending and for continuing authority. The addition
7 of these two definitions were developed with the
8 intent to clarify and provide context to these
9 complex issues. Blending is currently defined in
10 10 CSR 20-7.015 and is being added here for
11 consistency.
12 The continuing authority definition is
13 included as part of the proposed amendment for
14 10 CSR 20-6.010, which is on public notice starting
15 today. It was developed with the input of
16 stakeholders and is included in the proposed
17 amendment for the Definitions rule for consistency.
18 Under the rulemaking timeline, both the Definitions
19 rule and the proposed amendment for 10 CSR 20-6.010
20 would become effective within a month of each other.
21 With the updates to the rules to improve
22 clarity, it was discovered that eight definitions
23 included restrictions that were not appropriate for a
24 definitions rule. The rules were restructured to
25 provide the definition without placing a requirement.

1 This is an administrative rule and does not set
2 environmental requirements and is not expected to
3 have a cost to the public.
4 I appreciate the opportunity to provide
5 this information in support of the proposed
6 amendment. Thank you.
7 MS. McCARTY: Thank you, Leasue. Does
8 anyone have questions for the Department on this
9 amendment? Seeing none, we will now welcome comments
10 from the public. The one comment that I have
11 indicated at this time is Robert Brundage from
12 Newman, Comley & Ruth.
13 MR. BRUNDAGE: Good morning, Madam
14 Chair and Members of the Commission. I appreciate
15 Leasue taking over this work on this definition rule.
16 She was not the person who had originally worked on
17 this and she's picking it up and running with it, so
18 kudos to Leasue and I thank her for her work.
19 There were a number of meetings on the
20 Definitions Rule. Unfortunately, I couldn't attend
21 all of them because of all the other meetings that
22 were going on at the time. I have submitted two
23 comment letters. One of them is concerning the
24 number of definitions, most of which I commented on
25 on the agrichemical rule, because the agrichemical

1 design guide rule kept pulling out some definitions
2 and putting back over here in Chapter 2 definitions;
3 and while we're doing that, we're changing some of
4 them.
5 So whether those changes have any
6 substantive impact is one thing I'm in continuing
7 discussions with the Department. And actually we're
8 going to be meeting later this week just to kind of
9 hash out a few things, so I'm not going to talk about
10 those comments.
11 One comment I want to talk about is losing
12 streams. A losing stream is a stream that
13 distributes 30 percent of its flow into a bedrock
14 aquifer. That's what it says in the definition. Why
15 is that important? Well, if you discharge into a
16 creek that is a losing stream, it impacts your
17 effluent limits in your permit. So it could have a
18 huge impact on what kind of treatment you need to
19 provide, so it's a very important determination.
20 The definition in my comment letter dated
21 June 25 suggests there could probably be some work
22 done on this. I think we all want to protect
23 drinking water. That's probably the primary purpose
24 for these rules. We don't want our drinking water
25 aquifers contaminated.

1 So I'm not sure if a bedrock aquifer is the
2 same thing as a drinking water aquifer, so I point
3 out that I do not believe the words in this
4 definition "bedrock aquifer" are defined anywhere, so
5 should they be defined? That's one of the comments
6 that I made.
7 Another comment that I made is that if the
8 Department can't actually measure the amount of flow
9 going into a bedrock aquifer, they use basically
10 something that's a best professional judgment type of
11 assessment. It says it may be determined to be a
12 losing stream on the basis of channel development,
13 valley configuration, vegetation development, dye
14 tracing studies, bedrock characteristics,
15 geographical data and other geological factors.
16 So that's a mouthful. And what does that
17 mean? Well, nowhere in regulation is there anything
18 that defines that process. However, the Missouri
19 Geological Survey, which is an arm of the DNR, does
20 have a guidance document that describes that. But
21 the last time I checked, that guidance document is
22 not on the DNR's website and you have to actually ask
23 for it to even know that it exists out there.
24 I've been in communication with DNR
25 suggesting that that probably really needs to go into

1 a regulation somewhere. And Chris has said that that
2 is something, after he gets some of these other
3 things off of his plate, that they will be looking
4 at, so I will look forward to that in the future.
5 But the fact that there is so much best
6 professional judgment, that it's not really clear how
7 someone comes up with that. I'm not sure how this
8 rule can really be enforceable, is another one of my
9 comments.
10 So, anyway, if we can get into the
11 situation where we try to understand, are we trying
12 to protect the drinking water aquifer or something --
13 an undefined bedrock aquifer, that's my comment.
14 And then if we can move forward in the coming months
15 to define this process and put it in the regulation
16 is my other comment. Thank you very much. That
17 concludes my remarks today.
18 MS. McCARTY: Just one question of
19 clarification, Robert. So the digital Geospacial
20 Dataset -- no, it's the guidance document that's not
21 available. Walk back through that. What are you
22 suggesting become publicly available, more
23 accessibly?
24 MR. BRUNDAGE: It's publicly available
25 if you ask for it, but there is a -- I don't know,

1 I'll say a six-page document that the geological
2 survey folks have that actually spells out a scoring
3 system where those words I read to you about how they
4 try to use judgment on whether or not 30 percent of
5 the flow goes underground somewhere, that's in a
6 guidance document. I guess I'll call it a guidance
7 document. That is different from a Geospatial
8 Dataset.
9 Chris can correct me if I'm wrong, but the
10 DNR has gone to -- they had a huge, long list of
11 losing streams that they've assessed in the past and
12 instead of printing those all in the Code of State
13 Regulations, they put them in a --
14 MR. WIEBERG: GEO Dataset. It's
15 similar to the Dataset that we talk about from time
16 to time. This one is just for the losing stream
17 portion of the standard.
18 MR. BRUNDAGE: Thank you.
19 MS. McCARTY: Any other questions?
20 Thank you, Robert. Any other comments or questions
21 before this hearing closes out? The Department will
22 receive written testimony on this proposed amendment,
23 10 CSR 20-2.010, Definitions until 5 p.m. on July
24 25th, 2018. Written testimony may be submitted to
25 Leasue Meyers, Department of Natural Resources, Water

1 Protection Program, P.O. Box 176, Jefferson City,
2 Missouri 65102 prior to that deadline on July 25th.
3 On behalf of the Commission, thanks to
4 everyone who's participated in this process today and
5 up to this point and this hearing is now closed.
6 ******
7 MS. McCARTY: With that, we will move
8 to our next agenda item and begin the public hearing
9 on the proposed 2018 303(d) Impaired Waters List.
10 The purpose of this hearing is also to provide the
11 Department opportunity to present testimony and to
12 provide the Department and the public the opportunity
13 to comment on the proposed Impaired Waters List.
14 This is not a forum for debate or
15 resolution of issues and we ask that those commenting
16 limit their testimony to five minutes. We will first
17 hear testimony from the Department and following the
18 Department's testimony, we will give the public an
19 opportunity to comment.
20 We again ask that all individuals present
21 fill out an attendance card. And if you wish to
22 present verbal testimony, it is not too late. Please
23 indicate that on the back on the attendance card.
24 When you come forward to present testimony, please
25 speak into the microphone and begin by identifying

1 yourself to the court reporter.
2 And following this public hearing, the
3 Commission will review testimony presented and make
4 modifications to the proposed documents. We plan to
5 take final action on this 2018 303(d) List at the
6 October 18th meeting of this year. The court
7 reporter will now swear in anyone now wishing to
8 testify at this public hearing that did not stand
9 before. Would all those wishing to comment, please
10 stand?
11 COURT REPORTER: Do you swear to tell
12 the truth, the whole truth, and nothing but the truth
13 so help you God?
14 (All people standing were sworn)
15 MS. McCARTY: Thank you. So first we
16 will invite Robert Voss from the Department to
17 present testimony. Good morning.
18 MR. VOSS: Good morning,
19 Commissioners. Again, my name is Robert Voss. I am
20 the supervisor of the Monitoring and Assessment Unit
21 in the Watershed Protection Section of the Water
22 Protection Program. Today I will be providing
23 information on the draft 2018 303(d) list of impaired
24 waters currently posted on the Department's website.
25 The Commission approved the 2018 Listing

1 Methodology Document on April 6, 2016. The
2 Department assessed waters and developed the draft
3 2018 303(d) list following this methodology. The
4 draft 303(d) list was placed on public notice July
5 1st through October 13th, 2017. The Commission
6 approved the 2018 303(d) list at the January 4th,
7 2018 meeting.
8 Subsequent regulatory review showed the
9 Department did not fully comply with the state
10 statute regarding public noticing the 303(d) list, so
11 the Department placed the 2018 303(d) list, the
12 version approved by the Commission, back on public
13 notice starting on April 24, 2018, and continuing
14 through July 23, 2018.
15 The Department has held two public
16 availability meetings to discuss the draft 303(d)
17 list. These meetings were held on May 10th and May
18 24th, 2018. A list of attendees and a summary of the
19 meetings can be found in the Commission packets as
20 well as on the Department's website.
21 To date, the Department has received four
22 additional written comments on the draft 2018 303(d)
23 list. Comments were received from the Clarence
24 Cannon Wholesale Water Commission; the U.S. EPA;
25 Newman, Comley & Ruth, P.C. on behalf of Doe Run, and

1 The City of Humansville. Written comments will
2 continue to be received through July 23rd, 2018.
3 All public comments, along with the
4 Department's responses, will become part of the
5 public administrative record and will be made
6 available on the Department's 303(d) website.
7 The 2018 303(d) list and de-list before the
8 Commission today have not changed since the
9 Commission's approval on January 4th, 2018. The most
10 common pollutant and source categories are located at
11 the end of the draft 2018 303(d) list. That's Page
12 49 of your packet.
13 The purpose of today's hearing is just to
14 introduce the draft 2018 303(d) list of impaired
15 waters and allow the public to provide comments. The
16 Department will request the Commission's approval of
17 these documents at the October 18, 2018 Commission
18 Meeting.
19 MS. McCARTY: Thank you, Robert. Any
20 questions or comments addressed to Robert this
21 morning? With that, I will invite the public. I
22 have Errin Kempker from the City of Springfield
23 indicating an interest. You can come on up, Errin.
24 Trent Stover, did I see you also indicate an
25 interest? Not on this one. Good morning, Errin.

1 MR. KEMPKER: Good morning. I'll keep
2 my comments very brief. But the City has previously
3 submitted comment on the 303(d) list. Most of it is
4 regarding the prioritization of each of the
5 Springfield streams. Springfield has been working
6 with the Department to address these impairments
7 through a memorandum of understanding using our
8 integrated planning process.
9 In response to these comments that we
10 submitted on this listing, the State responded that
11 several commenters noted specific water bodies were
12 existing or planned activities may result in water
13 quality improvements. And in all cases, schedules
14 for TMDL development were changed to later dates in
15 order to allow additional time for data collection or
16 for stakeholders to provide supporting documentation
17 of finalized plans.
18 So we were one of the respondents, however,
19 we are still listed as high or medium priority on
20 several stream segments and we have met with the
21 Department and they have assured us that this is just
22 an oversight. We have full confidence in that. But
23 since that was published, we just wanted to be on
24 public recording as having stated that we feel those
25 should be a low priority.

1 MS. McCARTY: Thank you. I appreciate
2 that. Anyone else wishing to testify on the 303(d)
3 list for 2018? The Commission will accept comments
4 on this proposed document until 5 p.m. Monday, July
5 23rd, and comments can be submitted to the Water
6 Protection Program in one of three ways:
7 Mailing to the Water Protection Program,
8 attention Robert Voss, P.O. Box 176, Jefferson City,
9 Missouri 65102; emailing directly to Robert Voss at
10 robert.voss@dnr.mo.gov; or hand-delivering to the
11 receptionist in this building, the Lewis & Clark
12 State Office Building, 1101 Riverside Drive in
13 Jefferson City. Mark comments with attention to
14 Robert Voss, Water Protection Program.
15 On behalf of the Commission, thank you to
16 everyone who has participated in this long process.
17 This is one of the important tasks, in my opinion,
18 that this Commission oversees and this hearing is now
19 closed.
20 (Hearing concluded at 10:25 a.m.)
21
22
23
24
25

1 C E R T I F I C A T E

2

3 I, Joann Renee Richardson, Certified Court

4 Reporter, do hereby certify that pursuant to Notice there came before me on July 16, 2018, Department of

5 Natural Resources Missouri Clean Water Commission Hearing, 1101 Riverside Drive, City of Jefferson

6 City, County of Cole, who was first sworn by me to

7 testify the whole truth of all knowledge concerning the matter in controversy aforesaid; that they were

8 examined and their examination then and there was written in machine shorthand by me and afterwards

9 transcribed and is fully and correctly set forth in

10 the foregoing 18 pages; and this hearing is herewith returned.

11 I further certify that I am neither attorney or counsel for, nor related to, nor employed

12 by any of the parties to this action in which this

13 hearing is taken; and further that I am not a

14 relative or employee of any attorney or counsel employed by the parties hereto, or financially

15 interested in this action.

16

17 Given at my office in the City of St.

18 James, County of Phelps, State of Missouri, this 30th

19 day of July, 2018.

20

21

22

23 Joann Renee Richardson, CCR

24 State of Missouri

25

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Tab B2

Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Approval of Minutes

Issue:

Commission to review the Open Session minutes from the September 21, 2018, Missouri Clean Water Commission meeting.

Recommended Action:

Commission to approve the Open Session minutes from the September 21, 2018, Missouri Clean Water Commission meeting.

MISSOURI
DEPARTMENT OF
NATURAL RESOURCES
WATER PROTECTION PROGRAM

MINUTES OF THE
MISSOURI CLEAN WATER COMMISSION MEETING
Lewis and Clark State Office Building
1101 Riverside Drive
Jefferson City, Missouri
September 21, 2018

Present via Teleconference
Ashley McCarty, Chair, Missouri Clean Water Commission

Present at the Lewis and Clark State Office Building
John Reece, Missouri Clean Water Commission
Stan Coday, Missouri Clean Water Commission
Patricia Thomas, Missouri Clean Water Commission
Allen Rowland, Missouri Clean Water Commission
Chris Wieberg, Director of Staff, Missouri Clean Water Commission
Tim Duggan, Legal Counsel, Missouri Clean Water Commission
Chelsey Distler, Acting Secretary, Missouri Clean Water Commission

Joe Boland, Environmental Improvement and Energy Resources Authority, Jefferson City, Missouri
Robert Brundage, Newman, Comley, and Ruth, Jefferson City, Missouri
David Carini, HDR, Kansas City, Missouri
Sharon Davenport, Missouri Department of Natural Resources, Jefferson City, Missouri
Sherry Fry, Missouri Department of Natural Resources, Jefferson City, Missouri
Liz Grove, Missouri Rural Water Association, Ashland, Missouri
Jeanne Henson, Citizen, Jamestown, Missouri
Darlene Helmig, Missouri Department of Natural Resources, Jefferson City, Missouri
Lacey Hirschvogel, Missouri Public Utility Alliance, Columbia, Missouri
Ramona Huckstep, Missouri Municipal League, Jefferson City, Missouri
Hannah Humphrey, Missouri Department of Natural Resources, Jefferson City, Missouri
Sherri Irving, Kansas City Water & Light, Kansas City, Missouri
Chris Klenklen, Missouri Department of Agriculture, Jefferson City, Missouri
Ewell Lawson, Missouri Public Utility Alliance, Columbia, Missouri
Cindy LePage, Missouri Department of Natural Resources, Jefferson City, Missouri
Dave Michaelson, Missouri Department of Natural Resources, Jefferson City, Missouri
Leasue Meyers, Missouri Department of Natural Resources, Jefferson City, Missouri
Holly Neill, The Nature Conservancy, Springfield, Missouri
Randy Norden, Missouri Rural Water Association, Ashland, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
Joel Reschly, Missouri Department of Natural Resources, Jefferson City, Missouri

Trent Stober, HDR, Kansas City, Missouri

CALL TO ORDER

Vice-Chair Hurst called the meeting of the Missouri Clean Water Commission (CWC) to order on September 21, 2018, at 9:04 a.m., at the Lewis and Clark State Office Building, 1101 Riverside Drive, Jefferson City, MO.

Vice-Chair Hurst introduced the Commissioners, Staff Director, Legal Counsel, and the Commission Secretary.

Administrative Matters

Clean Water Commission Rule Amendment 10 CSR 20.2.010, Definitions, Adoption
Agenda Item 1

Leasue Meyers provided comments to the Commission regarding the revision of the definitions in 10 CSR 20.2.020. The Department recommends that the Commission adopt the order of rulemaking as proposed.

Robert Brundage, Newman, Comley and Ruth provided comments to the Commission recognizing the work that was done by staff submitting comments on the proposed changes.

Commissioner Reece made a motion to adopt the rules as proposed. Commissioner Thomas seconded the motion. The motion passed with a roll call vote:

Commissioner Coday:	**Yes**
Commissioner Thomas:	**Yes**
Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Vice-Chair Hurst:	**Yes**
Chair McCarty:	**Yes**

Application for a $500,000 grant from the Clean Water State Revolving Fund from the Missouri Public Utility Alliance – Resource Services Corporation
Agenda Item 2

Hannah Humphrey provided comments to the Commission briefing them on an application for a grant from the Clean Water State Revolving Fund (CWSRF). CWSRF funds are now allowed to be granted to a non-profit entity for assistance. This grant application for funds to provide technical assistance and planning resources for small and medium sized treatment works was accompanied by a request that the Commission assign special priority to this application and override the priority point system that is typically utilized to assign points for CWSRF projects in our annual Intended Use Plan (IUP). The application has been reviewed by the Department for alignment with the Department's priorities, including increased use of the CWSRF. The Department has engaged in initial discussions with MPUA-RSC on a potential scope of work that focuses on planning that

leads to SRF projects, but at this time we do not have yet have approval from Department leadership regarding the grant, the concept, and the scope of work. Any funding would need to be submitted for approval through the Commission in the IUP.

Commissioner Reece stated that he had had several concerns over the grant by had spoken to Mr. Ewell Lawson by phone, who had called him the prior day, regarding his concerns and Mr. Lawson answered most of his concerns about the application. Commissioner Reece stated there are issues he has with regard to how much assistance will be given typically preliminary engineering reports are performed by a registered professional engineer. Mr. Ewell Lawson assured Commissioner Reece that Missouri Public Utility Alliance (MPUA) does have staff who are registered and would suffice in this requirement. Commissioner Reece was also concerned if there would be a requirement for the entities receiving funding to join MPUA before special assistance would be provided. Mr. Lawson assured him that this would not be a requirement.

Chair McCarty asked what the consideration was in determining the cut-off for city size at population 50,000. Mr. Lawson provided an answer to her question and indicated the cut off would probably change to 20,000. Commission McCarty also asked if proposed services that include "water and energy efficiencies" is defined in the application as overall energy efficiencies for the city that would not fall under SRF for clean water, or energy efficiencies as they relate to wastewater treatment facilities. Mr. Lawson stated that the Congressional directive and EPA regulations do identify these SRF monies to be used for energy efficiency as it relates to water and sewer. He discussed the fact that a small city's largest energy load may be the wastewater plant and improving efficiency may improve sustainability. Chair McCarty asked if outreach has been considered for cities that desperately need help but are not MPUA members. Mr. Lawson indicated that MPUA feels they have a handle on the needs but does need to develop an approach to encourage cities to utilize SRF monies. Commissioner Reece asked what kind of program MPUA has in place to provide outreach to cities, such as attending council meetings. Mr. Lawson indicated that MPUA performs this type of work and that the assistance would become another tool they can talk to cities about. Mr. Reece asked if they are not a member if they will still attend meetings. Mr. Lawson indicated that yes, MPUA does meet with nonmembers. Commissioner Reece asked if a city needed assistance if the Department would send MPUA or Department staff. Mr. Wieberg indicated we are working on a referral component to the scope of work. Commissioner Reece asked what kind of dues structure would be required. Mr. Lawson indicated there will be no dues for grant services. Commissioner Reece asked what are MPUA's dues are currently. Mr. Lawson stated that there is a minimum of $280 with a multiplier on utility revenue and number of meters. Mr. Reece asked what an average small city's dues would run Mr. Lawson answered.

Mr. Randy Norden provided comments to the Commission regarding the grant application on behalf of the Missouri Rural Water Association (MRWA). MRWA has concerns about the request for special consideration of the application. The MRWA also feels that the funding should be well structured and provided for in the IUP, and that approving this process outside the IUP would set a precedent for the Commission in the future where they are overwhelmed with many non-profits following suit with applications for work that may not be desirable. Mr. Norden also commented that the FY2019 SRF IUP does not appear to have a points system to evaluate these applications and does not list technical assistance projects as eligible projects. MRWA would like the Commission develop a clear application process that is both clear and transparent and allows nonprofits to compete for public funds.

Commissioner Reece stated that the Department has the authority to review any issue with the application and to approve or disapprove the application and Department has the final say in the matter so a point systems would not be that effective or required to approve an application. Mr. Norden stated he there is nothing illegal about it, and is pointing out that the FY2019 draft IUP includes no priority point system for the performance of an evaluation of a grant for planning and assistance. MRWA believes the Commission would better served if the process were opened up with a public notice so any interested entities would submit an application. Commissioner Reece asked Mr. Wieberg to provide his thoughts. Mr. Wieberg indicated that the application is a new situation for the Department, and his applicability is new for the SRF. We could prepare an RFP for applications we could do that, but are reviewing the application and welcome guidance from the Commission. Commissioner Reece stated that the application needs work. Commissioner Thomas asked if it is Mr. Norden's testimony that because someone thought outside the box and applied for a grant that he doesn't think they should receive it? Mr. Norden indicated he is not opposed to thinking outside the box, but rather that public funds that would be applied to the grant may be better served if the opportunity was offered to all entities to apply. Also, once the precedent is set that planning funds are provided from construction funds outside the priority point process, it may open the Commission up to become overwhelmed. Also. It appears to be no IUP priority points activity applied to the consideration of the grant and provide the best service.

Ramona Huckstep, on behalf of the Missouri Municipal League, made comments to the Commission that a partnership with whoever receives these funds would be very valuable to many small communities.

Commissioner Hurst commented on the importance of being able to get these resources to small communities. He also encouraged MPUA and the Department to consider means of oversight for the use of the funds and the implementation of the program. Commissioner Thomas noted that she agrees these services for small communities are important, and noted that an RFP can be important but that when an RFP is set by a Department they can stifle thangs and sometimes out of the box growth or new ideas because they don't fit within the RFP. She appreciates the flexibility now and urges caution about everything being an RFP.

Presentations

Director's Update

- Welcome to Commissioner Rowland
- Work session to discuss the Listing Methodology Document
- Upcoming October 18 Commission meeting

Public Comment and Correspondence

Kevin Perry, REFORM, provided comments to the Commission to say thanks to the staff and Department for the support in putting together the Missouri Water Seminar.

ADJOURNMENT OF MEETING

Commissioner Thomas moved the Commission adjourn the meeting. Commissioner Reece seconded the motion. The motion passed with a roll call vote.

Commissioner Thomas:	**Yes**
Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Commissioner Coday:	**Yes**
Vice Chair Hurst:	**Yes**
Chair McCarty:	**Yes**

Commission adjourned the open meeting at 10:02 a.m.

For more information contact:
Ms. Krista Welschmeyer, Commission Secretary, Missouri Clean Water Commission
Water Protection Program, P.O. Box 176, Jefferson City, MO 65102
Phone: 573-751-6721
Fax: 573-526-1146
E-mail: krista.welschmeyer@dnr.mo.gov

Respectfully Submitted,

Chris Wieberg
Director of Staff

Tab B3

Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Approval of Minutes

Issue:

Commission to review the Open Session minutes from the October 18, 2018, Missouri Clean Water Commission meeting.

Recommended Action:

Commission to approve the Open Session minutes from the October 18, 2018, Missouri Clean Water Commission meeting.

MISSOURI DEPARTMENT OF NATURAL RESOURCES
WATER PROTECTION PROGRAM

DRAFT MINUTES OF THE
MISSOURI CLEAN WATER COMMISSION MEETING
Bennett Spring / Roaring River Conference Rooms
1730 East Elm
Lower Level
Jefferson City, Missouri
October 18, 2018

Present at the Lewis and Clark State Office Building
Ashley McCarty, Chair, Missouri Clean Water Commission
Ben Hurst, Vice-Chair, Missouri Clean Water Commission
John Reece, Missouri Clean Water Commission
Stan Coday, Missouri Clean Water Commission
Patricia Thomas, Missouri Clean Water Commission
Allen Rowland, Missouri Clean Water Commission
Chris Wieberg, Director of Staff, Missouri Clean Water Commission
Tim Duggan, Legal Counsel, Missouri Clean Water Commission
Chelsey Distler, Acting Secretary, Missouri Clean Water Commission

Michael Abbott, Missouri Department of Natural Resources, Jefferson City, Missouri
Shawna Abrahamsen, Missouri Department of Natural Resources, Jefferson City, Missouri
Conrad Blume, Missouri Department of Natural Resources, Jefferson City, Missouri
Kurt Boeckmann, Missouri Department of Natural Resources, Jefferson City, Missouri
Joe Boland, Environmental Improvement and Energy Resources Authority, Jefferson City, Missouri
Tim Bull, Missouri Department of Natural Resources, Jefferson City, Missouri
Robert Brundage, Newman, Comley, and Ruth, Jefferson City, Missouri
Mary Culler, Stream Team United, Shelbyville, Missouri
Sharon Davenport, Missouri Department of Natural Resources, Jefferson City, Missouri
Jane Davis, Missouri Department of Natural Resources, Jefferson City, Missouri
Joan Doerhoff, Missouri Department of Natural Resources, Jefferson City, Missouri
Chris Gilstrap, Missouri Department of Natural Resources, Jefferson City, Missouri
Elizabeth Grove, Missouri Rural Water Association, Ashland, Missouri
Darlene Helmig, Missouri Department of Natural Resources, Jefferson City, Missouri
Hannah Humphrey, Missouri Department of Natural Resources, Jefferson City, Missouri
John Hoke, Missouri Department of Natural Resources, Jefferson City, Missouri
Ewell Lawson, Missouri Public Utility Alliance, Columbia, Missouri
Cindy LePage, Missouri Department of Natural Resources, Jefferson City, Missouri
Refaat Mefrakis, Missouri Department of Natural Resources, Jefferson City, Missouri
Jack Metzenbach, Citizens Climate Lobby, Columbia, Missouri
Doug Mendoza, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Leasue Meyers, Missouri Department of Natural Resources, Jefferson City, Missouri

Ellen Mogdlin, Missouri Department of Natural Resources, Jefferson City, Missouri
Judy Morrison, Missouri Department of Natural Resources, Jefferson City, Missouri
Holly Neill, The Nature Conservancy, Springfield, Missouri
Randy Norden, Missouri Rural Water Association, Ashland, Missouri
Jason Peterson, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Joel Reschly, Missouri Department of Natural Resources, Jefferson City, Missouri
Rim Rielly, Missouri Department of Natural Resources, Jefferson City, Missouri
John Rustige, Missouri Department of Natural Resources, Jefferson City, Missouri
Darrick Steen, Missouri Corn Growers Association, Jefferson City, Missouri
Trent Stober, HDR, Kansas City, Missouri
Stan Thessen, Missouri Farmer's Association, Columbia, Missouri
Robert Voss, Missouri Department of Natural Resources, Jefferson City, Missouri
William Wilder, Missouri Farmer's Association, Columbia, Missouri
Tammy Wilson, Missouri Department of Natural Resources, Jefferson City, Missouri

CALL TO ORDER

Chair McCarty called the meeting of the Missouri Clean Water Commission (CWC) to order on October 18, 2018 at 10:04 a.m., at the Department of Natural Resources Conference Center, 1730 Eat Elm Street, Jefferson City, MO.

Chair McCarty introduced the Commissioners, Staff Director, Legal Counsel, and the Commission Secretary.

Administrative Matters

Adoption of Clean Water Commission Rules for 10 CSR 20-4 Grants
Agenda Item 1

Hannah Humphrey, Water Protection Program, provided comments to the Commission regarding the changes and rescissions to the rules for 10 CSR 20-4 grants. The Department is requesting that the Commission adopt the orders of rulemaking. The proposed changes are based on public comments received.

Commissioner Reece made a motion to adopt the rules as proposed. Commissioner Thomas seconded the motion. The motion passed with a roll call vote:

Commissioner Coday:	**Yes**
Commissioner Thomas:	**Yes**
Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Vice-Chair Hurst:	**Yes**
Chair McCarty:	**Yes**

<u>Adoption of Clean Water Commission rule amendment 10 CSR 20-6.010, Construction and Operating Permits</u>
Agenda Item 2

Leasue Meyers, Water Protection Program, provided comments to the Commission regarding the changes to the rule 10 CSR 20.6010. The Department is requesting that the Commission adopt the order of rulemaking.

Robert Brundage, Newman, Comley and Ruth, provided comments to the Commission regarding the above changes. He has concerns regarding some sections in Chapter 6, but supports the changes, and looks forward to receiving clarification in the future.

Commissioner Coday made a motion to adopt the rule as proposed. Vice-Chair Hurst seconded the motion. The motion passed with a roll call vote:

Commissioner Thomas: Yes
Commissioner Reece: Yes
Commissioner Rowland: Yes
Commissioner Coday: Yes
Vice-Chair Hurst: Yes
Chair McCarty: Yes

<u>Adoption of Clean Water Commission Rules for 10 CSR 20-6 Permits</u>
Agenda Item 3

Michael Abbott, Water Protection Program, provided comments to the Commission regarding the proposed changes to 10 CSR 20-6. The Department is requesting that the Commission adopt the orders of rulemaking.

Commissioner Reece made a motion to adopt the rules as proposed. Commissioner Coday seconded the motion. The motion passed with a roll call vote:

Commissioner Reece: Yes
Commissioner Rowland: Yes
Commissioner Thomas: Yes
Commissioner Coday: Yes
Vice-Chair Hurst: Yes
Chair McCarty: Yes

<u>Adoption of Clean Water Commission Rules for 10 CSR 20-7.015, Effluent Regulations</u>
Agenda Item 4

Tim Bull, Water Protection Program, provided comments to the Commission regarding the proposed changes to 10 CSR 20-7.015. The Department is requesting that the Commission adopt the order of rulemaking.

Commissioner Coday made a motion to adopt the rule as proposed. Commissioner Reece seconded the motion. The motion passed with a roll call vote:

Commissioner Rowland: Yes
Commissioner Thomas: Yes
Commissioner Coday: Yes
Commissioner Reece: Yes
Vice-Chair Hurst: Yes
Chair McCarty: Yes

<u>Adoption of Clean Water Commission rules for 10 CSR 20-8 Minimum Design Standards</u>
Agenda Item 5

Refaat Mefrakis, Water Protection Program, provided comments to the Commission regarding the proposed changes to 10 CSR 20-8. The Department is requesting that the Commission adopt the orders of rulemaking.

Commissioner Thomas made a motion to adopt the rules as proposed. Commissioner Rowland seconded the motion. The motion passed with a roll call vote:

Commissioner Coday: Yes
Commissioner Thomas: Yes
Commissioner Reece: Yes
Commissioner Rowland: Yes
Vice-Chair Hurst: Yes
Chair McCarty: Yes

<u>Adoption of Clean Water Commission rules for 10 CSR 20-9 Treatment Plant Operations</u>
Agenda Item 6

Darlene Helmig, Water Protection Program, provided comments to the Commission regarding the proposed changes to 10 CSR 20-9. The Department is requesting that the Commission adopt the orders of rulemaking.

Commissioner Coday made a motion to adopt the rules as proposed. Commissioner Reece seconded the motion. The motion passed with a roll call vote:

Commissioner Thomas: Yes
Commissioner Coday: Yes
Commissioner Reece: Yes

Commissioner Rowland: **Yes**
Vice-Chair Hurst: **Yes**
Chair McCarty: **Yes**

Adoption of Clean Water Commission rules for 10 CSR 20-14, Concentrated Animal Feeding Operation Waste Management System Operations
Agenda Item 7

Darlene Helmig, Water Protection Program, provided comments to the Commission regarding the proposed changes to 10 CSR 20-14. The Department is requesting that the Commission adopt the orders of rulemaking.

Commissioner Thomas made a motion to adopt the rules as proposed. Commissioner Rowland seconded the motion. The motion passed with a roll call vote:

Commissioner Reece: **Yes**
Commissioner Thomas: **Yes**
Commissioner Coday: **Yes**
Commissioner Rowland: **Yes**
Vice-Chair Hurst: **Yes**
Chair McCarty: **Yes**

Approval of the Proposed Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan (IUP)
Agenda Item 8

Hannah Humphrey, Water Protection Program, provided comments to the Commission regarding the Fiscal Year 2019 Clean Water State Revolving Fund IUP. The Department is requesting that the Commission adopt the plan as proposed.

Commissioner Rowland made a motion to adopt the plan as proposed. Commissioner Reece seconded the motion.

Commissioner Rowland: **Yes**
Commissioner Coday: **Yes**
Commissioner Thomas: **Yes**
Commissioner Reece: **Yes**
Vice-Chair Hurst: **Yes**
Chair McCarty: **Yes**

2018 Missouri Section 303(d) List Adoption
Agenda Item 9

Robert Voss, Water Protection Program, provided comments to the Commission regarding the 303(d) Impaired Waters List. The Department is requesting that the Commission adopt the list as proposed.

Commissioner Reece asked several questions regarding sampling of and data on water bodies. Clarification on gathering data was provided by Robert Voss and Chris Wieberg.

Robert Brundage, Newman, Comley and Ruth, provided comments to the Commission regarding his support of the 303(d) list going forward. He asked that there be clarification on Strother Creek and the comment about the Department assuming the creek is impaired due to metals in water and sediment. He asked that the verbiage be changed to "the Department assumes the creek *was* impaired."

Trent Stober, HDR, provided comments to the Commission regarding the progress that the Department has made regarding the 303(d) Impaired Waters List.

Commissioner Coday made a motion to adopt the 303(d) List with the grammatical change requested by Robert Brundage. Commissioner Reece seconded the motion.

Commissioner Coday:	**Yes**
Commissioner Thomas:	**Yes**
Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Vice-Chair Hurst:	**Yes**
Chair McCarty:	**Yes**

Presentations

Director's Update

- Meeting date changes will be sent to the Commission members soon
- Introduction of Joel Reschly, Water Attorney in the General Counsel's Office
- Clean Water SRF and Grant Eligibility
- Letters of Support related to the MPUA grant
- Red Tape Reduction has concluded

Public Comment and Correspondence

John Metzenbach, Citizens Climat Lobby, provided comments to the Commission regarding changes to 10 CSR 20-14. He has questions regarding those changes. He also had questions regarding Notices of Violation and penalties that can be assessed for violations. Chris Wieberg provided answers to the questions posed by Mr. Metzenbach.

Trent Stober, HDR, provided comments to the Commission regarding Minimum Sewer Size. One comment that was made regarding minimum pipe size, he recommends that the Department go back to eight inches in diameter as a minimum requirement. Refaat Mefrakis provided explanation to the concern that Mr. Stober posed regarding pipe size.

Ed Galbraith, Director, Division of Environmental Quality, provided comments to the Commission regarding the Red Tape Reduction efforts. He wanted to thank the clean water community and all our stakeholders for their work in getting through this process.

Mary Culler, Stream Team United, provided comments to the Commission thanking them that the video for the September 21, 2018 meeting was available online. She was unable to attend that meeting, but was able to learn what happened at the meeting by watching the video. Although the Listing Methodology document was not on the agenda today, she has concerns about some of the comments that were made at the September meeting suggesting that the standards for assessing streams for aquatic life be lowered.

ADJOURNMENT OF MEETING

Commissioner Reece moved the Commission adjourn the meeting. Commissioner Rowland seconded the motion. The motion passed with a roll call vote.

Commissioner Thomas:	**Yes**
Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Commissioner Coday:	**Yes**
Vice Chair Hurst:	**Yes**
Chair McCarty:	**Yes**

Commission adjourned the open meeting at 11:43 a.m.

For more information contact:
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Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Approval of Minutes

Issue:

Commission to review the Open Session minutes from the December 10, 2018, Missouri Clean Water Commission meeting.

Recommended Action:

Commission to approve the Open Session minutes from the December 10, 2018, Missouri Clean Water Commission meeting.

Attachments

Official transcripts

MISSOURI
DEPARTMENT OF
NATURAL RESOURCES
WATER PROTECTION PROGRAM

DRAFT MINUTES OF THE
MISSOURI CLEAN WATER COMMISSION MEETING
Bennet Spring / Roaring River Conference Rooms
1730 East Elm Street
Lower Level
Jefferson City, Missouri
December 10, 2018

Present at Department of Natural Resources Conference Center
Ashley McCarty, Chair, Missouri Clean Water Commission
John Reece, Missouri Clean Water Commission
Stan Coday, Missouri Clean Water Commission
Patricia Thomas, Missouri Clean Water Commission
Allen Rowland, Missouri Clean Water Commission
Chris Wieberg, Director of Staff, Missouri Clean Water Commission
Tim Duggan, Legal Counsel, Missouri Clean Water Commission
Chelsey Distler, Acting Secretary, Missouri Clean Water Commission

Michael Abbott, Missouri Department of Natural Resources, Jefferson City, Missouri
Linda Barton, Citizen, Lone Jack, Missouri
Shawna Bligh, Missouri Attorney General's Office, Jefferson City, Missouri
Jo Marie Bronson, Citizen, Lone Jack, Missouri
Robert Brundage, Newman, Comley, and Ruth, Jefferson City, Missouri
Ashlen Busick, Citizen, Trenton, Missouri
Daryl Casmark, Citizen, Lone Jack, Missouri
Lana Casmark, Citizen, Lone Jack, Missouri
JoAnn Collins, LSN, Lone Jack, Missouri
Mike Copperider, Citizen, Kingsville, Missouri
Vickie Copperider, Citizen, Kingsville, Missouri
Mary Culler, Stream Team United, Shelbyville, Missouri
Aimee Davenport, Powell Gardens, Kingsville, Missouri
Jane Davis, Missouri Department of Natural Resources, Jefferson City, Missouri
Elizabeth Deich, Citizen, Lone Jack, Missouri
Mike Deering, Missouri Cattle Association, Columbia, Missouri
Barbara Edwards, Citizen, Lone Jack, Missouri
Jennifer Griffin, Valley Oaks Country Club, Jefferson City, Missouri
Margaret Hall, Powell Gardens, Kingsville, Missouri
Thomas Hall, Powell Gardens, Kingsville, Missouri
James Harris, Powell Gardens, Jefferson City, Missouri
Chuck Hatfield, Powell Gardens, Kingsville, Missouri

Holly Hill, TNC, Springfield, Missouri
Leslie Holloway, Missouri Farm Bureau, Jefferson City, Missouri
Jay Hoskins, MSD, St. Louis, Missouri
Ramona Huckstep, Missouri Municipal League, Jefferson City, MO
Katie Hudson, Powell Gardens, Kingsville, Missouri
Sherri Irving, Kansas City Water & Light, Kansas City, Missouri
Penny James, Citizen, Lone Jack, Missouri
Williams James, Citizen, Lone Jack, Missouri
Steve Jeffrey, Ozark Civilian Conservation Corps, St. Louis, Missouri
Gwendolyn Jenkins, Citizen, Belton, Missouri
Ramona Jenkins, Citizen, Belton, Missouri
Molly Kenney, Powell Gardens, Kingsville, Missouri
Shirley Kidwell, Citizen, Fulton, Missouri
Chris Klenklen, Missouri Department of Agriculture, Jefferson City, Missouri
Caroline Kroh, Powell Gardens, Kingsville, Missouri
George Kroh, Powell Gardens, Kingsville, Missouri
Karen Lux, Lone Jack Neighbors, Lone Jack, Missouri
Dwight Maring, Powell Gardens, Kingsville, Missouri
Duane Mason, Citizen, Jackson County, Missouri
Claude Matthews, Citizen, Lone Jack, Missouri
Dawn Matthews, Citizen, Lone Jack, Missouri
Dave Michaelson, Missouri Department of Natural Resources, Jefferson City, Missouri
Jack Meinzenbach, Citizens Climate Lobby, Columbia, Missouri
John Meyer, Citizen, Oak Grove, Missouri
Lynn Milberg, Missouri Department of Natural Resources, Jefferson City, Missouri
Virginia Miller, Citizen, Fairway, Kansas
Kevin Perry, REGFORM, Jefferson City, Missouri
Karla Pierce, Citizen, Independence, Missouri
Sandy Powell, Powell Gardens, Kingsville, Missouri
Jill Sellenreick, Citizen, Fulton, Missouri
Kurt Schafer, Lathrop Group, Jefferson City, Missouri
Tabitha Schmidt, Powell Gardens, Kingsville, Missouri
Terry Spine, Citizen, Unionville, Missouri
Darrick Steen, Missouri Corn Growers/Soybean Association, Jefferson City, Missouri
Tom Steever, Brownfield, Jefferson City, Missouri
Tasha Stephens, Citizen, Johnson County, Missouri
Patti Wallace, Citizen, Kingsville, Missouri
Tommy Wallace, Citizen, Kingsville, Missouri
Clayton Ward, Valley Oaks, Oak Grove, Missouri
David Ward, Valley Oaks, Oak Grove, Missouri
Carolyn Wilkerson, Lone Jack Neighbors, Lone Jack, Missouri
Charity Wilkerson, Citizen, Lone Jack, Missouri
Jack Wilkerson, Citizen, Lone Jack, Missouri
Jeff Wilkerson, Citizen, Lone Jack, Missouri
Hunter Woodall, Kansas City Star, Kansas City, Missouri

CALL TO ORDER

Chair McCarty called the meeting of the Missouri Clean Water Commission (CWC) to order on December 10, 2018, at 10:02 a.m., at the Department of Natural Resources State Office Building, 1730 East Elm Street, Jefferson City, MO.

Chair McCarty introduced the Commissioners, Staff Director, Legal Counsel, and the Commission Secretary.

Administrative Matters

Administrative Hearing Commission's Recommended Decisions Regarding County Club Homes, LLC, Appeal Nos. CWC 18-0498 and CWC 18-0501
Agenda Item #1

An oral motion was made to disqualify Commissioner Reece. Commissioner Reece made comments regarding his visit to Country Club Home's Valley Oaks facility and Powell Gardens.

Commissioner Coday made a motion to deny the motion to disqualify Commissioner Reece. Commissioner Rowland seconded the motion. The motion passed with a roll call vote:

Commissioner Coday:	**Yes**
Commissioner Thomas:	**Yes**
Commissioner Reece:	**Abstain**
Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Chair McCarty:	**Yes**

Appeal No. CWC 18-0498
Steve Jeffrey, representing Lone Jack Neighbor's in the case, made comments to the Commission. Lone Jack Neighbors has approximately 1,000 members, and they have concerns about the CAFO. Mr. Jeffrey asked the Commission deny the permit based on the fact that the permit application was submitted using a false name and that neighbor letters were sent out 6-7 weeks late as designated by the regulations.

Shawna Bligh, Missouri Attorney General's Office, made comments to the Commission regarding the AHC decision. The AHC has recommended that the commission reverse the decision of the Department to issue the permit, her office is asking that the Commission reject the recommendation of the AHC and sustain issuance of the permit. Ms. Bligh also spoke to the issue of continuing authority on this permit application.

Jennifer Griffin spoke on behalf of the permittees. She is asking that the Commission sustain issuance of the permit. The argument was placed before the Commission that as a third party, the neighbors did not have the right to file an appeal on this matter. Ms. Griffin also provided information on the neighbor notices that were sent out by the permittee.

Appeal No. CWC 18-0501

Chuck Hatfield, representing Powell Gardens in this case, provided binders to the Commission with what his client feels is relevant on the matter. He also provided comments to the Commission on how the facility will affect water quality in the area and how the application did not comply with the Department regulations that are designed to protect the quality of the water.

Jennifer Griffin speaking on behalf of the permittees, made comments to the Commission regarding the neighbor notice requirements as they relate to the recommendation of the Administrative Hearings Commission (AHC). Ms. Bligh also made comments on the issue of Continuing Authority.

Ms. Griffin, speaking on behalf of Valley Oaks, made comments about an offer to settle pending claims with Powell Garden. She asked that the Commission hold off on making a decision for a week so that the parties can review and consider the offer.

Commissioner Thomas moved the Commission go into closed session to discuss legal, confidential, or privileged matters under Section 610.021(1), Revised Statutes of Missouri. Commissioner Reece seconded the motion. The motion passed with a roll call vote.

Commissioner Reece: Yes
Commissioner Rowland: Yes
Commissioner Coday: Yes
Commissioner Thomas: Yes
Chair McCarty: Yes

Open session reconvened at 2:01 p.m.

Commissioner Thomas made a motion to adopt the decision of the Administrative Hearing Commission decision regarding Country Club Homes, LLC No. 18-0498. Commissioner Rowland seconded the motion. The motion passed with a roll call vote:

Commissioner Rowland: Yes
Commissioner Coday: No
Commissioner Reece: Yes
Commissioner Thomas: Yes
Chair McCarty: Yes

Commissioner Reece made a motion to adopt the decision of the Administrative Hearing Commission decision regarding Country Club Homes, LLC No. 18-0501. Commissioner Coday seconded the motion. The motion passed with a roll call vote:

Commissioner Coday: Yes
Commissioner Reece: Yes
Commissioner Rowland: No
Commissioner Thomas: Yes
Chair McCarty: Yes

Presentations

Public Comment and Correspondence
Agenda Item 3

Barbara Edwards, citizen, provided handouts and comments to the Commission.

ADJOURNMENT OF MEETING

Chair McCarty adjourned the meeting.

Commission adjourned the open meeting at 2:11 p.m.

For more information contact:
Ms. Krista Welschmeyer, Commission Secretary, Missouri Clean Water Commission
Water Protection Program, P.O. Box 176, Jefferson City, MO 65102
Phone: 573-751-6721
Fax: 573-526-1146
E-mail: krista.welschmeyer@dnr.mo.gov

Respectfully Submitted,

Chris Wieberg
Director of Staff

1

2

3 BEFORE THE
MISSOURI CLEAN WATER COMMISSION

4

5 Meeting
6 December 10, 2018
Bennett Spring/Roaring River Conference Rooms
7 1730 East Elm Street
Lower Level
8 Jefferson City, Missouri

9

10 BEFORE: Ashley McCarty, Chair
Patricia Thomas, Acting Vice Chair
11 John Reece, Commissioner
Stan Coday, Commissioner
12 Allen Rowland, Commissioner

13

14 ALSO PRESENT:

15 Chris Wieberg, Director of Staff for the Commission and
Director of the Water Protection Program
16 Tim Duggan, Commissioner Legal Counsel
Chelsey Distler, Acting Secretary to the Commission and
17 Acting Secretary to the Program

18

19

20

21

22

23 Reported by:
Patricia A. Stewart, CCR 401
24 Alaris Litigation Services
Jefferson City, Missouri 65109
25 (573) 636-7551

(Start time: 10:00 a.m.)

P R O C E E D I N G S

CHAIR MCCARTY: Good morning everyone. If everyone can take their seats, we'll call this meeting of the Clean Water Commission to order.

Good morning. My name is Ashley McCarty. Welcome to this meeting of the Missouri Clean Water Commission. We are pleased to have everyone here. Thank you for your participation and involvement in the matters that come before this Commission.

I would first like to introduce those of us who sit on the Commission and work with the Commission.

First to my right is Commissioner Pat Thomas from Jefferson City. To her right is Stan Coday, Commissioner from Seymour, Missouri. To his right is John Reece, Commissioner from Lee's Summit. And last but not least Allen Rowland, Commissioner from Dexter, Missouri.

To my left sits Chris Wieberg, the Director of Staff for this Commission and the Director of the Water Protection Program. Tim Duggan, our Commission legal counsel from the Attorney General's Office, is to his left. And at the end of the table is Chelsey Distler, the Acting Secretary to the Commission and Acting Secretary to the Program.

1 Our first order of business this morning is
2 in the absence of our Vice Chair today, Ben Hurst, I
3 would like to appoint an Acting Vice Chair for today,
4 and do that in Commissioner Pat Thomas to my right.
5 Then the next motion before us will be to
6 take up motions to disqualify individual commissioners.
7 And the first motion that we will address -- we're going
8 to split these to address them appropriately, and the
9 first motion we will address will be the motion to
10 disqualify myself.
11 So I'm going to turn the gavel and the floor
12 over to Commissioner Thomas.
13 MR. JEFFERY: Excuse me, Madam Commissioner.
14 I hate to interrupt but given the opportunity,
15 Lone Jack Neighbors is going to voluntarily withdraw
16 both its motions to disqualify.
17 CHAIR MCCARTY: Thank you, Counsel. I
18 appreciate that.
19 Given that we will -- yes, ma'am.
20 MS. GRIFFIN: I'm sorry. I'm Jennifer
21 Griffin with Lathrop & Gage and on behalf of the
22 intervenors. In light of the withdrawal of the
23 Lone Jack --
24 CHAIR MCCARTY: We do have people joining us
25 today on the internet and via the web, so thank you for

1 speaking in the microphone.
2 MS. GRIFFIN: No problem.
3 As I mentioned, I'm Jennifer Griffin with
4 Lathrop & Gage. I represent the intervenors.
5 In light of the withdrawal of the neighbors'
6 motions to disqualify, I would like to make an oral
7 motion on behalf of my clients to disqualify
8 Commissioner Reece based on the fact that he actually
9 visited the facility during the pendency of the appeals,
10 which as is noted in the pleadings previously filed by
11 the neighbors was a grounds for disqualifying
12 Commissioner McCarty in a prior case, and we believe
13 that he should be disqualified for that reason.
14 CHAIR MCCARTY: Thank you.
15 One moment everyone.
16 At this time we would like just to get
17 matters started. So we know who is talking to us today,
18 could all of the counsel for the parties introduce
19 themselves this morning. And if anyone besides
20 Ms. Griffin has anything to say on that motion briefly,
21 we would welcome that.
22 MS. BLIGH: Shawna Bligh with the Missouri
23 Attorney General's Office, and I will be representing
24 Respondent Department of Natural Resources today.
25 CHAIR MCCARTY: Thank you, Shawna.

1 MR. JEFFERY: Hello. Steve Jeffery
2 representing Lone Jack Neighbors.
3 Concerning the oral motion that was just
4 made, we would submit that any oral motion to disqualify
5 Commissioner Reece based on an issue that we have
6 dropped our motion to disqualify for, that it's somewhat
7 disingenuous on the part of the intervenors to make
8 that.
9 They just handed me this morning two
10 pleadings they filed which said that none of the
11 commissioners should be disqualified for any reason, so
12 they've waived any argument that any commissioner should
13 be disqualified.
14 So we would suggest that Commissioner Reece
15 is more than fair and impartial to sit on this panel and
16 would object to this for that reason and the fact that
17 it's very untimely.
18 CHAIR MCCARTY: Thank you.
19 MR. HATFIELD: Good morning. My name is
20 Chuck Hatfield. Together with Amy Davenport we
21 represent Powell Gardens and the Deichs.
22 As you know we took no position on the
23 previous motion to disqualify. I don't know anything
24 about this motion, so I don't know exactly what the
25 facts are as to whether Commissioner Reece was there

1 during the appeal or not, and we don't have anything
2 really to respond to it at this point.
3 So I don't think it would be fair just
4 fundamentally at this time to have disqualifications on
5 an oral motion that no one has had a chance to respond
6 to or consider.
7 Thank you.
8 CHAIR MCCARTY: Thank you, Chuck.
9 MS. GRIFFIN: And again, just for purposes of
10 the formal record, I'm Jennifer Griffin and I represent
11 the Intervenors Valley Oaks Real Estate, LLC and
12 Countryclub Homes, LLC.
13 And I would submit that, first of all, I
14 think there is nothing that prohibits an oral motion to
15 disqualify. And we did plead in the alternative in the
16 pleading that we filed this morning in response to the
17 neighbors' motion, and the fact of the matter is the
18 neighbors cited to a specific case that was bound by the
19 Cole County Circuit Court in Callaway Farrowing that if
20 a Commissioner visits a site, it's automatic
21 disqualification, and we believe that Commissioner
22 Reece's action should disqualify him.
23 And I would also just like to ask for the
24 record, ask Commissioner Reece to verify whether or not
25 he did visit the site.

1 CHAIR MCCARTY: While deliberating as a body
2 on whether to accept this motion this morning,
3 Commissioner Reece, do you wish to make any comment or
4 not?
5 COMMISSIONER REECE: The only thing I would
6 like to say is I did -- I don't remember the day, but I
7 did visit Powell Gardens, and on that same day I did
8 visit Valley Oaks, mainly for my own edification to see
9 what was there and to see what type of an operation they
10 had.
11 And if that disqualifies me, then something
12 is wrong. I'm trying to educate myself as to what is
13 going on, and I think visiting the site gave me a lot of
14 insight into this whole proceeding.
15 CHAIR MCCARTY: Thank you, Commissioner
16 Reece.
17 I would like to bring this before the
18 Commission for a decision.
19 Thank you, Jennifer.
20 Before the Commission for a decision on
21 whether to take up this motion, I would like to speak to
22 it briefly first.
23 I believe that an educated commissioner is an
24 asset to decision-making processes as well, and I think
25 that when the commissioners visited with DNR the

1 facility that was going to be hosted in Callaway County
2 was also in an effort to be educated and informed
3 decision makers to do the best job that we can in our
4 citizen role and, therefore, do not find that this
5 motion would have standing to disqualify Commissioner
6 Reece personally from his decision-making process in
7 this proceeding but would bring this before the
8 Commission for your input and deliberation as well.
9 Commissioner Coday.
10 COMMISSIONER CODAY: Madam Chair, I would
11 move that we would deny this motion to disqualify
12 Commissioner Reece.
13 CHAIR MCCARTY: That motion has been made.
14 Is there a second to that motion?
15 COMMISSIONER ROWLAND: Chair, Allen Rowland.
16 I'll second that motion.
17 CHAIR MCCARTY: Commissioner Rowland has
18 seconded.
19 Any discussion?
20 COMMISSIONER CODAY: Madam Chairman, I would
21 just say that I have sat next to Commissioner Reece for
22 a year now on this Commission, and I have never found
23 him to be anything but fair. Regardless at times of his
24 own personal feelings he has always acted I think in the
25 best regard of the state and the waters of the state,

1 and it's almost offensive to me to think that he would
2 be anything but fair in any dealings that have to do
3 with this Commission.
4 CHAIR MCCARTY: Thank you.
5 I think that we all try to hold to that high
6 standard as well.
7 Chelsey, can you call the roll on this
8 motion?
9 MS. DISTLER: Commissioner Coday.
10 COMMISSIONER CODAY: Aye.
11 MS. DISTLER: Commissioner Reece.
12 COMMISSIONER REECE: Abstain.
13 MS. DISTLER: Commissioner Rowland.
14 COMMISSIONER ROWLAND: Aye.
15 MS. DISTLER: Commissioner Thomas.
16 COMMISSIONER THOMAS: Aye.
17 MS. DISTLER: Chair McCarty.
18 CHAIR MCCARTY: Aye.
19 Motion has passed, so that motion has been
20 denied.
21 And with that and all of those developments
22 we will now move to consideration of the Administrative
23 Hearing Commission's recommended decision regarding
24 Countryclub Homes' appeal, and I'm going to look to our
25 counsel to see what order our counsel goes in, because

1 there is two appeals before us, 0498 and 0501.
2 MR. DUGGAN: I wrote letters to the counsel
3 in both cases indicating the order in which we would
4 take up the matters after conferring with the
5 Commission.
6 The first case was 0498. The reason that was
7 going to be taken up first is because of the motions
8 that have been withdrawn, but there is no reason not to
9 hear that case first.
10 And the reason we're taking them separately
11 is because there are separate recommended decisions from
12 the Administrative Hearing Commission, and I anticipate
13 that it's entirely possible that this Commission will
14 issue separate decisions and take separate votes on
15 those two recommendations, so it makes sense to me to
16 take the cases up separately.
17 Given that there is overlap on some of the
18 issues, counsel may not be redundant in 501 of anything
19 they've said in 498 if it would expedite the proceedings
20 today.
21 I would also point out that in deciding which
22 order counsel would present, there's no consideration
23 whatsoever with respect to burdens of proof or any of
24 that sort of thing. It's merely three presentations and
25 they are separate and independent of each other. It

1 wouldn't necessarily matter who goes first in my view.
2 For convenience sake we have decided we would
3 hear first from the Petitioners, those who filed
4 complaints with the Administrative Hearing Commission
5 against the decision by the Department to issue the
6 permit.
7 With that said the first case is 0498, and
8 the first person to speak to this matter will be Steve
9 Jeffery.
10 CHAIR MCCARTY: And with that I would like to
11 note that in that same letter each party has been
12 allowed 15 minutes for our presentation. I will be
13 keeping time on that. That does not include questions
14 that will come to the counsel. And I would just
15 encourage everyone in the room today to respect the
16 process and maintain decorum, as I'm sure you will.
17 Okay. Steve, would you like to come forward.
18 MR. JEFFERY: Thank you.
19 Good morning, Chairman McCarty, and members
20 of the Clean Water Commission.
21 My name is Steve Jeffery. I represent the
22 Petitioner Lone Jack Neighbors in this case. I will be
23 brief. I don't have any handouts or exhibits, and so
24 hopefully we'll move things along relatively quickly.
25 As an initial matter, just to introduce to

1 the Commission who my client is, Lone Jack Neighbors is
2 a group of citizens who live in the immediate area of
3 where the proposed CAFO would be located. Lone Jack
4 Neighbors has approximately a thousand members on their
5 Facebook page, several of who are present at the meeting
6 today.
7 I would ask those folks to stand up if you're
8 from Lone Jack Neighbors supporting Lone Jack Neighbors.
9 These folks have taken out of their day to
10 travel to Jeff City from the Kansas City area because
11 this is an important issue for them.
12 The two points I would like to make are
13 really set forth in the AHC's recommended decision.
14 I'd like to draw the Commission's attention
15 to the recommended decision initially at page 12 on the
16 question -- or excuse me. Let's start at page -- it's
17 on pages 11 and 12.
18 Really the two issues that I'd like to talk
19 about today are, first, what the name of the applicant
20 who applied and was issued this permit. It's clear by
21 reading the recommended decision that Commissioner
22 Berri --
23 CHAIR MCCARTY: This would be -- make sure
24 that it's not page 12 of 501. It's the second
25 recommended decision under Tab 1 in our book.

1 Okay. Sorry. We were all confused.
2 MR. JEFFERY: Okay. I'm looking at 498 --
3 CHAIR MCCARTY: Yes.
4 MR. JEFFERY: -- on pages 11 and 12, where we
5 talk about where Commissioner Berri discusses the name
6 Country Club Homes versus Countryclub Homes, that each
7 are two distinct legal entities, the one entity who
8 applied who submitted the permit application was not a
9 valid limited liability company in Missouri, was never
10 recognized by the Missouri Secretary of State. It in
11 effect was a non-- it had no form. It was nonexistent.
12 And at the time that it was submitted the
13 permit application was signed, so one would have to
14 infer that the people who were behind this operation
15 were aware of the fact that an improper name was being
16 used.
17 Why that improper name was used would only be
18 up to speculation on all of our parts, but it's really
19 not important, because as the AHC recommends, the fact
20 that it was an improper name was fatally deficient and
21 the permit should be denied on that basis.
22 Secondly, another issue that Commissioner
23 Berri discussed was the fact of when neighbor notices
24 are required to be provided by the permit applicant to
25 people who live in the immediate area where a CAFO is

1 going to be permitted.
2 The Commission's own regulation states that
3 the neighbor notices have to be issued prior to the time
4 the permit application was submitted.
5 In this case the facts show the permit
6 application was submitted in mid December but yet the
7 neighbor notice letters didn't go out until the end of
8 the following January. They were six to seven weeks
9 late, and that didn't comply, didn't comport with the
10 Commission's rules, and for that reason the Commission
11 of the AHC recommended, said the permit be vacated
12 because the neighbor notice requirements were not
13 satisfied.
14 So on those two grounds we submit on behalf
15 of Lone Jack Neighbors that the Commission should accept
16 the recommendation of the AHC and vacate the permit
17 issued to Countryclub Homes.
18 I'd be glad to answer any questions.
19 CHAIR MCCARTY: Thank you.
20 Commissioners, any questions for Mr. Jeffery?
21 I see none at this time.
22 MR. JEFFERY: Thank you.
23 CHAIR MCCARTY: Thank you.
24 MR. JEFFERY: Was I within my 15 minutes?
25 CHAIR MCCARTY: Absolutely.

1 MR. DUGGAN: Shawna Bligh, you're up next.
2 MS. BLIGH: Good morning, Commissioners. My
3 name is Shawna Bligh. I'm with the Missouri Attorney
4 General's Office, and myself and my colleague Jennifer
5 Hernandez represented the Department of Natural
6 Resources at the hearing in front of the Administrative
7 Hearing Commission on this permit appeal.
8 I'd like to start by giving a little bit of
9 an overview of what I think some of the confusion is
10 with respect to the AHC's recommended decision.
11 As you know the AHC recommends that the
12 Commission reverse the decision of the Department to
13 issue the permit.
14 We would ask that the Commission actually
15 reject the recommended decision of the AHC and proceed
16 with issuance of the permit or sustain issuance of the
17 permit.
18 When the Department receives permit
19 applications, it receives all of the documents that are
20 essentially outlined in 10 CSR 20-6.300, Sub 2,
21 paragraph 8. It's been charged with the task of
22 reviewing the application materials for compliance with
23 two distinct regulations, 10 CSR 20-6.300 and
24 10 CSR 20-8.300, which are design criteria.
25 The Department by statute by Section 644.051

1 is entirely limited to the inquiry of whether or not the
2 applicant meets those two regulatory requirements. If
3 an application comports with those two regulations, then
4 the Department must issue a permit.
5 The AHC's recommended decision ignored key
6 provisions of these regulatory requirements set forth in
7 10 CSR 20-6.300 and 10 CSR 20-8.300 and confused issues
8 of permitting compliance with operational compliance.
9 We think that's essentially the core of where the AHC
10 may have got -- or went astray with regard to its
11 recommended decision.
12 With respect to the neighbor notices, the
13 applicant did, in fact, with its application submit
14 neighbor notice letters. In fact, the neighbor notice
15 letters were mailed out prior to submittal of the
16 application on August 28, 2017. The application was
17 received by DNR on August 31st of 2017.
18 Consistent with DNR's obligations and
19 undertaking its review of the application materials,
20 during its review DNR observed that neighbor notices
21 were not sent to all of the parties listed in
22 10 CSR 20-6.300, Subparagraph 3, Sub C, Paragraph 2.
23 As such DNR required that the permittee correct this
24 issue prior to issuance of the permit.
25 The fact that they required this is exactly

1 consistent with what the regulations provide; namely, in
2 10 CSR 20-6.300, Subparagraph (2)(E)4, states that when
3 an application is submitted incomplete or any of the
4 required permit documents are deficient, or if
5 additional information is needed, including, but not
6 limited to, engineering designs, the Department will act
7 in one of the following ways: The Department may return
8 the entire permit application back to the applicant for
9 resubmittal or the applicant and/or the applicant's
10 engineer will be notified of the deficiency and will be
11 provided time to address the Department's comments and
12 submit corrections. This is exactly what happened in
13 this case.
14 As such, because the Department was diligent
15 in looking through the various requirements that it had
16 to look through with regard to issuance of the permit
17 and noticing that the notice letters were not sent out,
18 they notified the applicant. The applicant corrected
19 this issue, sent a second round of neighbor notice
20 letters out. These letters were sent out January 3rd,
21 2018. At that time the CAFO application had already
22 been under DNR review for approximately four months.
23 What is key here is the neighbor notice
24 letters were, in fact, sent out prior to issuance of the
25 application. Furthermore, there was no real harm that

1 resulted from this because evidenced alone by the
2 thousands of comments that were received on this permit,
3 including from surrounding neighbors.
4 On that point we think that the AHC flatly
5 perhaps didn't get it factually correct in noting that
6 the neighbor notices were, in fact, submitted prior to
7 submittal of the application to the Department and
8 certainly didn't recognize that these type of things
9 happened consistently in undertaking a permit review,
10 that frequently applicants are required to submit
11 additional documentation before the application is
12 deemed complete.
13 Additionally I'd like to touch on the
14 continuing authority issue in this case and provide a
15 little bit more background, and I'm sure that you guys
16 are somewhat aware of this just by reading the proposed
17 recommended decision.
18 The continuing authority issued in this case
19 rests solely upon the presence or absence of one space,
20 a single space. Due to the addition of a space between
21 Country and Club on the permit application, the AHC made
22 a broad-based conclusion that there was no continuing
23 authority for the facility.
24 The Secretary of State's Office did, in fact,
25 have an entity named Countryclub, no space between the Y

1 and the C. The AHC contends that spelling matters, but
2 this is not strictly a spelling issue as much as a
3 spacing issue. Like I said, a single space.
4 The AHC's decision would result in an overly
5 strict -- that would result in an overly strict result,
6 meaning that the mere incorrect placement, subtraction
7 or addition of a space, a comma, a period could result
8 in a broad conclusion that a facility lacks continuing
9 authority.
10 DNR, when it undertook its review, there was
11 no question that the entity that was applying for the
12 permit was the same entity which appeared in the
13 Secretary of State's website. DNR did, in fact, look on
14 the Secretary of State's website and compared the entity
15 with no space with the entity that appeared on the
16 application and deemed it to be the same exact entity.
17 This is just a common-sense approach. There was no
18 question to DNR that these were the same entities.
19 Furthermore, Missouri case law which the
20 Commission -- which we feel that the Administrative
21 Commission did not take up or consider holds that a
22 minor discrepancy in the naming of an entity does not
23 rise to the level of rendering any entity invalid or
24 nonexistent. This is in State ex rel Hutchison versus
25 McGrath, also Empire Trust Company versus Empire Finance

1 Corporation.
2 The courts make clear that in determining
3 whether such entities are, in fact, the same, one looks
4 to whether or not the discrepancy in the name would
5 result in confusion.
6 In this case there was no confusion. DNR
7 reviewed the name on the application -- on the permit
8 application, reviewed the name on the Secretary of
9 State's website, as well as some of the identifying
10 information that also appeared on the Secretary of
11 State's website, and determined that this was, in fact,
12 the same entity. And it is true. It is, in fact, the
13 same entity.
14 So there is no public confusion that resulted
15 as a result of this, and there certainly was, in fact,
16 continuing authority. Countryclub, no space, Homes, LLC
17 was lawfully organized and in good standing as the owner
18 of the property as a perpetual, meaning permanent,
19 entity.
20 As such we feel that the AHC's decision with
21 respect to the continuing authority issue is misguided
22 and simply wrong.
23 Since we have two permit appeals and as
24 Mr. Duggan indicated we have some overlapping issues
25 between those two permit appeals, at this time just for

1 purposes of I guess brevity, one of the issues that
2 arises with the Powell Gardens' appeal is involving
3 manure storage.
4 The AHC contends that there was not adequate
5 manure storage because the Department misapplied the
6 definition of dry process waste.
7 The required manure storage for any facility
8 is driven by the amount of manure generated at the
9 facility. The amount of manure generated is based upon
10 a calculation set forth in the Nutrient Management
11 Technical Standard.
12 Now, importantly, DNR -- and this is actually
13 substantiated by the AHC's recommended decision --
14 relies solely upon the seal of a professional engineer
15 to certify the accuracy of the manure storage
16 calculations for the facility. In this case the
17 permittee voluntarily submitted those manure
18 calculations.
19 DNR in undertaking its review can rely solely
20 upon that seal of the professional engineer.
21 COMMISSIONER THOMAS: Ms. Bligh.
22 MS. BLIGH: Yes, ma'am.
23 COMMISSIONER THOMAS: I believe we were going
24 to take those issues up separately.
25 CHAIR MCCARTY: It's just for clarity. We

1 appreciate your brevity.
2 COMMISSIONER THOMAS: I understand your
3 brevity, and we're just saying because the two do have
4 similar, it would be better to come back later.
5 MS. BLIGH: That's fine.
6 COMMISSIONER THOMAS: All right. Thank you.
7 MS. BLIGH: And then with respect to the
8 permit appeal that was filed by Lone Jack Neighbors, I
9 think I've sufficiently addressed the continuing
10 authority issue, as well as the issue of the neighbor
11 notices.
12 At this time do the commissioners have
13 questions on those issues?
14 CHAIR MCCARTY: Stan.
15 COMMISSIONER CODAY: I believe that you've
16 already answered this, but just for clarity, what is the
17 purpose of the neighbor notice?
18 MS. BLIGH: The purpose of the neighbor
19 notice is to inform the neighbors of the construction of
20 the facility, the operation of the facility, to ensure
21 that the neighbors are given sufficient detail regarding
22 the nature of the operations and how those operations
23 could or may not impact their properties or any
24 surrounding property interest.
25 COMMISSIONER CODAY: And it's your -- you

1 believe that the neighbor notices were given out before
2 the permit was issued?
3 MS. BLIGH: Yes, one round of neighbor
4 notices were. The neighbor notices were sent out prior
5 to submittal of the application. They were originally
6 sent out on August 28, 2017.
7 When DNR was undertaking its review -- oh,
8 just real quick. The application was received by DNR on
9 August 31st, some three to four days after that fact.
10 COMMISSIONER CODAY: Okay.
11 MS. BLIGH: During its review of the
12 application materials DNR discovered that some of those
13 notices -- it may have only been a handful. I just
14 can't remember the exact number -- were not sent out to
15 all of the people; therefore, it required that a second
16 round of neighbor notices go out just to be sure under
17 an abundance of caution that everyone was aware of this
18 facility and what was going to take place at the
19 facility.
20 CHAIR MCCARTY: Thank you.
21 Commissioner Thomas.
22 COMMISSIONER THOMAS: That was my only
23 statement.
24 COMMISSIONER REECE: Madam Chair.
25 CHAIR MCCARTY: Yes.

1 COMMISSIONER REECE: How many neighbor
2 notices were sent out initially? And then you said it
3 was determined that there wasn't -- everyone was not
4 notified. How many neighbor notices were sent out?
5 MS. BLIGH: If you don't mind, I'd like to
6 just ask Greg Caldwell real quick for the exact number,
7 if you don't mind.
8 MR. CALDWELL: It was about a half a dozen.
9 MS. BLIGH: Approximately a half a dozen, so
10 approximately six.
11 COMMISSIONER REECE: Okay. And then after
12 that how many neighbor notices -- after the permit was
13 submitted, how many neighbor notices were sent out the
14 second round?
15 MS. BLIGH: All of the required neighbor
16 notices were sent out.
17 COMMISSIONER REECE: And how many --
18 MS. BLIGH: Do you have --
19 MR. CALDWELL: Probably 25 or so.
20 MS. BLIGH: 25 to 27.
21 COMMISSIONER REECE: Thank you.
22 COMMISSIONER THOMAS: Just as a follow-up to
23 that, what is the radius required for the neighbor
24 notice?
25 MR. CALDWELL: It's 3,000 feet.

1 MS. BLIGH: 3,000 feet.
2 COMMISSIONER THOMAS: Thank you.
3 CHAIR MCCARTY: Shawna, I have the 24 that
4 were sent out January 30th. Do we have in the record
5 the neighbor notices sent August 28th?
6 MS. BLIGH: I believe those would be included
7 in the administrative record. That's correct, right.
8 Yes, it should be included in the administrative record
9 as well.
10 CHAIR MCCARTY: Does anyone know where they
11 are?
12 MS. BLIGH: Do you know where they are?
13 They should be with the original application
14 that was submitted.
15 CHAIR MCCARTY: Okay. I'll look.
16 COMMISSIONER CODAY: So was it a
17 misunderstanding of who needed to receive those notices
18 the first time or why were there so few sent out the
19 first time compared to what was finally sent out?
20 MS. BLIGH: Frankly I'm not sure what the
21 issue was with respect to intervenors on that issue. I
22 think Ms. Griffin would probably be able to give the
23 Commission a little bit better information on why
24 approximately six of them were not sent out, but I think
25 it was just perhaps not including all of the parties

1 that were required to receive the notice under
2 10 CSR 20-6.300.
3 CHAIR MCCARTY: Any other questions for
4 Shawna at this time?
5 COMMISSIONER CODAY: In relation -- or
6 relative to continuing authority, I just -- again, I
7 want to be clear.
8 There would have been no difference in the
9 outcome had this space not been left out. Correct?
10 MS. BLIGH: That's correct. That's correct,
11 sir.
12 Also one thing that I did want to share with
13 the Commission as well is that this has come up in front
14 of DNR many times where you have a slight misspelling, a
15 space, a comma, lack of comma, some slight grammatical
16 issue of some kind, and typically these corrections are
17 made just administerially -- or adminsterial or through
18 an administrative correction, not through completely
19 re-opening a permit.
20 COMMISSIONER THOMAS: So it's your opinion
21 that's standard operating procedure for the Department
22 and not an exception that was made?
23 MS. BLIGH: That's correct.
24 COMMISSIONER THOMAS: Thank you.
25 MS. BLIGH: Any other questions?

1 CHAIR MCCARTY: Not at this time. Thank you.
2 MS. BLIGH: Thank you.
3 MR. DUGGAN: I would like to point out for
4 counsel's benefit, if you're not aware of it, that when
5 the Administrative Hearing Commission transmitted the
6 record of their hearing to this Commission, they did not
7 include in the -- apparently never included your briefs
8 that were filed before the recommended decision was
9 issued.
10 So I noted that Ms. Bligh referred to two
11 cases. We do not have those citations. If you would
12 provide those to us, that would be helpful. And
13 similarly if the other attorneys have citations to cases
14 supportive of their position on these issues, please
15 give us those citations.
16 MS. BLIGH: Would you like those now?
17 MR. DUGGAN: Yes, please.
18 MS. BLIGH: The two cases that I referred to,
19 one is State ex rel Hutchison versus McGrath. That's
20 92 Mo. 355. And then there was Empire Trust versus
21 Empire Finance, 226 Mo.App 298.
22 MR. DUGGAN: These are not to the South
23 Western Reporter?
24 MS. BLIGH: I think they were. I'm sorry. I
25 don't have those citations actually.

1 MR. DUGGAN: Yeah. 92 Mo. 355, that sounds
2 like a Supreme Court Reporter.
3 MS. BLIGH: It is, uh-huh.
4 MR. DUGGAN: What year was that?
5 MS. BLIGH: 1887.
6 MR. DUGGAN: And the other one?
7 MS. BLIGH: 1931. Both of which are
8 shepardized and are still good law.
9 MR. DUGGAN: Do you have the South Western
10 Reporter citations?
11 MS. BLIGH: I don't but I'm happy to provide
12 that to you.
13 MR. DUGGAN: Okay. That's all.
14 CHAIR MCCARTY: Intervenors.
15 Okay. Jennifer.
16 MS. GRIFFIN: I've got a PowerPoint for you.
17 I don't know if you want to dim the lights.
18 MR. WIEBERG: We'll see how it looks,
19 Jennifer, and make a decision.
20 MS. GRIFFIN: Good morning. Again, I'm
21 Jennifer Griffin. I'm here for the permittees in the
22 neighbors' appeal. And, of course, we would ask that
23 the Clean Water Commission issue the permit.
24 We think there are several facets of the
25 recommended decision that are incorrect, and I'd like to

1 walk through each one of those items.
2 The first one is the issue of standing, which
3 is a threshold issue that the AHC was required to
4 consider. It was required to evaluate the law to
5 determine whether or not the neighbors had any right and
6 ability to appeal under Missouri law.
7 And under our statutes Missouri law grants
8 only two classes of persons the right to appeal, and
9 those two classes of persons are applicants and
10 potential applicants. It is undisputed that the
11 neighbors are third parties, and they don't have a right
12 of appeal that's listed in anywhere in our Missouri
13 statutes.
14 And I understand that there is a regulation
15 of the Clean Water Commission that says aggrieved
16 persons have a right to appeal; however, there were some
17 amendments to the pertinent statutes in Chapter 640. I
18 think it is -- which you don't have the benefit of my
19 cites. I apologize.
20 The two relevant statutes are 640.010.1.
21 Before it was amended in 2013 it actually said that the
22 Department's decisions were subject to appeal by
23 affected parties.
24 The other relevant statute is 644.056, and
25 it's the statute that says there are two classes of

1 applicants who have the right to appeal, applicants,
2 potential applicants. There is nothing else in the
3 statutes that talks about appeal.
4 Now, the regulation was adopted at the time
5 when 640.010.1 said that affected parties had a right to
6 appeal. That language was removed from the statute by
7 our Legislature in 2013, and now what it says is the
8 Director's decisions are subject to appeal as provided
9 by law. And it's our position that that change in the
10 statutes aggregated and rendered invalid the regulation
11 granting third parties the right to appeal.
12 So it's our position the neighbors didn't
13 have any ability to appeal, and the appropriate course
14 of action for the AHC was to dismiss the appeal, and
15 that's what we believe should happen here.
16 We've already talked about neighbor notice,
17 so I don't want to belabor the point, but the statute
18 does say that neighbor notice letters have to go out
19 before the permit application is filed, and it also says
20 that the Department is required to accept public
21 comments for at least 30 days.
22 But also by statute it's important to note
23 that the Department has the authority, in fact is
24 supposed to allow an applicant who has a deficiency in
25 any application, including one related to neighbor

1 notice, to correct the error and provide additional
2 information, so long as the Department allows that
3 30 days for public comment.
4 And there is a statute and a regulation that
5 provides that, both of which I have in my presentation
6 here. And I will note that the regulation, the
7 Subsection 6.300(3)(C), that says that deficiencies can
8 be corrected is founded based on two different statutes,
9 the 644.051, which is part of the rulemaking authority
10 that is granted to this Commission under Chapter 644,
11 and it's also promulgated pursuant to rulemaking
12 authority in Chapter 640.
13 So there is clear language in 644.051.13,
14 Subparagraph 5, that says when the Department does its
15 technical review it is supposed to provide a letter to
16 the applicant and advise the applicant of issues and
17 allow them to submit additional information to correct
18 the deficiencies. And that is what happened here.
19 And as a matter of law, so long as the public
20 is given the minimum 30 days to provide public comment,
21 the requirements are met. And the entire purpose to a
22 question that was asked earlier, the entire purpose of
23 the statute that requires the neighbor notice letters to
24 go out is to provide a framework for a public
25 participation process and allow parties to submit

1 comments -- anybody that might be affected to submit
2 comments for at least 30 days.
3 And what the evidence in the record shows,
4 and the administrative record, is that the Department
5 advised in response to the public comments that
6 Valley Oaks sent out its initial round of neighbor
7 notice letters in August of 2017, which was right before
8 it filed an initial application in August, and then
9 months later filed another application in December of
10 2017.
11 And I cited to the exhibits that are in the
12 record, and Mr. Caldwell gave testimony consistent to
13 that effect at trial, and he also testified, as
14 Ms. Bligh mentioned, that he required a second set of
15 neighbor notices letter to go out because the first
16 round was incomplete.
17 And I actually think there was a slight
18 misstatement by Mr. Caldwell. I think he might have
19 transposed the information. I believe the first round
20 of neighbor notice went to 25 individuals, and what the
21 Department found was there were about six that were
22 missing.
23 And I think once they did the second round,
24 what actually happened was there were a bunch of
25 people -- or multiple people that weren't even required

1 to receive notice that got notice.
2 But the bottom line is once that second round
3 of notice was completed in January of this year, the
4 Department accepted comments up into April, and the
5 Department also held a public hearing it wasn't required
6 to hold, and there is no question that everyone got
7 their right to participate.
8 There was a public participation process,
9 which the entire purpose of the requirement is to give
10 the public at least 30 days to participate, and the
11 Department gave them closer to 90 days to participate.
12 So the neighbor notice requirements were met.
13 The next issue which you've already heard
14 some discussion about is the continuing authority issue.
15 And all the law says is that an applicant has to
16 identify a permanent existing entity to serve as a
17 continuing authority. And as you've already heard, the
18 evidence shows that Valley Oaks did that. It identified
19 Countryclub Homes on its application as a continuing
20 authority.
21 Countryclub Homes is an entity. It's a fact.
22 It's in the record. It's qualified to serve as a
23 continuing authority. It's a Missouri entity and it's
24 permitted and it's existing, and that is what is
25 reflected in the Missouri Secretary of State's records.

1 At trial Mr. Caldwell testified that when he
2 got the application, he went to the Missouri Secretary
3 of State's website, which is the procedure that the
4 Department follows for all applications that are
5 submitted, and he looked for Countryclub Homes, LLC.
6 On the application there was a space between
7 the Country and the Club. It was a typo. These things
8 happen. He found that there wasn't an entity that
9 looked exactly like that, but he saw there was a
10 Countryclub Homes, LLC, which is my client, Mr. Ward's
11 entity, and he noted that it was located in the
12 Kansas City area, which is where the applicant's entity
13 CountryClub Homes was located, and he correctly
14 concluded based on his review that Countryclub Homes was
15 an existing permanent entity that was qualified to serve
16 as a continuing authority.
17 And he further communicated throughout the
18 application process with Mr. Ward, the owner of
19 Countryclub Homes, LLC, and Mr. Ward's engineers, and he
20 testified that when the Department issued the permit,
21 they knew that Countryclub Homes, LLC was the applicant,
22 and that's who they issued that permit to.
23 So, you know, the fact that the space was
24 there or was not there would not have changed in any
25 respect the Department's correct conclusion that a

1 qualified continuing authority was identified on the
2 application, and this permit was properly issued and it
3 was properly transferred later to another entity that is
4 a qualified continuing authority, Valley Oaks Real
5 Estate, LLC.
6 And the remaining issues which we haven't
7 talked about, and they are in my presentation, but
8 another issue that the AHC correctly decided was an
9 attack on the facility's design, which under the
10 regulations, both the permitting regulation
11 10 CSR 20-6.300 and 10 CSR 20-8.300, they both say that
12 the Department is prohibited from looking beyond the
13 engineer's seal to determine any issue related to
14 design.
15 If the application has an engineer's seal,
16 the design has to be accepted as compliant with the
17 design regulation, which is 10 CSR 20-8.300.
18 So in reviewing the arguments related to
19 design, the AHC, like the Department, appropriately
20 concluded that the regulation did not allow it to
21 inquire into the design of the facility.
22 There was also an argument raised relating to
23 groundwater monitoring which the AHC correctly decided.
24 It was argued that the Department was required to have
25 the Missouri Geological Survey determine if a

1 groundwater monitoring program was needed. And the
2 bottom line is is that argument is inconsistent with the
3 wording of Section 640.710, which only allows the
4 Department to require groundwater monitoring programs
5 for Class 1A CAFOs that have lagoons where they store
6 manure, and Valley Oaks is not a Class 1A facility.
7 It's a Class 1B, and it does not have any lagoons in
8 which it stores manure.
9 So there was no requirement, and had the
10 Department tried to impose groundwater monitoring it
11 would have been contrary to the statute. So the
12 Department's decision was correct and so was the AHC's
13 on that point.
14 Another argument advanced by the neighbors
15 was that pharmaceuticals should be considered, that the
16 manure should be evaluated for use of veterinary
17 pharmaceuticals. However, as the AHC and Department
18 correctly concluded, the use of veterinary
19 pharmaceuticals is something that is entirely outside
20 the scope of the permitting process.
21 And under the regulation, 10 CSR
22 20-6.300(3)(G)2.C, the only components of manure that
23 the Department is able to look at during the permitting
24 process are nitrogen and phosphorus, and the manure is
25 required to be tested for both of those. So the

1 Department appropriately decided that pharmaceuticals
2 shouldn't be considered.
3 And in summary basically what the neighbors
4 are asking you is to deny this permit based on
5 speculation and unfounded concerns about the operation
6 and the design of the facility and potential future
7 violations, an incomplete first round of neighbor notice
8 letters that were submitted before the application was
9 filed and a space in the applicant's name.
10 That was a typographical error, which you've
11 heard from the Department's counsel is very commonplace
12 in these applications. It's usually just a technical
13 correction.
14 And what I want to reiterate to you, as
15 Ms. Bligh said, is that the operational and design
16 concerns are outside of the permitting process. They
17 are not a legal basis to deny this permit.
18 The Department correctly decided that the
19 permit should be issued because it met all of the
20 permitting requirements, and that's the decision that
21 we're asking you to make as well.
22 We're quite confident that both the
23 Department and the Commission will enforce the law as
24 they're tasked to do if there are any operational
25 issues.

1 It's my understanding that the Department has
2 already been out to this facility. There have not been
3 any violations cited and everything is working
4 beautifully out there, and the Department has been very
5 impressed with the facility.
6 And we would invite you to visit the
7 facility, and we ask that you issue the permit, and we
8 thank you for your time today.
9 And also, the other thing I'd like to say is
10 I think all of the parties' briefs should be part of the
11 record here today, and we object to the Commission
12 making a decision without having the benefit of that
13 information. We think it's certainly part of the
14 administrative record.
15 So I would ask that the parties be allowed to
16 submit copies of their briefs. I don't know
17 procedurally how the best way to handle that is. I'm
18 sure everyone would want their briefs in, and I don't
19 want anyone to be denied an opportunity to have what
20 they argued to the AHC not be in the record.
21 But I do think the record is incomplete
22 unless it has copies of those pleadings so it can see
23 the positions taken on paper by the parties and the
24 legal reasons and facts that support those respective
25 positions, and I'd like to ask the Commission to receive

1 that information.
2 MR. DUGGAN: Yeah, if I may address that.
3 I assume that the Administrative Hearing
4 Commission follows even in this case procedures it
5 normally follows when there's an appeal from that
6 Commission as a stand-alone administrative -- make
7 decisions to the court's system.
8 They generally e-file the record that they
9 create for purposes of further judicial review of their
10 decisions affecting other kinds of agencies.
11 And it appears that their system is
12 consistent with the Supreme Court rules which basically
13 suggest that in preparing a legal file on an appeal, you
14 are not supposed to include anything beyond the
15 pleadings and those matters that are critical to the
16 decision because there are issues such as jury
17 instructions or some kind of a ruling by the trial court
18 on a motion and so forth.
19 So this Commission did not limit the AHC's
20 record, deny the AHC to limit its providing us this
21 information.
22 That said, I also want to point out that what
23 we did receive by the AHC besides the transcript,
24 exhibits and the recommended decisions were the
25 pleadings, as well as the motions, such as Valley Oaks'

1 motion with respect to standing, the suggestions in
2 opposition to that and so forth.
3 So the preliminary stuff for some reason we
4 seem to have a pretty good record of but not the final
5 briefs with the proposed findings of fact and
6 conclusions of law.
7 It's up to the Commission, but I would point
8 out that if the Commission would like to see those
9 briefs, that could kick out the time they have to make a
10 decision, and as you all know, only the permittee has
11 sole discretion to extend any deadlines.
12 I believe a deadline for this particular --
13 well, there are two because they were filed a few days
14 apart. I think one is December 21st, something like
15 that, and the other one is December 26th, something like
16 that.
17 So if the parties agree and want to submit to
18 this Commission those proposed findings and conclusions
19 that they submitted to the Administrative Hearing
20 Commission, that may cause a bit of a delay in their
21 consideration, but I'll allow the Commission to decide
22 what they want to do about that.
23 CHAIR MCCARTY: I have a question first for
24 Jennifer, and then we'll move to that consideration.
25 Your Exhibit B and G, can you direct me in

1 these four binders of information to -- again, I found
2 the 24 neighbor notices sent January 30th --
3 MS. GRIFFIN: Right.
4 CHAIR MCCARTY: -- but no -- I'm still
5 looking for the August 28th neighbor notice, if it's in
6 our packets.
7 MS. GRIFFIN: I don't think the actual copies
8 of the August 28th letters are in Exhibit B. I
9 referenced Exhibit B because it contains the letters
10 that were sent out in January.
11 CHAIR MCCARTY: Yes.
12 MS. GRIFFIN: Exhibit G is a comment letter
13 response sent out by the Department, and there were some
14 comments received about the neighbor notice issue, and
15 the reason I cited to it was because I didn't see copies
16 of those letters, but it is in the administrative record
17 in that document where the Department notes that that
18 initial round of neighbor notice letters went out in
19 August of 2017.
20 And so that is in the administrative record
21 even though the actual copies of the letters are not.
22 And I don't know why those letters aren't in there, but
23 I didn't see them either.
24 CHAIR MCCARTY: Thank you. That is helpful.
25 If the Commission would hear from the other

1 parties' counsel regarding including the briefs of each
2 set of counsels in our record, do we want to consider
3 that at this time? Would we like to hear from
4 Mr. Jeffery and Shawna on including briefs or would we
5 like to make a decision based on the record before us?
6 It's not an issue that's come up before in
7 our former considerations.
8 Shawna, could we hear from you and
9 Mr. Jeffery?
10 MS. BLIGH: I would echo Ms. Griffin's
11 suggestion that the Commission have those briefs.
12 For instance, during the arguments on the
13 motion to stay, the cases that I referenced to
14 Mr. Duggan, actually there was some briefing on those
15 cases.
16 I believe Mr. Jeffery -- we filed a proposed
17 findings of fact and conclusions of law in the motion to
18 stay that included a discussion of those cases. I
19 believe Mr. Jeffery filed a response, and I believe we
20 also filed a reply.
21 I think that is an example of why it's
22 important that the Commission have all of the things
23 that were filed in this case, including the pleadings
24 that were filed towards the end of the case.
25 So I would echo her comments and suggest that

1 we do provide those to the Commission.
2 CHAIR MCCARTY: Thank you, Shawna.
3 Mr. Jeffery, would you like to address this
4 issue?
5 MR. JEFFERY: Certainly.
6 As an initial matter, since I have some time
7 left over from my initial presentation, I would ask
8 leave to have a very, very brief rebuttal to some of the
9 statements that were made earlier.
10 CHAIR MCCARTY: Okay. Can we address the
11 briefs first?
12 MR. JEFFERY: We have no issue with the
13 Commission receiving the briefs which have been filed in
14 this matter with the AHC.
15 CHAIR MCCARTY: Okay.
16 MR. JEFFERY: Again, very, very briefly.
17 We've all heard of fake news. I sit back and
18 I heard a lot of fake facts in the last few minutes.
19 And I think if the commissioners were to go through the
20 notebooks and compare certain documents, you will find
21 the permit application at issue is dated December the
22 17th, 2017.
23 There was an earlier permit application from
24 August but that's not what we're talking about. We're
25 talking about the December 17th permit application, and

1 then the 25 plus green postal cards reflecting when the
2 neighbor notice were issued on January the 30th, 2018.
3 That definitely confirms that the neighbor notice
4 letters were sent out after the permit application,
5 which is totally in violation of what the Commission's
6 rules state on that point.
7 Secondly, if you would go through the
8 notebooks and look at the letter, the actual permit that
9 was issued to Country Club Homes, LLC, separate words,
10 and compare that, again going through the notebooks, to
11 the certificate of no name issued by the Missouri
12 Secretary of State's Office, which confirms that there
13 is no such entity as Country Club Homes, LLC. That
14 conclusively shows that the permit is invalid.
15 That's all you need to look at to decide this
16 case. All of the other facts are irrelevant, and all of
17 the other arguments which you've heard by the opposing
18 counsel, they were all made to the Administrative
19 Hearing Commission, all of the evidence was submitted to
20 the Administrative Hearing Commission, and the
21 Administrative Hearing Commission came up with a
22 decision recommending that the permit be vacated because
23 of the name issue and the neighbor notice issue.
24 And we would again request that you accept
25 that recommendation, and I'd be glad to answer any

1 questions.
2 COMMISSIONER THOMAS: Thank you.
3 Since you've gone down the path of the fake
4 news thing, I'm going to ask, would you care to direct
5 comments toward the neighbors lack of standing to appeal
6 versus 640.010 and 644.056?
7 MR. JEFFERY: Sure.
8 It's probably important to look at some past
9 history. In 1999 --
10 COMMISSIONER THOMAS: Wait a minute.
11 Let me be clear. You're looking at past
12 history now but you didn't want to accept the
13 Department's past history in standing procedure for
14 issuing a permit based on spacing or grammar.
15 MR. JEFFERY: True.
16 To answer your question, the reason that
17 Lone Jack Neighbors has standing is because the
18 Environmental Protection Agency has a regulation that
19 says -- states who administer their own NPDES program,
20 like Missouri through the Missouri DNR, are required to
21 allow third parties to file permit appeals. So it's a
22 matter of Federal law which gives the neighbors
23 standing.
24 In addition, I believe Ms. Griffin cited to a
25 Commission's regulation which allows the aggrieved

1 parties, which clearly would include the neighbors,
2 particularly those individuals who reside in close
3 proximity to where the CAFO is located, that they are
4 aggrieved.
5 So those are the two factual reasons that the
6 Administrative Hearing Commission determined
7 conclusively that the neighbors have standing.
8 CHAIR MCCARTY: And, Shawna and Jennifer, we
9 will allow you -- since we've opened the door for
10 rebuttal here, we will do the same for you after this
11 continues.
12 Yes, Mr. Coday.
13 COMMISSIONER CODAY: So it's your position
14 that there were no neighbor notices mailed out before
15 the December application?
16 MR. JEFFERY: It's my understanding that
17 there was an August permit application submitted. What
18 happened to that, whether it was withdrawn, that was
19 never an issue when this matter was litigated at the
20 Administrative Hearing Commission.
21 Okay. Like I say, it's my understanding
22 there was an August permit app submitted. There was a
23 handful of neighbor notices sent out in August. But
24 when the new permit app was submitted on December
25 the 17th, there was no new notice -- or no additional

1 neighbor notice letters provided between August and
2 December 17th. In fact, those additional notices
3 weren't sent out for six or seven weeks later, until
4 January the 30th. That's what the paper trail shows.
5 COMMISSIONER CODAY: But there were notices
6 sent out before the December -- because you said the
7 December application was the one that counts.
8 MR. JEFFERY: Correct.
9 COMMISSIONER CODAY: You said we're not
10 worried about August.
11 Before December there were some -- I'm not
12 saying all -- there were some neighbor notices sent out?
13 MR. JEFFERY: Just to clarify, it's my
14 understanding that those earlier neighbor notice letters
15 related to the August permit application. They didn't
16 relate to the December 17th permit application.
17 CHAIR MCCARTY: I would like to know --
18 MR. JEFFERY: And again, I would just refer
19 to the documents. The documents speak for themselves.
20 COMMISSIONER REECE: Ashley, I have a
21 question.
22 CHAIR MCCARTY: Yes, sir.
23 COMMISSIONER REECE: Why was the August
24 permit application withdrawn?
25 MR. JEFFERY: I do not know the answer to

1 that.
2 CHAIR MCCARTY: Do we know that that permit
3 application was withdrawn or was that permit updated is
4 the question that I have at this point for this
5 discussion. Yeah, so this is just for all of the
6 parties.
7 Do we have an update to a deficient permit
8 that was first received in August that was updated in
9 December? Do we have two separate permits that were
10 filed? I think that's a question before us that's not
11 clear at this point in the discussion.
12 MR. JEFFERY: And I personally don't know the
13 answer to that.
14 COMMISSIONER THOMAS: It would be interesting
15 to know if the letters referenced a similar permit
16 number or a separate permit number? Were there two
17 filing fees made?
18 CHAIR MCCARTY: They wouldn't have a permit
19 number because they weren't granted a permit.
20 COMMISSIONER THOMAS: So it's just a
21 notification to neighbors that basically says we're
22 interested in building -- pursuing a business --
23 CHAIR MCCARTY: X, Y and Z.
24 COMMISSIONER THOMAS: And are the two
25 letters -- to your knowledge are the two letters between

1 August and January the same letter?
2 MR. JEFFERY: I don't know. Again, I would
3 refer the commissioners to the actual documents that are
4 in the exhibit binders.
5 COMMISSIONER THOMAS: Okay.
6 CHAIR MCCARTY: Perhaps we'd ask Ms. Griffin
7 the same question.
8 COMMISSIONER THOMAS: Agreed.
9 CHAIR MCCARTY: Okay. Thank you.
10 MR. JEFFERY: Sure.
11 COMMISSIONER THOMAS: Thank you.
12 CHAIR MCCARTY: Ms. Bligh, would you like to
13 rebut anything?
14 MS. BLIGH: I'm going to allow Ms. Griffin to
15 address some of the issues that came up in Mr. Jeffery's
16 rebuttal.
17 Just to close this loop, I wanted to give you
18 the cite pages for the South Western Reporter for those
19 cases.
20 For State ex rel Hutchison versus McGrath
21 it's 5 S.W. 29, and then for the Empire Trust Company
22 versus Empire Finance Corporation it's 41 S.W. 2nd 847.
23 CHAIR MCCARTY: Thank you.
24 Ms. Griffin.
25 MS. GRIFFIN: Thank you.

1 First with respect to the standing issue.
2 The bottom line is I don't disagree with Mr. Jeffery
3 that there is a Federal law that says third parties are
4 supposed to have the right to appeal, and I believe that
5 is why the Commission adopted the regulation that's on
6 the books.
7 However, the regulation is only valid if it's
8 authorized by law, and what is authorized by law is
9 determined by our Legislature and what is in our
10 statutes.
11 And the fact that the Legislature changed the
12 language in 640.010.1 to eliminate the reference to
13 aggrieved parties and said instead we allow an appeal
14 where it's provided by law means that you have to look
15 to the provision in 644.051, and those are the classes
16 of people that have the right to appeal and there are
17 two, and third parties are not included there.
18 And to the extent that the regulation that
19 was on the books before that changed was made is
20 inconsistent. It's just invalid and it's not
21 enforceable anymore. So there isn't any standing
22 because there is no law in Missouri that grants standing
23 to third parties.
24 And that is something I think that, you know,
25 if it's inconsistent with Federal law, that doesn't --

1 the Federal law doesn't render the regulation valid.
2 Only State law can grant this Commission the authority
3 to maintain a regulation with respect to who has
4 standing.
5 And the statutes were changed, and there just
6 isn't any authority any longer under the current law for
7 the Commission to enforce that regulation. I think
8 that's something that the Commission may need to take up
9 with the Legislature, but that's what the current state
10 of the law is.
11 With respect to the neighbor notice issue,
12 the bottom line is even if the neighbor notice letters
13 that were sent out in August -- and by the way, there is
14 no fake news. My presentation, once you have a hard
15 copy -- I'm going be filing a copy of it as well so it's
16 part of our record here today.
17 The fact is is I noted in my presentation
18 that the letters actually went out in August of 2017 and
19 that the application was filed in December. And there
20 was an August 2017 application, and it was withdrawn
21 with the understanding it would be resubmitted.
22 The fact that those neighbor notice letters
23 went out in August 2017 is really all that matters. I
24 mean, the law says you're supposed to do your round of
25 neighbor notice letters before you submit your

1 application. Those letters are for the same facility,
2 the same operation that they were proposing, the same
3 number of animal units. Nothing was changed in between
4 the time those letters went out in August and the time
5 the application was submitted in December of 2017.
6 And the Department's normal procedure is to
7 consider those neighbor notice letters valid once they
8 go out. There was no need to re-send another round
9 before that application was submitted in 2017.
10 And the fact of the matter is, is your
11 administrative record, despite the fact that it doesn't
12 include actual copies of those letters, does include a
13 document, Exhibit G, that reflects that those letters
14 were sent out in advance of the December 2017
15 application being submitted.
16 CHAIR MCCARTY: Thank you.
17 COMMISSIONER REECE: Jennifer, is there a
18 time element involved before the permit is issued on
19 how -- when are those neighbor notices supposed to go
20 out before the application is submitted? Is there a
21 time requirement there?
22 MS. GRIFFIN: There is no -- there is no
23 requirement that says you have to send out the neighbor
24 notice letters a certain number of days in advance of
25 submitting the application.

1 The timing comes into play in a situation
2 that's really not at issue here, but the permitting
3 regulation, the 6.300, the timing comes into play if you
4 submit neighbor notice letters and you're looking at who
5 falls within the buffer zone and defining what the
6 buffer zones are.
7 If someone establishes an existing
8 dwelling -- and there's a definition for this.
9 If the buffer zone say -- they determine
10 where you can locate your facility, and you can only
11 locate your facility within so many feet of an existing
12 dwelling. And that's determined at the time -- on one
13 of two dates, at the time the neighbor notice letters go
14 out or at the time the application is received.
15 And so there is some protection built in to
16 prevent a situation where somebody finds out that
17 there's an entity that wants to establish a new CAFO
18 facility, so they rush out and hastily erect a dwelling
19 and then try to defeat the application because the
20 facility is going be too close to this dwelling they
21 just threw up overnight.
22 And what the regulation provides is once you
23 submit your neighbor notice letters, so long as you get
24 your application in within 30 days after you send out
25 the neighbor notice -- and this is the timing I'm

1 referring to -- that it doesn't matter if somebody tries
2 to erect the dwelling within that 30-day timeframe. It
3 will not change what the buffer distance requirements
4 are. They're required to be determined in that instance
5 as of the date the neighbor notice letter went out and
6 not the date of the application. That's the only timing
7 issue.
8 COMMISSIONER REECE: What was the date of the
9 original neighbor notice before the August permit?
10 MS. GRIFFIN: I'm not sure I'm understanding
11 your question.
12 COMMISSIONER REECE: Okay. You have stated
13 that there were neighbor notices sent out prior to the
14 August application for an operating permit.
15 MS. GRIFFIN: Correct.
16 COMMISSIONER REECE: Do you know the
17 timeframe involved? When did those neighbor notices go
18 out and when was that August application submitted?
19 MS. GRIFFIN: They went out as Ms. Bligh
20 indicated. I think it was three or four days prior to
21 the application.
22 COMMISSIONER REECE: So it wasn't 30 days?
23 They did not receive those notices 30 days --
24 MS. GRIFFIN: That's correct.
25 COMMISSIONER REECE: Because you just stated

1 that they had to be sent out 30 days before the
2 application.
3 MS. GRIFFIN: No. I think you misunderstood
4 what I said. They don't have to be -- the statute says
5 the letters are supposed to be sent out before the
6 application is submitted. There is no requirement that
7 the letters be sent any certain number of days prior to
8 that application being submitted. They can be sent out
9 the day before.
10 CHAIR MCCARTY: A 30-day comment period. Is
11 that correct?
12 MS. GRIFFIN: The 30-day comment period
13 begins once the application is received and the
14 Department has the ability to place that on hold and
15 extend it to make sure that there's a 30-day comment
16 period if there are deficiencies in the application.
17 What I was trying to explain to you is the
18 30 days prevents someone from changing the buffer
19 distance. There's a protection in the regulation that
20 says once you send out your neighbor notice letters
21 somebody can't build a house or install a trailer with a
22 septic system and change your buffer distance and
23 basically eliminate your ability to build this CAFO you
24 proposed, so long as you get your application submitted
25 30 days after.

1 And I also point out to the issue of how long
2 neighbor notice is valid, that under the regulation --
3 and this is in the permitting regulation 6.300,
4 Subsection 3(C)(1).
5 It says prior to filing an application for an
6 operating permit with the Department on a new or
7 expanded Class 1 concentrated animal feeding operation,
8 the following information shall be provided by letter to
9 all parties listed below, and that's the neighbors, the
10 governing body of the county and the Department.
11 And if you go down to paragraph 5, there's a
12 provision in your regs that say the neighbor notice will
13 expire if an operating permit application has not been
14 received by the Department within twelve months of
15 initiating the neighbor notice requirements.
16 So the notices given in August of 2017 were
17 valid until August of 2018, and this application -- the
18 application that was submitted in August after those was
19 withdrawn and with the understanding and agreement with
20 the Department that they would work on it and resubmit
21 it, you know, later, which is exactly what they did in
22 December.
23 CHAIR MCCARTY: And, Commissioner Reece, the
24 specifications for that neighbor notice can be found on
25 pages from 10 CSR 20-6.300, Subsection 3, Paragraph C,

1 on page 14 and 15 of this AHC decision of the case that
2 we're in. And so you'll see who, how far and the steps
3 that an entity has to follow.
4 COMMISSIONER REECE: I'm not following you,
5 Ashley.
6 CHAIR MCCARTY: The regulations are cited in
7 that AHC decision that you have before you. Right here,
8 this and this.
9 COMMISSIONER REECE: Thank you, Ashley.
10 CHAIR MCCARTY: Yes. Thank you.
11 Any other questions for Ms. Griffin?
12 Thank you.
13 COMMISSIONER REECE: Ashley, I have a
14 question but it would be through her to Mr. Caldwell.
15 Is that legit?
16 CHAIR MCCARTY: Or Shawna would be
17 representing the Department, Ms. Bligh.
18 COMMISSIONER REECE: Do you know if
19 Mr. Caldwell visited the site after he received the
20 application?
21 MS. BLIGH: No, he did not.
22 COMMISSIONER REECE: And after all of the
23 neighbor notices and concerns from the neighbors -- and
24 I think there were like 1,400 submitted --
25 MS. BLIGH: Yes, sir.

1 COMMISSIONER REECE: -- did he visit the site
2 after receipt of those 1,400 concerns?
3 MS. BLIGH: No, sir.
4 COMMISSIONER REECE: So he never visited the
5 cite before he issued the permit?
6 MS. BLIGH: No.
7 COMMISSIONER REECE: Thank you.
8 MS. BLIGH: Chair McCarty, may I clarify one
9 thing?
10 CHAIR MCCARTY: Yes.
11 MS. BLIGH: Mr. Reece, it's my understanding
12 Mr. Caldwell has processed thousands of these CAFO
13 applications, and his state of practice -- and he's not
14 required under the regulations -- is to not visit the
15 facility prior to issuance of the permit, and he's
16 typically not done that in all of his permit reviews,
17 nor is there any regulatory requirement that he do so.
18 COMMISSIONER REECE: I'm sorry. I don't
19 agree with that. If he's going to issue a permit that
20 has this much protest, this much neighbor concerns, I
21 think ethically he should have gone out and visited the
22 site before he issued the permit. That's my opinion.
23 Sorry.
24 MS. BLIGH: Okay.
25 CHAIR MCCARTY: Thank you.

1 Counsel, I would just encourage everyone
2 to -- while this is an emotional issue, to keep emotions
3 and expressions at bay. It really doesn't add to. We
4 appreciate your involvement but interjecting is not
5 particularly helpful.
6 Okay. As you can see, these are complex
7 matters. We're going to continue deliberation of this
8 and hear from the parties on the appeal of 18-0501.
9 Correct?
10 And so start back through hearing first from
11 Mr. Jeffery. Right?
12 Oh, yes. And now we're moving to a different
13 case, so we will hear from the parties from Powell
14 Gardens. Sorry.
15 MR. HATFIELD: Thank you.
16 My name is Chuck Hatfield. Together with
17 Amy Davenport we represent Powell Gardens.
18 Ms. Tabitha Schmidt is here from Powell
19 Gardens, as is Wendy Powell from the Board. We also
20 represent the Deichs. Ms. Deich and her daughter are
21 here. They're adjacent neighbors on a Century Farm next
22 to Valley Oaks.
23 Ms. Davenport and I were concerned that you
24 did not have enough paperwork, and so we have binders
25 for you that include portions of the record that we

1 thought were important in our PowerPoint. We're not
2 going to put a PowerPoint up here, but I thought it
3 might be helpful for you to follow along, and
4 Ms. Davenport is going to hand those to you now.
5 I promise not to talk about anything that you
6 just discussed in the previous appeal; however, I'm
7 happy to answer any of your questions on any of that if
8 you'd like to know our position on any of those issues.
9 I'm going to wait until Ms. Davenport hands
10 you your books here.
11 And in the first tab you have got sort of a
12 PowerPoint presentation. Sorry. The first tab is an
13 index and then you have a PowerPoint, and that's what
14 I'm going to be following along as kind of my outline.
15 I'm not going to read it all to you, but if you want to
16 follow along in my outline. And it does have citations
17 specifically to the record for use later.
18 I'm sure Mr. Duggan will remind you that, you
19 know, we're looking at what is in the record, not
20 necessarily my PowerPoint, so I tried to refer you to
21 some of those things.
22 CHAIR MCCARTY: Thank you.
23 MR. HATFIELD: You just heard a lot of
24 technical issues, and a lot of technical issues involved
25 here, standings and notices and all that sort of thing.

1 I'd like to focus my presentation on the
2 issue of what impact this facility will have on the
3 quality of the water in this area and how the permit
4 application did not comply with the Department's
5 regulations that are there to protect the quality of the
6 water. To me that's the important issue, and I hope
7 that that's what you're focused on as well.
8 So as we walk through this, on your first tab
9 I've included a summary of the AHC's recommendation.
10 This is from the actual decision that you have in our
11 case.
12 I'd like to talk about two of the findings in
13 our case. No. 1, that the Valley Oaks permit failed to
14 provide realistic yield goals for the fields identified
15 for land application, and No. 2, that Valley Oaks failed
16 to provide for adequate storage of the manure.
17 Now, I want to step back and make sure we
18 know what we're talking about here. We're talking about
19 a facility that is going to produce 110,000 tons of
20 manure a year. That's 220 million pounds of cattle
21 manure.
22 I'm told by experts that if you take a
23 football field from end to end, all of the way across,
24 the manure would stack 38 feet high. That's every
25 single year.

1 As a matter of protection of the environment
2 and of the water quality -- my clients, by the way, are
3 both in the watersheds. The Deichs are in the immediate
4 watershed around the facility itself. Powell Gardens is
5 in the watershed where the land application will occur.
6 And that is in the record, that was testified to and
7 undisputed.
8 So there is going to be 220 million tons of
9 manure produced and it has to go somewhere other than
10 into the waters of the state of Missouri, and that's
11 what our appeal was really about.
12 The stay transcript in particular talked
13 about the magnitude of this facility. That's in your
14 record. This will be the largest beef CAFO in the state
15 of Missouri. Combined with the processing plant that
16 is next to it, this may be the largest one in the
17 United States according to the experts who testified.
18 Now, that's not just the CAFO but adding in the
19 processing plant.
20 Valley Oaks is owned by a company and
21 operated by a company -- and this is also in your
22 transcript -- that has no prior experience running
23 CAFOs. It is owned by a company that has a history of
24 violating the environmental laws. That is in the record
25 as well.

1 So this is not -- and the other thing is,
2 this is not really a farm that has grown. We have in
3 Tab -- I believe it's A -- some just aerial photos to
4 show you what this looks like. I know some of you know
5 what it looks like.
6 But over time this was a field with a barn on
7 it, and now we have a fairly large CAFO facility with a
8 processing plant.
9 So this is a large facility, the largest in
10 the state as far as beef goes, and when you combine it
11 with processing, one of the largest in the country.
12 It is located in an area -- and this is not
13 directly for your consideration, but it's located on the
14 border between Jackson and Johnson County, a highly
15 populated area, which makes the risk assessment here
16 even more important.
17 And I was noticing as I sat here, the mission
18 of the Department of Natural Resources that talks about
19 preserving the water quality, and it also talks about --
20 somewhere on there it talks about risk assessment.
21 Decisions guided by risk assessment is one of
22 the bullets under the principles. And I know that's the
23 Department, but it's also a good principle here. What
24 is the risk assessment?
25 And we also want to make sure that this

1 Commission understands that Valley Oaks continues to
2 change its plans and continues to submit additional
3 permit application, we believe acknowledging that the
4 current permit does not meet the regulations. There's a
5 new notice out there now, speaking of notices, that was
6 sent in November, and there is a new permit application
7 that was submitted December 5th that changes the way
8 land application in particular would be conducted.
9 I've included a slide on legal authority in
10 the next tab. You're well represented by Mr. Duggan.
11 I'm sure you're all familiar with those standards from
12 other things.
13 In this particular case I think the important
14 issues are the Department bears the burden under the
15 law. In other words, if it's more likely than not that
16 this permit should not have been issued -- I'm sorry --
17 that it has to be more likely than not that the permit
18 should have been issued.
19 And on each particular finding of fact the
20 Department is urging you to change, they have the burden
21 to prove to you it's more likely than not that the AHC
22 was wrong on that. You'll take your own legal advice on
23 that.
24 So to the heart of it. Nutrient Management
25 Plan. So you all know what this is about, and I don't

1 want to beleger it, but this is what I mean. This is
2 important to the water quality.
3 The plan here is to store this 220 million
4 pounds of manure -- or actually half of that I guess,
5 six-months worth -- at the facility during the winter
6 months like now when it can't be land applied, but then
7 to spread it out over the acreage.
8 That's an acceptable way to manage nutrients.
9 The crops will uptake that, pull the bad stuff, to use a
10 layman's term, out of it, so that when it does rain and
11 when there is runoff off of these fields, it doesn't
12 damage the waters.
13 You have to have realistic goals for what is
14 called nutrient uptake. There has to be some evidence
15 that what Valley Oaks was proposing to do out there
16 would pull the pollutants, the nutrients up out of that
17 manure that was being applied.
18 The Department's own regulations reflect how
19 important this is. They say -- and you've got your
20 slide there hopefully about the Nutrient Management
21 Plan, that the yield goals should be based on crop
22 yields for multiple years for the fields.
23 They were not. There is not a shred of
24 evidence that anybody looked at historical crop yields
25 for the field. Nobody testified that that happened.

1 Everybody admits it didn't happen.
2 Good judgment should be used to adjust yield
3 goals to counteract unusually higher loads. Nobody did
4 that because there wasn't any record. When a field's
5 yield history is not available, another reference source
6 may be used.
7 The Department has to prove that the yield
8 history was not available before we even get to the next
9 part. The yield history was available. And if you look
10 at Tab 2 -- no. I'm sorry. My tab is wrong.
11 Tab B3. I've completely got my tabs wrong.
12 Tab C2, this is in evidence. It's marked as
13 Exhibit 203. The yield goals for Johnson County, there
14 are data out there, and the record talks about what the
15 source of this document is and where it was.
16 In Johnson County, which is where this
17 facility was, the yield goals for these what is called
18 the cool season hay grasses are an average of 2.16.
19 That's what the historical data appears to show,
20 although nobody went and got any underlying data.
21 This exhibit is something we came up with.
22 This wasn't something the Department had. This wasn't
23 something that Valley Oaks submitted.
24 What yield goal did Valley Oaks use? Six
25 tons per acre. Not two, not three, not four. They used

1 six tons per acre.
2 Now, where did they get that? You can go
3 back to B1, so the tab right before that, the first
4 thing is a business record affidavit. The next thing is
5 an e-mail with Kansas State.
6 By the way, disregard anything from Kansas
7 right off the top, but that's where they went. They
8 asked Kansas State. This is the evidence as to how
9 Valley Oaks came up with these, quote, unquote,
10 reasonable yield goals.
11 And we didn't put it in here, but there is a
12 discovery request in the record in the interrogatory
13 where we said what makes you think you can get six tons
14 per acre, and they said Kansas State.
15 But Kansas State told them not to use six
16 tons per acre. It's right here in the e-mail. And she
17 says in the e-mail -- and you can read through there --
18 if it's based on historical data, you could maybe use
19 the six, but if it's not used on historical data, you
20 should use something closer to four or split the
21 difference.
22 They didn't do any of that. They used the
23 six tons per acre. But here is the thing for you: Zero
24 evidence, zero in this record, that you can get a six
25 ton per acre yield over there.

1 Now, even if there was some evidence, you
2 should still look at the weight of this evidence and
3 realize that that's just not realistic. It's never
4 happened. It's never happened according to the records
5 in the state of Missouri anywhere, much less in Johnson
6 County.
7 So going back to our PowerPoint for just a
8 minute to finish that thought out. I got to get back to
9 my PowerPoint.
10 CHAIR MCCARTY: You have about four minutes
11 and 20 seconds.
12 MR. HATFIELD: Left or done?
13 CHAIR MCCARTY: Left.
14 MR. HATFIELD: Okay. So to me that's just a
15 matter of legal -- there is no basis to do anything
16 other than that because there was absolutely no record
17 to support that.
18 Now why is it important? It's important
19 because if you can't get six tons per acre, then you
20 don't have enough acreage. You're not spreading it
21 widely enough. And they need more -- they need more
22 land application ability and they simply don't have it.
23 I want to make sure I point out something,
24 and maybe it's sort of an elephant in the room. We're
25 not here to say that there is not a plan that would

1 qualify. There may be a plan out there, and maybe it's
2 this new one that is not in front of you now that would
3 qualify. This one doesn't qualify because it doesn't
4 meet.
5 And to Ms. Bligh's comments about operating
6 and engineering design, this is neither operational, nor
7 an engineering design. This is about what the plan was.
8 It has to have realistic yield goals.
9 Now, manure storage. There is a discussion
10 in manure storage about the seal of the expert, and I
11 think it's an important issue for this Commission
12 whether you can just completely rely on the seal of an
13 expert.
14 If an expert sent you something that made no
15 sense on its face at all -- and by the way, in this case
16 it was wrong. And Valley Oaks' expert at the hearing
17 said that the engineer's calculations were wrong in a
18 minor way. They calculated 186 days of storage. There
19 was really only 183. He made a math error.
20 So do you just accept a seal even if there
21 was a major math error that might have put them below
22 180? Of course you don't. That doesn't make any sense
23 at all.
24 But on this manure storage issue it's not an
25 issue of design. It's not an issue of operation. It's

1 an issue of plan.
2 The plan was to store the manure in two
3 places, in the farms next door -- this is all in the
4 record -- where he would stack it up 18 feet high inside
5 the barns, and then where the animals are actually
6 housed, 2.3 feet up to the edge of the stem walls where
7 the animals are actually housed, so they'd be standing
8 on 2.3 feet of manure.
9 And the AHC found first that that was not a
10 realistic storage plan because the manure will spill
11 over the sides of that as the animals walk around.
12 That's not a matter of engineering. That's a matter of
13 simple logic. The plan was to store it to the brim of
14 the stem walls.
15 Second, they used the wrong numbers. Dry
16 process waste, as is discussed, is supposed to be
17 75 percent of moisture capacity. Or I may have that
18 flipped. But 80 percent -- they were using 80 percent
19 instead.
20 So they weren't putting enough bedding in
21 there to sufficiently dry the manure. You can't move it
22 around. It's going to be too wet.
23 Once you calculate in the 80 percent -- which
24 Valley Oaks' expert says he doesn't necessarily disagree
25 with, and I've included his handwritten notes on that

1 issue in your packet here. Once you go to 80 percent,
2 now you've got more manure and you're only down to
3 152 days of storage.
4 Once you go to 75 percent. I said that
5 wrong. But you've got to get it down to the regulatory
6 requirement to 75 percent dry. That was the other.
7 It's a bad plan. It's not a matter of how
8 it's operated. It's not a matter of how it's designed.
9 The plan was wrong and the calculations were wrong.
10 So on manure storage, I think that is covered
11 in our slides here. I know I don't have a ton of time
12 left on that.
13 But I think that when you look at the record
14 and you see that the expert actually went through and
15 said it was originally calculated wrong and then he gets
16 down to 183 -- your recommended is 365 by the way.
17 Nobody thinks that it was 365. That's in the
18 regulation.
19 I have to just say, what does it mean to have
20 a regulation that recommends 365 if we're going to
21 completely ignore it? When do we go up to a recommended
22 number? Well, maybe when we look at risk assessment.
23 What's the recommended 365? What's the minimum 180?
24 They don't meet the 180 according to the rules.
25 Now, the only evidence that they could meet

1 the 180 and comply with the reg on 75 percent moisture
2 content is that the expert of Valley Oaks at the hearing
3 recalculated, and he went in and he disregarded what the
4 engineer said.
5 I guess that's my timer. I heard that
6 beeping earlier and I wondered what it was, somebody
7 else.
8 So the engineer went in and recalculated. He
9 said, well, the engineer was apparently wrong on how
10 much manure each cattle would produce. So he
11 disregarded the engineer's seal, and he said, well,
12 they'll actually produce less manure. And if he did
13 that and he complied with your 75 percent moisture reg,
14 then he could get to 180 days. So the finding is that
15 there is only 152 days of storage out there.
16 This plan does not comply with the
17 regulations in the two ways I've talked about, lack of
18 realistic yield goals -- that's your reg. You can't
19 disregard it and you're bound by it -- and lack of
20 proper manure storage, and more importantly it doesn't
21 protect the watershed, for those two reasons.
22 I'm happy to answer any questions.
23 CHAIR MCCARTY: Any questions for
24 Mr. Hatfield, Commissioners?
25 COMMISSIONER THOMAS: I have a question.

1 MR. HATFIELD: Yes, ma'am.
2 COMMISSIONER THOMAS: When you say there is
3 not enough manure storage available, are you assuming
4 that the facility would be at full capacity 6,999 every
5 day?
6 MR. HATFIELD: Absolutely, because that is
7 the plan. There has to be a plan to deal with 6,999.
8 COMMISSIONER THOMAS: Okay. Thank you.
9 MR. HATFIELD: If I argued otherwise, I'd be
10 running into Ms. Bligh's operational issue. Right? So
11 we can't have it both ways. We have to -- if we're
12 talking about operations, we can't consider how it's
13 being operated.
14 COMMISSIONER THOMAS: So you have an
15 operating permit up to 6,999. I guess my practical side
16 would say the facility being completely full every day
17 and not having days where you have livestock going in,
18 coming out, raising or lowering those numbers. That's
19 just why I asked.
20 MR. HATFIELD: No. I think it's a legitimate
21 question.
22 COMMISSIONER THOMAS: You plan X number of
23 school lunches for 200 students and you have the flu and
24 so you have 152 kind of thing.
25 MR. HATFIELD: Sure. Absolutely.

1 COMMISSIONER THOMAS: So that's why I was
2 asking.
3 MR. HATFIELD: Operationally it may turn
4 out -- and right now today, because of a TRO that has
5 been issued, they're limited to 2,000 cattle or
6 something like that. But you're approving a plan that
7 allows them to go -- the Department issued a plan that
8 allows them to go to 6,999, one point short of
9 triggering the odor rules.
10 COMMISSIONER THOMAS: By the way, this is not
11 a $5 value, right, an ethics thing?
12 MR. HATFIELD: Well, you're not a legislator.
13 COMMISSIONER THOMAS: Staff.
14 MR. HATFIELD: Oh, you're staff.
15 COMMISSIONER THOMAS: I have to return your
16 binder.
17 MR. HATFIELD: I don't know. We'll have to
18 figure it out.
19 CHAIR MCCARTY: Any other questions?
20 COMMISSIONER REECE: Ashley.
21 CHAIR MCCARTY: Yes, sir.
22 COMMISSIONER REECE: I have some questions
23 based on moisture content based on my experience. Is
24 that --
25 CHAIR MCCARTY: Let's talk -- shall we hear

1 from everybody and then address those, and we'll see who
2 can best address those.
3 Thank you.
4 MR. HATFIELD: Thank you.
5 CHAIR MCCARTY: Ms. Bligh.
6 MS. BLIGH: Go ahead.
7 MS. GRIFFIN: All right. I guess just before
8 I get started, I wanted to raise the same issue about
9 the parties' recommended decisions being received for
10 your consideration. I don't know if Mr. Hatfield has
11 any --
12 MR. HATFIELD: No objection.
13 MS. GRIFFIN: Thank you.
14 And I'm also going to gloss over the points
15 that have already been discussed.
16 We've already talked about -- well, actually
17 a couple things I need to say about the neighbor notice
18 requirements.
19 Powell did make an argument about the
20 neighbor notice requirements in its appeal; but when it
21 submitted its recommended decision to the AHC, it didn't
22 even mention the neighbor notice requirements. It
23 abandoned that argument completely, and yet inexplicably
24 to me the AHC found in its favor anyway.
25 So it abandoned the argument and it's an

1 error to accept the AHC's finding that it won on that
2 argument, aside from which fact the argument that they
3 actually made in their appeal, lack of merit, which I
4 assume is why they abandoned it, what they argued was
5 the neighbor notice requirements weren't met because
6 there wasn't a letter sent to the Jackson County
7 Commission, which isn't true. The evidence shows that a
8 letter was sent to the Commission.
9 They also argued that an additional round of
10 neighbor notice letters wasn't sent after the permit was
11 placed on public notice, and there is no law that
12 requires that. And they didn't make any other
13 arguments.
14 So they shouldn't -- the AHC errored in
15 finding in their favor after they abandoned their
16 argument completely and made no other arguments.
17 Continuing authority, an additional point for
18 the Powell appeal. This argument wasn't raised by
19 Powell in its appeal. It was not until the Department
20 transferred the permit to Valley Oaks Real Estate, LLC
21 basically on the eve of trial that they asked to amend
22 their appeal and add this argument. That's the reason
23 we believe they waived it and it was an error for the
24 AHC to rule in their favor on this point.
25 Okay. You've heard about a bunch of

1 comments. I'm going to try to get through this as
2 quickly as I can.
3 We believe that the Nutrient Management Plan
4 submitted was in compliance with the law and with
5 respect to the yield goal issue that Mr. Hatfield was
6 talking about, and there is a couple of reasons for
7 this.
8 The first one, which is really important, is
9 that the law doesn't require Nutrient Management Plans
10 to include a cite to sources that they use to develop
11 their yield goals. It's not in the application. It's
12 not in the statutes. It's not in the regulation, and
13 it's not in a technical standard as found by the AHC.
14 Here is what the standard says. This is
15 Exhibit P -- I cited to it in my presentation -- on
16 page 3. What the standard says is fertilizer
17 recommendations should be based on the following. And
18 it doesn't require, contrary to what Mr. Hatfield said,
19 that you base your -- you base your yield goal on actual
20 yield. It does not say that.
21 What it says is when a field yield history is
22 not available, another reference source may be used to
23 estimate yield goal. The word should is a
24 recommendation and the word may is permission.
25 So what this language says is the standard

1 recommends using a source to develop yield goals, and it
2 permits citing sources that are used to develop yield
3 goals. There is nothing in this standard that requires
4 the citation of a source used to develop a yield goal.
5 This is what the Department advised Powell in
6 Exhibit H, which is the response to their comments. The
7 law does not contain this requirement.
8 And at trial Valley Oaks' expert Darrick
9 Steen, who is the former Agricultural Unit Chief for the
10 Water Protection Program, testified that the Department
11 has historically not applied the law that requires cites
12 for yield goals, and he said he was not aware of the
13 Department ever denying a permit for failure to cite a
14 yield goal.
15 The second reason that the finding is wrong
16 is that the evidence shows that the Department properly
17 determined Valley Oaks' yield goal for cool season hay
18 grass was realistic.
19 Now, Mr. Hatfield has cited you to the county
20 averages, and those are just that. They're county
21 averages. There are people that have hay in fields that
22 never fertilized it at all, and, of course, those
23 numbers -- those yields are going to be much lower than
24 for fields that are actually fertilized, and that's not
25 even an appropriate measure of whether this yield goal

1 was realistic.
2 What the Department's employee, Mr. Caldwell,
3 testified that six tons per acre is a realistic yield
4 goal when you have lands that are aggressively
5 fertilized like the lands would be at Valley Oaks where
6 they are using manure as fertilizer.
7 And has been noted, Mr. Caldwell has
8 extensive experience. It's in the slide, and it's in
9 the record more importantly. And he testified that when
10 he reviewed the yield goal that was in Valley Oaks'
11 Nutrient Management Plan, that he believed it was
12 realistic -- and this is really important -- based on
13 actual records from other Missouri CAFOs showing actual
14 yields of cool season hay grass as high as seven to
15 eight tons per acre.
16 Now, the statement was made. There aren't
17 any records that support a yield goal of six tons per
18 acre, and that is just false.
19 I mean, Mr. Caldwell based his decision
20 making and his recommendation to the Department to
21 accept this yield goal and prove it as realistic based
22 on documents filed with the Department that show yield
23 goals of seven to eight tons per acre.
24 There was other evidence at trial that
25 supported the Department's conclusion. One was

1 testimony from Mr. Steen, Valley Oaks' expert, that the
2 goal was realistic because Valley Oaks is going to use
3 an intensive management strategy. They're going to
4 apply manure. They're going to take multiple cuttings.
5 That's going to increase the yield.
6 Further, contrary to what Mr. Hatfield said,
7 the Johnson County K-State Research and Extension
8 advised Valley Oaks' engineer that yield goals could be
9 as aggressive as desired and that an intensive
10 management strategy would support a six tons per acre
11 yield goal. And that's in your Exhibit 1003 which is
12 admitted into evidence.
13 And if you look at my bottom bullet there,
14 even Powell's expert admitted that yield goals could be
15 as aggressive as you like and that an intensive
16 management strategy would increase yield. And I've got
17 the cite to the transcript.
18 Finally there was a source, the NCRS
19 handbook, which is a source that Mr. Steen testified is
20 used by the Department, a source that K-State Research
21 and Extension noted in the e-mail that is Exhibit 1003
22 that they rely on, and that Powell's expert said was
23 reliable, showed there were cool season grasses that had
24 yield -- average yields of six tons per acre. So
25 there's evidence and that goal is realistic.

1 So the bottom line is the Department got it
2 right. The Department correctly decided there was no
3 source needed to be cited, and the evidence supported
4 the conclusion that those yield goals for hay grass were
5 realistic.
6 The evidence is there and the law is there.
7 It was the right decision.
8 Now, you heard a lot of discussion about
9 manure storage, and we vehemently disagree that there is
10 any issue with manure storage here and the AHC wrongly
11 decided there was.
12 The first reason has already been discussed
13 earlier this morning, which is that the application
14 contained all of the information that was required by
15 the permitting regulation to show the structures were
16 properly designed to have adequate storage.
17 There are four things under the permitting
18 regulation that were required to be in Valley Oaks'
19 application to demonstrate to the Department that it was
20 properly designed to have adequate manure storage.
21 One is a statement as to the amount of manure
22 that would be generated each year; two, the storage
23 volume; three, days of storage of the structure and the
24 engineer's seal. All that information was in the
25 application.

1 And what the regulation says is the
2 Department is prohibited from requiring or considering
3 any design information and that includes manure
4 calculations in deciding whether to issue the permit.
5 The Department is required to rely on the
6 engineer's seal as evidence that the project was
7 designed in accordance with the design reg, the
8 20-8.300, and that includes manure storage capacity.
9 There is only one exception to that rule, and
10 that is for a facility that used an earthen basin for
11 manure storage, and those types of entities have to
12 submit construction permits with engineer reports,
13 including manure calculations.
14 That doesn't apply here because there is not
15 an earthen basin at Valley Oaks that will store any
16 manure.
17 The next reason that the AHC got it wrong,
18 and it's that the calculations that were submitted did,
19 in fact, show that the facility was designed to have
20 enough storage.
21 And that's for two reasons. One, the
22 facility underestimated the total amount of manure --
23 excuse me -- overestimated the total amount of manure
24 that would be generated and its space of storage was
25 overestimated.

1 What the application showed -- and the
2 reason I say that -- is there were to be 6,999 animals.
3 The calculations show all of the steers weighing
4 1,100 pounds, even though the fact of the matter is
5 there were two weights of cattle at that facility.
6 Calves were going to weigh an average of 1,100 pounds.
7 Calves were going to weigh an average around 750 pounds.
8 And based on the Manure Characteristics
9 Publication, which is in evidence as Exhibit 246,
10 Table 6, the manure -- that shows -- and that
11 publication is cited in the manure calculations that
12 were submitted with the application, shows that the
13 smaller cows generate a heck of a lot less waste than
14 the bigger ones.
15 So the bottom line is they overcalculated the
16 amount of manure. And Mr. Caldwell, when I asked him at
17 trial, agreed with me that that was correct and he noted
18 that when he was processing the application.
19 The second item is the days of storage, and
20 the application showed there were 180 days of storage
21 for all of the manure, and that includes the extra
22 manure that was not actually going to be there, but, you
23 know, we were trying to be conservative in our
24 calculations.
25 The law doesn't require the storage

1 structures to store all of the waste for 180 days. What
2 it requires is that all of the waste that will be land
3 applied be stored for 180 days. If it's going to be
4 sold or given away, the minimum design storage period is
5 only 90 days.
6 And because we showed in our Nutrient
7 Management Plan that we were going to land apply
8 70 percent of the waste, the application actually
9 underestimated the amount of days of storage. And
10 again, that was for the overestimated amount of waste.
11 There was plenty of storage there.
12 Now, Powell came up with this expert that
13 somehow the moisture in the manure had to be dry process
14 waste and had to be reduced to 75 percent, blah, blah,
15 blah. They're wrong.
16 The bottom line is there is no requirement in
17 the law that says that. This is a dry litter operation.
18 That term is not defined in the law. The only storage
19 requirements in the regulation in 8-300.5 are for liquid
20 manure, solid manure and dry process waste.
21 And the definition of solid manure in your
22 regulation is manure that can be stacked without free-
23 flowing liquids.
24 And going back to the manure publication, and
25 this is what was cited in the calculations in the

1 application, and both Valley Oaks' engineer and Powell's
2 expert agreed this was an appropriate publication to
3 use.
4 What it says is manure with 20 percent solids
5 content, 80 percent moisture content or more can be
6 handled as a solid. In other words, it's solid manure.
7 It can be stacked and it can be picked up with a fork or
8 a bucket loader. That's in Exhibit 246.
9 The Valleys Oaks' manure calculations
10 properly show that they would use bedding to lower the
11 moisture content in the manure to 80 percent. So it
12 would be solid manure that could be moved and stacked in
13 compliance with the law.
14 And even those calculations are conservative
15 because they don't account for evaporation or other
16 things that Powell's expert admitted would reduce the
17 moisture content and volume of the manure.
18 So the bottom line is even if you buy into
19 that, it got the law wrong on that point. And even if
20 the law required moisture content of 75 percent, like
21 the AHC found based on Powell's argument, the facility
22 still had enough storage, and that is based on
23 information that was in those calculations submitted
24 with the application.
25 At trial Valley Oaks' expert Mr. Steen used

1 the formulas in the application and referenced the
2 manure publication about the waste that would be
3 generated by the two classes of cows, the actual waste,
4 not the overestimated amount of waste, and he showed
5 that even if the law required 75 percent moisture
6 content, there would be 183 days of storage for all of
7 the manure.
8 And again, they weren't required to have
9 180 days of storage for all of the manure, just for the
10 70 percent they were land applying.
11 So that was an overestimate. There were
12 actually more days of storage available even if that is
13 what the law says, which isn't what it says.
14 But this information was in the application.
15 It was available to DNR. It was just a matter of doing
16 some math.
17 At the end of the day the conclusion was
18 appropriate. The Department properly concluded that
19 there was adequate storage at the facility based on the
20 law and the evidence.
21 And I want to comment too on a couple of
22 other things that counsel mentioned.
23 There is a new application that was
24 submitted. I mean, this facility is not going away.
25 It's in operation. It's a good facility. The new

1 application was submitted not because we think there are
2 any errors with the current application, but the bottom
3 line is that we're not going to take any chances with
4 it. We think that everything is correct. We've got
5 these technical issues that the AHC ruled against us,
6 and based on that we really don't have any choice but to
7 go ahead and submit another application.
8 And I hope you never have to look at it
9 because the correct decision here is to issue the
10 permit, in which case it doesn't really matter what is
11 in that application at all.
12 And the design issues are just simply
13 something that you aren't required -- or allowed to
14 consider when you're making your permitting decision,
15 and all of these other issues that are raised are
16 operational issues about how it's operating, and they
17 want to talk about things that are outside of the
18 record.
19 If we want to go outside of the record, what
20 actually is happening at Valley Oaks is the moisture
21 content based on the samples that were taken in August
22 is ranging between 30 something percentage and
23 60 percent. So there aren't any issues here.
24 Do you have any questions?
25 COMMISSIONER REECE: I have a question.

1 MS. GRIFFIN: Yes.
2 COMMISSIONER REECE: Is it not true that the
3 manure storage calculations were based on the height of
4 the wall at 2.3 feet, the area of the feed barns -- or
5 the storage barns -- not storage -- cattle barns was
6 based on 2.3 feet?
7 MS. GRIFFIN: They were based on 2.3 feet.
8 COMMISSIONER REECE: Okay. Isn't it also
9 true that it was pointed out during the testimony that
10 the feed bunks are at a height of two feet?
11 MS. GRIFFIN: That's correct.
12 COMMISSIONER REECE: So what you're
13 indicating is that if it's stored to 2.3 feet, it would
14 be three-tenths of a foot over the top of the feed
15 bunks.
16 MS. GRIFFIN: Well, no, I don't think that's
17 true, and the reason that that's inaccurate is because
18 the manure becomes compressed, it loses volume and it's
19 like a hard pack. And the cattle are walking on it.
20 It's not burying the cattle. The cattle aren't
21 trenching through all of this manure like they want to
22 lead you to believe.
23 But from a legal issue in permitting, the
24 permitting decision is required to accept that
25 engineer's seal as evidence that the facility was

1 designed appropriately regardless of what those wall
2 heights and water feeder heights are, and there is an
3 operational issue which the Department and the
4 Commission have the ability to deal with if there's --
5 if it comes up as you're suggesting that these water
6 feeders -- as they're suggesting that the water feeders
7 are going to be buried.
8 It's just simply inaccurate. The manure gets
9 packed down. The design was appropriate. And as a
10 matter of law, your permitting decision has to be based
11 on the seal that was provided by the engineer that those
12 plans complied with the law.
13 If the Department were to go in there and
14 later find that there was some sort of a problem in the
15 operation, they would tell the facility they had to
16 correct it, and there would not be any -- there would
17 not be any harm to the waters of the state.
18 I mean, that's how the process works. The
19 permit has to be issued based on the requirements in the
20 permitting law, and the permitting law prohibits the
21 Department and it prohibits this Commission from denying
22 a permit based on a design issue when the application
23 contains an engineer's seal.
24 COMMISSIONER REECE: Madam Chair, I'd like to
25 comment on that if I may.

1 I am a registered professional engineer in
2 the state of Missouri, and I happen to have 48 years of
3 experience -- had 48 years of experience in wastewater.
4 Just because an engineer seals a set of plans
5 or a document doesn't mean it's 100 percent correct,
6 because you have to go back and review how he obtained
7 that information, what sources he used then to justify
8 his calculations.
9 And it's the requirement of DNR to check his
10 calculations to be sure, in fact, they are correct,
11 because if they issue a permit based on an engineer's
12 seal and the calculations are not correct, then DNR is
13 at fault for issuing that permit.
14 And I'm sorry. I cannot agree with you.
15 Just because it's sealed by a registered professional
16 engineer -- I know it says that in the law, but just
17 because he seals it doesn't mean it's correct.
18 MS. GRIFFIN: Well, and I understand your
19 point, but you are required to follow the law in making
20 the permit decision; and the law says if it's sealed,
21 you have to accept that seal.
22 COMMISSIONER REECE: No, you don't. If they
23 find a mistake in those calculations, then it's their
24 responsibility to question that engineer to determine,
25 in fact, how he came up with his information, how he

1 calculated his data. So I think just because it's
2 sealed doesn't mean it's 100 percent correct, because
3 it's DNR's responsibility to make sure that it is
4 correct and what he's submitted meets their
5 requirements.
6 MS. GRIFFIN: That's not what the law
7 requires.
8 COMMISSIONER REECE: I know, but as I say, I
9 reviewed hundreds of sets of plans and specifications
10 sealed by a registered professional engineer and they're
11 not always correct.
12 MS. GRIFFIN: Well, and also to assuade your
13 concerns would like to point out that DNR has been out
14 there multiple times, and I don't know. Maybe they've
15 reported to the Commission and maybe they haven't.
16 After all you are the enforcement body, and they help
17 you with enforcement, just like they help you with
18 permitting decisions. They have not cited any
19 violations at this facility.
20 COMMISSIONER REECE: You said they've been
21 out there several times.
22 MS. GRIFFIN: That's correct.
23 COMMISSIONER REECE: You testified that
24 Mr. Caldwell did not visit the site and he was the
25 authority within DNR that issued the operating permit.

1 MS. GRIFFIN: What he said was he did not
2 visit the site prior to the issuance of the permit
3 because that's not something he's allowed to do and
4 that's not the Department's process.
5 COMMISSIONER REECE: You also testified that
6 after the permit was issued and they received all of the
7 opposition letters and notices, that he still did not go
8 to the site.
9 MS. GRIFFIN: Correct, because that was prior
10 to the permit being issued. These visits have all been
11 to inspect the operations to make sure that the facility
12 is being operated in compliance with the law and that
13 the facility is being operated as a no-discharge
14 facility, which is what is required by the law and what
15 is required by the permit, and that there will not be
16 any pollution to the waters of the state, and those are
17 the findings they've consistently made.
18 COMMISSIONER REECE: May I continue, Madam
19 Chair?
20 CHAIR MCCARTY: Yes, sir.
21 COMMISSIONER REECE: As I stated, I have
22 48 years of experience in wastewater, and I've dealt
23 with a lot of sludges. And if you stack sludge that is
24 80 percent moisture, I'll guarantee you there will be
25 leachate leaving that stack, guarantee it. I've worked

1 with it for years and years and years. If you stack it
2 at 75 percent, it's less likely to leach. 70 percent,
3 there would probably be very little leachate. But at
4 80 percent I'll guarantee you there will be leachate
5 leaving that storage facility.
6 MS. GRIFFIN: But they're not -- first of
7 all, 80 percent is sufficient based on the manure
8 publication that those calculations were made, but the
9 reality is the moisture content that we're dealing with,
10 once that amount of bedding is put in and the
11 environment does its thing and the air gets involved and
12 there's evaporation, the manure samples show that the
13 highest moisture content out of any of the samples
14 taken, that were taken, like, three days before the
15 trial in this case, showed the moisture content was
16 60 percent.
17 There is not an issue with this being moved
18 and stacked. And again, it's an operational issue.
19 It's not something that is allowed to be considered
20 during the permitting process anyway.
21 COMMISSIONER REECE: And when was that
22 information taken? You said 60 percent?
23 MS. GRIFFIN: The highest moisture content
24 was 60 percent. The lowest was 30 something percent.
25 MR. HATFIELD: And I don't believe that is

1 anywhere in the record, so I would object.
2 COMMISSIONER REECE: No, I don't recall that
3 in the record either.
4 MS. GRIFFIN: No. That's what I'm just
5 saying. Those are operational issues. That is not
6 something that is in the record, and it wasn't -- these
7 visits that you're saying should have occurred prior to
8 the permit issuance, by the same token, that's -- I
9 don't believe that's in the record either. I'm just
10 trying to address your questions. Those are not things
11 that the permitting decision should be based on.
12 COMMISSIONER REECE: There were many issues
13 discussed by the Administrative Hearing Commission, and
14 experts testified that there will be leachate leaving
15 that facility, and so what you're saying is you don't
16 believe the experts in this case?
17 MS. GRIFFIN: No, I don't. There were
18 experts on both sides here. And the Department has
19 experts. Mr. Caldwell is an expert. He's been doing
20 this for years, and he works with engineers and he's --
21 MR. SCHAEFER: Darrick Steen did it before
22 him.
23 MS. GRIFFIN: Darrick Steen was the former
24 Agricultural Unit Chief, and he testified and he has
25 extensive experience, which his resume is also in the

1 record. What I'm saying is there are competing --
2 competing opinions here.
3 COMMISSIONER REECE: I think Mr. Steen's
4 testimony was questioned by counsel.
5 MS. GRIFFIN: Well, again, I mean, you have
6 all of the testimony. You can read it. Mr. Steen
7 testified correctly, and we believe that the AHC wrongly
8 rejected his opinions.
9 COMMISSIONER REECE: Okay. Thank you.
10 MS. GRIFFIN: Does anybody else have
11 questions?
12 CHAIR MCCARTY: Not at this time. Thank you.
13 MS. GRIFFIN: Thank you.
14 CHAIR MCCARTY: Ms. Bligh.
15 MS. BLIGH: And I won't take too much of your
16 time. I think Ms. Griffin did a good job of reiterating
17 issues related to manure storage, as well as the yield
18 goals.
19 With regard to the manure storage, and again,
20 I guess to start, I would kind of like to go back to
21 where I started, that the AHC's recommended decision
22 ignored key provisions of regulatory requirements set
23 forth in 10 CSR 20-6.300 and 10 CSR 20-8.300. It
24 confused issues of permitting compliance and operational
25 compliance, and I see that happening again today.

1 When DNR undertakes it's review of a permit
2 application, it has to adhere to two sets of
3 regulations, 10 CSR 20-6.300 and 10 CSR 20-8.300.
4 With respect to the latter, which are the
5 design criteria, DNR has to rely upon the seal of a
6 professional engineer. These are the Commission's
7 regulations. These are the regulations that the
8 Department has to adhere to in determining whether or
9 not to issue a permit.
10 With respect to manure calculation, the AHC
11 contended that there was not adequate manure storage
12 because the Department misapplied the definition of dry
13 process waste.
14 The required manure storage for any facility
15 is driven by the amount of manure generated at the
16 facility. The amount of manure generated is based upon
17 a calculation set forth in the Nutrient Management
18 Technical Standard.
19 Importantly, again, DNR relies upon a
20 professional engineer to certify the accuracy of the
21 manure storage calculations for the facility.
22 Significantly, the AHC even confirmed its
23 understanding that DNR is to rely upon the seal of the
24 professional engineer as to whether the facility meets
25 the requirements for issuance of a permit.

1 The AHC determined that Valley Oaks'
2 application had the required seal and signature of the
3 engineer and that his statement indicated the project --
4 and acknowledged the statement indicating that the
5 project was designed in accordance with regulations, the
6 design criteria regulations.
7 This is permitted as a no-discharge facility.
8 The AHC concluded that the Department is not permitted
9 to inquire further into the design.
10 Furthermore, one thing I did want to add with
11 respect to -- if we do want to look at the calculation,
12 that the calculation of what's presented, which didn't
13 even have to be included with respect to DNR's
14 undertaking its review of the permit application, was
15 actually very conservative.
16 This is going to be a facility where you're
17 going to have 30 percent of the manure exported off
18 site. That fact was not even considered with respect to
19 the calculation.
20 Additionally, the calculation contemplated
21 only the larger size of cows at this facility. It
22 didn't consider at all the fact that you're going to
23 have multiple weights, some cows that are of a lesser
24 weight that produce, therefore, less manure.
25 With respect to the yield goals for the land

1 application rates, again, one thing that I wanted to
2 point out is that the AHC's decision is not consistent
3 with Regulation 10 CSR 20-6.300(3)(G)2C, which are the
4 Best Management Practices and the Nutrient Management
5 Technical Standard, both of which contemplated
6 adjustments to the application rates per year and allows
7 flexibility for each owner to manage fields intensively
8 versus standard management.
9 Valley Oaks intends to intensively manage
10 these fields; therefore, the number justified that they
11 will, in fact, be able to meet the yield goals specified
12 therein.
13 And with respect to the Department's review
14 of the permit application, it was required to -- that
15 when field history -- yield history is not available,
16 another reference source may be used to estimate yield
17 goals.
18 DNR testified that the yield goals for this
19 facility were to be six tons per acre for the cool
20 season grass hay.
21 DNR testified at the hearing that it did, in
22 fact, have precedent and know of other facilities within
23 the state of Missouri that were able to meet those yield
24 goals, so, therefore, it was in DNR's view a realistic
25 yield goal for this facility, particularly given the

1 intensive management practices that were going to occur.
2 Does anyone have any questions?
3 CHAIR MCCARTY: Any questions for Ms. Bligh?
4 I do not see any at this time.
5 MS. BLIGH: Thank you.
6 CHAIR MCCARTY: Shawna, maybe I do.
7 MS. BLIGH: Yes.
8 CHAIR MCCARTY: I'm going back to standing.
9 Did you cite references on standing as well?
10 MS. BLIGH: I did not, no.
11 CHAIR MCCARTY: What was the one from 1890
12 that you cited? What was that?
13 MS. BLIGH: That was actually a case, and
14 that was pertaining to the issue of continuing
15 authority.
16 CHAIR MCCARTY: Okay. That was the spelling
17 matters, continuing authority conversation?
18 MS. BLIGH: That's correct.
19 CHAIR MCCARTY: Okay. Thank you.
20 MS. BLIGH: Certainly.
21 We've now heard from all parties.
22 Does the Commission wish to discuss this
23 further, move into closed session to discuss with our
24 counsel?
25 MS. GRIFFIN: Can I say one more thing?

1 MR. HATFIELD: Well, that would be fine --
2 MR. SCHAEFER: It's about what we talked
3 about.
4 MR. HATFIELD: Well, if we're going to allow
5 people to speak again, I'd also like an opportunity to
6 rebut.
7 MR. SCHAEFER: We talked about this.
8 MR. HATFIELD: Since I went first normally I
9 would have an opportunity --
10 MR. SCHAEFER: It's not rebuttal.
11 MS. GRIFFIN: No, it's not rebuttal.
12 MR. HATFIELD: -- to rebut, and I would ask
13 for an opportunity to rebut what was said.
14 CHAIR MCCARTY: By Shawna?
15 MR. HATFIELD: By both of the parties.
16 So Mr. Duggan and I talked about this.
17 Normally the party with the burden of proof would be
18 required to go first, and then that party would have an
19 opportunity to rebut. You required us to go first even
20 though we don't have the burden of proof. And normally
21 the party who goes first has an opportunity to rebut,
22 and that's what I'd request.
23 CHAIR MCCARTY: I will take that under
24 consideration.
25 MR. HATFIELD: Thank you.

1 MS. GRIFFIN: What I was going to request and
2 mention to the Commission is my clients have made an
3 offer to Powell in hopes that we might be able to
4 resolve their appeal and --
5 MR. SCHAEFER: We talked about this, and Amy
6 knows fully --
7 MR. HATFIELD: And she asked you not to tell
8 the Commission this.
9 MR. SCHAEFER: No. She said it's fine to say
10 that we made an offer.
11 MS. DAVENPORT: Our claim has not been --
12 THE COURT REPORTER: I'm sorry. I don't know
13 who is speaking. This is --
14 MR. HATFIELD: We'll rebut. We'll rebut.
15 CHAIR MCCARTY: The court reporter needs to
16 be able to record what we are addressing. And so one
17 moment.
18 MS. GRIFFIN: As I discussed with
19 Ms. Davenport right before we started this morning, and
20 she knew I was going to make this request, our clients
21 extended an offer to Powell. They haven't considered
22 it. I don't know what they're going to do with it.
23 Certainly we're hopeful that something will come out of
24 it that might result in a resolution. So I'm not
25 suggesting they've considered it or have any idea of

1 what they're going to do.
2 But because of that offer being extended we
3 would like to request that the Commission refrain from
4 issuing its final decision in both of the appeals, since
5 some of the issues are interrelated, for a week, just to
6 give us some time to see what their response is going to
7 be once they have an opportunity to consider it.
8 CHAIR MCCARTY: Thank you.
9 COMMISSIONER REECE: Madam Chair, are we
10 allowed to ask what that offer has --
11 MR. HATFIELD: You're allowed to ask whatever
12 you want, absolutely.
13 CHAIR MCCARTY: Let's let Amy address this
14 first and then if we have questions --
15 MS. DAVENPORT: Thank you, Chair McCarty.
16 Amy Davenport on behalf of Powell Gardens and the
17 Deichs.
18 I just would like to clarify that Powell
19 Gardens, we do know that Valley Oaks has extended an
20 offer, which you may question them about.
21 My client Powell Gardens is made up of a
22 board, a large board, an executive board, and all of the
23 board members certainly have not -- that offer was
24 extended late Thursday, and our board members haven't
25 seen it, so I do want the Commission to know that.

1 In terms of whether or not there is an
2 extension allowed, that is up to the Commission.
3 MR. HATFIELD: And there's been no offer
4 extended to the Deichs who also are parties to this
5 appeal, and we object to any additional delay.
6 Valley Oaks has tried to delay this matter
7 over and over and over again. It's improper of you to
8 consider whether there have been any offers made.
9 Thank you.
10 You know what, if you think I have an --
11 THE COURT REPORTER: I'm sorry. I --
12 CHAIR MCCARTY: You can't have comments
13 outside of the microphone and the record.
14 MR. JEFFERY: The only reason I came up,
15 Madam Chair, and I would ask briefly for a moment was
16 because Ms. Griffin asked that the hearings be delayed
17 in both cases, so I just wanted to provide Lone Jack
18 Neighbors' position on that.
19 Because under Section 621.250 the Commission
20 has to base its decision solely on facts and evidence,
21 quote, unquote, that is contained in the record.
22 Certainly it's okay with us if you want to append the
23 record with copies of briefs and filings, you know, that
24 the attorneys did before the AHC.
25 However, those comments of counsel in their

1 briefs don't constitute facts and they clearly don't
2 constitute evidence. So you don't need to delay any
3 type of vote in order just to read those briefs. The
4 briefs just should be appended to the record as
5 Mr. Duggan had suggested.
6 And we, you know, don't consider -- we think
7 the facts in evidence are in the record. They've been
8 submitted. There's a recommended decision. We think
9 the issue is right to be voted on today. We would
10 object to any delay to pursue some type of settlement
11 offer to which my parties, my clients, are not even a
12 party. It's, you know, justice delayed. It's justice
13 denied. Let's vote and get on with it.
14 CHAIR MCCARTY: I would just address that it
15 is doubtful that this Commission is going to act right
16 this moment and come up with a decision. As you can
17 see, we are swimming in information. We have had a
18 request by counsel to have briefs amended to the four-
19 inch, four-ring binders that we have.
20 And so we have a lot of facts to consider
21 before, because we take our job very -- our unpaid
22 citizen volunteer position very seriously. And so I'm
23 not sure that any of this conversation has much
24 relevancy on the decision that is going to be before us
25 today because we do have deliberation to do now and

1 likely in a closed session before us.
2 MS. GRIFFIN: And I just wanted to point out
3 we were not asking that the statutory period be
4 extended. Certainly Mr. Duggan mentioned it earlier in
5 his December 21 or 22 for the resolution of the
6 neighbors appeal and a couple days later for the Powell
7 appeal.
8 And I would also point out that under the
9 statute the only party that is before you today that has
10 the ability to extend that statutory deadline is my
11 client, my clients I should say, and we're not even
12 asking you to do that. And we appreciate that you are
13 going to take time to review everything, and we know
14 it's a lot of information.
15 CHAIR MCCARTY: Thank you.
16 Commissioners.
17 COMMISSIONER CODAY: I think it would be
18 appropriate if counsel for Powell wants to rebut. We
19 did give that -- we gave that opportunity in the
20 preceding case.
21 CHAIR MCCARTY: Absolutely.
22 We opened a door here. Please walk through
23 it, Mr. Hatfield.
24 MR. HATFIELD: I will attempt to walk through
25 it very quickly and hopefully in a focused manner.

1 One kind of cleanup detail for Commissioner
2 Thomas. As I understand it -- and I didn't have a
3 chance to read the regulation precisely -- the 6,999
4 cattle is an average. So you're right. It could be
5 less. It could be more on any given day. So that's
6 something that you can take to counsel and make sure I'm
7 right about that.
8 But this issue of design versus operation
9 versus plan, I think it's an important one. You need a
10 plan that complies with the rules. So you need a plan
11 that complies with the Nutrient Management Technical
12 Standard which require realistic goals.
13 So the question for you is -- and I think
14 it's pretty clear. The only testimony that the six ton
15 per acre yield goal was realistic is that Mr. Caldwell
16 said that he recalled seeing that in other filings.
17 That's it. That's all you have.
18 None of those records were produced. I asked
19 him and it's in the transcript. Do you have any of
20 those files?
21 So when you look at the administrative law
22 standard and what is an arbitrary and capricious
23 decision, the language that is used is this case based
24 on mere surmise guesswork or gut feeling.
25 So the question for you-all, if you want to

1 reverse the AHC -- and the AHC's finding is certainly
2 justified by the record, but if you wanted to reverse
3 what the AHC found about the realistic yield goals is
4 Mr. Caldwell's testimony that he recalled seeing those,
5 although the transcript will show he could not identify
6 by name one of them. Nobody produced any records that
7 that had ever actually happened.
8 Is that a reason to reverse the AHC's
9 decision or is that even sufficient evidence? I would
10 submit to you it's not. These weren't realistic yield
11 goals. They were backed into to try to figure out where
12 we're going to put all this manure, and there is not
13 enough space to put all of the manure.
14 Which gets to the manure storage. For the
15 180 days when you can't land apply, you need to be able
16 to store. You really ought to be able to store 365 days
17 worth, which we sort of lost sight of.
18 We included on purpose that Tab D2, an
19 exhibit where Valley Oaks' own expert, the person they
20 put up, went through the Permit Form W, which was manure
21 storage, and made its own handwritten notes on what he
22 thought about that original application.
23 At the bottom of the first page of D2, to
24 Commissioner Reece's point, Valley Oaks' expert wrote,
25 can't transport 80 percent liquid manure. He's

1 referring to Professor Sweeten's testimony. And then he
2 says, not sure, disagree, DS, Don (sic) Steen.
3 So Valley Oaks' own expert said that the
4 80 percent was not stackable. There is a technical
5 standard -- there's a technical document they talked
6 about. But that's why we included it.
7 He also -- Valley Oaks' own expert also
8 circled notice on the next -- on the third page the
9 2.3 foot stem walls, which is something Mr. Reece asked
10 about, and then at the end Valley Oaks' own expert
11 testified that the storage calculations were actually
12 wrong. What the engineer submitted was a math error.
13 And so what is being proposed to you-all
14 again is that if an engineer makes a math error and then
15 stamps it, you don't have any choice but to accept that.
16 Here there was a math error, and you will
17 take counsel on this from your technical people, from
18 your counsel. You are allowed to look at the evidence
19 that was presented at the AHC, and you're allowed to
20 look at the evidence that the engineer was simply wrong.
21 I think that kind of focuses on the main two
22 points that were raised. I'm happy to answer questions.
23 COMMISSIONER THOMAS: I have a question.
24 CHAIR MCCARTY: Commissioner Thomas.
25 COMMISSIONER THOMAS: Chuck, would you say

1 then that Ms. Bligh was incorrect when she said that
2 that is not part of what the Commission is charged with
3 looking at?
4 MR. HATFIELD: So I think that a -- I don't
5 know exactly how she said it.
6 An engineer's certification is certainly some
7 evidence that might be considered. Of course, in the
8 Trenton Farms case, I think it is, that I'm sure
9 Mr. Duggan will explain to you, there was a lot of
10 discussion about relying on certification. That's
11 504 S.W. 3rd 157. It's a 2016 case.
12 And whether you can rely on these -- by the
13 way, let me make sure I'm clear on this. This doesn't
14 go to this land application thing at all. That doesn't
15 have anything to do with land application.
16 COMMISSIONER THOMAS: Are we on permit or
17 operational compliance?
18 MR. HATFIELD: We're on permit. We're on
19 what the plan was.
20 COMMISSIONER THOMAS: All right.
21 MR. HATFIELD: So you have to have a plan to
22 store all of the manure before you put a cow out there.
23 You have zero cattle out there, but you have to have a
24 plan, and that's what the permit requirement is.
25 COMMISSIONER THOMAS: Okay.

1 MR. HATFIELD: And so the plan that was
2 submitted here was apparently, according to Valley Oaks'
3 expert, used the wrong weight for the cattle, used the
4 wrong amount of manure according to them, used the wrong
5 amount of storage capacity.
6 I mean, basically they're now saying that
7 their own engineer used the wrong figures, which is how
8 they're now getting to the numbers.
9 COMMISSIONER THOMAS: Okay.
10 MR. HATFIELD: But you do look at either --
11 you do look at the plan. We have to have a plan to
12 store the manure for the 6,999 cattle. Whether
13 operationally that happens or not, that is correct,
14 that's an issue for enforcement.
15 COMMISSIONER THOMAS: Okay. Thank you.
16 CHAIR MCCARTY: Any other questions for
17 Mr. Hatfield?
18 MR. HATFIELD: We very much appreciate your
19 patience.
20 CHAIR MCCARTY: Thank you.
21 MR. HATFIELD: Thank you.
22 CHAIR MCCARTY: Any other counsel need an
23 opportunity to address any final thoughts before us?
24 MS. GRIFFIN: I have a couple more. I
25 apologize. I know the day is growing long here. I just

1 want to say a couple of things in response to the
2 rebuttal.
3 First of all, there is no requirement in the
4 law that the application had to contain the information
5 that the Department relied on in determining whether
6 those yield goals were realistic. Deference is required
7 as a matter of law to the Department's interpretation of
8 its own regulations, of your regulations, in its
9 evaluation of the application, which as I indicated was
10 based on years of experience and expertise and data from
11 other CAFOs showing even greater yield goals than what
12 was in the Nutrient Management Plan.
13 And that is not arbitrary by any means. It's
14 appropriate, and it's what they do every single time
15 they consider an application, and it's what happened
16 here.
17 Also with respect to the characterization of
18 Exhibit 1009 and the handwriting at the bottom. There
19 was no testimony to the effect of what Mr. Hatfield said
20 during the hearing. In fact, he wasn't even at the
21 hearing when Mr. Steen testified. The comments are
22 hearsay. They should be disregarded. That's not part
23 of the record. It's his characterization of some
24 handwriting.
25 And for all of the reasons we already stated

1 we believe that the Department made the correct decision
2 and they followed the permitting requirements and we ask
3 that you issue the permit.
4 Thank you.
5 CHAIR MCCARTY: Thank you.
6 MR. HATFIELD: I trust you. You've got it.
7 CHAIR MCCARTY: Thank you. Thank you.
8 Okay. Commissioners.
9 COMMISSIONER THOMAS: I think we have a lot
10 of reading and a lot of discussion with our attorney
11 that need to happen before we make any type of decision
12 on this as it impacts the water resources of the state.
13 And so I would move that the Clean Water
14 Commission go into a closed session to discuss legal,
15 confidential and privileged matter under
16 Section 610.021 RSMo.
17 CHAIR MCCARTY: Okay. A motion has been
18 made.
19 COMMISSIONER REECE: Second.
20 CHAIR MCCARTY: Commissioner Reece has
21 seconded it.
22 Any discussion?
23 Okay. Seeing none, Chelsey, will you call
24 the roll, please.
25 MS. DISTLER: Commissioner Reece.

1 COMMISSIONER REECE: Aye.
2 MS. DISTLER: Commissioner Rowland.
3 COMMISSIONER ROWLAND: Aye.
4 MS. DISTLER: Commissioner Coday.
5 COMMISSIONER CODAY: Aye.
6 MS. DISTLER: Commissioner Thomas.
7 COMMISSIONER THOMAS: Aye.
8 MS. DISTLER: Chair McCarty.
9 CHAIR MCCARTY: Aye.
10 Motion passes.
11 This Commission will go into closed session
12 to discuss these matters. We will go back into open
13 prior to adjournment. So I cannot say whether we'll
14 have an answer at that time but we'll be considering
15 that and then -- so being that the Commission will
16 likely still have this matter under consideration, there
17 is an opportunity for public comment on the agenda.
18 We would ask that public comment not relate
19 to this matter because, again, we are attending to the
20 record in our decision on this matter. Public comments
21 have been made and have been incorporated in our record
22 on this matter, and so would ask that additional public
23 comments aren't taken on this as we're considering the
24 facts before us.
25 And so we will reconvene. I can't say a

1 time. We will back into open session before adjourning
2 today.
3 (CLOSED SESSION HELD.)
4 CHAIR MCCARTY: The Clean Water Commission
5 will go back into open session at this time.
6 The matters that are still before us would be
7 the permit appeals 18-0498 and 18-0501.
8 And so I would just open up the floor for
9 discussion or a motion by the Commission.
10 COMMISSIONER THOMAS: In light of testimony
11 provided or not provided today, I would make a motion
12 that we uphold the AHC 18-0498 in light of some
13 deficiencies that were in the permit originally.
14 CHAIR MCCARTY: Okay. A motion has been
15 made. Is there a second for that motion?
16 COMMISSIONER ROWLAND: I'll second.
17 CHAIR MCCARTY: Okay. Commissioner Rowland
18 had seconded.
19 Is there any discussion on this motion?
20 COMMISSIONER THOMAS: I would like to add
21 something.
22 I think while it may be standard operating
23 practice that we accept certain LLCs and things that we
24 find on the Secretary of State's website, there were
25 grave concerns regarding continuing authority and who

1 would actually be liable if things were not proven to be
2 the person or people or entity that we felt they would
3 be on this particular motion.
4 CHAIR MCCARTY: Thank you.
5 Any other comments?
6 Okay. Seeing none, Chelsey, would you call
7 the roll on this motion, please.
8 MS. DISTLER: Commissioner Rowland.
9 COMMISSIONER ROWLAND: Aye.
10 MS. DISTLER: Commissioner Coday.
11 COMMISSIONER CODAY: No.
12 MS. DISTLER: Commissioner Thomas.
13 COMMISSIONER THOMAS: Aye.
14 MS. DISTLER: Commissioner Reece.
15 COMMISSIONER REECE: Aye.
16 MS. DISTLER: Chair McCarty.
17 CHAIR MCCARTY: Aye.
18 Okay. That motion passes and the
19 Administrative Hearing Commission's recommended decision
20 on 18-0498 is upheld.
21 Okay. Then moving to decision 18-0501. Any
22 discussion or would entertain a motion on that.
23 COMMISSIONER REECE: Madam Chair.
24 CHAIR MCCARTY: Yes.
25 COMMISSIONER REECE: I move that the Clean

1 Water Commission uphold the Administrative Hearing
2 Commission's recommended decision regarding Countryclub
3 Homes, LLC, Appeal No. CWC 18-0501.
4 CHAIR MCCARTY: Okay. A motion has been
5 made. Is there a second for that motion?
6 COMMISSIONER CODAY: I second the motion.
7 CHAIR MCCARTY: Thank you, Commissioner
8 Coday.
9 Any discussion on this motion before us?
10 Seeing none, Chelsey, would you call the
11 roll.
12 MS. DISTLER: Commissioner Coday.
13 COMMISSIONER CODAY: Aye.
14 MS. DISTLER: Commissioner Reece.
15 COMMISSIONER REECE: Aye.
16 MS. DISTLER: Commissioner Rowland.
17 COMMISSIONER ROWLAND: No.
18 MS. DISTLER: Commissioner Thomas.
19 COMMISSIONER THOMAS: Aye.
20 MS. DISTLER: Chair McCarty.
21 CHAIR MCCARTY: Aye.
22 That motion has passed upholding the
23 Administrative Hearing Commission's decision on
24 18-0501.
25 With those matters decided, we will now move

1 to public comment and correspondence as needed and would
2 ask anyone interested in making a public comment to make
3 sure that we have a card up here so that we can
4 recognize you and call you forward.
5 And the cards that I have up here would all
6 be in regard to the issue that we have just taken up and
7 decided on, so would ask that those are held to another
8 time from the issues now before us.
9 Okay. Any new public comment or
10 correspondence on this matter or on any matter before
11 Clean Water?
12 Yes, ma'am.
13 MS. EDWARDS: Yes, I would like -- would it
14 be permissible to give these comments going forward on a
15 new application or just some general comments?
16 CHAIR MCCARTY: Not at this time on this
17 matter. We do not have a new application in front of
18 us, in front of this Commission. I understand that the
19 Department will. I'm sure that there will be -- that's
20 on public notice, and so there will be opportunity for
21 comments at that time.
22 MS. EDWARDS: Okay. I have a couple letters.
23 Can I leave them with you for your perusal?
24 CHAIR MCCARTY: That would probably be best
25 left with the Department, but, yes, you may. We'll get

1 them to the right people within the Department.
2 MS. EDWARDS: May I come up now and give them
3 to you?
4 CHAIR MCCARTY: Absolutely.
5 MS. EDWARDS: Thank you.
6 THE COURT REPORTER: If you can give me your
7 name, please, and spell it.
8 MS. EDWARDS: Barbara Edwards, Lone Jack,
9 Missouri.
10 I don't know that I have -- these were
11 prepared (inaudible) --
12 THE COURT REPORTER: I'm sorry. I'm having
13 trouble hearing you.
14 MS. EDWARDS: Oh, I'm sorry.
15 CHAIR MCCARTY: We'll take those, yes.
16 MS. EDWARDS: Okay. These are from her,
17 these are letters from me, and then I will go ahead and
18 put those onto the website.
19 Thank you very much.
20 And my thanks to you-all and to
21 Commissioner Berri. I listened one and a half days. I
22 felt him to be very attentive and very, very good at
23 listening.
24 Thank you again.
25 CHAIR MCCARTY: Thank you.

1 Okay. That concludes the business before the
2 meeting of the Missouri Clean Water Commission today,
3 and with that we are adjourned.
4 WHEREIN, the meeting was adjourned at
5 2:11 p.m.
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14 by the parties thereto, nor financially or otherwise
15 interested in the outcome of the action.
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Tab B5

Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Approval of Closed Session Minutes

Issue:

Commission to review the Closed Session minutes from the December 10, 2018, Missouri Clean Water Commission meeting.

Recommended Action:

Commission to approve the Closed Session minutes from the December 10, 2018, Missouri Clean Water Commission meeting.

Tab B6

Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Approval of Minutes

Issue:

Commission to review the Open Session minutes from the January 9, 2019, Missouri Clean Water Commission meeting.

Recommended Action:

Commission to approve the Open Session minutes from the January 9, 2019, Missouri Clean Water Commission meeting.

Attachments

Official transcripts

MISSOURI DEPARTMENT OF NATURAL RESOURCES
WATER PROTECTION PROGRAM

DRAFT MINUTES OF THE
MISSOURI CLEAN WATER COMMISSION MEETING
Lewis and Clark State Office Building
1101 Riverside Drive
Jefferson City, Missouri
January 9, 2019

Present via Telephone
Patricia Thomas, Missouri Clean Water Commission

Present at Lewis and Clark State Office Building
Ashley McCarty, Chair, Missouri Clean Water Commission
John Reece, Missouri Clean Water Commission
Stan Coday, Missouri Clean Water Commission
Allen Rowland, Missouri Clean Water Commission
Chris Wieberg, Director of Staff, Missouri Clean Water Commission
Tim Duggan, Legal Counsel, Missouri Clean Water Commission
Chelsey Distler, Acting Secretary, Missouri Clean Water Commission

Stuart Baker, Missouri Department of Natural Resources, Jefferson City, Missouri
Kurt Boeckmann, Missouri Department of Natural Resources, Jefferson City, Missouri
Joe Boland, Environmental Improvement and Energy Resources Authority, Jefferson City, Missouri
Robert Brundage, Newman, Comley, and Ruth, Jefferson City, Missouri
Ashlen Busick, Citizen, Trenton, Missouri
Kurtis Cooper, MoDNR, Jefferson City, Missouri
Sharon Davenport, Department of Natural Resources, Jefferson City, Missouri
Jane Davis, Missouri Department of Natural Resources, Jefferson City, Missouri
Joan Doerhoff, Department of Natural Resources, Jefferson City, Missouri
Dee Dokken; Osage Group Sierra Club, Columbia, Missouri
Jodi Gerling, Missouri Department of Natural Resources, Jefferson City, Missouri
Amanda Good, HSUS, Jefferson City, Missouri
Jennifer Hernandez, Attorney General's Office, Jefferson City, Missouri
Jeanne Hersee, Citizen, Jamestown, Missouri
John Hoke, Missouri Department of Natural Resources, Jefferson City, Missouri
Leslie Holloway, Missouri Farm Bureau, Jefferson City, Missouri
Ramona Huckstep, Missouri Municipal League, Jefferson City, MO
Hannah Humphrey, Missouri Department of Natural Resources, Jefferson City, Missouri
Steve Jeffrey, Ozark Civilian Conservation Corps, St. Louis, Missouri

Donald Jones, Citizen, Poplar Bluff, Missouri
Shirley Kidwell, Citizen, Fulton, Missouri
Chris Klenklen, Missouri Department of Agriculture, Jefferson City, Missouri
Nancy Krutesch, Citizen, Jefferson City, Missouri
Paul Martin, Ozark Civilian Conservation Corps, Clarksburg, Missouri
Brenda Martin, Ozark Civilian Conservation Corps, Clarksburg, Missouri
Cole Marty, Citizen, Kirksville, Missouri
Jack Meinzenbach, Citizens Climate Lobby, Columbia, Missouri
David P. Nelson, Kansas City Water, Kansas City, Missouri
Randy Norden, MRCRA, Ashland, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
Norb Plassmeyer, Citizen, Jefferson City, Missouri
Sandra Potts, Ozark Civilian Conservation Corps, Tipton, Missouri
Joel Reschly, Missouri Department of Natural Resources, Jefferson City, Missouri
Libby Reinsch, Citizen, Kirksville, Missouri
Jill Sellenreick, Citizen, Fulton, Missouri
Darrick Steen, Missouri Corn Growers/Soybean Association, Jefferson City, Missouri
Patty Tuttle, Ozark Civilian Conservation Corps, Clarksburg, Missouri
Charles Tuttle, Citizen, Clarksburg, Missouri
Fred Williams, Ozark Civilian Conservation Corps, Clarksburg, Missouri
Susan Williams, Ozark Civilian Conservation Corps, Clarksburg, Missouri

CALL TO ORDER

Chair McCarty called the meeting of the Missouri Clean Water Commission (CWC) to order on January 9, 2019, at 9:04 a.m., at the Lewis and Clark State Office Building, 1101 Riverside Drive, Jefferson City, MO.

Chair McCarty introduced the Commissioners, Staff Director, Legal Counsel, and the Commission Secretary.

Administrative Matters

Election of Missouri Clean Water Commission Vice-Chair
Agenda Item 1

Commissioner Rowland made a motion to elect Thomas as Vice-Chair. Commissioner Reece seconded the motion. The motion passed with a roll call vote:

Commissioner Coday:	**Yes**
Commissioner Thomas:	**Yes**
Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Chair McCarty:	**Yes**

Recommended Decision Regarding PVC Management II, Appeal No. CWC 18-0549
Agenda Item 2

Item #1: Disqualification of Chair McCarty

A second amended motion was placed before the Commission by Stephen Jeffrey, attorney for Ozark Civilian Conservation Corps, to disqualify Chair McCarty from voting on the recommended decision regarding PVC Management II, appeal number CWC 18-0549. Chair McCarty turned over control of the commission to Vice Chair Thomas for this discussion. Chair McCarty also asked to make a statement regarding the motion.

Commissioner Reece made a motion to deny the motion to disqualify Chair McCarty. Commissioner Rowland seconded the motion. The motion passed with a roll call vote:

Commissioner Coday:	**Yes**
Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Vice Chair Thomas:	**Yes**
Chair McCarty:	**Abstain**

Item #2: Presentations regarding the Recommended Decision Regarding PVC Management II, Appeal No. CWC 18-0549

Stephen Jeffrey, attorney for Ozark Civilian Conservation Corps, provided comments and gave a slide presentation on behalf of his client. In addition, he is asking on behalf of his client that the Commission disapprove the permit, or impose reasonable conditions to require a baseline water quality assessment and a groundwater monitoring program at the site if the permit is approved.

Jennifer Hernandez, Missouri Attorney General's Office, provided comments and asked that the Commission adopt the recommended decision of the Administrative Hearing Commission to sustain the issuance of the permit to PVC Management II, Permit No. MOGS10560.

Commissioner Reece made comments regarding the effects that this Concentrated Animal Feeding Operation (CAFO) may have on the groundwater surrounding properties.

Commissioner Coday moved the Commission go into closed session to discuss legal, confidential, or privileged matters under Section 610.021(1), Revised Statutes of Missouri. Commissioner Rowland seconded the motion. The motion passed with a roll call vote.

Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Commissioner Coday:	**Yes**
Vice Chair Thomas:	**Yes**
Chair McCarty:	**Yes**

Open session reconvened at 10:17 a.m.

Commissioner Coday made a motion to uphold the decision made by the Administrative Hearing Commission. Commissioner Rowland seconded the motion. The motion passed with a roll call vote:

Commissioner Reece:	**No**
Commissioner Rowland:	**Yes**
Commissioner Coday:	**Yes**
Vice-Chair Thomas:	**Yes**
Chair McCarty:	**Yes**

Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan Amendment
Agenda Item 3

Hannah Humphrey, Missouri Department of Natural Resources, Financial Assistance Center, presented an amendment to the Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan.

Commissioner Reece made a motion to approve the amendment as proposed. Commissioner Coday seconded the motion. The motion passed with a roll call vote:

Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Commissioner Coday:	**Yes**
Vice-Chair Thomas:	**Absent for vote**
Chair McCarty:	**Yes**

Motion to Approve the November 27, 2018, Missouri Clean Water Commission Closed Meeting Minutes
Agenda Item 4

Commissioner Coday made a motion to approve the minutes. Commissioner Reece seconded the motion. The motion was passed with a roll call vote.

Commissioner Rowland:	**Yes**
Commissioner Coday:	**Yes**
Commissioner Reece:	**Yes**
Vice-Chair Thomas:	**Absent for vote**
Chair McCarty:	**Yes**

Application for Award of Attorney's Fees Regarding County Club Homes, LLC, Permit MOG10872
Agenda Item 5

Tim Duggan spoke to the commission and recommended that the issue be tabled to ensure there are no additional appeals before a decision is made.

Commissioner Rowland made a motion to table this issue for a later meeting. Commissioner Reece seconded the motion. The motion was passed with a roll call vote.

Commissioner Rowland:	**Yes**
Commissioner Coday:	**Yes**
Commissioner Reece:	**Yes**
Vice-Chair Thomas:	**Absent for vote**
Chair McCarty:	**Yes**

Presentations

Director's Update
Agenda Item 6

Chris Wieberg, Director, Water Protection Program, reported the following to the Commission:

- Approval of U.S. Environmental Protection Agency's (EPA) Numeric Nutrient Criteria proposal
- Notice of triennial review of water quality standards
- Missouri Agricultural & Small Business Authority
- 2018 303d List and 2020 listing methodology
- 2018 Clean Water Permit Fee Annual Invoice Report
- 2018 Issued Permits Report
- FFY18 Compliance Monitoring Strategy Report
- EPA review of the Commission's water quality standards package
- Clean Water Commission hearing that will be held for the East-West Gateway 208 Tier I Management Plan amendment

Public Comment and Correspondence
Agenda Item 7

Robert Brundage, Newman, Comley, and Ruth, Jefferson City, Missouri, provided comments about the pending EPA approval of water quality standards that the Commission passed. Wanted to point out that new regulations can't be used until they are approved by the EPA, and that the only portion of the package that was approved was lake nutrient criteria. Mr. Brundage has clients who are waiting on permits that want to take advantage of the new regulations once they are approved. He suggested that the Commission contact the EPA and ask for a commitment or timeline as to when this process will be completed.

Nancy Crutch, Citizen, Clarksburg, Missouri, provided comments about the Tipton East CAFO, she lives 0.2 miles away from the CAFO. She is concerned about the negative health impacts the CAFO has on her family and community.

Missouri Clean Water Commission Meetings
Agenda Item 8

- April 29, 2019, Lewis and Clark State Office Building
- July 10, 2019, Lewis and Clark State Office Building
- October 9, 2019, Lewis and Clark State Office Building

ADJOURNMENT OF MEETING

Commissioner Rowland moved the Commission adjourn the meeting. Commissioner Reece seconded the motion. The motion passed with a roll call vote.

Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Commissioner Coday:	**Yes**
Vice-Chair Thomas:	**Absent for vote**
Chair McCarty:	**Yes**

Commission adjourned the open meeting at 11:26 a.m.

For more information contact:
Ms. Krista Welschmeyer, Commission Secretary, Missouri Clean Water Commission
Water Protection Program, P.O. Box 176, Jefferson City, MO 65102
Phone: 573-751-6721
Fax: 573-526-1146
E-mail: krista.welschmeyer@dnr.mo.gov

Respectfully Submitted,

Chris Wieberg
Director of Staff

1 BEFORE THE DEPARTMENT OF NATURAL RESOURCES
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3
4
5 MISSOURI CLEAN WATER COMMISSION
PUBLIC HEARING REGARDING PVC MANAGEMENT II
6 APPEAL NO. CWC 18-0549
AT LEWIS & CLARK STATE OFFICE BUILDING
7 1101 RIVERSIDE DRIVE
JEFFERSON CITY, MISSOURI 65101
8
JANUARY 9, 2019
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A P P E A R A N C E

MS. ASHLEY McCARTY, Chair
MS. PATRICIA THOMAS, Vice Chair
MR. ALLEN ROWLAND, Member
MR. CHRIS WIEBERG, Member
MR. STAN CODAY, Member
MR. JOHN REECE, Member
MS. CHELSEY DISTLER, Acting Commission Secretary
MR. DUGGAR, Legal Counsel

Court Reporter:
Joann Renee Richardson
Alaris Litigation Services
711 North Eleventh Street
St. Louis, MO 63101
(314) 644-2191
1-800-280-3376

1 MS. McCARTY: Good morning everyone.
2 We will now call this meeting of the Missouri Water
3 Commission to order. First I would like to introduce
4 my commissioners and staff in front of you today. I
5 am Ashley McCarty, Chair from Kirksville, Missouri.
6 To my right is Stan Coday, Commissioner from Seymour
7 area. To his right is Allen Rowland, Commissioner
8 from Dexter.
9 John Reece is at the end of the table from
10 Lee's Summit. Patricia Thomas is joining us by phone
11 today and will be participating. And to my left is
12 Chris Wieberg, director of staff for the Commission
13 and director of the water protection program.
14 Tim Duggan is here as Commission legal
15 counsel from the Attorney General's Office. Chelsey
16 Distler is acting secretary to the Commission and
17 acting secretary to the program and has successfully
18 stayed as acting in those roles.
19 We first have an amended agenda before us
20 this morning, in that our first order of business will
21 be the election of the Missouri Clean Water Commission
22 Vice Chair.
23 For those that don't know, Commissioner Ben
24 Hurst took a new role and with that needed to step
25 away from his citizen service on the Missouri Clean

1 Water Commission. And we have a certificate
2 recognizing his service here on the Clean Water
3 Commission since January 31st of 2018. We appreciate
4 his time.
5 This is certainly a burden to bear at times
6 and a call to public service at others, so I will pass
7 down this recognition of Ben's service on the
8 Commission. And with his departure, we will need to
9 elect a new vice chair before us today. So I will
10 sign this and pass down and, while doing so, would
11 accept any nominations from my fellow commissioners
12 for the service of vice chair.
13 COMMISSIONER ROWLAND: Madam Chairman, I
14 would nominate Pat Thomas.
15 COMMISSIONER REECE: Second.
16 CHAIRMAN McCARTY: Commissioner Thomas
17 has been nominated and second. Is there any other
18 nominations.
19 COMMISSIONER CODAY: Move the nominations
20 cease.
21 CHAIRMAN McCARTY: Commission Coday has
22 moved that nominations cease. Pat, are you willing to
23 serve as Commission vice chair.
24 COMMISSIONER THOMAS: I would be honored.
25 CHAIRMAN McCARTY: Commissioner Thomas

said, "Yes, I would be honored." It's a little fuzzy on this end Pat, so I am repeating for the court reporter in attendance this morning.

COMMISSIONER THOMAS: Thank you.

CHAIRMAN McCARTY: Chelsey, can you call the roll for this vote, please?

MS. DISTLER: Commissioner Coday.

COMMISSIONER CODAY: Aye.

MS. DISTLER: Commissioner Thomas.

COMMISSIONER THOMAS: Aye.

MS. DISTLER: Commissioner Reece.

COMMISSIONER REECE: Aye.

MS. DISTLER: Commissioner Rowland.

COMMISSIONER ROWLAND: Aye.

MS. DISTLER: Chair McCarty.

CHAIRMAN McCARTY: Aye. Congratulations, Pat. Thank you for your willingness to serve in a leadership role on the Clean Water Commission. We appreciate it and appreciate your time here with us even despite a busy day.

Pat, the next order of business that we will be moving to is our second agenda item, which all it entails is the Administrative Hearing Commission's recommended decision regarding PVC Management II, which is Appeal CWC 18-0549.

The first issue that we need to deal with is the second amended motion to disqualify myself, Commissioner McCarty, and I would turn the floor over to you if you feel comfortable doing so via phone.

COMMISSIONER THOMAS: Yes, that's fine.

CHAIRMAN McCARTY: The sound is coming through better on this side. I think maybe first, Commissioner Thomas, I would like to make a statement on this motion to disqualify, if that suits you.

COMMISSIONER THOMAS: Does anyone have any discussion or objection to Commissioner McCarty making her own personal statement on the issue?

COMMISSIONER REECE: Madam co-chair, I would like to move that we deny Mr. Jeffrey's motion to disqualify Chair McCarty, in that her service and her knowledge and her understanding of the Commission and its activities more than qualifies her to remain in that position through the process of hearing this permit consideration.

COMMISSIONER THOMAS: Thank you. Is there a second to commissioner Reece's motion?

COMMISSIONER ROWLAND: I'll second that motion.

COMMISSIONER THOMAS: Thank you, Commissioner Rowland. Any discussion? Seeing none,

Chelsey would you please call the roll?

MS. DISTLER: Commissioner Reece.

COMMISSIONER REECE: Aye.

MS. DISTLER: Commissioner Rowland?

COMMISSIONER ROWLAND: Aye.

MS. DISTLER: Commissioner Coday.

COMMISSIONER CODAY: Aye.

MS. DISTLER: Vice Chair Thomas.

COMMISSIONER THOMAS: Aye.

MS. DISTLER: Chair McCarty?

CHAIRMAN McCARTY: Abstain.

COMMISSIONER THOMAS: So is that by a vote of four to zero?

CHAIRMAN McCARTY: Yes, with one abstention.

Commissioner THOMAS: By a vote of four to zero, the motion on the table passes or the motion before us passes. Chairman McCarty, would you like to take back over the meeting.

CHAIRMAN McCARTY: Sure. I would just like to clarify that there are two separate issues that this motion to disqualify really attempts to meld into one and so, to make clear, my role is to ensure that an opportunity exists, an environment exists in counties so that agriculture can grow and thrive.

1 My role is not to advocate for, defend, nor
2 promote any individual operation, farm, nor permittee
3 that would qualify in this case and all others, in
4 that while working in this case in Cooper County to
5 ensure that Cooper County did not enact additional
6 regulations that were burdensome on agriculture, it
7 did not involve my role in advocating for PCV II or
8 any other permittee at that time. And same in the
9 second amended motion, that the support for a county
10 commissioner did not equate to support for this
11 permittee or any other.
12 And in my work role, I work hard to
13 maintain that I have two hats that I wear, one as a
14 citizen, service here on the Clean Water Commission,
15 and another in my work role in Missouri farmers care.
16 I am diligent in ensuring that those things are
17 separate and that I do not advocate for anything or
18 take any stand on anything that would be coming before
19 me on the Clean Water Commission as it has in this
20 case with PVC II. Thank you all.
21 We will now move into -- as we have on
22 previous appeals -- hearing from the parties that are
23 representing both the plaintiff and the defendant. In
24 this case it will be Mr. Jeffrey representing
25 opponents of Cooper County CAFOs and the Attorney

1 General's Office. And so, Mr. Jeffrey, I would with
2 offer you to come forward and make your presentation
3 at this time.
4 MR. JEFFREY: Good morning.
5 CHAIRMAN McCARTY: Good morning.
6 MR. JEFFREY: Good morning, Chairman
7 McCarty and members of the commission. My name is
8 Steve Jeffrey. I represent the petitioners in this
9 case. Anyone who has ever dealt in the world of real
10 estate knows that the three magic words involving real
11 estate are location, location, location.
12 And what I would like to do today is just
13 run you through a very brief PowerPoint presentation
14 which shows why the location of the proposed Tipton
15 East CAFO is an unsuitable location for the operation
16 that they propose.
17 I would like to discuss three topics today.
18 First, the soils at the CAFO site. Secondly, some
19 hydrogeological issues at the CAFO site. And then,
20 finally, the request that my clients would like to
21 make to the Commission. This map -- again, this is
22 going to show excerpts of several actual exhibits that
23 were introduced at the Administrative Hearing
24 Commission and should be contained in the
25 administrative record, which you have in front of you.

1 What this is is an excerpt from Exhibit 7.
2 This is just a general view showing the location of
3 where the CAFO is located. Hopefully you can see that
4 better than this one. Is that pretty visible?
5 There's a white box with red letters "CAFO." That's
6 the site of the proposed facility.
7 And then the red area outlined is the
8 approximate location where all the spreading fields
9 would be located, where waste from the the CAFO would
10 be knifed in, disked in, however the particular
11 operator would do that. And this is located at the
12 very very southern edge of Cooper County.
13 This next document is an excerpt from
14 Exhibit 14, which was the deposition transcript of Tom
15 Aley. Tom Aley, A-L-E-Y, is probably one of most
16 prominent geologists, not only in Missouri, but in the
17 Midwest. He has 40 to 50 years experience dealing
18 specifically with karst and karst related issues
19 throughout Missouri, northwest Arkansas, and the whole
20 general area. His resume' is included within the
21 exhibit. I think there's a separate exhibit with his
22 resume and if the Commission would like additional
23 information on his background, I would encourage you
24 to look at that.
25 But what this document is, is a soils map

1 which Mr. Aley referenced during his deposition. It
2 shows several features. These include these green
3 dots, which are drinking water wells located in the
4 area. And if you look within one and a quarter radius
5 of where the CAFO will be proposed, I believe there
6 are 22 residential wells. And based on information in
7 the administrative record from some people who live
8 within that area, these are relatively shallow wells,
9 all less than four, 500 feet. I believe they were
10 less than 300 feet in some cases.
11 So, anyway, the important takeaway here is,
12 there is no county water. There is no water district.
13 Everyone is dependant upon groundwater for the source
14 of their drinking watering supply. More importantly,
15 most of these people are farmers, so all of their
16 agricultural water supply also comes from wells, so
17 all the water supply is at issue here.
18 What this document does, it's the same as
19 the preceding soils map, but the layer of the map that
20 shows where all the wells are located is peeled back,
21 so what this map shows -- you'd probably have to look
22 at it in more detail -- but it shows the specific
23 soils type throughout this region. If you can focus
24 in on the classification of the soil type where the
25 physical plant of the CAFO would be located and where

most of these spreading fields are located, you'll see a certain number, a five digit number.

These numbers are prepared not by my clients, they're prepared by the NRCS, an agency of the U.S. Department of Agriculture. These maps are all derived from federal sources. And what I would like to do is hand out a hard copy -- this is an exhibit into the record.

If you were to look in the back of that document, there are several fold-out maps and I believe it's sheet number 41, is where this specific site is located. That's where all these soil numbers come from. So specifically the source is the federal government for these soil types.

If you look at the relevant numbers that we're talking about, these are what are called "Clafork" soils. C-L-A-F-O-R-K. The numbers are shown here, the 73137, 73138, and 73531. It is the third one, the 73531, that's the one that almost totally envelopes the site of where the proposed Tipton East facility would be located.

Exhibit 15 is in the record and that's the document that Mr. Coday is looking at right now, that's the cover of it. And if you look on Page 27 of Exhibit 15, it gives you a description of Clafork

1 soils. At some point in time the NRCS changed the
2 numbering for Clafork soils from the four digits that
3 they use here and they made it a five digit. I assume
4 they digitized that for computer purposes or
5 something.
6 Any way, what this page describes is
7 Clafork soils. This very deep, moderately sloping,
8 somewhat poorly drained soil is on the shoulders and
9 back slopes of ridges in the uplands. It basically
10 describes what that classification of Clafork soil is.
11 And then if you turn to page 27, I think
12 it's the same page further down, according to NRCS,
13 the important properties of that soil are listed and
14 the ones I would like to highlight are the two shown
15 with the red arrows. The seasonal high water table:
16 Perched at a depth of one and a half feet below ground
17 surface. And finally what's call the shrink-swell
18 potential, and it says high.
19 When I first saw that, I had no
20 understanding what shrink-swell potential meant. I
21 thought it was an interesting concept. And in his
22 deposition, Mr. Aley went on to explain all this. It
23 referenced to the NRCS document that you have inspect
24 front you.
25 If you look at Page 150 in the NRCS soils

map, it defines shrink-swell as, "The shrinking of soil when dry and the swelling when wet. Shrinking and swelling can damage roads, dams, building foundations and other structures. It can also damage plant roots."

On Page 103 of the NRCS soils document it describes shrink-swell potential. It is a potential for volume change in a soil with a loss or gain in moisture. Which means whenever there's any kind of rain event, the soil particles where the sight of the CAFO is located are going to expand, and when the weather dries up they're going to shrink again. Shrink-swell, that's where the terminology comes from.

Again, this isn't my client saying this. This is the USDA NRCS saying this. If the shrink-swell potential is rated moderate to very high, shrinking and swelling can cause damage to buildings, roads and other structures. Special design is often needed.

If you look further back in the NRCS document on Page 183, there is a table given. I believe this is Table 11. And what this does is, the NRCS has developed different types of tables, like based on different soil types. It gives you characteristics for doing various activities at a

1 location given a given soil type.
2 And here it's in Table 11, as we said, on
3 page 183. The columns are the soil type and then
4 there's a column shallow foundations, buildings
5 without basement, buildings with basements, small
6 commercial buildings, local roads and streets, and
7 lawns and landscaping.
8 So in this table the NRCS is providing to
9 the user information about whether or not soils at a
10 given location with a particular soil classification,
11 what are the attributes of that soil with respect to
12 these various activities.
13 So if you turn to Page 183 and you go down,
14 it lists clafork soils. All three categories of the
15 clafork soils, there's entry for that. The entry I
16 would like to draw the Commission's attention to is
17 under buildings without basements. It says the
18 classification is severe. It's severe because of the
19 shrink-swell potential. The attribute for buildings
20 with basements is severe because of the wetness and
21 swell. And for small commercial buildings it's also
22 categorized as severe for shrink-swell potential.
23 And, again, this isn't a table prepared by
24 my clients. This is a table prepared by the U.S.
25 Department of Agriculture, NRCS. This document is not

1 in the record, but I found this on the internet
2 because it just illustrates a situation where if you
3 had an underground concrete structure, it shows the
4 upward and sideward pressure resulting from this
5 shrink-swell characteristics.
6 Whenever it gets wet and the soils expand,
7 it will exert pressure on the sides and up from the
8 bottom on any concrete structure and it's going to
9 cause that structure to crack. That's why these
10 building foundations were rated as severe.
11 So with regard to the hydrogeological
12 issues -- and, again, this is all reflected in
13 Mr. Aly's deposition at Pages 44 and 45. His
14 transcript is Exhibit 14. Again, it was
15 uncontradicted. There was no other testimony or
16 evidence presented to the AHC to contradict what
17 Mr. Aly's professional opinions were concerning the
18 hydrogeological issues here.
19 He testified that based on his review, this
20 location of where the facility is proposed is
21 underlain by what's called Burlington-Keokik
22 limestone. And based on his review of those maps,
23 which we looked at a few moments ago, that there are
24 multiple springs in the area and there are multiple
25 shallow residential drinking water wells in the area.

1 Also Exhibit 12, Page 3 -- I'd like to hand
2 this out. This is just a copy of a summary document
3 that Mr. Aly referred to in his deposition and it's
4 attached to the record in Exhibit No. 12, if anyone
5 wanted to refer along -- he indicates that the CAFO
6 was underlain by a karst aquifer that supplies water
7 to numerous springs and provides the only drinking
8 water source for 22 homes within a mile and quarter of
9 the CAFO. He also states no alternative drinking
10 water sources exist or are expected to exist in the
11 foreseeable future.
12 He also states the Tipton East CAFO site is
13 a hydrologically unsuitable site for liquid manure
14 storage in underground pits. As designed the site
15 will not and cannot function as a no-discharge
16 facility. He explained his opinions are based upon
17 the fact of the karst geology, the shallow water
18 table, and the clafork soils with the severe
19 shrink-swell potential for any type of underground
20 structure associated with the building.
21 Again, referring back to NRCS table, if the
22 federal government says -- if I want to build a small
23 house with a small basement and it's going to be very,
24 very difficult for me to do that, how is it going to
25 be for the Tipton East folks to build their massive,

1 you know, underground structures at their production
2 facilities on a much larger scale, on orders of
3 magnitude larger than my small house with a small
4 basement that the Feds say I shouldn't build.
5 Again, on Page 4 of Mr. Aley's summary, he
6 said the factors that contribute to or responsible for
7 leakage from this facility would be, first, an
8 inadequate subsurfacing investigation for a site
9 underlain by a karst aquifer. There's no evidence
10 that investigations appropriate for a site underlain
11 by a karst aquifer were ever conducted by anybody.
12 Subsurface investigations need to extend through the
13 epikarstic zone, approximately the top 30 feet of
14 bedrock.
15 He also indicated that there's no evidence
16 of any assessment of the impacts of irregular bedrock
17 surface, shrink-swell potential of the soils, or low
18 strength of soils on the leakage integrity of the
19 waste pits. And this is on page 4 of Exhibit 12,
20 which you have.
21 He also indicated there's no evidence of
22 any assessment of the risks of the differential
23 subsidence of rock, residuum, and soil overlying
24 solutionally enlarged openings in the bedrock. This
25 is an attribute related to the karst topography.

1 Such subsidence would damage the leakage
2 integrity of the manure storage basins. He also said
3 moderate to high shrink-swell characteristics of the
4 soil and residuum plus low strength of the soils and
5 residuum. These characteristics will result in the
6 fracturing of the concrete manure pits and leakage of
7 liquid manure into the karst groundwater system.
8 And, again, this is just not an opinion
9 he's pulling out of the air. His opinions are based
10 on the NRCS soils document developed and issued by the
11 federal government. Mr. Aley finally concluded,
12 "Given the hydrogeologic setting on top of the
13 limestone units that are routinely karstified,
14 monitoring wells are required. These wells must be
15 designed and located where they will detect
16 unpermitted discharges of wastes to groundwater.
17 So based on that, it appears the reasonable
18 conclusion that could be drawn, is that based on the
19 karst geology at the site, the 22 shallow drinking
20 water wells all located within a mile and a quarter of
21 the site as well as the clafork soils that are present
22 not only at the CAFO site, but throughout most of the
23 area where the spreading fields are located, that it's
24 necessary to require at least a baseline groundwater
25 assessment to determine what are the current

1 conditions in this area. Right now that is an
2 unknown. Secondly, require the installation of a
3 groundwater system around the CAFO in the event the
4 CAFO is allowed to assume operations.
5 We believe that the Commission, in
6 reviewing this, has the legal authority, if the
7 Commission were to be so inclined, to impose
8 reasonable conditions on the issuance of a CAFO
9 permits like this.
10 There is a specific regulation, 10 CSR
11 20-8.300 (13), which deals with groundwater
12 monitoring: An approved groundwater monitoring
13 program may being required around the parameter of a
14 manure storage site. And, again, whether that could
15 be required is based upon the potential contaminated
16 drinking water aquifer due to soil permeability,
17 bedrock, distance to aquifer, et cetera. That's what
18 the law currently allows the Commission to do.
19 During the AHC hearing there was some
20 testimony from the DNR staff that they thought, well,
21 this regulation really doesn't apply because these
22 people aren't constructing an earthen basin; however,
23 if you read the literal language of this, there's no
24 restriction that says this only applies to a facility
25 if you're building an earthen basin.

1 And also the AHC stated that there is a
2 statute that says the Department can only adopt rules
3 that impose groundwater monitoring requirements on a
4 Class 1A CAFO. And since this is not a class 1A CAFO,
5 you can't enforce this rule on anyone.
6 Well, the issue with that is, first of all,
7 the statute was adopted in 1996 when the CAFOs were
8 first coming into Northwest Missouri and the
9 Department was trying to get a handle on really how to
10 deal with these things. There are probably a handful
11 of us in this room who were involved in this process
12 going back to those days.
13 But at that point the Department initially
14 adopted a rule, but the legislature said, well, you
15 can only have your rules applicable to 1A CAFOs. But
16 in this case, thing reg we just being looked at, the
17 Subsection 13, it wasn't enacted by the Department.
18 It was enacted by the Clean Water Commission. And the
19 Clean Water Commission has its own unique statutory
20 authority to adopt rules and regulations.
21 And this is a copy from the Missouri
22 register for the initial adoption of that Subsection
23 13 back in 2012. It says: By the authority vested in
24 the Clean Water Commission that rule is adopted. It
25 was readopted in 2016 by authority of rule making

1 vested in the Clean Water Commission.
2 So that rule was adopted by the Clean Water
3 Commission, it was not adopted by the Department,
4 therefore that statutory prohibition doesn't apply.
5 Again, conceptually, what difference does it make if
6 you have a class 1A CAFO and class 1B CAFO both
7 located side by side, it's a difference of one animal
8 unit. If they both have the potential to affect all
9 these people who have these shallow drinking water
10 wells, what difference should one animal unit make.
11 It really shouldn't from practical perspective.
12 Months ago during the AHC testimony some
13 folks from the Department said, well, we don't think
14 Subsection 13 should apply because we only deal -- you
15 know, require stuff like this for facilities if you
16 build earthen basin. Well, there's preceding
17 Subsection 6 in the same regulation and it
18 specifically deals with construction of earthen
19 basins. And it again goes on about hydrogeologic
20 evaluations and studies and things such as this.
21 So really there are two separate
22 regulations on the books. One, this one right here
23 specifically deals with facilities who are going to
24 build an earthen basin and impose certain
25 requirements, but then there's subsection 13, on the

other hand, which deals with when the Commission can require groundwater monitoring and it has absolutely no reference to earthen basins at all, so it should apply to any facility whereas these requirements only apply to facilities with earthen basins.

So it's our view legally the Commission has authority, if you were inclined, to require some type of groundwater investigation and monitoring at this facility in the event it were permitted.

Just to get ready to wrap things up here, this is a copy of Statute 644.011. This is the purposes of the Missouri Clean Water law. I want to just stress that the general assembly, when they passed this, said one of thing goals are to conserve the waters of the state and to protect, maintain and improve the quality thereof for public water supplies and for domestic, agricultural, industrial, so on and so forth, legitimate beneficial uses.

In this case, if you go back to the map in one of the exhibits, not within a mile and a quarter of the facility are all of the residential drinking water wells, but there's testimony that there was also all these agriculture wells that these folks used to get water to water their animals. These folks -- most of my clients, they're all farmers themselves.

1 They're concerned about their water supply. That's
2 what this appeal is all about, is protecting the
3 groundwater.
4 We believe based on Mr. Aley's testimony
5 about the karst geology, the number of nearby
6 residential drinking water wells, the severe
7 construction limitations of these clafork soils, that
8 it's reasonable for the Commission to either, one,
9 based on all those factors, just disapprove the permit
10 and deny it outright, or, alternatively, if the
11 Commission were so inclined to issue the permit, to
12 impose reasonable conditions to require the baseline
13 groundwater assessment at the facility just so
14 everyone knows before you start up this is what the
15 current conditions are, and then to require the
16 groundwater monitoring system at the CAFO site and the
17 land application fields so in the future, if there is
18 some type of adverse affect and someone's drinking
19 water wells are watering their farm animals, you know,
20 there's some data available to determine where the
21 problem came from.
22 In other words, these are reasonable
23 requirements and they relate to the conservation of
24 the water supply, which are statutory goals and
25 purposes of the clean water law, which you all are

1 designed to implement. So that's my presentation.
2 I'd be glad to answer any questions.
3 CHAIRMAN McCARTY: Commissioners, any
4 questions for Mr. Jeffrey? I have one. So in our AHC
5 recommended decision, Page 11, Counts 1 and 2 were
6 your assertion on failure to investigate potential
7 spring and well contamination and the assessed
8 groundwater monitoring system.
9 So the AHC weighed in pretty clearly in its
10 statement that an administrative agency may not
11 promulgate a regulation broader than the authorizing
12 statute in your assertion about the groundwater
13 monitoring. Can you tell me how that interpretation
14 is incorrect? It looks pretty clear with the
15 reference to 10CSR 20-8.300 Subsection 12 and 13.
16 Walk me through again where you feel our authority
17 exceeds what the law lays out.
18 MR. JEFFREY: Sure. I believe the
19 statute that the Administrative Hearing Commission
20 referenced -- again, there was a slide I had up if you
21 wanted me to bring it back up. But anyway it's
22 Section 640 -- I believe it was 470. I might have the
23 number wrong. But it says the Department can adopt
24 rules dealing with Class 1A CAFOs, but you can only
25 require groundwater monitoring at a Class 1A CAFO. If

1 you look at the literal language in that statute, it
2 says the Department can't do this. The Department
3 can't adopt a rule that requires groundwater
4 monitoring at any site other than a Class 1A CAFO. In
5 this case, the orders of rule making, this particular
6 rule, the Subsection 13 was not adopted by the
7 Department. It was adopted by the Clean Water
8 Commission. The Department of Natural Resources is a
9 unique statutory animal. The Clean Water Commission
10 is a unique statutory animal.
11 If the general assembly wanted to prohibit
12 the Clean Water Commission from requiring any other
13 other than a Class 1A CAFO to do groundwater
14 monitoring, they very easily could have said that when
15 they adopted the statute. They could have included
16 the Commission, but they didn't, so we believe that's
17 what gives you the legal authority to impose a
18 reasonable condition like that.
19 Again, we don't believe we're asking for
20 the moon and the stars here. We're just submitting,
21 because of documented, you know, severe limitations
22 about the soil and the karst topography, karst
23 geology, this is a reasonable thing to do.
24 CHAIRMAN McCARTY: Thank you.
25 COMMISSIONER CODAY: I have a question.

1 I don't want to get into an argument. I believe you
2 cherry pick your facts because if you look at some of
3 the characteristics of this soil, you failed to point
4 out the fact that the permeability of this soil is
5 moderately soil, which means anything on the top of
6 the soil is going to move through that soil slowly, so
7 the idea that this is just going to immediately
8 contaminate the groundwater I question, but that's
9 neither here nor there.
10 MR. JEFFREY: I never suggested that it
11 would immediately contaminate. The document speaks
12 for itself.
13 COMMISSIONER CODAY: As I said, I don't
14 want to argue with you. What I would like to know is,
15 though -- your position is, if we permit this, you
16 would like groundwater monitoring. What would you
17 like -- what's your perfect scenario of that looking
18 like? Do you want -- you mentioned the groundwater
19 monitored at the site, but is that -- would you be
20 happy with water testing at the site only? Do you
21 want wells at residences within this mile and a half
22 that you mentioned, do you want all them tested? What
23 would that look like as far as you're concerned in
24 your perfect scenario?
25 MR. JEFFREY: I think that's a great

question. I think if you read the language of Subsection 13, it talks about engaging the Division of Geological Surveying. It used to be DGLS. Missouri Geological Survey, I think, is what they call it now. Engage the folks down in Rolla, have them review conditions and have them come up with the recommendations for what a reasonable and appropriate plan would be.

I'm not a hydrologist. I'm not a geologist. I really couldn't tell you one way or the other. I would suggest that this is a reasonable thing to look into and a reasonable way to approach it would be to have the experts within the department down at Rolla engage and develop what they think would be a reasonable approach to dealing with this, to address the issue.

CHAIRMAN McCARTY: Other questions at this time for Mr. Jeffrey? Thank you.

MR. JEFFREY: Thank you.

CHAIRMAN McCARTY: Ms. Hernandez from the Attorney General's Office will be presenting on behalf of the Department, will be presenting the Department's perspective at this time.

MS. HERNANDEZ: May it please the Commission. Again, my name is Jennifer Hernandez.

1 I'm an assistant attorney general at the Missouri
2 Attorney General's Office and I, along with Shawna
3 Bligh, represented the Department of Natural Resources
4 before the Administrative Hearing Commission and
5 today, on behalf of DNR, I'm asking that this
6 Commission adopt the recommended decision of the
7 Administrative Hearing Commission to sustain the
8 issuance of the permit to PVC Management. Just so the
9 record is clear, the permit number is MOGS10560.
10 And I guess my first comment today is that
11 Mr. Jeffrey presented a lot of information to the
12 Commission this morning, but none of it is new
13 information in terms of the record. All this
14 information was presented in the evidentiary hearing
15 and as Commissioner McCarty brought up, in terms of
16 the soil and the water monitoring on Page 11, that was
17 not adopted by the Commission.
18 They found the arguments that were
19 presented to them to be not credible and found that,
20 in fact, you can't authorize a regulation that is
21 broader than the statute. So when we're talking about
22 Class 1A monitoring and the permit that was requested
23 is a 1C permit, that is beyond the statutory scope
24 that is allowed under 640.
25 But also I want to mention to you in terms

1 of the conditions that were proposed. I guess, in
2 effect, Mr. Jeffrey is asking the Commission to order
3 monitoring on property that is not under the
4 operational control of the CAFO, so essentially you
5 would be including conditions in this permit on
6 private individuals' property. Some of which may be
7 here, perhaps they're not here.
8 So you would be ordering someone to drill a
9 well and take monitoring actions not being a party to
10 this proceeding, so I think that's outside the scope
11 of this Commission's authority.
12 And something that Ms. Bligh and I really
13 tried to keep the Administrative Hearing Commission
14 focused on is that a lot these arguments that were
15 brought up to you today -- again, the same arguments
16 that were in the evidentiary hearing -- are going
17 towards operational requirements, whereas we try to
18 keep the Commission focused on the permitting
19 requirements and there's clearly a separation when the
20 Department is considering an application for a permit.
21 And if you look at the recommended decision
22 on Pages 8, 9 and 10, it's listing the permit
23 requirements that the Department must consider and the
24 Commission found that the Department presented
25 credible evidence through the application and the

1 testimony presented and the other documents that all
2 the permitting requirements were met and the
3 application was deemed complete and the department
4 issued a lawful permit, so I think it's important to
5 not lose that focus.
6 I think Mr. Jeffrey is asking the
7 Commission to play ball outside the ballpark, if you
8 will; focus on the operational requirements, not the
9 permitting requirements, which were the subject of
10 this appeal, and whether the Department issued a
11 lawful permit in the permitting requirements, not the
12 operation.
13 The permit issued is a no-discharge
14 facility. I think that's important to bring up as
15 well. I think I will end my presentation at that
16 point unless there's any questions. Again, the
17 Department is just recommending that this Commission
18 sustain the Department's action in issuing the permit
19 to PVC.
20 CHAIRMAN McCARTY: Thank you. Any
21 questions for Ms. Hernandez at this time? Thank you.
22 MS. HERNANDEZ: Thank you.
23 CHAIRMAN McCARTY: Mr. Jeffrey, do you
24 have any need for rebuttal, since you went first?
25 MR. JEFFREY: I'll be very brief, just to

1 clarify one point. The document that the AHC issues
2 is only a recommendation. The final decision -- you
3 have total discretion as to how the Commission deals
4 with this. I do want to draw a comparison between the
5 things the Department looks at when they can issue or
6 deny a permit themselves, you know, there's like a
7 checklist of items they look at. And just because the
8 groundwater concerns aren't on the checklist, that may
9 well mean the Department can't consider that to issue
10 a permit or not.
11 However, given the Commission's broad
12 discretion to impose conditions on permits like this,
13 which clearly you have the legal authority to do
14 because you have to make the final decision, it's not
15 like you're acting as an appellate court, reviewing
16 the decision the AHC made. They only gave you a
17 recommendation.
18 So you have total carte blanche discretion
19 based on the facts that if you want to impose some
20 reasonable conditions about groundwater, clearly you
21 have the legal discretion to do that. That has
22 nothing to do with the checklist as it were that the
23 Department is confined to when they make the
24 additional permitting decision or not.
25 The Department doesn't have the discretion

to look outside their box, whereas you have the discretion to look at all these issues in determining whether or not to impose conditions or not. I'd be glad to answer any questions.

CHAIRMAN McCARTY: Thank you. Commissioners, this is now before us for deliberation and discussion. Any consultation with our counsel as needed?

COMMISSIONER REECE: I have a couple comments.

CHAIRMAN McCARTY: Sure. Commissioner Reece.

COMMISSIONER REECE: Based on my experience, 48 years in engineering, one thing was omitted from the testimony in that there's two types of concrete, concrete that's cracked and concrete that's gonna crack. Mr. Aley pointed out in his testimony that because of the type of soils that we have here, it's very difficult to impact those soils.

And if you build a concrete structure or a tank on those soils and due to the nature of the soil, the shrinking and expanding of the soil, those basins are going to contract.

Another issue with regard to the monitoring wells. I don't care how many monitoring wells you

have around the site, if you land apply manure or this waste to the soil and it permeates the soil and it gets into the groundwater, no matter how many monitoring wells you have, it's too late.

You can monitor that water from now on, for eternity, but once the groundwater is polluted, it's polluted, there's nothing -- and you continue to apply this manure to the land, again, as I stated, it's too late.

So if, in fact, we do install monitoring wells and the groundwater does become polluted, are we going to shut down this CAFO? Are we going to fine him for pollution of the groundwater? What happens, then, once the groundwater is polluted?

So I just think we need to consider these facts and there's more to this than just building a CAFO. And there were, I believe, 22 homes that will be affected by this CAFO. I heard from one of the property owners that they've already had to abandon their home and that they can't live there because of the stench, the odor and so forth, or the potential for odor.

So I just think that we need to consider this very seriously and in our deliberations we need to take into account the affect this CAFO will have on

the surrounding community.

CHAIRMAN McCARTY: Thank you, Commissioner. Any other comments at this time?

COMMISSIONER CODAY: Madam Chairman, I move the Clean Water Commission go into closed session to discuss legal, confidential or privileged matters under Section 610.021 RSMo.

CHAIRMAN McCARTY: It's been moved to move into closed. Is there a second to that motion?

COMMISSIONER ROWLAND: I'll second that motion.

CHAIRMAN McCARTY: Commissioner Rowland seconds the motion. Any discussion? Commissioner Thomas, if we step into another room for closed session, can you join us via phone?

COMMISSIONER THOMAS: How would I do that?

CHAIRMAN McCARTY: You could call one of us or we could call you.

COMMISSIONER THOMAS: You can call my cell. Call my cell on speaker, that's fine.

CHAIRMAN McCARTY: With that, Chelsey can you call the roll?

MS. DISTLER: Commissioner Rowland?

COMMISSIONER ROWLAND: Aye.

MS. DISTLER: Commissioner Coday?
COMMISSIONER CODAY: Aye.
MS. DISTLER: Commissioner Reece?
COMMISSIONER REECE: Aye.
MS. DISTLER: Vice Chair Thomas?
COMMISSIONER THOMAS: Aye.
MS. DISTLER: Chairman McCarty?
CHAIRMAN McCARTY: Aye.
(In closed session.)
CHAIRMAN McCARTY: We will now be back into open session of the Missouri Clean Water Commission. Thank you guys for your patience. We'll continue our deliberation in consideration of the AHC recommendation on the PCV Management II appeal. Anyone have questions or documents for any of the parties?
COMMISSIONER THOMAS: Is this my opportunity to say something?
CHAIRMAN McCARTY: This would be a good one, yes.
COMMISSIONER THOMAS: I just want to say that I think good points and issues are raised when we listen to the public, but that some of these are legislative issues. They are not issues that we, as the Commission who is set currently, can decide, so

1 thank you.
2 CHAIRMAN McCARTY: Thank you. Anything
3 else?
4 COMMISSIONER CODAY: Madam Chairman, as
5 we deliberate through each of these permits, I think
6 obviously our knowledge, our own knowledge, our fore
7 knowledge makes a difference. I kind of alluded to
8 that with Mr. Jeffrey's. I believe that it's very
9 important that we look at all the facts. The soil
10 type.
11 As a former vocational agriculture
12 instructor, I've taught soils for 30 years. Looking
13 at soils is certainly an important thing and aspect,
14 but, again, I think that needs to be laid aside,
15 because as Commissioner Thomas just alluded to, that
16 really, as far as our purview as the Clean Water
17 Commission, I believe legally that is outside the
18 scope of our commission.
19 And so I believe it's important for us --
20 the last permit hearing that we had, whether we agreed
21 or not, we were very conscious of what the AHC had
22 done, what they had looked at as far as the legality
23 of the permit and what DNR had done.
24 And I realize neighbors of this operation,
25 it's a very emotional issue, but we must lay our

1 emotions aside. And to that end, I'm going to move
2 the Clean Water Commission uphold the AHC's or the
3 Administrative Hearing Commission's recommended
4 decision regarding PCV Management II appeal CWC
5 18-0549.
6 CHAIRMAN McCARTY: A motion has been made
7 to uphold the recommended decision. Is there a second
8 on that motion?
9 COMMISSIONER ROWLAND: I'll second that
10 motion.
11 CHAIRMAN McCARTY: Commissioner Rowland
12 has seconded. Is there any discussion?
13 COMMISSIONER THOMAS: Can someone please
14 restate the motion?
15 CHAIRMAN McCARTY: Yes. Commissioner
16 Cody moved to uphold the Administrative Hearing
17 Commission's recommended decision regarding PVC
18 Management II in this appeal before the Clean Water
19 Commission 18-0549.
20 As we discussed that motion, I would just
21 like to clearly state for the record again this
22 morning that I concur with Commissioner Coday that our
23 consideration, our full consideration is given on
24 these appeals based upon the evidence presented in the
25 appeal record and weight given to the conclusions

recommended by the Administrative Hearing Commission.

Certainly in my consideration of this, I am fully -- I have nothing to gain on the support nor denial of this permit and am able to be unbiased in my assessment and base my decision solely upon the record. If there's no other comments or discussion, Chelsey can you call the roll, please?

MS. DISTLER: Commissioner Coday.

COMMISSIONER CODAY: Aye.

MS. DISTLER: Commissioner Reece?

COMMISSIONER REECE: No.

MS. DISTLER: Commissioner Rowland?

COMMISSIONER ROWLAND: Aye.

MS. DISTLER: Vice Chair Thomas?

COMMISSIONER THOMAS: Aye.

MS. DISTLER: Chair McCarty?

CHAIRMAN McCARTY: Aye. That motion has passed and we have a final decision order to be signed by the Commission here today before we depart.

[Hearing concluded.

C E R T I F I C A T E.

I, Joann Renee Richardson, Certified Court Reporter, do hereby certify that pursuant to Notice there came before me on January 9, 2019, Department of Natural Resources Missouri Clean Water Commission Hearing, 1101 Riverside Drive, City of Jefferson City, County of Cole, and this hearing was written in machine shorthand by me and afterwards transcribed and is fully and correctly set forth in the foregoing 40 pages.

I further certify that I am neither attorney or counsel for, nor related to, nor employed by any of the parties to this action in which this hearing is taken; and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in this action.

Given at my office in the City of St. James, County of Phelps, State of Missouri this 20th day of January, 2019.

_____

Joann Renee Richardson, CCR

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Tab B7

Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Approval of Closed Session Minutes

Issue:

Commission to review the Closed Session minutes from the January 9, 2019, Missouri Clean Water Commission meeting.

Recommended Action:

Commission to approve the Closed Session minutes from the January 9, 2019, Missouri Clean Water Commission meeting.

Tab C

Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Director's Update

Issue:

Routine update to the Commission

Recommended Action:

Information only.

Tab D

Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Public Hearing

Issue:

This portion of the meeting allows for information to be presented to the Commission.

Recommended Action:

Information Only

List of Attachments:

None

Tab D1

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

April 29, 2019

Proposed Amendments to 208 Plan for the Lower Meramec Basin

Issue: The St. Louis Metropolitan Sewer District (MSD), the Northeast Public Sewer District (NPSD), and the Rock Creek Public Sewer District (RCPSD) along with the East West Gateway Planning Commission are requesting to amend the existing 208 Plan which was finalized in 1978.

Background: Section 208 of the Clean Water Act required that Regional Water Quality Management Plans be developed to control water pollution from point and non-point sources in a defined geographic area. In 1975 the Governor of Missouri designated the East-West Gateway Council of Governments (EWGCOG) as the agency responsible for preparing the Water Quality Management Plan for the St. Louis Area, including the City of St. Louis and the counties for Franklin, Jefferson, St. Charles and St. Louis. The federal rules allow plans to be updated to reflect changing water quality conditions, results of implementation actions, new requirements, or to remove conditions in prior conditional or partially-approved plans (40 CFR 130.6). The updates must be certified by the Governor (or Governor's designee) before being sent to the Environmental Protection Agency (EPA) for approval

The attached report provides supporting documentation for amending the 208 plan to bring it into alignment with the current situation in the lower Meramec basin. The 208 plan called for a regional secondary treatment system in St. Louis County near the confluence of Meramec and Mississippi River. This regional facility was to be managed by MSD and provide services for the lower Meramec system within the Lower Meramec Basin. The report concluded that since the 208 plan was completed in 1978, the technical, economic and environmental conditions have changed and some of the original recommendations including a single facility within the Lower Meramec System are no longer appropriate.

The report explains the chosen alternative which was based on consideration of four major criteria: 1) cost effectiveness, 2) water quality effectiveness, 3) management/intuitional constraints, and 4) environmental considerations. The report concluded that Lower Meramec Basin will continue to be served by the existing four regional treatment facilities: MSD Lower Meramec WWTF, MSD Grand Glaize WWTF, NPSD Saline Creek Regional WWTF, and RCPSD Kimmswick WWTF. With the same considerations for biosolids handling as with treatment, it is not feasible for the Lower Meramec WWTF to serve as a regional biosolids processing center. The plan amendment recognizes that biosolids processing for MSD facilities in the Lower Meramec System will be addressed at the Lemay WWTF, where MSD plans to

build new fluidized bed sewer sludge incinerators; while NPSD and RCPSD will continue their current management activities.

East-West Gateway and St. Louis Metropolitan Sewer District (MSD) placed the draft amendment to the 208 plan on public notice on February 4, 2019 and held a public meeting on February 12, 2019. The amendment is to discuss long term planning in the lower Meramec basin, specifically St. Louis Metropolitan Sewer District's (MSD's) plan to take the MSD Fenton Wastewater Treatment Facility (WWTF) offline and connect it to the Lower Meramec WWTF. Additionally, it provides some certainty for MSD, NPSD, and RCPSD in their future planning to serve the citizens of St. Louis County and Jefferson County, with cost effective options.
The proposed amendment was placed on public notice by the Department on March 29, 2019 and will remain on public notice until May 7, 2019.

Recommended Action: Hearing only

List of Attachments

- Proposed Amendments to the 1978 St. Louis, Missouri Water Quality Management 208 Plan
- 208 EWG Letter of Support

Proposed Amendments to the 1978 St. Louis, Missouri Water Quality Management 208 Plan

Lower Meramec River Basin

March 15, 2019

Prepared by

Metropolitan St. Louis Sewer District
Northeast Public Sewer District
Rock Creek Public Sewer District

Executive Summary

In 1978, pursuant to Section 208 of the Clean Water Act, East-West Gateway Council of Governments (EWGCOG) completed the St. Louis, Missouri Regional Water Quality Management Plan (hereinafter referred to at the 208 Plan). The goal of the 208 Plan was to meet State water quality standards throughout entirety of St. Louis City and County, St. Charles County, Franklin County, and Jefferson County. The 208 Plan also identified the Meramec River as the region's number one priority river, deserving protection as a drinking water source and because it is biologically diverse and contains important habitat.

The 208 Plan recommended controls to address point and nonpoint sources of pollution and residual waste management throughout the four-county planning area. Within the Lower Meramec Basin, the plan called for a regional secondary treatment system in St. Louis County near the confluence of the Meramec and Mississippi River. This regional facility was to be managed by the Metropolitan St. Louis Sewer District (MSD) and provide services for the Lower Meramec System, which consists of the Lower Meramec Basin (southern St. Louis County and northern Jefferson County) and the entire Rock Creek Basin in Jefferson County. The 208 Plan also recommended designating this facility a regional sludge processing center.

These recommendations were based on an evaluation of cost-effectiveness, water quality effectiveness, management and institutional constraints, and environmental considerations. Since 1978 however, the technical, economic, and environmental conditions have changed and some of the original recommendations are no longer appropriate. The 208 Plan recognizes that updates to the plan may be necessary noting that it "is not a static list of recommendations but represents a dynamic and progressive policy for guiding future wastewater construction activities." Federal regulations (40 CFR 130.6) also allow plans to be updated to reflect changing water quality conditions, results of implementation actions, new requirements, or to remove conditions in prior conditional or partially-approved plans.

This report provides support for amending the 208 Plan to bring it into alignment with the current situation in the Lower Meramec Basin. The analyses justify the following amendments:

- It is more cost-effective to maintain existing facilities ($147 million) within the Lower Meramec System than to construct a single regional WWTF ($400 million). Further, a single regional WWTF is not necessary to meet state water quality standards in the Lower Meramec River. Therefore, the Lower Meramec System should instead be served by four WWTFs: Lower Meramec WWTF, Grand Glaize WWTF, Saline Creek Regional WWTF, and Kimmswick WWTF.
- Due to environmental and management considerations, it is not feasible for the Lower Meramec WWTF to serve as a regional sludge processing center. The plan should be revised to recognize that sludge processing for MSD facilities in the Lower Meramec System will be addressed at the Bissell Point WWTF or Lemay WWTF; the Northeast Public Sewer District and Rock Creek Public Sewer District will continue their current management activities.

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Attachments

Attachment A. Process and Proposed Schedule for Updating the 208 Plan.

Attachment B. Summary of Water Quality Management Plan Elements Required by 40 CFR 130.6(c).

1. Introduction

Section 208 of the Clean Water Act (CWA) requires that Regional Water Quality Management Plans be developed to control water pollution from point and nonpoint sources in a defined geographic area. In 1975, the Governor of Missouri designated the East-West Gateway Council of Governments (EWGCOG) as the agency responsible for preparing the Water Quality Management Plan for the St. Louis area, including the City of St. Louis and the counties of Franklin, Jefferson, St. Charles and St. Louis (Figure 1).

The St. Louis, Missouri Regional Water Quality Management Plan[1] (hereinafter referred to at the 208 Plan) was subsequently completed in 1978. The objective of the 208 Plan was to ensure that the water quality of rivers and streams of the St. Louis area meets state standards and that the negative effects of growth on water quality be kept to a minimum. The 208 Plan also identified the Meramec River as the region's number one priority river and watershed area, deserving protection as a drinking water source and because it is biologically diverse and contains important habitat.

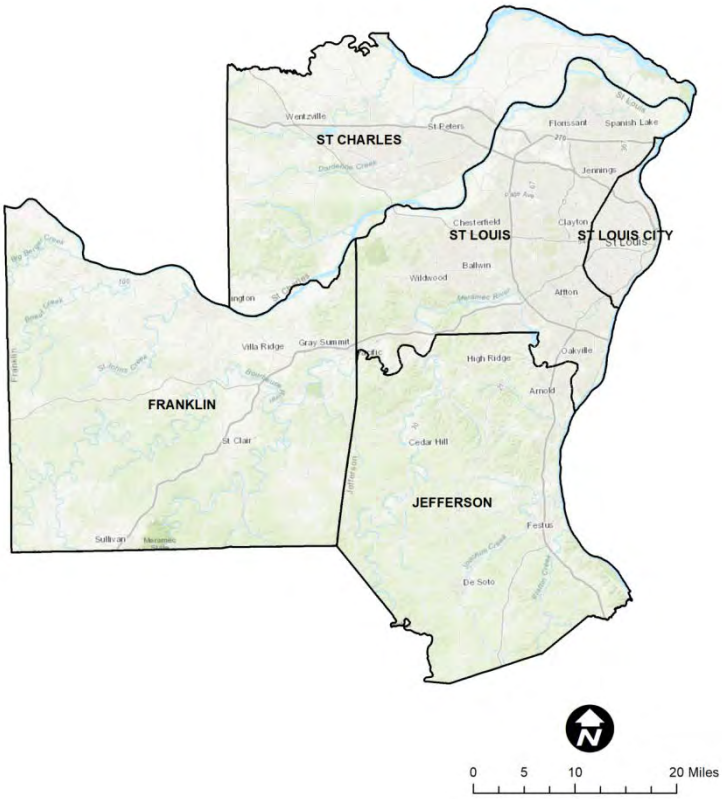

Figure 1. 208 Planning Area for the St. Louis Region.

The 208 Plan proposed multiple control alternatives, with each alternative evaluated using four major criteria: 1) cost-effectiveness, 2) water quality effectiveness, 3) management/institutional constraints, and 4) environmental considerations. After evaluation against these criteria, the best of the alternatives at the time was chosen as a goal for the region. The 208 Plan included a mixture of structural and non-structural control alternatives to address point sources, nonpoint sources, and residual waste (sludge) throughout the four county region, which are summarized as follows:

- *Point sources* – The 208 Plan delineated 40 service area recommendations across the four county planning area and identified a number of secondary wastewater treatment

[1] East-West Gateway Coordinating Council (EWGCOG). 1978. St. Louis, MIssouir Water Quality Management Plan: Areawide Waste Treatment Management Study (208). St. Louis, Missouri. https://www.ewgateway.org/wp-content/uploads/2017/07/208Rpt-Part1.pdf

facilities (WWTF) to serve as regional treatment facilities within each of the service areas.

- *Nonpoint sources* – The 208 Plan recommended nonpoint source control measures for each of the four counties in the planning area. Controls addressed both individual home treatment systems (septic systems) and urban stormwater runoff. Recommendations for septic systems included design and operational guidelines and implementation measures. Recommendations for urban stormwater runoff were divided into three categories of control designed to address the quantity and quality aspects of urban runoff. These include control of stormwater runoff, onsite detention, and urban cleanliness programs.

- *Sludge management* – The 208 Plan delineated 14 regional sludge processing centers across the four county planning area.

Since the 208 Plan was completed in 1978, the technical, economic, and environmental conditions have changed and some of the original recommendations are no longer appropriate. This report and the proposed amendment address updates to the original point source and sludge management recommendations within the Lower Meramec System, which is one of 40 areas defined by the 208 Plan. Information regarding the Lower Meramec System, MSD's 201 planning efforts, and objectives of the current report are discussed in the remainder of this section.

1.1. Lower Meramec System

The Lower Meramec System is one of 40 service areas delineated within the St. Louis 208 planning region. The Lower Meramec System of the 208 Plan included the Lower Meramec Basin (southern St. Louis County and northern Jefferson County) and the entire Rock Creek Basin in Jefferson County (Figure 2). Plan recommendations within the Lower Meramec System were intended to address pressing water quality issues of the time in the Meramec River.

The main recommendation of the 208 Plan for the Lower Meramec System was the construction of a regional secondary treatment system in St. Louis County near the confluence of the Meramec and Mississippi River (see pages 62 and 91 of the 208 Plan). The proposed Lower Meramec facility was to be managed by the Metropolitan St. Louis Sewer District (MSD) and provide sewer services via major interceptors for the entire Lower Meramec System. The 208 Plan also recommended that the facility serve as the regional sludge processing center for St. Louis and Jefferson counties (see pages 148-149 and 151 of the 208 Plan). Sludge processing would include the use of dissolved air flotation, anaerobic digestion, and final disposal in twenty year storage lagoons. The plan alternatively considered pumping and hauling residuals from the regional treatment facility to MSD's Lemay WWTF to be incinerated. However, this alternative was ultimately rejected based on the preliminary economic analysis conducted at that time.

Recommendations for a single regional facility within the Lower Meramec System to be serviced and managed by MSD never came to fruition. In 1977, MSD annexed the entirety of the St.

Louis County portion of the Lower Meramec River Basin into its service area. By charter, MSD could not annex the Jefferson County portions of the Lower Meramec River Basin, so in 1979 it was proposed that the northern Jefferson County's newly-formed Northeast Public Sewer District (NPSD) contract with MSD for treatment at the proposed regional treatment facility. A similar suggestion was made for the newly-formed Rock Creek Public Sewer District (RCPSD) and the City of Arnold. MSD currently accepts and treats flow from the Arnold Pump Station, but not from NPSD. Nearly all of RCPSD's flow is treated at the Kimmswick WWTF, with a small amount of area ultimately being served (via the Arnold Pump Station) by the Lower Meramec WWTF.

1.2. MSD's 201 Facility Plan for the Lower Meramec River Basin

In conjunction with the 208 Plan, MSD developed the 201 Facility Plan (hereinafter referred to as the 201 Plan) for the Lower Meramec River Basin in September 1979[2] and updated the plan in 1985[3]. Consistent with the 208 Plan, the 201 Plan concluded that the most cost-effective solution to improve water quality in the Lower Meramec Basin was through the consolidation of wastewater treatment to one regional WWTF discharging to the Mississippi River with a major interceptor serving the entire basin. However, for unexpressed reasons, the 201 area was limited to the Lower Meramec Basin and did not include Rock Creek as called for in the 208 Plan.

Additionally, the 201 Plan acknowledged that MSD has no legal or jurisdictional authority for operation within Jefferson County. By charter, MSD's service area boundaries are limited to St. Louis City and St. Louis County. The effect of this is to limit the sewer collection system that MSD is responsible for operating and maintaining to these areas. MSD and Missouri-American Water (the agency that operates Arnold's sewer collection system) have an interagency agreement whereby MSD treats wastewater from the City of Arnold. RCPSD has a similar agreement with Missouri American Water to allow flow through to MSD. NPSD currently maintains authority over most of the Lower Meramec Basin in Jefferson County.

In 1985 when the 201 Plan was updated, MSD recognized that construction of the regional treatment facility and its associated collection system could take significantly longer than anticipated because of decreases in federal funding, and therefore proposed interim solutions. These interim solutions included the construction of three secondary treatment facilities, Grand Glaize, Fenton, and Lower Meramec, within the St. Louis County area of the Lower Meramec River Basin. The intent of the 201 Facility Plan was to phase out the interim treatment facilities upon the construction of the regional facility and the Lower Meramec Tunnel (LMT), which was to be completed in three distinct phases (Figure 2). MSD has since been implementing the 201 Facility Plan recommendations in the Lower Meramec Basin. Details regarding specific actions and progress are discussed further in Section 2.1.

[2] Metropolitan St. Louis Sewer District (MSD). 1979. Final 201 Facility Plan: Lower Meramec River Basin. St. Louis, MO. 462 pp.
[3] Havens and Emerson, Inc. 1985. 201 Facility Plan Update: Lower Meramec River Basin. St Louis, MO. 193 pp.

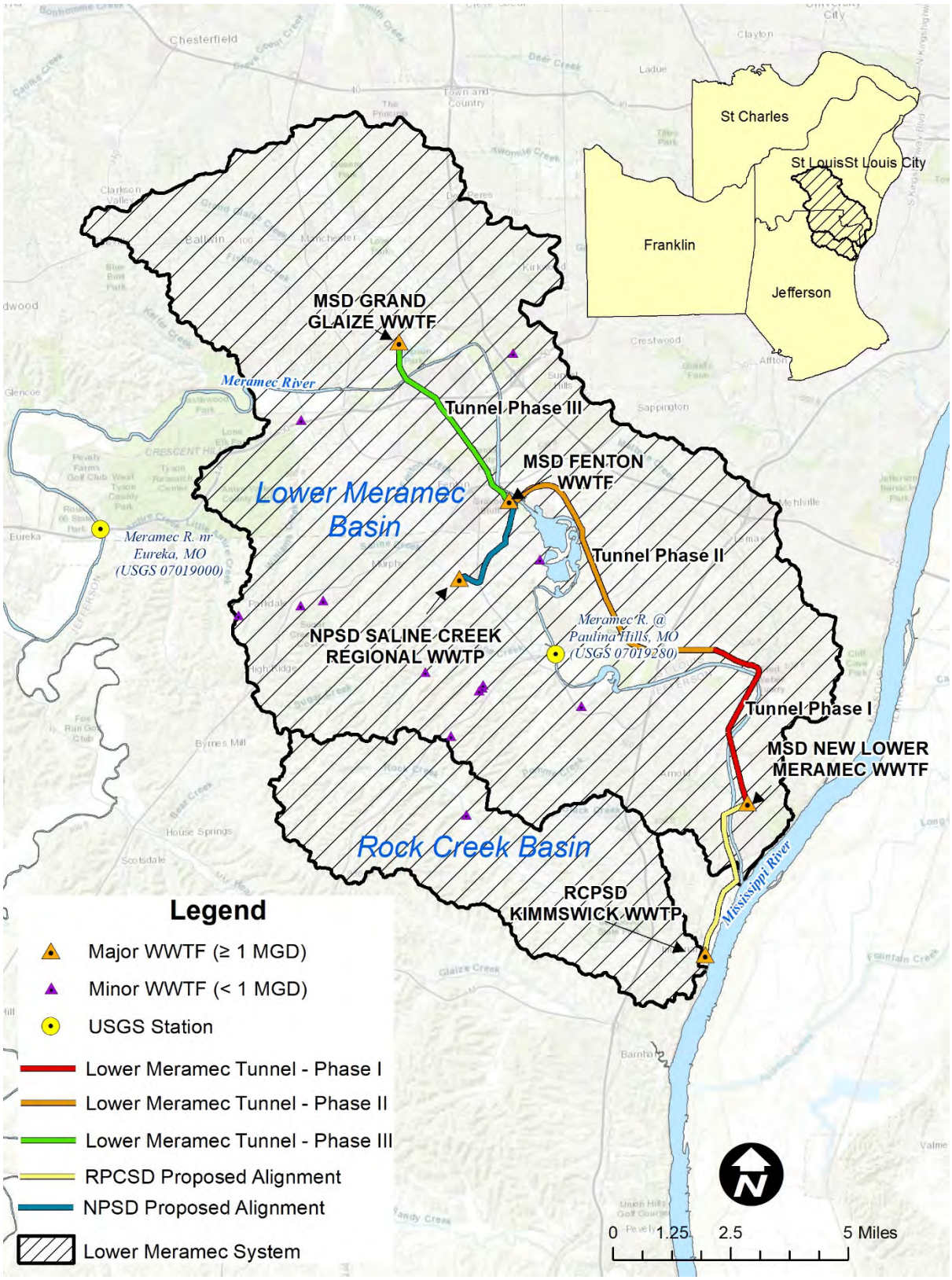

Figure 2. Lower Meramec System as Identified in the 208 Plan and Interim WWTF Outfalls and Tunnel Identified in 201 Plan.

1.3. Report Objectives

As discussed above, the objective of the 208 Plan was to ensure that the water quality of rivers and streams of the St. Louis area meets state standards and mitigate the negative effects of population growth on water quality. Circumstances have changed since 1978 and construction of a single regional treatment facility in the Lower Meramec Basin is no longer necessary to achieve these objectives. Water quality in the Meramec River itself has generally improved and point sources in the Basin currently meet all applicable discharge permit requirements. Remaining water quality challenges in the Basin are primarily related to nonpoint source control issues and cannot be remedied through further point source consolidation.

The original 208 Plan recognizes that updates to the plan may be necessary, noting that it "is not a static list of recommendations but represents a dynamic and progressive policy for guiding future wastewater construction activities." Further, federal regulations (40 CFR 130.6(e)) allow water quality management plans to be updated to reflect changing water quality conditions, results of implementation actions, new requirements, or to remove conditions in prior conditional or partially-approved plans. The process for amending the 208 Plan is included in Attachment A. A summary of necessary plan elements required by 40 CFR 130.6(c), and their relationship to the modifications proposed in this report is included in Attachment B.

The purpose of this report is to amend the 208 Plan recommendation for the Lower Meramec Basin and bring it into alignment with the current situation. The decision criteria used to evaluate alternatives and develop recommendations in the original 208 Plan were

- Cost-effectiveness,
- Water quality effectiveness,
- Management and institutional constraints, and
- Environmental considerations.

These same criteria are applicable in the context of the current situation and support the need to amend some of the original 208 Plan recommendations for the Lower Meramec Basin. It is important to note that the proposed amendments in this report only address one point source service area (identified as the Lower Meramec System in the 208 Plan) and one regional sludge processing center (identified as the Lower Meramec Regional Center in the 208 Plan). The proposed amendments do not impact point source, nonpoint source, or sludge management recommendations for the remainder of the four-county planning area.

2. System Updates in the Lower Meramec System

Wastewater treatment and planning efforts of the three regional control authorities responsible for the Lower Meramec System are discussed below. These include MSD, NPSD, and RCPSD.

2.1. Metropolitan St. Louis Sewer District (MSD)

MSD incorporated the entirety of the St. Louis County portion of the Lower Meramec River Basin in 1977, inheriting hundreds of miles of sewers and over sixty treatment plants, most of which were small, overburdened, and failing due to construction under limited to no regulation. Much of the inherited collection system was old and inadequately sized for future development. MSD shaped its goals for the Lower Meramec River Basin around rehabilitating, maintaining, and improving this inherited collection system and eliminating numerous treatment plants.

Through the use of its sewer use ordinance, MSD has been able to regulate dischargers within its service area in order to protect the sewer system, treatment processes, residuals management processes, and receiving waters. MSD has a variety of regulatory abilities including requiring connection to the MSD system, connection permitting, pretreatment limits, effluent monitoring, and reporting requirements. These regulatory abilities have given MSD the opportunity to eliminate nearly all of the inherited treatment plants and replace them with three well operated treatment facilities, as well as to rehabilitate much of its collection system.

In 2012, MSD entered into a Consent Decree with the United States EPA (EPA), the state of Missouri, and the Missouri Coalition for the Environment Foundation. In this Consent Decree, MSD committed to spending $4.7 billion in order to make infrastructure improvements to the sanitary and combined collection systems.[4] The major improvements to MSD's collection system that the Consent Decree includes are inflow and infiltration (I/I) reduction remediation projects, elimination of all constructed sanitary sewer overflows (SSOs), elimination of all known SSOs, and elimination of building backups. These efforts have and will continue to make a significant impact in ensuring that the Lower Meramec River Basin achieves Clean Water Act goals.

Since the 1985 201 Plan update, MSD has constructed the three recommended WWTFs and made significant progress with respect to maintaining and improving their sanitary sewer collection systems. These activities, as well as planned future WWTF modifications, are described below.

2.1.1. Lower Meramec WWTF

The Lower Meramec WWTF was constructed in 2007 with a design flow of 15 million gallons per day (MGD) and a peak hour design capacity of 40 MGD. Currently, the facility has an average dry weather daily flow of 11 MGD, which includes wastewater flows from the City of Arnold, and discharges to the Mississippi River (Figure 2). MSD intends to expand the Lower

[4] *United States of America and the State of Missouri, and Missouri Coalition for the Environment Foundation v. Metropolitan St. Louis Sewer District*, No. 4:07-CV-1120-CEJ, The original Consent Decree required improvements over a twenty-three year period. In 2018, the parties agreed to modify the duration of improvements to twenty-eight years.

Meramec WWTF to accommodate additional flows from the Fenton WWTF when it is eliminated. The Lower Meramec WWTF is currently served by a 31 square mile sanitary sewer collection, consisting of approximately 1.75 million feet of public sewers and 34 active pump stations owned and maintained by MSD.

The Lower Meramec WWTF uses sludge grit removal, gravity sludge thickeners, sludge belt filter presses, and cake storage hoppers for sludge management, and produces approximately 2,000 dry tons of sludge annually. MSD currently hauls its sludge from the Lower Meramec WWTF to MSD's Bissell Point WWTF for incineration or to the IESI Champ Landfill to be landfilled.

2.1.2. Grand Glaize WWTF

In an effort to improve wastewater treatment in the Lower Meramec River Basin, MSD constructed the Grand Glaize WWTF in 1986 and expanded the facility in 2006. This expansion resulted in an average design flow of 21 MGD and peak hour design capacity of 40 MGD. In addition to the treatment capacity directly available, the facility can store influent flows above 40 MGD in its 49.7 million gallon wet weather storage lagoon. The Grand Glaize WWTF discharges to the Meramec River (Figure 2). The Grand Glaize WWTF serves a 45 square mile sanitary collection system consisting of approximately 3 million feet of public sewers, with pipe diameters ranging from 6 to 54 inches. The collection system also includes 20 active pump stations owned and maintained by MSD.

The Grand Glaize WWTF uses gravity sludge thickeners and belt filter presses for residuals management and produces approximately 3,000 dry tons of sludge annually. MSD hauls its residuals from Grand Glaize to MSD's Bissell Point WWTF for incineration or to the IESI Champ Landfill to be landfilled.

2.1.3. Fenton WWTF

The Fenton WWTF was constructed in 1987. This facility has a design flow of 6.75 MGD and currently has an average dry weather daily flow of 4.85 MGD that discharges to the Meramec River. The Fenton WWTF currently discharges to the Meramec River but MSD anticipates taking it offline and sending flows to the Lower Meramec WWTF once Phase II of the LMT is complete (Figure 2). The Fenton WWTF has a 19 square mile sanitary collection system consisting of approximately 850,000 feet of public sewers. The Fenton collection system also includes 21 active pump stations owned and maintained by MSD.

The Fenton WWTF uses a gravity sludge thickener and a sludge belt filter press for residuals management and produces approximately 1,000 dry tons of sludge annually. MSD hauls its residuals from the Fenton treatment facility to MSD's Bissell Point treatment facility for incineration or to the IESI Champ Landfill to be landfilled.

2.1.4. Future Plans for MSD WWTFs in the Lower Meramec Basin

MSD plans to expand the Lower Meramec WWTF to accommodate future flows from the offline Fenton WWTF. This expansion is scheduled to be completed in 2023. The Fenton WWTF facility is currently scheduled to be taken offline in 2025 once the Phase II LMT extension is complete.

The Grand Glaize WWTF will continue to operate, as the treatment facility has more than enough capacity to accommodate future flows and has demonstrated continual high-quality treatment. MSD is also planning to spend $2.75 million for additional flood protection infrastructure, including earthen berms and a floodwall. This work is important for making the Grand Glaize maintenance yard and treatment facilities more resilient to regional flooding created by the Meramec River.

As described further herein (see Section 3.1.1), MSD is planning major improvements to its sewer sludge incineration facilities at the Lemay WWTF and Bissell Point WWTF. MSD estimates $340 million is needed to replace its sewer sludge incinerators with fluidized bed incinerator technology that substantially reduces emissions. MSD estimates an additional $50 million is needed for pumping stations and piping needed to transport sludge from the Meramec basin facilities to the Lemay WWTF.

2.1.5. Collection System Improvements

MSD has taken significant steps to study and characterize its collection system in order to identify the best strategy to maintain and rehabilitate the collection system. In 2013, MSD produced sewer system evaluation surveys (SSES) for the following watersheds: Fenton Creek, Lower Meramec Sub Areas, Mattesse Creek, Fishpot Creek, Kiefer Creek, and Grand Glaize Creek. These watersheds make up the entirety of the MSD service area portion of the Lower Meramec River Basin. SSES reports were produced discussing the various aspects of the collection system, including constructed SSO outfalls, known SSOs, building backups, gravity sewers, pump stations, force mains, CCTV inspections, I/I evaluations, and flow and rainfall monitoring,

MSD has made substantial efforts towards maintaining and rehabilitating its collection system. The Capacity, Management, Operations and Maintenance (CMOM) Program Plan is a Consent Decree requirement that allows MSD to better understand how its sewer system works under various conditions, and identifies maintenance and improvements needed to achieve established goals. The CMOM program has been in place since 2012. The goal of the CMOM program is to preserve capital investment while minimizing building backups and non-capacity SSOs. The CMOM program includes the following control measures: scheduled cleaning and inspection of gravity sewers, especially for sewer lines with historic Fats, Oils, and Grease (FOG) blockages; sewer lining to minimize root intrusion and I/I and to prevent structural damage, SSOs, and building backups; manhole inspection, repair, rehabilitation, and replacement; utilization of a computerized maintenance management system; recording, investigating, and resolving customer complaints to correct system problems; CCTV of sewer

lines and manholes to rate the condition; pump station inspections, maintenance, repair, and testing; scheduled force main visual and non-destructive testing; and proactive inspection of FOG generating facilities and source investigation of excessive FOG in sewer lines. These CMOM control measures have target service levels for MSD to maintain, all of which have been consistently met since the program was implemented.

2.2. Northeast Public Sewer District (NPSD)

NPSD was established in 1979 under the provisions of Chapter 204 of the Missouri Revised Statutes and is governed by a five member Board of Trustees appointed by the Jefferson County, Missouri government. The day-to-day operations of NPSD are managed by the Executive Director. As a Chapter 204 Sewer District, NPSD does not levy taxes and receives income from user fees and connection fees. NPSD covers 42.8 square miles of northern Jefferson County, serving over 12,000 customers. NPSD operates and maintains a collection system consisting of 161.5 miles of gravity sanitary sewer, 49 pump stations, 29.78 miles of force mains, 4,948 manholes, and 298 lampholes.

In 1980, the service area of NPSD contained five privately owned sewer companies and 80 permitted wastewater disposal systems. In 1980, and reaffirmed in 1991, NPSD signed a management agreement designating NPSD as a Management Agency for the Northeast Facility Planning Area (FPA) with the boundaries of the FPA conterminous with the boundaries of NPSD. This designation made NPSD responsible for the planning, design, construction, acquisition, operation and maintenance of any public wastewater system with the NPSD service area. In 2015, NPSD was granted Level 2 Continuing Authority classification by the Missouri Clean Water Commission, which permits NPSD to provided sewage collection and service on a regional basis within the NPSD service area. NPSD is currently the only Level 2 Continuing Authority in the Lower Meramec Basin.

Today, there is one privately owned sewer company (Missouri American Water Company), and 14 permitted wastewater disposal systems in the NPSD service area. Four (4) of these permitted systems are NPSD facilities, and NPSD also has a no-discharge pump and haul site.

2.2.1. 2010 Facility Planning Efforts

NPSD completed a comprehensive Facility Plan for the entire collection and treatment system in 2010, with an amendment in 2013. The Facility Plan identified NPSD's future wastewater needs and identified improvements that will support growth within the service boundaries. The Facility Plan recommended the Saline Creek WWTF become a regional facility for NPSD. The plant was designed for an average daily flow of 4 MGD and a peak daily flow of 10 MGD. Provisions were made in the plant design to accommodate expanding capacity to an average daily flow of 8 MGD and a peak daily flow of 20 MGD by adding additional process equipment.

The Facility Plan also recommended to re-rate the Saline Creek Regional WWTF as follows:

1. Design Average Daily Flow = 6.56 MGD
2. Design Maximum Flow = 17.97 MGD
3. Organic Loading BOD5 = 11,341 lb/d
4. Total Suspended Solids Loading TSS = 12,203 lb/d

2.2.2. Saline Creek Regional WWTF Construction and Upgrade History

The Saline Creek Regional WWTF was constructed in two phases with the headworks and overflow basin completed in 2004, and the remainder of the existing facility including lab building, oxidation ditch, clarifiers and UV disinfection system completed in 2009. The WWTF was constructed adjacent to the old Ron Rog plant, which itself was converted to a temporary aerobic digester for the Saline Creek Regional WWTF. In 2017 construction was completed on a new blower building, electrical improvements to the headworks facility to comply with NEC (NFPA 70) Class I, Division 1 requirements, and a new perforated plate screen. The Saline Creek WWTF discharges to the Meramec River (Figure 2).

Biosolids from NPSD's satellite WWTFs are transported to the Saline Creek Regional WWTF for processing and final disposal. The Saline Creek Regional WWTF has an aerobic digester which is a recycled plant from the old Ron Rog WWTF adjacent to Saline Creek Regional WWTF and two (2) biosolids holding ponds. Biosolids are land applied annually by a contractor on fields near Byrnes Mill, MO. The aerobic digester was intended to be a temporary facility until a more in-depth study for improvements to NPSD's biosolids process could be completed.

The Biosolids Facility Plan was completed in February 2014 and NPSD conducted pilot studies on several different types of equipment as part of the development of the plan. The recommendation of the Biosolids Facility Plan was to construct a new aerobic digester with a membrane thickener and continue land application. NPSD applied for a SRF loan ($5 million) to fund most of the cost of the Biosolids project with the remainder to be funded by NPSD's capital improvement fund. NPSD's biosolids project was included in the FY 2019 Intended Use Plan approved by the Missouri Clean Water Commission on October 18, 2018 as a $5 million loan. The project is in final design with anticipated bidding in Spring 2019. The total capital cost of the biosolids project will be approximately $6.4 million.

Between May 2012 and May 2015 NPSD completed $9.75 million in work to eliminate known sources of I/I and regionalize the service area by eliminating eight of NPSD's wastewater treatment facilities. The flow from seven of these eliminated facilities was redirected to the Saline Creek Regional WWTF, and the flow from the remaining facility was redirected to the collection and treatment system of the RPCSD. Approximately $9.3 million of this expenditure was funded by a loan from the State Revolving Fund (SRF) program, with the remainder funded by NPSD revenue.

Some of the work completed during this time period also provided improved access to the public sewer system for unsewered areas of NPSD's service area. Four years ago, NPSD eliminated eight facilities. Of the three satellite facilities remaining, two are in the Antire Valley. Sewering of the Antire Valley will be completed in phases. NPSD staff is currently working on design of Phases 1A and 1B. While Phases 1A and 1B will not consolidate treatment or make sewers accessible to additional properties, it must be completed prior to other phases of the work. Phase 2 will eliminate one WWTF (Walnut Ridge WWTF, MO-0095281), remove two pump stations and make public sewers accessible to a private treatment facility (Pembrooke Apartments, MO-0091359) and numerous homes with onsite systems. Phase 3 will eliminate one WWTF (Antire Springs WWTF, MO-0099252) and makes sewers accessible to the lower Antire Valley because the major infrastructure will be in place. Sewer main extensions may be required by property owners with onsite systems and they would bear the cost for the sewer main to serve their property. The use of sanitary sewer improvement area financing could aid property owners with financing the cost of sewer main extensions.

2.2.3. Future Improvements

In addition to the planned biosolids project and reduction of unsewered areas, NPSD has begun efforts to evaluate and improve their collection system to eliminate sources of I/I, eliminate sanitary sewer overflows and enhance customer service reliability. While the 2010 Facility Plan improved parts of the collection system and removed I/I, this work concentrated on the interceptors of NPSD's collection system. With that work completed, NPSD can concentrate on the collection sewer mains. As NPSD inspects the system, needed improvements will be added to NPSD's capital improvement planning. At this time, it is anticipated that the work identified by NPSD's systemic inspection program will be completed on a pay-as-you-go basis as funding is available.

In addition to NPSD's planning for its existing assets, NPSD is working to improve management of wastewater on a watershed basis. Many areas of NPSD's territory are not served by public sewers. They are either served by on-site (septic) systems or private treatment facilities. NPSD works with MDNR, Jefferson County and residents to facilitate extending public sewer service to these areas. The introduction of the use of SSIAs is one step that aids in the process of extending public sewers to areas with on-site systems by providing a financing mechanism for the construction. NPSD believes that their current efforts and future planning are the best way to regionally manage wastewater collection and treatment in its service area and improve water quality.

2.3. Rock Creek Public Sewer District (RCPSD)

RCPSD was established on August 7, 1979 under the provisions of Chapter 204 of the Missouri Revised Statutes and is governed by a five member board of trustees appointed by the Jefferson County, Missouri government. The day-to-day operations of RCPSD are managed by the RCPSD Administrator. As a Chapter 204 Sewer District, RCPSD does not levy taxes and receives income from user fees and connection fees. RCPSD was designated the management

agency for the Rock Creek drainage area as a result of the 208 Plan. RCPSD had accepted this responsibility by an agreement signed in March 1980.

RCPSD currently owns and operates the Kimmswick WWTF which services the Rock Creek Basins and includes the cities of Arnold, High Ridge, House Springs, Kimmswick and Imperial. RCPSD area contains approximately 32 square miles or approximately 20,750 acres. The RCPSD area is divided into four service areas: Imperial/Kimmswick, New Towne, Seckman Valley, and West Elm Place. RCPSD operates and maintains a collection system consisting of 150 miles of gravity sewer lines, six pump stations, five miles of force main, 5,000 manholes, and 65 grease traps for commercial customers.

RCPSD also owns and operates the Kimmswick WWTF. The facility is a four basin sequencing batch reactor system with UV disinfection and three aerobic sludge digesters. It has a design flow of 4.8 MGD and discharges directly to the Mississippi River. Under an intergovernmental agreement between RCPSD and MSD, RCPSD also collects sewer flows from the Pomme Creek watershed in Arnold and sends them to MSD's Lower Meramec WWTF.

2.3.1. Historical Facility Planning Efforts and Improvements

Since being established in 1979, RCPSD has worked to improve wastewater treatment and eliminate and regionalize small treatment facilities throughout the Rock Creek Basin. Historical facility planning efforts in 1983, 1985, 1993, 2000, and 2009 have focused on cost-effectively consolidating existing facilities while meeting discharge permit requirements.

The Kimmswick WWTF was constructed in 2003 to facilitate regionalization in the watershed. At the time, RCPSD evaluated the cost to build the new treatment facility against the cost to construct sewers and pump to MSD, as outlined in the original 208 Plan. RCPSD found that the new facility was the most cost effective alternative (Table 1). Construction of the new facility led to the elimination of nine smaller WWTFs in the basin.

Table 1. Estimated RCPSD Treatment Alternative Construction Costs Developed during Previous Facility Planning Efforts (in 2000 Dollars).

Project	RCPSD Cost
Original 208 Plan Recommendation - Connect to MSD	
Original 208 Plan Recommendation – Connect to MSD	$26.2 million
Construct Kimmswick WWTF	$16.7 million

Source: Don Daniel, RCPSD District Administrator

In 2009, new permit requirements for disinfection, potential future treatment and collection system improvements, and significant inflow and infiltration reduction challenges necessitated phased upgrades to the Kimmswick WWTF. Upgrades included the addition of a UV disinfection system and the addition of mixers within the existing sequencing batch reactor to achieve partial

nutrient removal in Phase 1. Phase 1 also included improvements to the collection system including elimination of two pump stations, several creek bank stabilizations, sewer relocations, the closure of the Seckman School Lagoon, a significant inflow and infiltration investigation, and manhole lining and rehabilitation. Future Phase 2 improvements may include two additional sequencing batch reactors and the addition of a deep bed sand filter to achieve high effluent quality.

2.3.2. Identified Future Improvements

RCPSD is currently working through a Facility Plan Amendment in the FY 2019 and have identified approximately $5.7 million in necessary capital improvements at the existing WWTF. Projects include a new influent screen, influent pump replacement, new high efficiency blowers, and a new maintenance garage. These projects will continue to be refined as the Facility Plan Amendment is developed.

3. Meramec River Water Quality Evaluation

Since 1978, water quality impacts caused by WWTFs have been eliminated in the Lower Meramec Basin. However, the Meramec River remains a high priority area in need of improvement from other pollutant sources. A summary of the original 208 Plan water quality goals, existing water quality conditions, and WWTF performance is provided below.

3.1. 208 Plan Water Quality Goals

Three different approaches to water pollution control were defined and evaluated for the original 208 Plan. Each approach or level of pollution control was predicted to produce different water quality in the study area at a different cost. The three levels of water quality used in the 208 Plan in ascending order of stringency are summarized below:

- Level 1 – Provided for the secondary treatment of point sources and a continuation of existing practices and controls for nonpoint sources;
- Level 2 – Required the control of point and nonpoint sources necessary to meet the State of Missouri's water quality standards; and
- Level 3 – Called for more stringent control of point and nonpoint sources of pollution in order to meet the water quality goals developed during the 208 study. This included establishing a new criterion of 0.05 mg/L for phosphate and new, more stringent criteria for fecal coliform and ammonia than were proposed by the State at the time the plan was developed.

As part of the 208 planning process, control strategies and their costs were developed for each water quality level. Results of this analysis were presented to the public at workshops held in 1977. Workshop participants overwhelmingly chose Level 2 water quality, which was subsequently selected as the target for the 208 Plan. In essence, the goal of the 208 Plan was to implement a combination of point and nonpoint source controls such that the rivers and streams of the St. Louis area meet Missouri's water quality standards. Water quality standards consist of three basic elements: 1) designated uses (e.g., recreation, aquatic life, public water supply), 2) numeric and narrative water quality criteria to protect designated uses by limiting chemical constituents that may be present in the water body, and 3) an antidegradation policy to maintain and protect existing uses and high quality waters.

3.2. Existing Water Quality Conditions

Section 303(d) and 305(b) of the CWA require each state to report to EPA on the status of their waters every two years. Waters that do not meet water quality standards and for which adequate water pollution controls have not been required are included on the state's 303(d) List. Missouri's 2018 303(d) List of impaired waters identifies the Lower Meramec River as impaired for both lead in sediment and bacteria (*Escherichia coli or E. coli)*. There are currently no other identified 303(d) impairments in the Meramec River. Additional information regarding existing lead and *E. coli* levels in the Meramec River is included below. Because total ammonia nitrogen (ammonia) is a common pollutant discharged by WWTFs and Missouri's water quality criteria for ammonia will likely become more stringent in the near future, an analysis of historic and current

ammonia levels in the Meramec River is also included. Data used for this analysis were obtained from United States Geological Survey (USGS) monitoring stations at Paulina Hills (07019280) and Eureka (07019000). Paulina Hills is downstream of all major point discharges. Eureka is located upstream of the Lower Meramec basin system.

3.2.1. Lead

The most likely source of lead impairments to the Meramec River is old lead belt tailings. The Meramec River region is a former lead producing area with over 200 years of lead mining pollution. EPA and the U.S. Army Corps of Engineers (USACE) currently serve on a task force to facilitate the cleanup, restoration, and remediation efforts on the Meramec River[5]. DNR concluded that the Fenton WWTF, Grand Glaize WWTF, and Saline Creek WWTF were not a source of lead or the impairment.[6]

3.2.2. Bacteria

E. coli data collected in the Meramec River at Paulina Hills (USGS station 07019280) since 1997 supports MDNR's findings that the Meramec River is impaired for bacteria. The *E. coli* criterion on the Meramec River is 126 cfu/100 mL, which is expressed as a recreational season (April – October) geomean. Since 1997, the *E. coli* criterion has been exceeded at this location six times (Figure 3).

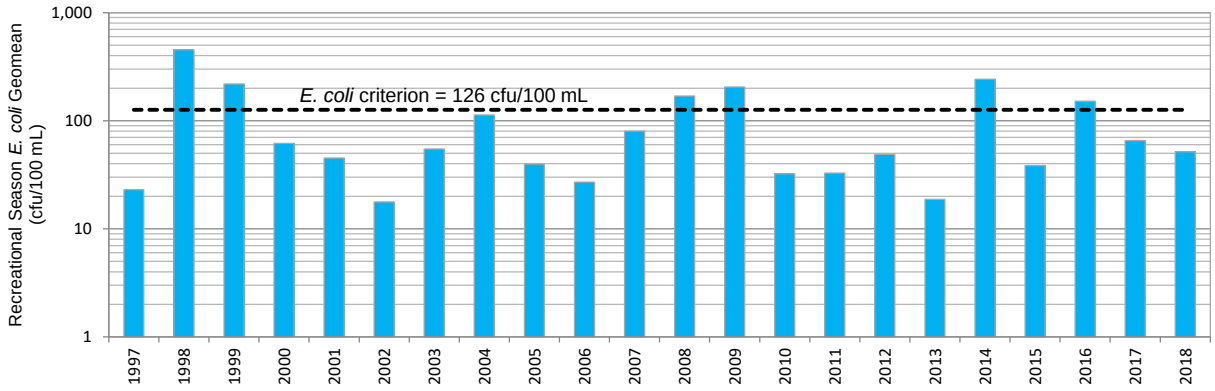

Figure 3. Average (Geometric Mean) Recreational Season (April – October) *E. coli* Levels in the Meramec River at Paulina Hills (1997-2016).

At the time the 208 Plan was developed, WWTFs were considered a significant source of bacteria. However, since then most treatment facilities in the Lower Meramec Basin have been either been eliminated or are required to disinfect. This suggests that high bacteria levels in the Meramec River are primarily a result of nonpoint sources in the watershed. This finding is supported by data from Paulina. Recent *E. coli* data (collected since 2005) from the Paulina Hills station were grouped and summarized by the following flow regimes:

[5] https://www.epa.gov/urbanwaterspartners/urban-waters-and-meramec-and-big-rivers-missouri
[6] See fact sheets for Missouri State Operating Permits MO-0086126, MO-0101362, and MO-0128490.

- High Flows: 0 to 10% flow exceedance
- Moist Conditions: >10 to 40% flow exceedance
- Mid-Range Flows: >40 to 60% flow exceedance
- Dry Conditions: >60 to 90% flow exceedance
- Low Flows: >90% flow exceedance

The data show that bacteria levels and the flow regime are positively correlated (Figure 4). This relationship is most apparent during high flow conditions, which has an *E. coli* recreational season geometric mean of 398 cfu/100 mL during these wet weather conditions. *E. coli* levels in all other flow regimes range from 40 to 83 cfu/100 mL, which are below the criterion of 126 cfu/100 mL. Because the high flow regime is dominated by stormwater runoff, nonpoint sources are likely the primary source of bacteria during this condition.

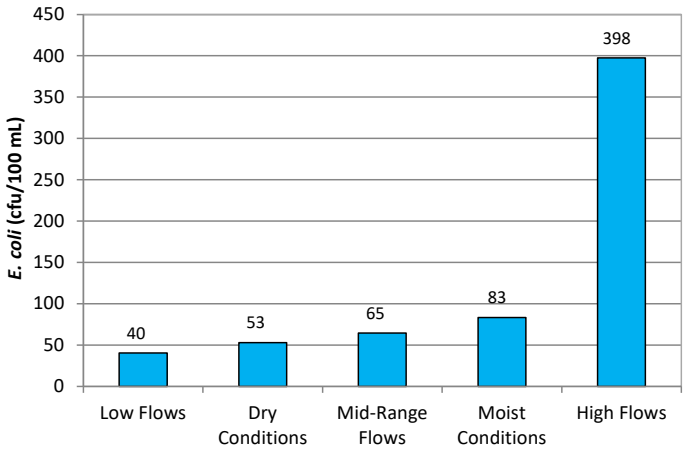

Figure 4. Distribution of Average (Geometric Mean) Recreational Season (April – October) *E. coli* Levels by Flow Regime in the Meramec River at Paulina Hills (2005 – 2018).

3.2.3. Ammonia

Since 1968, average ammonia levels in the Meramec River at the Paulina Hills station have consistently remained below EPA's new recommendations[7] for summer (April – September) and winter (October – March) water quality criteria of 0.7 and 2.3 milligrams per liter (mg/L), respectively, which are based on a pH of 7.8 and assume a summer temperature of 26°C and a winter temperature of 6°C (Figure 5). During this period, average summer ammonia levels have been below 0.1 mg/L and average winter levels have been below 0.2 mg/L. There is no clear, long-term trend in ammonia levels at the Paulina Hills station.

[7] EPA's 2013 ammonia criteria recommendations are based on new toxicity data which demonstrate that some organisms, particularly some species of gill-breathing snails and freshwater mussels, are more sensitive to ammonia than other organisms in the national toxicity dataset used in previous criteria recommendations (EPA 2013). Depending on pH and temperature assumptions, the revised recommendations represent a decrease of 50% or more for existing ammonia criteria.

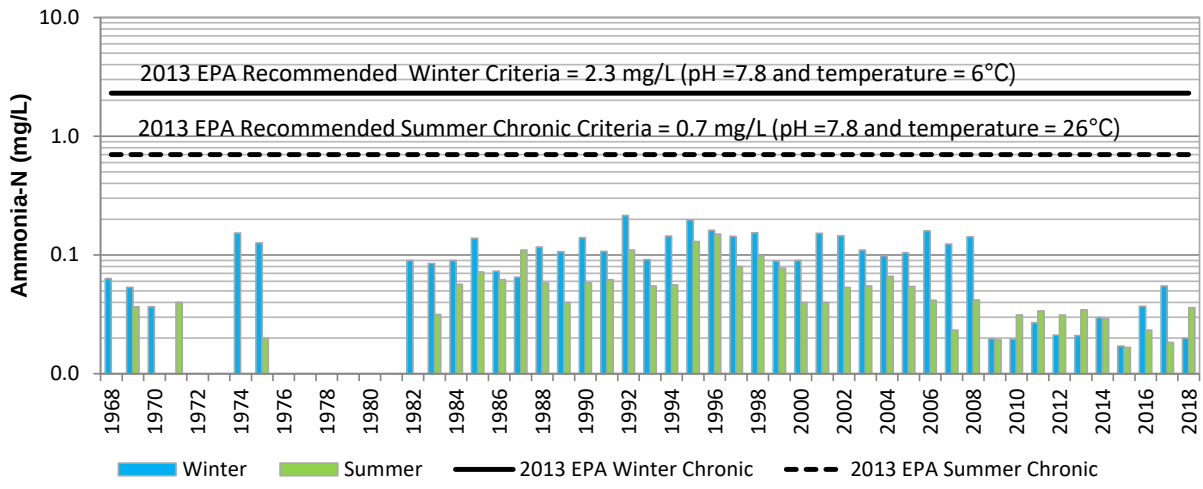

Figure 5. Average Annual Ammonia in the Meramec River at Paulina Hills (1968 – 2018).

Since 2009, average ammonia levels at the Paulina Hills station dropped by approximately 50% and 75% during the summer and winter seasons, respectively. The net result of these changes was that ammonia returned to background levels measured at the upstream Eureka station (Figure 6). This reduction is likely attributable to upgrades made at the Grand Glaize WWTF during the period. However, reduced ammonia levels may also be partly attributable to improvements at the NPSD Saline Creek Regional WWTF, which completed its second phase of construction in 2009.

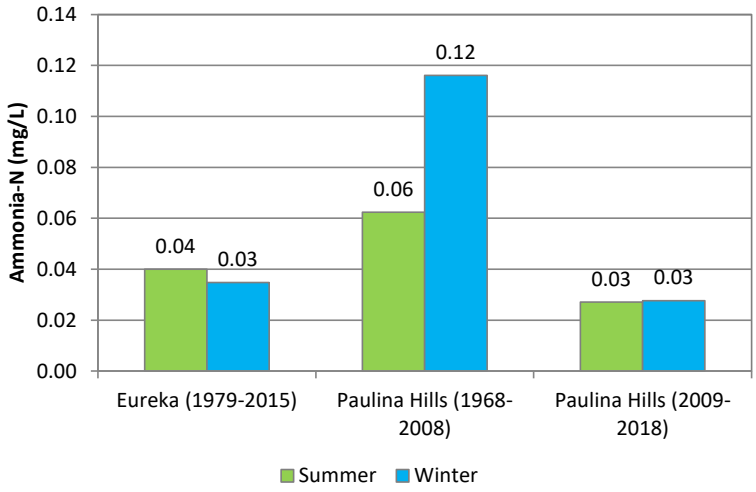

Figure 6. Average Annual Ammonia Levels in the Meramec River at Eureka (Upstream of the 201 Planning Area) and Paulina Hills (Downstream of Major WWTFs in the 201 Planning Area).

3.3. WWTF Performance for Major Facilities Discharging into the Lower Meramec River

In the 1970s, discharges from point sources were directly attributed to elevated levels of phosphorus and fecal coliform in the Meramec River. At that time, the Lower Meramec Basin was serviced by numerous lagoons and septic systems, which did not meet secondary treatment standards or require disinfection. Effluent quality was generally insufficient to meet water quality standards. Since this time, most of these facilities and septic tanks have been consolidated into a small number of major secondary treatment facilities with disinfection. Major facilities that discharge to the lower Meramec River include MSD's Grand Glaize WWTF, and Fenton WWTF, and NPSD's Saline Creek Regional WWTF. All three of these facilities typically meet their National Pollutant Discharge Elimination System (NPDES) permit requirements, which were designed to protect water quality standards.

3.3.1. Grand Glaize WWTF Performance

The Grand Glaize WWTF (MO-0101362) uses a treatment process that includes equalization, coarse screening, influent pumping, fine screening, grit removal, primary clarification, aeration, secondary clarification, and disinfection during the recreation season. This treatment process has been well operated since the facility's expansion in 2007. Over the past decade, both BOD and TSS effluent concentrations have consistently achieved minimum average monthly removal requirement. High wet weather flows significantly affect BOD and TSS removal, so continual achievement of the average monthly removal indicates the Grand Glaize WWTF's ongoing exceptional performance.

Since final ammonia effluent limits came into effect in 2010, the Grand Glaize WWTF has never exceeded daily maximum or monthly average ammonia effluent limits. *E. coli* effluent limits were consistently achieved. In 2018, the National Association of Clean Water Agencies gave the Grand Glaize WWTF a Gold Peak Performance Award.

3.3.2. Fenton WWTF Performance

The Fenton WWTF (MO-0086126) uses a treatment process of fine screening, influent pumping, grit removal, primary clarification, aeration, secondary clarification, and disinfection during the recreation season. In the past five years, there has been one exceedance of *E. coli* limits in May 2017, which occurred during a period of historic flooding and flows into the plant that exceeded the rated capacity of the disinfection equipment. There was one exceedance of lead effluent limits in December 2013. It is anticipated that the Fenton WWTF will be taken offline in 2025 and the Fenton influent flow will be sent to the Lower Meramec WWTF. In 2018, the National Association of Clean Water Agencies gave the Fenton WWTF a Platinum Peak Performance Award.

3.3.3. Saline Creek Regional WWTF Performance

The Saline Creek Regional WWTF (MO-0128490) currently features a multi-channel oxidation ditch with biological nutrient reduction capabilities, two secondary clarifiers, and UV disinfection. The facility used to consist of two separate treatment plants with a separate outfall – the Ron Rog site and the Highway 141 site. The Highway 141 plant was eliminated in 2013 and replaced with a lift station sending all effluent to the Ron Rog site now referred to as the Saline Creek Regional WWTF. Since 2013, there have been no permit limit exceedances. Although nutrient removal is not currently required at the facility, it can be operated to remove nitrogen and phosphorus biologically.

4. Proposed 208 Plan Amendments

As discussed in Section 1, the original 208 Plan made recommendations regarding point source, nonpoint source, and sludge management alternatives across the four-county planning area. These recommendations were based on an evaluation of cost-effectiveness, water quality effectiveness, management and institutional constraints, and environmental considerations.

Technical and economic considerations have changed since the 1978 analysis and the original 208 Plan point source and sludge management alternatives for the Lower Meramec Basin are not necessary for meeting the overall planning objectives. The 208 Plan recognizes that updates to the plan may be necessary noting that it "is not a static list of recommendations but represents a dynamic and progressive policy for guiding future wastewater construction activities."

The purpose of this section is to identify changes necessary to amend the 208 Plan recommendations and bring it into alignment with the current situation in the Lower Meramec Basin. The proposed changes in this report only address one point source service area (identified as the Lower Meramec System in the 208 Plan) and one regional sludge processing center (identified as the Lower Meramec Regional Center in the 208 Plan), but do not impact point source, nonpoint source, or sludge management recommendations for the remainder of the four-county planning area.

4.1. Lower Meramec System Point Source Amendments

The existing 208 Plan calls for MSD to serve as the designated management agency of a regional treatment facility to provide sewer services via major interceptors for the Lower Meramec area (southern St. Louis County and northern Jefferson County) and the entire Rock Creek Basin in Jefferson County. At the time the 208 Plan was developed, the construction of separate facilities within this area was considered impractical from both a technical and economic standpoint. Technical and economic considerations have evolved since 1978 and it is currently more practical to make the existing major facilities permanent. Also, only NPSD is a Level 2 Continuing Authority whereas MSD and RCPSD are Level 3 Continuing Authorities. Therefore, the 208 Plan recommendations should be amended to state that the Lower Meramec System will be served by four WWTFs and their designated management agencies (Table 1, Figure 7).

Table 1. Proposed Permanent WWTFs in the Lower Meramec System.

Treatment Facility	Service Area	Management Agency
Lower Meramec WWTF	Lower Meramec (St. Louis County)*	MSD
Grand Glaize WWTF	Grand Glaize (St. Louis County)	MSD
Saline Creek Regional WWTF	Lower Meramec (Jefferson County)	NPSD
Kimmswick WWTF	Rock Creek (Jefferson County)	RCPSD

*Includes serving portions of the City of Arnold and RCPSD (Pomme Creek Watershed) in Jefferson County.

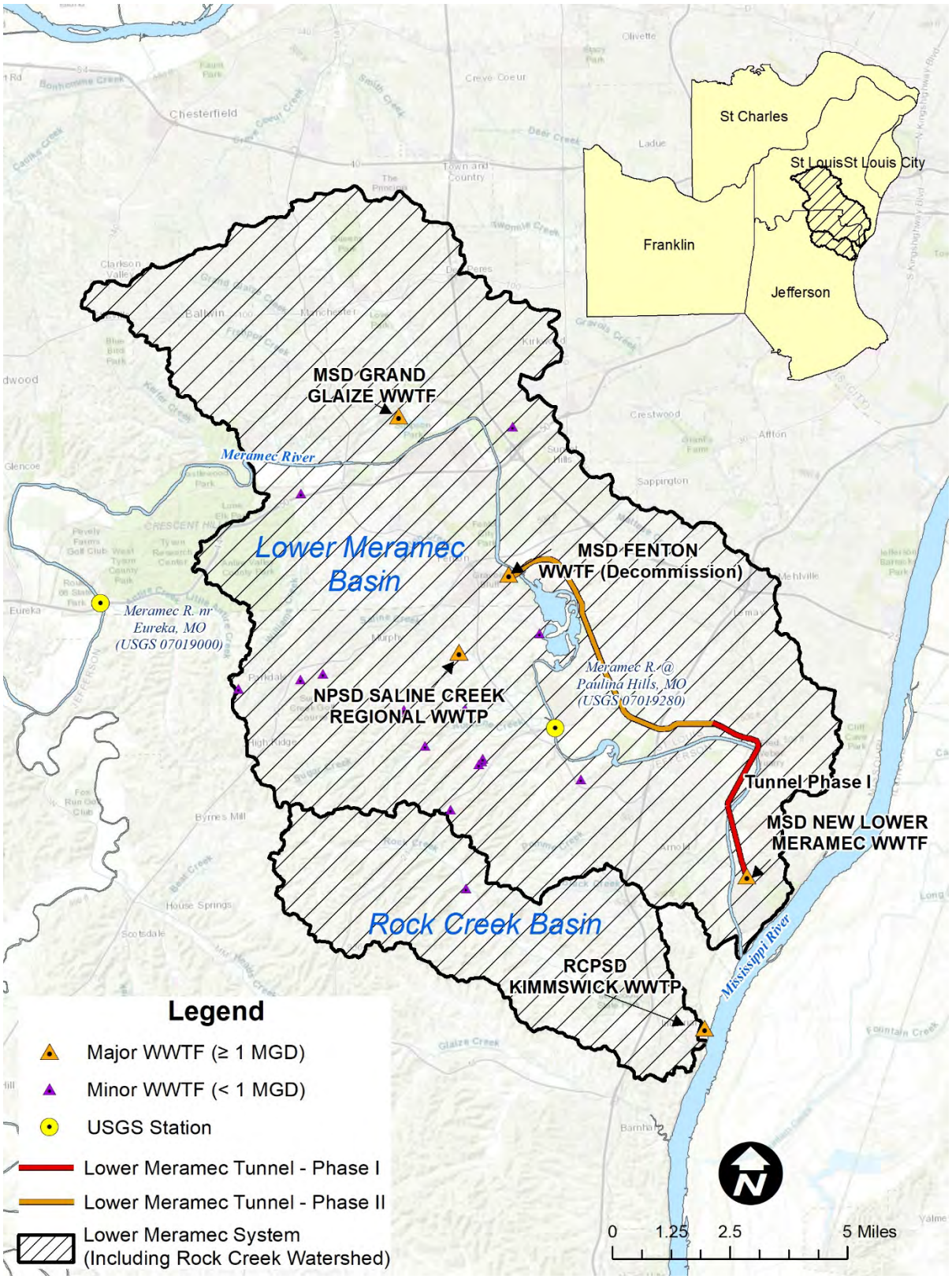

Figure 7. Proposed 208 Plan Amendment for the Lower Meramec System.

Amending the 208 Plan to maintain the four major WWTFs within the Lower Meramec System will not impact water quality standards attainment. Unlike in 1978, there are currently no impairments in Meramec River that are attributable to WWTF discharges, and the existing WWTFs are producing high quality effluent that meets NPDES permit conditions. Additionally, both the Lower Meramec and the Kimmswick WWTF discharge directly to the Mississippi River with no impact to the Meramec River. Therefore, from a water quality perspective, there is little difference between the original 208 Plan and this proposed amendment.

In addition to the Continuing Authority and jurisdictional issues, the overriding consideration for maintaining separate WWTFs in the Lower Meramec System is cost-effectiveness. The 20-year present worth costs for implementing the original 208 recommendations (connecting to the Lower Meramec WWTF) greatly exceed the cost to maintain current facilities for each of the three agencies. Implementing the original 208 recommendations would include annual operation and maintenance, constructing the Phase III Lower Meramec Tunnel, expanding the Lower Meramec WWTF, and decommissioning parts or all of the Grand Glaize, Saline Creek, and Kimmswick WWTFs. The combined estimated cost to implement these projects is approximately $400 million (Table 2).

Table 2. Comparison between Costs to Implement Original 208 Point Source Recommendations and Costs to Maintain Existing Facilities in the Lower Meramec System.

Estimated 20-Year Present Worth Cost to Implement Original 208 Recommendations (in 2018 dollars)[1]				
Cost Component	**MSD**	**NPSD**	**RCPSD**	**Total**
Phase III Lower Meramec Tunnel	$134,900,000	--	--	$134,900,000
Phase III Lower Meramec WWTF Expansion	$82,200,000	--	--	$82,900,000
Grand Glaize WWTF Decommissioning	$2,000,000	--	--	$2,000,000
O&M Present Worth	$73,300,000	--	--	$73,300,000
Cost of Tunnels to Connect to Lower Meramec System	--	$57,500,000	$14,300,000	$71,800,000
Cost of Lower Meramec WWTF Upgrades[2]	--	$15,800,000	$19,000,000	$34,800,000
Total Cost to Implement 208 Recommendations	**$293,100,000**	**$73,300,000**	**$33,300,000**	**$399,700,000**
Estimated 20-Year Present Worth Cost to Maintain Existing Facilities (in 2018 dollars)[1]				
Cost Component	**MSD Grand Glaize WWTF[3]**	**NPSD Saline Creek Regional WWTF**	**RCPSD Kimmswick WWTF**	**Total**
Capital Improvements	$24,700,000	$6,400,000	$5,650,000	$31,550,000
O&M Present Worth	$88,500,000	$10,700,000	$11,200,000	$95,200,000
Total Cost to Maintain Existing Facilities	**$113,200,000**	**$17,100,000**	**$16,850,000**	**$147,150,000**
Final Cost Savings	**$179,900,000**	**$56,200,000**	**$16,450,000**	**$252,550,000**

[1] 20-year present worth based on an inflation rate of 2.5%.

[2] Does not include annual O&M, as these costs would be defined through future intergovernmental agreements.

[3] Includes costs ($5.1 million capital, $15.3 OM) for future nitrogen and phosphorus removal.

By comparison, costs to maintain the existing facilities would include annual operation and maintenance and capital costs to replace aging equipment at the Grand Glaize WWTF, improve biosolids facilities at the Saline Creek Regional WWTF, and implement preliminary improvements identified for the Kimmswick WWTF. The combined estimated cost to implement these projects is approximately $147 million (Table 2). Overall, maintaining the existing facilities results in a cost savings of nearly $253 million.

Existing user rates at each of the three sewer districts do not account for the increased costs necessary to implement the original 208 Plan projects. For MSD, existing (FY 2020) residential user rates include a base charge of $26.53 and a volume charge that varies depending on whether a home is metered or unmetered. At the current rates, a typical residential bill would be $55.57 per month. MSD is requesting a 1.9% rate increase in FY 2021, and a 3.8% rate increase in each of FY 2022, FY 2023, and FY 2024. NPSD customers pay a $31.73 per month base charge and $3.17 per thousand gallons of water usage. At the current rates, an average NPSD customer would pay $47.58 per month. NPSD has no planned rate increases at this time. RCPSD just completed a district wide rate increase. RCPSD charges a base fee of $24.43 per month or $73.29 per quarter and a volumetric fee of $2.57 per thousand gallons. A typical RCPSD customer would pay approximately $88.79 per quarter or $29.60 per month, depending on the billing structure.

4.2. Lower Meramec Regional Center Sludge Management Amendments

The existing 208 Plan recommended designating the Lower Meramec WWTF as a regional sludge processing center. Alternatives, including transporting the sludge to the Lemay WWTF for incineration, were determined to be more expensive and ultimately ruled out of consideration for this reason. However, more recent analyses and activities in the watershed indicate that the original recommendation is no longer applicable. The 208 Plan recommendations should be amended to state that MSD, NPSD, and RCPSD will be responsible for sludge management at their respective facilities, as discussed below.

4.2.1 MSD Sludge Management

In the Lower Meramec Basin, sludge from the Grand Glaize WWTF and Lower Meramec WWTF is currently thickened and hauled off-site for incineration and/or landfill disposal. Sludge from MSD facilities outside of the Lower Meramec Basin are currently incinerated at the Bissell Point WWTF or Lemay WWTF. In 2018, MSD evaluated four potential future sludge management alternatives[8].

[8] Metropolitan St. Louis Sewer District (MSD). 2018. Solids Handling Technical Memorandum, Fluidized Bed Incinerators. Project 12565. St. Louis, MO. 24 pp.

Sludge management alternatives included the following:

1) Locating all incineration activities at the Bissell Point WWTF,
2) Retaining incineration facilities at the Bissell Point WWTF and constructing new facilities at the Lower Meramec WWTF to handle sludge from the Lower Meramec and Grand Glaize WWTFs,
3) Retaining incineration facilities at the Bissell Point WWTF and constructing new facilities at the Lower Meramec WWTF and Grand Glaize WWTFs to handle sludge from MSD's facilities in the Lower Meramec Basin, and
4) Retaining incineration facilities at the Bissell Point and Lemay WWTFs. The Lemay WWTF would accept sludge from the Grand Glaize and Lower Meramec WWTFs. Incinerators at Bissell Point would provide redundancy for sludge produced at the Grand Glaize and Lower Meramec WWTFs.

MSD concluded that Alternative 4 was the most environmentally sustainable and socially feasible future course of action. This cost between the alternatives was not statistically different, but Alternative 4 provided MSD with the most certainty with respect to unexpected increases in future capital or operational costs. Per the Second Material Amendment to the Consent Decree, the incinerators at both Bissell Point and Lemay WWTFs will be upgraded from multiple hearth incinerators to fluidized bed incinerators by 2026, which will result in a yearly reduction of 2,109 tons of air emissions.

Alternative 4 assumes that sludge from the Grand Glaize and Lower Meramec WWTFs may initially be hauled, but eventually will be transported to the Lemay WWTF via force main. Transportation of raw sludge via hauling will be phased out of use because hauling has potential for both spills and odor complaints. Landfilling of raw sludge will only be used minimally.

The 208 Plan should be amended to state that MSD will manage sludge generated at the Grand Glaize and Lower Meramec WWTFs at the Lemay WWTF, as described above in alternative 4.

4.2.2 NPSD Sludge Management

Biosolids from NPSD's satellite WWTFs are transported to the Saline Creek Regional WWTF for processing and final disposal. The Saline Creek Regional WWTF has an aerobic digester which is a recycled plant from the old Ron Rog WWTF adjacent to Saline Creek Regional WWTF and two (2) biosolids holding ponds. Biosolids are land applied annually by a contractor on fields near Byrnes Mill, Missouri. As described in Section 2.2.2, NPSD is in the process of construction a new aerobic digester with a membrane thickener and will continue land application. The 208 Plan should be amended to state that NPSD will continue the current activities.

4.2.3 RCPSD Sludge Management

In previous facility planning efforts, RCPSD evaluated the cost to haul sludge to MSD's facilities against the cost to retain a contract hauler and land apply them. RCPSD found that the cost to

land apply was approximately half the cost to dispose of them at MSD ($0.07 per gallon versus $0.17 per gallon). RCPSD selected the most cost effective alternative and currently land applies residual sludge in accordance with their NPDES permit and MDNR-approved biosolids management plan. The 208 Plan should be amended to state that RCPSD will continue the current activities.

4.3. Summary of Public Information Process

As of the date of this report, the three management agencies proposing to amend the 208 Plan have conducted significant public information and outreach activities. These include:

- January 8, 2019 – Coordination meeting with MDNR staff.
- January 16, 2019 – Informational meeting with Senator Weiland, Representative Shaul, and Representative Ruth.
- February 4, 2019 – Initiated 30-day public comment period for interested parties to review and comment on the draft report and provided update to MSD board at the Program Manager Committee Meeting.
- February 8, 2019 – Informational meeting with Dennis Gannon, Jefferson County Executive.
- February 11, 2019 – Provided update at Jefferson County Council meeting.
- February 12, 2019 – Hosted public hearing.
- March 8, 2019 – Coordination meeting with EPA Region 7 staff.

Additional outreach and public review will occur as the proposed amendment when the proposed amendment is finalized and presented to the Clean Water Commission for review and approval. The planned schedule of remaining outreach activities is included in Attachment A.

4.4. Summary of Proposed Amendments

This report provides support for amending the 208 Plan to bring it into alignment with the current situation in the Lower Meramec Basin. The analyses support the following amendments:

- It is more cost-effective to maintain existing facilities ($147 million) within the Lower Meramec System than to construct a single regional WWTF ($400 million). Further, a single regional WWTF is not necessary to meet state water quality standards in the Lower Meramec River. Therefore, the Lower Meramec System should instead be served by four WWTFs: Lower Meramec WWTF, Grand Glaize WWTF, Saline Creek Regional WWTF, and Kimmswick WWTF.
- Due to environmental and management considerations, it is not feasible for the Lower Meramec WWTF to serve as a regional sludge processing center. The plan should be revised to recognize that sludge processing for MSD facilities in the Lower Meramec System will be addressed at the Bissell Point WWTF or Lemay WWTF; the Northeast Public Sewer District and Rock Creek Public Sewer District will continue their current management activities.

ATTACHMENT A

Process and Proposed Schedule for Amending the 208 Plan

State regulations do not currently specify a process or requirements for amending existing 208 plans. According to federal regulations (40 CFR 130.6(f)), updated water quality management plan sections must be consistent with all other parts of the plan. The updates must also be certified by the Governor (or Governor's designee before being sent to EPA for approval.

In the fall of 2015, the EWGCOG met with MDNR, EPA Region 7, and NPSD to identify a process for amending the plan in accordance with the federal regulations. From these discussions, EWGCOG prepared a detailed Process to Amend 208 Water Quality Management Plan. In general, the process stipulates that the requesting agencies (MSD, NPSD, RCPSD) will prepare a documentation report (this document) and amendment request and, with EWGCOG's support, submit it to the Missouri Clean Water Commission (CWC) for their approval following a public notice period. The CWC shall consider recommendations on the proposal from MDNR and hold a public hearing before submitting final recommendations to the Governor or appropriate designee. The detailed process identified by the EWGCOG is outlined below. The proposed schedule for amending the 208 Plan recommendations, through the vote by the CWC to take action on the plan, is included in Figure A-1.

EWGCOG Process for Amending 2018 Plan Recommendations

1. Applicant(s) notify EWGCOG of their interest in an amendment to the 1978 208 Water Quality Management Plan.

2. Applicant(s) communicate with interested parties including and MDNR and receives feedback concerning proposed amendment.

3. Applicant(s) prepare **documentation report** supporting proposed amendment.

4. While Applicant(s) are preparing their **documentation report**, EWGCOG considers request and can prepare a **background report** (if needed) with recommendation and letter.

5. Applicant(s) sends draft **documentation report** to MDNR Engineering Section, Water Pollution Control Branch of Water Protection Program for feedback.
   Applicant(s) receives feedback and makes adjustments, if necessary.

6. Applicant(s) hold public meeting
   Schedule meeting.
   Post meeting announcement and request/documentation on Applicant(s) website.
   Comment period should begin at time of announcement and end 7 days after public meeting.
   Publicize meeting announcement.
   Public meeting held and feedback on proposed amendment is solicited.
   Meeting documentation is assembled – announcement, where publicized, meeting sign-in sheet and notes and comments received.

7. Applicant(s) prepare packet including: letter requesting amendment to plan; **documentation report**; and public meeting information.

8. Applicant(s) send packet to EWGCOG and to Clean Water Commission.

9. EWGCOG sends letter of recommendation to Clean Water Commission. EWG's **background report** (if needed) will be attached.

MISSOURI CLEAN WATER COMMISSION ACTIONS

1. MDNR receives request letter and packet from Applicant(s).
2. MDNR receives EWG recommendation letter with **background report** (if needed).
3. MDNR/Clean Water Commission places request on Clean Water Commission meeting schedule and identify public hearing/comment period.
4. Clean Water Commission meeting with request on Agenda, as information item.
5. Clean Water Commission holds public hearing about request from MSD.
6. Clean Water Commission meeting with request as action item on Agenda.
7. At this meeting, MDNR will make recommendation to Clean Water Commission on request.
8. Clean Water Commission will take action on request to amend 208 Plan.
9. MDNR staff drafts document to record Commission's recommendation and asks them to sign.
10. MDNR staff prepares memo to Governor requesting action to amend 208 Plan and attaches Commission's recommendation.

GOVERNOR ACTIONS

1. Governor reviews recommendations from Clean Water Commission/MDNR and issues 208 Plan certification and sends to EPA Region 7 for review and approval.

EPA ACTIONS

1. EPA reviews certification and takes action.
2. EPA communicates with MDNR on their action.
3. MDNR informs MSD.

Figure A-1. Proposed Process and Schedule for Amending the 208 Plan.

ATTACHMENT B

Summary of Water Quality Management Plan Elements Required by 40 CFR 130.6(c)

Federal regulations (40 CFR 130.6(c)) outline the planning elements that must be included in a water quality management (WQM) plan, or referenced as part of the WQM plan if contained in separate documents when they are needed to address water quality problems. A summary of the regulatory planning elements and their relationship to the information and changes requested in this report is included below.

1) **Identify relevant total maximum daily loads (TMDLs) and associated requirements.** There are five TMDLs within the Lower Meramec System. These include biochemical oxygen demand (BOD) and ammonia TMDLs for Rock Creek and Saline Creek, a chlordane and PCB TMDL for the Mississippi River, a lead and zinc TMDL for the Missouri River, and a bacteria TMDL for Fishpot Creek. The issues leading to the Rock Creek and Saline Creek TMDLs have been addressed through regionalization by the Northeast Public Sewer District and Rock Creek Public Sewer District. None of the remaining TMDLs directly address water quality in the Meramec River or impact any recommendations or changes suggested in this report.

Existing TMDLs in the Lower Meramec System				
Stream	**Year**	**Pollutant**	**Source**	**Document Link**
Rock Creek	1999	BOD and Ammonia	WWTPs	https://dnr.mo.gov/env/wpp/tmdl/docs/1714-rock-ck-tmdl.pdf
Saline Creek	2001	BOD and Ammonia	WWTPs	https://dnr.mo.gov/env/wpp/tmdl/docs/2190-saline-ron-rog-tmdl.pdf
Mississippi River	2006	Chlordane and PCBs	Many point and nonpoint sources	https://dnr.mo.gov/env/wpp/tmdl/docs/0001-1707-3152-mississippi-r-tmdl.pdf
Mississippi River	2010	Lead and Zinc	Herculaneum Smelter	https://dnr.mo.gov/env/wpp/tmdl/docs/1707-miss-r-tmdl.pdf
Fishpot Creek	2016	Bacteria	Urban runoff	https://dnr.mo.gov/env/wpp/tmdl/docs/tmdl-bacteria-fishpot-cr-final.pdf

2) **Identify effluent limitations and schedules of compliance.** According to MDNR's most recent (2015) NPDES permit shapefiles, there are 26 permitted facilities (excluding general permits) in the Lower Meramec System. These include major and minor municipal and non-municipal facilities, one state facility, and one industrial stormwater facility. MDNR generally applies new permit limits, compliance schedules, and other requirements for every facility on a five year cycle. A list of facilities in the Lower Meramec Basin and links to their permits (if available) is included in the table below.

   As the recommendations included in this report are implemented, MDNR will update permit requirements for the Grand Glaize WWTP, Lower Meramec WWTP, Saline Creek Regional WWTP, and Kimmswick WWTP to reflect the plan amendment and meet water quality standards in the Meramec River.

Existing NPDES Discharges in the Lower Meramec System (Excludes General Permits)			
Category	**Permit ID**	**Facility Name**	**Link to Permit**
Major Municipal	MO0101362	MSD Grand Glaize WWTP	https://dnr.mo.gov/env/wpp/permits/issued/docs/0101362.pdf
Major Municipal	MO0086126	MSD, Fenton WWTP	https://dnr.mo.gov/env/wpp/permits/issued/docs/0086126.pdf
Major Municipal	MO0127949	MSD, Lower Meramec WWTF	https://dnr.mo.gov/env/wpp/permits/issued/docs/0127949.pdf
Major Municipal	MO0128490	NPSD, Interim Saline Creek Regional WWTF	https://dnr.mo.gov/env/wpp/permits/issued/docs/0128490.pdf
Major Non-Municipal	MO0000361	Ameren Missouri- Meramec Power Plant	https://dnr.mo.gov/env/wpp/permits/issued/docs/0000361.pdf
Minor Municipal	MO0092649	NPSD, Terry Jean Acres WWTF	https://dnr.mo.gov/env/wpp/permits/issued/docs/0092649.pdf
Minor Non-Municipal	MO0090484	Big Valley Mobile Home Court	Permit not available online
Minor Non-Municipal	MO0001627	Bohn and Dawson, Inc.	https://dnr.mo.gov/env/wpp/permits/issued/docs/0001627.pdf
Minor Non-Municipal	MO0107981	Brennens Point Apartments	https://dnr.mo.gov/env/wpp/permits/issued/docs/0107981.pdf
Minor Non-Municipal	MO0088846	BROOKSHIRE COURT APTS	https://dnr.mo.gov/env/wpp/permits/issued/docs/0088846.pdf
Minor Non-Municipal	MO0123358	KOLLER CRAFT PLASTIC PROD	https://dnr.mo.gov/env/wpp/permits/issued/docs/0123358.pdf
Minor Non-Municipal	MO0127515	LIVING WELL VILLAGE	Permit not available online
Minor Non-Municipal	MO0091162	MAWC, Meramec Sewer	https://dnr.mo.gov/env/wpp/permits/issued/docs/0091162.pdf
Minor Non-Municipal	MO0094374	McArthy Homesites #2 WWT	https://dnr.mo.gov/env/wpp/permits/issued/docs/0094374.pdf
Minor Non-Municipal	MO0106569	Meramec Heights Shopping Center	https://dnr.mo.gov/env/wpp/permits/issued/docs/0106569.pdf
Minor Non-Municipal	MO0120910	Motomart	https://dnr.mo.gov/env/wpp/permits/issued/docs/0120910.pdf
Minor Non-Municipal	MO0090956	Murphy Ann Apartments WWTP	Permit not available online
Minor Non-Municipal	MO0110779	PEERLESS DEMOLITION LF	https://dnr.mo.gov/env/wpp/permits/issued/docs/0110779.pdf
Minor Non-Municipal	MO0001341	Reichhold, LLC 2	https://dnr.mo.gov/env/wpp/permits/issued/docs/0001341.pdf
Minor Non-Municipal	MO0088897	SIR THOMAS MANOR APTS	Permit not available online
Minor Non-Municipal	MO0114413	Tesson Hills Apartments	https://dnr.mo.gov/env/wpp/permits/issued/docs/0114413.pdf
Minor Non-Municipal	MO0123021	Valley Park TCE Site - Wainwright	https://dnr.mo.gov/env/wpp/permits/issued/docs/0123021.pdf
Minor Non-Municipal	MO0084930	Woodglen Apartments WWTP	Permit not available online
Minor Non-Municipal	MO0040347	Woodridge Apartments	https://dnr.mo.gov/env/wpp/permits/issued/docs/0040347.pdf
Minor State	MO0109975	MDC, Powder Valley Cons. Nature Center	https://dnr.mo.gov/env/wpp/permits/issued/docs/0109975.pdf
Site-Specific Industrial SW	MO0113000	Advanced Disposal Oak Ridge Landfill	Permit not available online

3) **Identify anticipated municipal and industrial waste treatment works, construction priorities, and schedules.** The relevant information for this planning element is addressed in Section 2 of this report.

4) **Describe the regulatory and non-regulatory programs, activities and Best Management Practices (BMPs) which the agency has selected as the means to control nonpoint source pollution where necessary to protect or achieve approved water uses. Identify BMPs for the following nonpoint sources:**
    - **Residual waste.** Proposed residual management amendments for the Lower Meramec System are outlined in Section 4.2 of this report.
    - **Land disposal.** Proposed residual management amendments for the Lower Meramec System are outlined in Section 4.2 of this report.
    - **Agricultural and silvicultural.** This is not applicable, as the proposed amendments included in this report do not impact or suggest changes to existing plan requirements.
    - **Mines.** This is not applicable, as the proposed amendments included in this report do not impact or suggest changes to existing plan requirements.
    - **Construction.** This is not applicable, as the proposed amendments included in this report do not impact or suggest changes to existing plan requirements.
    - **Saltwater intrusion.** This is not applicable, as the proposed amendments included in this report do not impact or suggest changes to existing plan requirements.
    - **Urban stormwater.** This is not applicable, as the proposed amendments included in this report do not impact or suggest changes to existing plan requirements.

5) **Identify management agencies necessary to carry out the plan.** As discussed throughout the report, the management agencies responsible for implementing the 208 Plan and associated amendments described include the East-West Gateway Council of Governments, Metropolitan St. Louis Sewer District, Northeast Public Sewer District, and Rock Creek Public Sewer District.

6) **Identify implementation measures necessary to carry out the plan, including financing, the time needed to carry out the plan, and the economic, social and environmental impact of carrying out the plan.**
    - Financing – Although the proposed amendment will save the agencies and their customers $253 million, the cost to implement the plan is still extensive. The agencies will work with their financial advisors and boards of directors to develop and pursue long-term financing strategies and tools that facilitate successful implementation of the amended plan, as proposed. Financing will likely include a combination of municipal bonds, loans, and pay as you go rates.
    - Point Source Amendment Timelines – Implementation timelines are included in the attached report for each agency as follows:
        - MSD – Section 2.1.4 describes planned Lower Meramec Tunnel and WWTP project timelines
        - NPSD – Section 2.2.2 describes planned biosolids improvement timelines. Section 2.2.3 describes future improvements that may be pursued as needs are identified.
        - RCPSD – Section 2.3.2 describes potential future improvements. RCPSD is still working to develop the facility plan amendment that will inform future implementation schedules.
    - Sludge Management Amendment Implementation Timelines – Implementation timelines are included in the attached report for each agency as follows:

    - MSD – Section 4.2.1 describes planned Bissel Point and Lemay WWTF project timelines.
    - NPSD and RCPSD – These agencies will continue their current sludge management activities.
- Economic and Social Impacts – The economic impacts are addressed in Section 4.2.1. The proposed amendment will result in a cost savings of $253 million.
- Environmental Impacts – The water quality impacts are addressed in Section 3. The analysis shows that the point sources meet their discharge limits and do not contribute to water quality impairments in the Meramec River.

7) **Identify and develop programs for the control of dredge or fill material.** This is not applicable, as the proposed amendments included in this report do not impact or suggest changes to existing dredge or fill requirements.

8) **Identify any relationship to applicable basin plans developed under section 209 of the Clean Water Act.** Section 209 of the Clean Water Act encourages basin-wide planning through coordination of area-wide plans developed under Section 208, facility plans developed under Section 201, or water quality standards implementation plans developed under Section 303. The relationship of the proposed amendment to the existing 201 Facility Plan for the Lower Meramec System is described in Section 1.2 of this report. Recent facility planning efforts for the individual sewer districts are also described in Sections 2.1, 2.2.1, and 2.3.1. Once approved, the 201 Facility Plan for the Lower Meramec System will be updated to reflect the amended 208 Plan. MDNR's approach to 209

9) **Identify and develop programs for control of ground-water pollution.** This is not applicable, as the proposed amendments included in this report do not impact groundwater or suggest changes to any existing groundwater requirements.

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Illinois Department of Commerce
and Economic Opportunity
Patrick McKenna
Missouri Department of
Transportation
Taulby Roach
Bi-State Development
Aaron Willard
Missouri Office of Administration
Executive Director
James M. Wild

March 22, 2019

Chris Wieberg, Program Director
Water Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

RE: 208 Plan Amendment for the Lower Meramec System Recommendation

Dear Mr. Wieberg,

In 1978, as the 208 Water Quality Management regional planning agency for the St. Louis metropolitan area (Franklin, Jefferson, St. Charles and St. Louis counties and the City of St. Louis), East-West Gateway Council of Governments (EWG) and a team of consultants prepared the St. Louis, Missouri Water Quality Management (208) Plan [208 Plan]. The 208 Plan provided a framework for establishing control strategies to address both point and non-point pollution problems and also contained recommendations for residual waste (sludge) management. The 208 Plan was approved by the U.S. Environmental Protection Agency (EPA) in 1979.

As part of its responsibility as 208 Water Quality regional planning agency, EWG aids and cooperates with designated management agencies to assure that responsibilities under the 208 Plan are carried out in a technically and financially feasible manner. Management agencies may substitute alternative plans or methodologies strategy from what was recommended in the 208 Plan if the alternative strategy has been demonstrated to be cost effective, meets all effluent permit limitations, and meets all applicable in-stream water quality criteria.

The management agencies of the Metropolitan St. Louis Sewer District (MSD) and the Northeast Public Sewer District (NPSD) have been communicating with EWG concerning facility planning efforts, current operations and the process to amend the Lower Meramec System point source recommendation, and the residual waste control recommendation from the 208 Plan. MSD and NPSD have prepared a report, *Proposed Amendments to the 1978 St Louis Missouri Water Quality Management 208 Plan: Lower Meramec River Basin-March 15, 2019*, which describes the current situation in each district and delineates the water quality status and economic benefits for an amendment to the Lower Meramec System point source recommendation and the residual waste control measure

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recommendation. The Rock Creek Public Sewer District (RCPSD) was also involved in the preparation of this report and the amendment recommendations.

The *Proposed Amendments to the 1978 St Louis Missouri Water Quality Management 208 Plan: Lower Meramec River Basin* shows that it is more cost-effective to maintain the wastewater treatment facilities owned and operated by MSD, NPSD and RCPSD within the footprint of the Lower Meramec System area than it is to implement the original 1978 208 Plan point source recommendation for this area. These facilities currently meet applicable state in-stream water quality standards and effluent permit limitations. With this amendment, each district will be able to implement their facility and operational plans and continue activities to provide services to their residents in a cost-effective manner while continuing satisfying water quality and effluent requirements.

The March 2019 document also shows it is more effective to allow for processing of residual waste from MSD facilities in the Lower Meramec System to occur at MSD's Bissell Point and Lemay wastewater treatment facilities and that NPSD and RCPSD will continue their own residual waste efforts. Each district will continue to be responsible for residual waste efforts.

EWG is in support of the request by the Metropolitan St. Louis Sewer District, the Northeast Public Sewer District and the Rock Creek Public Sewer District that the original 1978 Lower Meramec System area point source recommendation and the residual waste management recommendation be amended.

Thank you for the opportunity to express our support for these amendments to the 1978 *St. Louis, Missouri Water Quality Management (208) Plan.*

Sincerely,

Mary Grace Lewandowski, AICP
Director of Community Planning

Cc: Jay Hoskins
Bob Hembrock
Don Daniel

Tab E

Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Recommended for Adoption and Actions to Be Voted On

Issue:

This portion of the meeting allows for the Commission to review and vote on specific actions.

Recommended Action:

It is recommended that the Commission review and vote on the actions presented

List of Attachments:

None

Tab E1

Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Election of Chair

Background: State law requires that the commissioners select from among the members a chair.

Recommendation: The Department recommends the Commission nominate, vote and elect a chair.

Suggested Motion Language: "Madam Chair, I nominate (name of commissioner) to serve as chair of the Missouri Clean Water Commission."

Attachments:

None

Tab E2

Missouri Clean Water Commission Meeting
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan Revisions

Issue: Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan Revisions.

Background: Financial Assistance Center staff is recommending that the project lists for the Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan be amended as follows:

- The MSD Gravois Trunk Sanitary Storage Facility listed on the Sources and Uses of Funds Loan and Grants Commitments 1/18/18 through 12/31/18 table was funded with a loan on December 28, 2018, in the amount of $25,267,000, rather than the estimated loan amount of $44,000,000. The construction bids received from the lowest, responsive bidder were $18,733,000 less than what the consultant had anticipated during the design phase.
- The Boone County Commission (Bolli Road Collection System), currently on the Planning List for $200,000, will be moved to the Outstate Missouri Fundable project list since they have met the readiness to proceed criteria. The Boone County Commission (Bolli Road Collection System) is also requesting an increase of funds from $200,000 to $319,900, due to increased costs.
- The Boone County Commission (Phenora North Collection System), currently on the Planning List for $198,090, will be moved to the Outstate Missouri Fundable project list since they have met the readiness to proceed criteria.
- The Sunrise Beach project currently listed on the Planning List for $3,013,000, has requested to be removed.
- Remove the Loan and Grant amounts from the Fundable Contingency List and the Contingency List since the money is not committed until they move to a fundable list.
- With these changes, the unallocated balance of funds available has increased from $48,803,713 to $67,018,723. This available balance should encourage applicants on the Planning List to continue to progress their projects forward to meet the readiness to proceed criteria during Fiscal Year 2019.

Recommended Action: The Missouri Department of Natural Resources recommends the Missouri Clean Water Commission approve changes to the Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan as follows:

- Move the Boone County Commission (Bolli Road Collection System) project in the amount of $200,000 to the Outstate Missouri Fundable project list and increase the amount from $200,000 to $319,900.
- Move the Boone County Commission (Phenora North Collection System) project in the amount of $198,090 to the Outstate Missouri Fundable project list.
- Revise the MSD Gravois Trunk Sanitary Storage Facility project on the Sources and Uses of Funds Loan and Grant Commitments 1/1/18 through 12/31/18 table from a loan in the amount of $44,000,000 to a loan in the amount of $25,267,000.
- Remove the Sunrise Beach project from the Planning List.
- Remove the Loan and Grant amounts from the Fundable Contingency List and the Contingency List.

Suggested Motion Language: I move to approve the proposed changes to the Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan and Priority List as proposed.

List of Attachments:

- Revised Fiscal Year 2019 Clean Water State Revolving Fund Intended Use Plan project lists.

MISSOURI DEPARTMENT OF NATURAL RESOURCES

Fiscal Year 2019

(Oct. 1, 2018 – Sept. 30, 2019)

Clean Water State Revolving Fund Intended Use Plan And Priority List

Adopted October 18, 2018
Amended January 9, 2019
Proposed Amendment April 29, 2019

List of Fiscal Year 2019 Applicants

Note: *An explanation of the abbreviations and codes appears at the end of the list.*

APPLICANT	APPLICATION DATE	PRIORITY POINTS	SERVICE AREA POP.	LIST LOCATION
Aurora - Phase II*	11/7/2016	105	7,508	Fund
Belle*	3/6/2017	115	1,545	C
Boone County Commission (Bolli Road Coll System)*	**11/15/2016**	**85**	**37**	~~**P**~~ **OS**
Boone County RSD (Lee Heights)	11/14/2017	135	82	OS
Boone County RSD (Oberlin Valley)	11/14/2017	135	297	OS
Boone County Commission (Phenora North Coll System)*	**11/15/2016**	**90**	**163**	~~**P**~~ **OS**
Carthage - WWTP Upgrades	2/20/2018	125	14,247	OS
Deer Run Reorganized Common Sewer District*	11/18/2016	90	385	P
Drexel	2/6/2018	85	965	OS
East Lynne*	2/21/2017	95	303	C
Garden City*	2/14/2017	60	1,642	Cont
Gravois Arm Sewer District - Phase 5*	11/16/2016	75	525	OS
Greenfield	9/11/2017	95	1,500	OS
Kansas City	11/1/2018	135	631,000	LM
Labadie Creek Watershed Sewer District of Franklin County	11/14/2017	110	963	OS
LaGrange	11/7/2017	120	86	OS
Lancaster	4/3/2018	95	940	P
Lathrop*	10/25/2016	135	2,086	C
Liberal*	11/14/2016	75	759	P
Meadville*	10/11/2016	95	512	C
Miller	11/16/2017	90	725	P
Missouri Agriculture & Small Business Development*	10/25/2016	N/A	N/A	C
Missouri Public Utility Alliance-Resource Services Corporation	8/13/2018	N/A	N/A	DI
Moberly (Regional Lift Station)	11/15/2017	70	13,974	P
Moberly (Sewer Installation)	11/15/2017	70	13,974	P
Moscow Mills	11/17/2017	110	2,509	OS
MSD Public I/I Reduction Program - Phase 5	3/17/2017	155	1,300,000	C
MSD - Deer Creek Sanitary Relief	11/9/2017	140	30,000	LM
MSD - Deer Creek Tunnel Pump Station	11/9/2017	140	140,000	LM
MSD Public I/I Reduction Program - Phase 6	11/17/2017	175	1,300,000	LM
Northeast Public Sewer District Jefferson County	11/9/2017	140	30,166	OS
Peculiar*	11/17/2016	55	4,608	P
Perryville	10/27/2017	90	8,458	OS
Poplar Bluff*	11/10/2016	105	17,023	C
Rolla	4/26/2018	85	20,000	OS
~~**Sunrise Beach***~~	~~**11/16/2016**~~	~~**75**~~	~~**431**~~	~~**P**~~
Troy*	11/16/2016	105	10,500	C
Urbana	12/26/2017	80	417	OS
Weston*	11/15/2016	115	1,641	C
Windsor	2/22/2018	100	3,087	OS

An * indicates the project is carried over from last year's IUP.

Abbreviations and Codes

C – Carryover List	Fund – Fundable List
Cont – Contingency List	LM – Large Metropolitan Areas & Districts
CSO – Combined Sewer Overflow	OS - Outstate
DI - Department Initiatives	P – Planning List

Sources and Uses of Funds
Capitalization Grants and Loan Repayments
(As of Dec. 31, 2017)

Estimated Sources		
FFY 2017 CW SRF Capitalization Grant (federal portion only)	$ 29,800,582	
FFY 2018 CW SRF Capitalization Grant (federal portion only, not yet awarded)	$ 44,495,000	
Loan Repayment Fund (Balance in Fund 0602 as of 12/31/17)	$ 215,493,645	
Balance of Fund 0649 as of 12/31/17	$ 1,308,678	
Projected Savings from Bond Refinancing (1/1/18 - 9/30/20)	$ 8,968,577	
Estimated CWSRF portion of Fund 0602 Investment Interest (1/1/18 - 9/30/20)	$ 6,217,075	
Estimated CWSRF portion of Fund 0649 Investment Interest (1/1/18 - 9/30/20)	$ 39,700	
Reserve Release (1/1/18 - 9/30/20)	$ 130,977,850	
Direct Loans - Principal and Interest Repayments (1/1/18 - 9/30/20)	$ 166,174,689	
2018A State Match Bond Proceeds*	$ 24,000,462	
Total Estimated Sources		**$ 627,476,258**
Estimated Uses		
Base Program Funds Committed for Direct Loans as of 09/30/17	$ 139,009,921	
Base Program Funds Committed for Direct Grants as of 09/30/17	$ 4,214,624	
4% Administrative Expenses from FFY 2017 Capitalization Grant	$ 1,469,873	
4% Administrative Expenses from FFY 2018 Capitalization Grant	$ 1,779,800	
Match Bond Debt Service (A2010 and A2012)		
Remaining Principal Due as of 09/30/17	$ 4,896,000	
Interest Due Through 9/30/2018	$ 122,400	
Additional Match Bond Debt Service Due through FY 2018 **	$ 167,476	
2010B and 2015A Pledge Commitments (10/1/17 - 9/30/20)	$ 21,553,325	
	~~$ 53,158,000~~	
Anticipated Direct Loans during FY 2018 (10/1/17 - 9/30/18)	**$ 34,425,000**	
Anticipated Direct Grants during FY 2018 (10/1/17 - 9/30/18)	$ -	
FFY 2016 Capitalization Grant Additional Subsidization-Required	$ 1,225,926	
FFY 2016 Capitalization Grant Additional Subsidization-Optional ***	Up to $2,000,000	
FFY 2017 Capitalization Grant Additional Subsidization-Required	$ 3,675,400	
FFY 2017 Capitalization Grant Additional Subsidization-Optional ***	Up to $2,000,000	
FFY 2018 Capitalization Grant Additional Subsidization-Required	$ 4,449,500	
FFY 2018 Capitalization Grant Additional Subsidization-Optional ***	Up to $2,000,000	
Loan Funds Available for FY 19 CW IUP Projects	~~**$ 391,754,013**~~ **$ 410,487,013**	
Total Estimated Uses		**$ 627,476,258**

* 2018A bond proceeds to be used as state match for the FY2019, FY2020 and FY2021 capitalization grants.

** Debt Service for the Match Bond Debt Service currently being funded from the Clean Water SRF program rather than state funds.

*** The department will utilize up to this amount. As grant funds are awarded, loan funds will be reduced accordingly. See Appendix 5 for more information.

Loan and Grant Commitments 1/1/18 through 12/31/18	Loan	Grant	Total
Ashland - Funded 3/27/18	6,408,000	-	6,408,000
Center Creek 201 Board - Funded 09/28/18	2,750,000	-	2,750,000
	44,000,000		**44,000,000**
MSD Gravois Trunk Sanitary Storage Facility - Funded 12/28/18	**25,267,000**	-	**25,267,000**
	53,158,000		**53,158,000**
Total Commitments 1/1/18 - 9/30/18	**34,425,000**	**-**	**34,425,000**

Fiscal Year 2019 Project Lists

Applicant	Project #	Description/ Needs Category	Priority Points	Service Area Population	Eligible Costs	Loan Amount	Grant Amount	NPDES #	Problem Code	Financing Schedule FY - Quarter
Carryover Fundable List Available Funds						**~~$ 391,754,013~~**				
						$ 410,487,013	**$ 15,350,826**			
MSD Public I/I Reduction Program - Phase 5*	C295023-40	I/I; IIIA	155	1,300,000	$ 41,200,000	$ 41,200,000	$ -	Multiple	4, 5	19-4
Lathrop*	C295821-01	TP Imp, I/I, Rehab; II, IIIA, IIIB	135	2,086	$ 6,245,200	$ 6,245,200	$ -	MO-0112704	1, 5	19-1
Belle*	C295813-01	Coll Impr, PS	115	1,545	$ 730,000	$ 365,000	$ 365,000	MO-0048101	2	18-4
Weston*	C295814-01	TP Impr, PS, Coll; I, II, IIIB	115	1,641	$ 4,000,000	$ 4,000,000	$ -	MO-0031585	4, 5	18-3
Poplar Bluff*	C295671-01	TP Impr; IIIB	105	17,023	$ 18,119,172	$ 18,119,172	$ -	MO-0043648	5	19-2
Troy*	C295822-01	FM, PS, Impr; I	105	10,500	$ 18,579,000	$ 18,579,000	$ -	MO-0054623 MO-0131296	1	19-1
Meadville *	C295801-01	TP Impr; I	95	512	$ 2,098,080	$ 1,049,040	$ 1,049,040	MO-0041114	5	20-2
East Lynne*	C295695-01	TP Impr; I	95	303	$ 1,325,885	$ 662,943	$ 662,942	MO-0099961	5	19-4
Missouri Agriculture & Small Business Development *	C295212-10	NPS; VIIB	N/A	N/A	$ 1,000,000	$ 1,000,000	$ -	N/A	3	19-2
Total Carryover Fundable Projects					**$ 93,297,337**	**$ 91,220,355**	**$ 2,076,982**			
Balance						**~~$ 300,533,658~~**				
						$ 319,266,658	**$ 13,273,844**			

Notes: *An explanation of the abbreviations and codes appears at the end of the project lists.*

Allocation of Available Loan Funding

It is important to note:

*** The fundable project lists may change significantly between the draft Intended Use Plan placed on public notice and the final version approved by the Clean Water Commission.**
*** The inclusion of a project on the fundable list is not a guarantee of funding. Other factors, such as timely progress toward funding, compliance with program requirements and funding availability, may impact project funding.**
*** Projects carried over from the 2018 Intended Use Plan retain the points they received under the criteria in effect at the time they initially applied. Carry-over projects in the fiscal year 2019 Intended Use Plan are not eligible to compete in the fiscal year 2020 Intended Use Plan unless reapplication is made by November 15, 2018.**

Loan Balance Forward from Fundable Carry-over Project Lists		~~**$ 300,533,658**~~
		$ 319,266,658
Outstate Missouri (1)	40%	~~**$ 120,213,463**~~
		$ 127,706,663
Large Metropolitan Areas and Districts (2)	30%	~~**$ 90,160,097**~~
		$ 95,779,997
Combined Sewer Overflow (CSO)	15%	~~**$ 45,080,049**~~
		$ 47,889,999
Department Initiatives		~~**$ 45,080,049**~~
	15%	**$ 47,889,999**

(1) Service area population of less than 75,000.
(2) Service area population of 75,000 or more.

Financial Summary of the Fundable Projects Lists (loan funding only)

	Outstate Missouri	Large Metropolitan Areas & Districts	Combined Sewer Overflow	Department Initiatives	Total
Loan Allocation	**$ 127,706,663**	**$ 95,779,997**	**$ 47,889,999**	**$ 47,889,999**	**$ 319,266,658**
Total Projects (1)	**$ (80,047,935)**	**$ (172,200,000)**	**$ -**	**$ -**	**$ (252,247,935)**
Balance Before Transfers	**$ 47,658,728**	**$ (76,420,003)**	**$ 47,889,999**	**$ 47,889,999**	**$ 67,018,723**
Transfers		$ 47,889,999	$ (47,889,999)		
	$ 19,359,995	$ 28,530,004		$ (47,889,999)	
					$ -
Total Transfers	**$ 19,359,995**	**$ 76,420,003**	**$ (47,889,999)**	**$ (47,889,999)**	**$ -**
Balance Available (2)	**$ 67,018,723**	**$ -**	**$ -**	**$ -**	**$ 67,018,723**
Amount Forward to Project Tables (3)	**$ 147,066,658**	**$ 172,200,000**	**$ -**	**$ -**	**$ 319,266,658**

(1) From the Project Lists on the subsequent pages.
(2) Balance may be shifted to other categories to fund projects that are ready to proceed.
(3) Amount equals the Allocation + Total Transfers.

Fiscal Year 2019 Project Lists

Applicant	Project #	Description/ Needs Category	Priority Points	Service Area Population	Eligible Costs	Loan Amount	Grant Amount	NPDES #	Problem Code	Financing Schedule FY - Quarter
						~~$ 128,333,658~~				
Outstate Missouri Fundable List Available Funds						**$ 147,066,658**	**$ 13,273,844**			
Northeast Public Sewer District Jefferson County	C295684-05	TP Impr; I	140	30,166	$ 5,000,000	$ 5,000,000	$ -	MO-0128490	5	19-2
Boone County RSD (Oberlin Valley)	C295375-26	Coll, FM, PS; IVB	135	297	$ 674,741	$ 674,741	$ -	MO-0117323	5	19-1
Boone County RSD (Lee Heights)	C295375-28	Coll, FM, PS; IVB	135	82	$ 629,968	$ 629,968	$ -	MO-0102113	5	19-1
Carthage - WWTP Upgrades	C295809-01	TP Impr; I	125	14,247	$ 4,350,000	$ 4,350,000	$ -	MO-0039136	5	19-2
LaGrange	C295830-01	Coll, FM; IVA	120	86	$ 1,006,667	$ 1,006,667	$ -	MO-0041203	1	19-4
Moscow Mills	C295810-01	PS, I; IVA, IVB	110	2,509	$ 2,592,585	$ 1,296,293	$ 1,296,292	MO-0129852 MO-0119709	1	19-1
Labadie Creek Watershed Sewer District of Franklin County	C295727-01	TP, Coll, Exp; II, IVA	110	963	$ 3,000,000	$ 3,000,000		Multiple	1	19-1
Windsor	C295512-01	TP Impr, I/I; I, IIIA, IIIB	100	3,087	$ 5,000,000	$ 3,000,000	$ 2,000,000	MO-0047325 MO-0047317	1	19-2
Greenfield	C295831-01	Coll Impr, FM; I	95	1,500	$ 1,454,350	$ 727,175	$ 727,175	Multiple	5	19-1
Boone County Commission (Phenora North Coll System) *	**C295375-24**	**IVA**	**90**	**163**	**$ 198,090**	**$ 198,090**	**$ -**	**MO-0099911**	**1**	**19-4**
Perryville	C295832-01	TP, Impr, PS; I, II	90	8,458	$ 27,509,650	$ 27,509,650	$ -	MO-0051144	5	19-4
Boone County Commission (Bolli Road Coll System) *	**C295375-25**	**IVA**	**85**	**37**	~~$ 200,000~~	~~$ 200,000~~	**$ -**	**None**	**4**	**19-4**
					$ 319,900	**$ 319,900**	**$ -**			
Drexel	C295803-01	TP, Impr, I/I; I, IIIA, IVB	85	965	$ 2,067,826	$ 1,033,913	$ 1,033,913	MO-0023655 MO-0023663	5	19-1
Rolla	C295836-01	TP, Exp; II	85	20,000	$ 28,830,000	$ 28,830,000	$ -	MO-0047031 MO-0050652	1	19-4
Urbana	C295834-01	TP Impr, Coll, I/I; I, II, IIIB	80	417	$ 1,667,125	$ 833,563	$ 833,562	MO-0095176	5	19-3
Gravois Arm Sewer District - Phase 5 *	C295826-01	IIIB	75	525	$ 3,275,950	$ 1,637,975	$ 1,637,975	MO-0134821	5	20-2
					~~$ 87,058,862~~	~~$ 79,529,945~~				
Total Outstate Missouri Fundable Projects					**$ 87,576,852**	**$ 80,047,935**	**$ 7,528,917**			
Balance						**$ 67,018,723**	**$ 5,744,927**			

Applicant	Project #	Description/ Needs Category	Priority Points	Service Area Population	Eligible Costs	Loan Amount	Grant Amount	NPDES #	Problem Code	Financing Schedule FY - Quarter
Large Metropolitan Areas & Districts Fundable List Available Funds						**$ 172,200,000**				
MSD Public I/I Reduction Program - Phase 6	C295023-41	I/I	175	1,300,000	$ 41,200,000	$ 41,200,000	$ -	Multiple	4, 5	19-4
MSD Deer Creek Sanitary Relief	C295833-01	Coll	140	30,000	$ 29,000,000	$ 29,000,000	$ -	MO-0025151	4, 5	20-1
MSD Deer Creek Tunnel Pump Station	C295833-02	Coll	140	140,000	$ 22,000,000	$ 22,000,000	$ -	MO-0025151	4, 5	20-1
Kansas City	C295840-01	TP; I	135	631,000	$ 80,000,000	$ 80,000,000	$ -	MO-0024911	5	22-3
Total Large Metropolitan Areas & Districts Fundable Projects					**$ 172,200,000**	**$ 172,200,000**				
Balance						**$ -**				

Combined Sewer Overflow Fundable List Available Funds						**$ -**				
Total Combined Sewer Overflow Fundable Projects					**$ -**	**$ -**				
Balance						**$ -**				

Department Initiatives Fundable List Available Funds							**$ 5,744,927**			
Missouri Public Utility Alliance - Resource Services Corporation	C295837-01		N/A	N/A	$ 300,000		$ 300,000			
Total Department Initiatives Fundable Projects					**$ 300,000**	**$ -**	**$ 300,000**			
Balance						**$ -**	**$ 5,444,927**			

Applicant	Project #	Description/ Needs Category	Priority Points	Service Area Population	Eligible Costs	Loan Amount	Grant Amount	NPDES #	Problem Code	Financing Schedule FY - Quarter
Fundable Contingency List (Complete Facility Plan Submitted and Approved Debt Instrument)							~~$ 5,444,927~~			
Aurora - Phase II *	**C295711-02**	**I**	**105**	**7,508**	**$ 1,324,870**	~~**$ 662,435**~~	~~**$ 662,435**~~	**MO-0036757**	**5**	**19-2**
Total Fundable Contingency Projects					**$ 1,324,870**	~~**$ 662,435**~~	~~**$ 4,782,492**~~			
						$ -	**$ -**			
Contingency List (Complete Facility Plan Submitted)							~~**$ 4,782,492**~~			
Garden City*	C295829-01	TP Impr	60	1,642	$ 200,000	~~**$ 100,000**~~	~~**$ 100,000**~~	MO-0046647	5	20-4
Total Contingency Projects					**$ 200,000**	~~**$ 100,000**~~	~~**$ 4,682,492**~~			
						$ -				
Planning List	***Note: Information will be added to the shaded columns when the project moves to the fundable or contingency list.***									
~~**Boone County Commission (Bolli Road Coll System) ***~~	~~**C295375-25**~~		~~**85**~~	~~**37**~~	~~**$ 200,000**~~					
~~**Boone County Commission (Phenora North Coll System) ***~~	~~**C295375-24**~~		~~**90**~~	~~**163**~~	~~**$ 198,090**~~					
Deer Run Reorganized Common Sewer District *	C295815-01		90	385	$ 1,808,100					
Lancaster	C295804-01		95	940	$ 2,227,325					
Liberal *	C295827-01		75	759	$ 1,709,337					
Miller	C295726-02		90	725	$ 3,268,839					

Applicant	Project #	Description/ Needs Category	Priority Points	Service Area Population	Eligible Costs	Loan Amount	Grant Amount	NPDES #	Problem Code	Financing Schedule FY - Quarter
Moberly (Sewer Installation)	C295648-02		70	13,974	$ 1,650,000					
Moberly (Regional Lift Station)	C295648-03		70	13,974	$ 3,000,000					
Peculiar *	C295824-01		55	4,608	$ 8,129,713					
~~**Sunrise Beach ***~~	~~**C295540-02**~~		~~**75**~~	~~**431**~~	~~**$ 3,013,000**~~					
Total Planning List Projects					~~**$ 25,204,404**~~					
					$ 21,793,314					

Description Reference List		Problem Codes	Needs Codes	
Coll	Collection	1 - NPDES Permit Violation	I	Secondary Treatment
CSO	Combined Sewer Overflow	2 - Unpermitted Discharge	II	Advanced Treatment
Det	Detention	3 - Water Quality Stds. Violation	IIIA	I/I correction
Exp	Expansion	4 - Public Health Problems	IIIB	Sewer replacement or rehabilitation
FM	Force Main	5 - Future NPDES Violation Expected	IVA	New Collection
Impr	Improvements		IVB	New Interceptors
I	Interceptor		V	CSO
I/I	Inflow/Infiltration		VIIB	NPS: Animal
NPDES	National Pollution Discharge		VIID	NPS: Urban
	Elimination System			
NPS	Non Point Source			
PS	Pump Station			
Rehab	Rehabilitation			
TP	Treatment Plant			

Notes:

Final eligible costs will be determined as documents are submitted and the project is closer to financing.

Financing schedule shown is for planning purposes only. Final scheduling will be determined as documents are submitted and approvals obtained.

An * indicates the project is carried over from the previous year's IUP.

Carry over projects from the fiscal year 2018 list must reapply to be considered for the fiscal year 2020 list.

Tab E3

Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Application for Attorney's Fees Appeal No. 18-0498

Background: Jeffery Law Group submitted correspondence to the Department on behalf of the Lone Jack Neighbors for Responsible Agriculture, LLC filing an Application for Award of Attorney's Fees in connection with the subject permit appeal.

Recommendation: The Department recommends that the Commission consult with their attorney regarding this request.

Attachments:

Application for Attorney's Fees Appeal No. 18-0498

Application for Attorney's Fees Appeal No. 18-0498 Amended

JEFFERY LAW GROUP, LLC
400 CHESTERFIELD CENTER, STE 400
CHESTERFIELD, MISSOURI 63017
WWW.JEFFERYLAWGROUP.COM

STEPHEN G. JEFFERY
(855) 915-9500 – TOLL FREE
(314) 714-6510- FAX
SJEFFERY@JEFFERYLAWGROUP.COM

December 12, 2018

Chris Wieberg, Director
Water Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

RECEIVED
DEC 17 2018
Water Protection Program

Re: *In Re Country Club Homes, LLC*, Permit MOG010872

Dear Mr. Wieberg:

Enclosed for filing, please find Petitioner's Application for Award of Attorneys' Fees in connection with the subject permit appeal.

Very truly yours,

JEFFERY LAW GROUP, LLC

Stephen G. Jeffery

SGJ:sj

Enclosure

RECEIVED
DEC 17 2018
Water Protection Program

BEFORE THE MISSOURI CLEAN WATER COMMISSION

IN RE COUNTRY CLUB HOMES, LLC	)	
	)	No. 18-0498
PERMIT NO. MOG010872	)	

PETITIONER'S APPLICATION FOR AWARD OF ATTORNEYS FEES

COMES NOW, Petitioner-Lone Jack Neighbors for Responsible Agriculture, LLC, by and through counsel, pursuant to § 536.087, RSMo and for its Application for Award of Attorneys' Fees states:

PARTIES

1. Petitioner is a Missouri limited liability company in good standing with its principal place of business located at 37904 E US 50 Highway, Suite B, Lone Jack, Missouri 64070. Petitioner has a net worth of less than $7 million and does not have any employees.

2. Petitioner, its members, and its supporters reside in the immediate vicinity of the location of the concentrated animal feeding operation known as Valley Oaks Steak Company ("Valley Oaks CAFO") and the fields where manure from its operations will be land applied, and are adversely affected and aggrieved by the issuance of Permit MOG010872 and the operation of the Valley Oaks CAFO.

3. Respondent-Missouri Department of Natural Resources ("DNR") is the state agency created by § 640.010.1, RSMo.

STATEMENT OF FACTS

4. On December 19, 2017, "Country Club Homes, LLC" submitted a permit Application (Form W) to Respondent-DNR for the operation of a concentrated animal feeding operation ("CAFO") known as the Valley Oaks CAFO and located near Lone Jack, Missouri.

5. In section 1.2, the Permit Application stated "Country Club Homes, LLC" is the "Owner" of the facility.

6. 10 CSR 20-6.010(3) requires, *inter alia*, that "All applicants for construction permits or operating permits shall show, as part of their application, that a permanent organization exists which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application is made."

7. On June 15, 2018, DNR issued Permit MOG010872 to "Country Club Homes, LLC" for the operation of the Valley Oaks CAFO.

8. Petitioner timely appealed the issuance of Permit MOG010872.

9. On appeal, Petitioner alleged that Respondent-DNR improperly issued Permit MOG01872 to "Country Club Homes, LLC" because (a) "Country Club Homes, LLC" is a nonexistent legal entity; and (b) "Country Club Homes, LLC," as a nonexistent legal entity, cannot serve as a lawful Continuing Authority for the Valley Oaks CAFO as required by 10 CSR 20-6.010(3).

10. According to the "Certificate of No Record" issued by the Missouri Secretary of State, there is no legal entity in existence in Missouri known as "Country Club Homes, LLC."

11. 10 CSR 20-6.300(3) "Neighbor Notice Requirements," requires "<u>Prior to filing an application for an operating permit</u> with the department for a new or expanding Class I concentrated animal feeding operation, <u>the following information shall be provided [by the applicant] by way of a letter to all the parties listed in paragraph (3)(C)2</u>. of this section: ..." (emphasis added).

12. The permit applicant did not send Neighbor Notice letters to all the parties listed in 10 CSR 20-6.300(3)(C)2 prior to December 19, 2017 (the date of the permit application), as specifically required by 10 CSR 20-6.300(3).

13. Certified Mail Receipts from the U. S. Postal Service conclusively show that the required Neighbor Notice letters were not mailed until January 30, 2018.

14. On appeal, Petitioner alleged that the permit applicant's failure to comply with 10 CSR 20-6.300(3) to timely provide the required Neighbor Notice letters prior to the submission of the CAFO permit application, adversely affected Petitioner, its members, and supporters by effectively denying their legal rights to public notice and public participation and hindering their ability to timely organize to oppose the permit application.

15. On appeal, Petitioner alleged that Respondent-DNR improperly issued Permit MOG01872 to Country Club Homes, LLC because the permit applicant failed to timely provide Neighbor Notice as required by 10 CSR 20-6.300(3).

16. On October 23, 2018, the Missouri Administrative Hearing Commission issued a Recommended Decision to the Missouri Clean Water Commission in Case 18-0498 to reverse the issuance of Permit MOG010872 because Respondent-DNR unlawfully issued the Permit in that: Permit MOG010872 was issued to "Country Club Homes, LLC," which is a non-existent legal entity and cannot serve as a continuing authority, and the required Neighbor Notice letters were not mailed by the permit applicant to all required parties prior to December 19, 2018, the date the permit application was submitted.

17. On December 10, 2018, the Missouri Clean Water Commission took-up the matter of the Country Club Homes, LLC permit appeal and voted to accept the Recommended Decision submitted by the Missouri Administrative Hearing Commission.

18. The permit appeal involving Permit MOG010872 is an "agency proceeding" as defined by § 536.085, RSMo.

19. Petitioner obtained a favorable decision from the Clean Water Commission, and therefore "prevail[ed]" as defined by § 536.085, RSMo.

20. Respondent-DNR is a State agency, and therefore Petitioner prevailed against the "State" as defined by § 536.085, RSMo.

21. In the "Country Club Homes, LLC permit appeal, Petitioner incurred legal fees and expenses in the amount of: (a) 123.3 hours of attorney time, (b) hourly rate of $175.00 for attorney time, and (c) $712.28 in expenses. *See* Exhibit 1, attached hereto and incorporated herein.

22. The position of Respondent-DNR in issuing Permit MOG010872 to "Country Club Homes, LLC" was <u>not substantially justified</u> because a cursory examination of the relevant facts conclusively shows that: (a) "Country Club Homes, LLC" was not an existing legal entity and could not lawfully serve as a continuing authority as required by 10 CSR 20-6.010(3); and (b) the permit applicant failed to comply with the Neighbor Notice requirements in 10 CSR 20-6.300(3) because the Neighbor Notice letters were mailed on January 30, 2018, which is six weeks after the date the permit application was submitted on December 19, 2017.

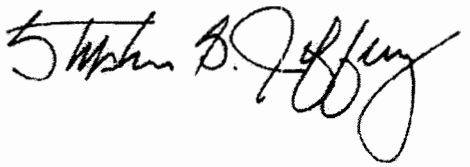
23. Because of the existence of special factors, including the limited availability of qualified attorneys who routinely practice environmental law, environmental litigation, are familiar with the contested case procedures in the Missouri Administrative Procedure Act, Chapter 536, RSMo, and rules adopted by the Respondent-DNR and the Clean Water Commission, a higher hourly rate for attorney time in excess of the statutory $75.00 per hour rate is justified in this matter.

24. An hourly rate of $175.00 and 123.3 hours of attorney time is reasonable and appropriate.

WHEREFORE, pursuant to § 536.087, RSMo, Petitioner submits this Application for Award of Attorneys' Fees and respectfully requests that the Clean Water Commission approve an award of $21,577.50 for reasonable attorney fees and $712.28 in reasonable expenses, for a total award in connection with the permit appeal in the amount of $22,289.78.

Respectfully submitted,

JEFFERY LAW GROUP, LLC



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(314) 714-6510 – Fax
E-mail: sjeffery@jefferylawgroup.com

ATTORNEY FOR PETITIONER

JEFFERY LAW GROUP, LLC
400 CHESTERFIELD CENTER
SUITE 400
CHESTERFIELD, MO 63017-4800
FEIN: 27-4821891

(855) 915-9500 - Toll-Free
(314) 714-6510 - Fax

December 12, 2018

Carolyn Wilkinson
37605 E US 50 Hwy
Lone Jack, MO 64070

In Reference To:

Invoice # 17183

Professional Services

		Hrs/Rate	Amount
04/03/18 SGJ	Preparation for DNR meeting. Conference with clients. Attend DNR public meeting. Travel from St. Louis to Warrensburg.	6.80	
04/04/18 SGJ	Phone call with Carolyn. Travel from Warrensburg to St. Louis.	4.10	
04/23/18 SGJ	Draft Freedom of Information Act request to USDA, Farm Services Agency. Draft e-mail to Carolyn and Karen. Call from Aimee Davenport (Powell Gardens counsel).	1.20	
05/08/18 SGJ	Phone call with Carolyn and Karen. Review Groebbel report.	1.20	
05/16/18 SGJ	Voicemail from Aimee Davenport (Powell Gardens' attorney). Draft e-mails to Aimee Davenport. Review replies.	0.40	
06/18/18 SGJ	Start work on Complaint. Review permit application and supporting documents.	1.80	
06/19/18 SGJ	Continue work on Complaint. Review DNR regulations. Review hydrogeologic investigation at Valley Oak lagoon. Review Grobbel report. Draft e-mail to Carolyn and Karen. Review e-mails from Aimee Davenport. Draft replies.	4.20	

		Hrs/Rate	Amount
06/21/18 SGJ	Continue work on Complaint. Review e-mails from Carolyn Wilkinson. Draft replies. Review FEMA website for FIRM information for Johnson County, Missouri.	2.60	
06/25/18 SGJ	Review and Revise Complaint. Review permit application, Secretary of State website, DNR permit. File Complaint with AHC.	4.20	
06/26/18 SGJ	Review and revise Amended Complaint. File same. Draft e-mails to Carolyn and Karen. Review replies. Review and revise Motion for Stay. Review Complaint and Motion for Stay filed by Powell Gardens.	4.80	
06/27/18 SGJ	Review and revise Amended Motion for Stay. File same. Calls with Marie Gellerstedt. Draft Affidavit for Marie Gellerstedt. Draft e-mail to Marie Gellerstedt. Call with Secretary of State's Office. Obtain Certificate of No Record from Secretary of State's Office. Draft e-mails to Carolyn and Karen. Review replies. Review executed Affidavit from Marie.	6.20	
06/28/18 SGJ	Draft Notice of Affidavit for Marie Gellerstedt affidavit. File same.	0.40	
07/06/18 SGJ	Preparation for July 9 hearing on motion for stay. Review AHC rules, statutes, and case law. Review e-mails from Carolyn and Karen. Draft revised questions for Carolyn and Karen. Assemble exhibits. Call with Aimee Davenport (Powell Gardens).	4.80	
07/08/18 SGJ	Review documents and exhibits for hearing. Travel from Chesterfield - Jefferson City.	3.10	
07/09/18 SGJ	Final preparation for Stay hearing. Conference with clients. Attend hearing on motion for stay. Conference with clients. Travel from Jefferson City -	10.20	

		Hrs/Rate	Amount
	Chesterfield.		
07/10/18 SGJ	Draft First Interrogatories and First Request for Admissions to DNR and Valley Oaks. Draft e-mail to opposing counsel. Draft e-mail to Carolyn, Karen, and Rachel.	2.40	
08/13/18 SGJ	Phone call from CEC (Ivan Cooper) regarding depo preparation. Revise depo outline. Draft e-mail to John Bognar (CEC). Review VO discovery responses. Draft Motion to Compel Discovery. File same with AHC. Draft e-mail to clients.	2.40	
08/19/18 SGJ	Review August 9, 2018 re-issued Permit and correspondence. Draft Motion for Contempt against DNR. Draft Motion to file amended Complaint and to reschedule hearing. File same with AHC.	4.90	
08/20/18 SGJ	Deposition of Ivan Cooper, PE. Revisions to Amended Motion to Compel Discovery. File same.	5.20	
08/26/18 SGJ	Review documents, exhibits, witness outlines for hearing. Travel from Chesterfield - Jefferson City.	3.90	
08/27/18 SGJ	AHC Hearing.	10.60	
08/28/18 SGJ	AHC Hearing. Travel from Jefferson City - Chesterfield.	8.60	
10/01/18 SGJ	Start work on draft Recommended Decision. Review transcripts and exhibits.	5.60	
10/02/18 SGJ	Continue work on Recommended Decision. Review case law. Review transcripts and exhibits. Draft e-mail to Carolyn, Karen, and Rachel.	6.20	

		Hrs/Rate	Amount
10/03/18 SGJ	Draft Designations for Cooper deposition. Review and revise draft Recommended Decision. Review transcript of hearing. Review e-mails from Carolyn, Karen, and Rachel.	2.30	
11/08/18 SGJ	Draft Motion to Disqualify Ashley McCarty. Review photos from April 3 public hearing. Draft e-mail to Karen, Carolyn, and Rachel. Review e-mails from Karen. File motion with AHC. Draft e-mail to Shawna Bligh, Jennifer Hernandez, and Jennifer Griffin.	2.10	
11/20/18 SGJ	Revisions to draft Motions to Disqualify CWC Commissioners. Draft cover letter. Draft e-mail to Chris Wieberg, Shawna Bligh, Jennifer Hernandez, and Jennifer Griffin.	1.40	
12/08/18 SGJ	Preparation for December 10 Clean Water Commission meeting. Draft e-mail to Carolyn, Karen, Rachel, Amy Davenport, and Chuck Hatfield. Review e-mail from Carolyn.	1.10	
12/09/18 SGJ	Preparation for Clean Water Commission meeting. Travel to Columbia.	3.20	
12/10/18 SGJ	Attend Clean Water Commission meeting to argue permit appeal in Country Club Homes LLC matter. Conference with clients. Travel from Columbia-Jefferson City. Return travel.	7.40	
	For professional services rendered	123.30	$0.00

Additional Charges :

		Qty/Price
04/03/18 SGJ	Comfort Inn, Warrensburg	1 98.77

		Qty/Price	Amount
04/03/18 SGJ	Mileage to/from St. Louis - Warrensburg	404 0.55	
06/27/18 SGJ	Postage	1 3.26	
SGJ	Secretary of State charge for No Record Certificate	1 10.00	
07/06/18 SGJ	FedEx charge.	1 15.22	
07/08/18 SGJ	Mileage - Chesterfield - Jefferson City	117 0.55	
07/09/18 SGJ	Mileage Jefferson City - Chesterfield	117 0.55	
08/25/18 SGJ	FedEx copying cost.	1 4.87	
08/26/18 SGJ	Mileage Chesterfield - Jefferson City	117 0.55	
08/27/18 SGJ	Parking	1 7.00	
08/28/18 SGJ	Parking.	1 7.00	
SGJ	Mileage Jefferson City - Chesterfield.	117 0.55	
11/21/18 SGJ	Postage for certified mail to DNR.	1 8.46	
12/09/18 SGJ	Mileage - Chesterfield - Columbia	107 0.55	
12/10/18 SGJ	Mileage - Columbia - Jefferson City	35 0.55	
	Total additional charges		$712.28

Timekeeper Summary

Name	Hours	Rate	Amount
Stephen G. Jeffery	123.3	175.00	$21,577.50

Balance Due: $22,289.78

BEFORE THE MISSOURI CLEAN WATER COMMISSION

IN RE COUNTRY CLUB HOMES, LLC	)	
	)	No. 18-0498
PERMIT NO. MOG010872	)	

PETITIONER'S AMENDED APPLICATION FOR AWARD OF ATTORNEYS FEES

COMES NOW, Petitioner-Lone Jack Neighbors for Responsible Agriculture, LLC, by and through counsel, pursuant to § 536.087, RSMo and for its Amended Application for Award of Attorneys' Fees states:

PARTIES

1. Petitioner is a Missouri limited liability company in good standing with its principal place of business located at 37904 E US 50 Highway, Suite B, Lone Jack, Missouri 64070. Petitioner has a net worth of less than $7 million and does not have any employees.

2. Petitioner, its members, and its supporters reside in the immediate vicinity of the location of the concentrated animal feeding operation known as Valley Oaks Steak Company ("Valley Oaks CAFO") and the fields where manure from its operations will be land applied, and are adversely affected and aggrieved by the issuance of Permit MOG010872 and the operation of the Valley Oaks CAFO.

3. Respondent-Missouri Department of Natural Resources ("DNR") is the state agency created by § 640.010.1, RSMo.

STATEMENT OF FACTS

4. On December 19, 2017, "Country Club Homes, LLC" submitted a permit Application (Form W) to Respondent-DNR for the operation of a concentrated animal feeding operation ("CAFO") known as the Valley Oaks CAFO and located near Lone Jack, Missouri.

5. In section 1.2, the Permit Application stated "Country Club Homes, LLC" is the "Owner" of the facility.

6. 10 CSR 20-6.010(3) requires, *inter alia*, that "All applicants for construction permits or operating permits shall show, as part of their application, that a permanent organization exists which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application is made."

7. On June 15, 2018, DNR issued Permit MOG010872 to "Country Club Homes, LLC" for the operation of the Valley Oaks CAFO.

8. Petitioner timely appealed the issuance of Permit MOG010872.

9. On appeal, Petitioner alleged that Respondent-DNR improperly issued Permit MOG01872 to "Country Club Homes, LLC" because (a) "Country Club Homes, LLC" is a nonexistent legal entity; and (b) "Country Club Homes, LLC," as a nonexistent legal entity, cannot serve as a lawful Continuing Authority for the Valley Oaks CAFO as required by 10 CSR 20-6.010(3).

10. According to the "Certificate of No Record" issued by the Missouri Secretary of State, there is no legal entity in existence in Missouri known as "Country Club Homes, LLC." *See Exhibit1, attached hereto and incorporated herein.*

11. 10 CSR 20-6.300(3) "Neighbor Notice Requirements," requires "Prior to filing an application for an operating permit with the department for a new or expanding Class I concentrated animal feeding operation, the following information shall be provided [by the applicant] by way of a letter to all the parties listed in paragraph (3)(C)2. of this section: ..." (emphasis added).

12. The permit applicant did not send Neighbor Notice letters to all the parties listed in 10 CSR 20-6.300(3)(C)2 prior to December 19, 2017 (the date of the permit application), as specifically required by 10 CSR 20-6.300(3).

13. Certified Mail Receipts from the U. S. Postal Service conclusively show that the required Neighbor Notice letters were not mailed until January 30, 2018.

14. On appeal, Petitioner alleged that the permit applicant's failure to comply with 10 CSR 20-6.300(3) to timely provide the required Neighbor Notice letters prior to the submission of the CAFO permit application, adversely affected Petitioner, its members, and supporters by effectively denying their legal rights to public notice and public participation and hindering their ability to timely organize to oppose the permit application.

15. On appeal, Petitioner alleged that Respondent-DNR improperly issued Permit MOG01872 to Country Club Homes, LLC because the permit applicant failed to timely provide Neighbor Notice as required by 10 CSR 20-6.300(3).

16. On October 23, 2018, the Missouri Administrative Hearing Commission issued a Recommended Decision to the Missouri Clean Water Commission in Case 18-0498 to reverse the issuance of Permit MOG010872 because Respondent-DNR unlawfully issued the Permit in that: Permit MOG010872 was issued to "Country Club Homes, LLC," which is a non-existent legal entity and cannot serve as a continuing authority, and the required Neighbor Notice letters were not mailed by the permit applicant to all required parties prior to December 19, 2018, the date the permit application was submitted.

17. On December 10, 2018, the Missouri Clean Water Commission took-up the matter of the Country Club Homes, LLC permit appeal and, by a 4-1 vote, accepted the

Recommended Decision submitted by the Missouri Administrative Hearing Commission and issued a Final Decision. *See Exhibit 2, attached hereto and incorporated herein.*

18. The permit appeal involving Permit MOG010872 is an "agency proceeding" as defined by § 536.085, RSMo.

19. Petitioner is a "party" as defined by § 536.085, RSMo.

20. Petitioner obtained a favorable decision from the Clean Water Commission, and therefore "prevail[ed]" as defined by § 536.085, RSMo.

21. Respondent-DNR is a State agency, and therefore Petitioner prevailed against the "State" as defined by § 536.085, RSMo.

22. Specialized knowledge and skills were necessary to successfully try this case. These specialized knowledge and skills include a detailed understanding of the Missouri Administrative Procedure Act, Chapter 536, RSMo; significant experience in litigation involving administrative hearings at the Administrative Hearing Commission; and the permitting process set forth in the Missouri Clean Water Law, Chapter 644, RSMo. *See Affidavit of Rachel Foley (attached as Exhibit 3), Affidavit of Roger Walker (attached as Exhibit 4), and Affidavit of Eugene Schmittgens (attached as Exhibit 5), all of which are incorporated herein.*

23. There were no qualified attorneys reasonably available to Petitioner who would conduct the "County Club Homes, LLC" permit appeal at the hourly rate of $75.00. *See Affidavit of Rachel Foley.*

24. Because of the existence of special factors, including the limited availability of qualified attorneys at an hourly rate of $75.00 who routinely practice environmental law, environmental litigation, are familiar with the contested case procedures in the Missouri Administrative Procedure Act, Chapter 536, RSMo, have conducted contested case hearings at

the Administrative Hearing Commission, and are experienced with the rules adopted by the Respondent-DNR and the Clean Water Commission, a higher hourly rate for attorney time in excess of the statutory $75.00 per hour rate is justified in this matter.

25. An hourly rate of $175.00 is reasonable for the work performed in this case. *See Affidavit of Rachel Foley, Affidavit of Roger Walker, and Affidavit of Eugene Schmittgens.*

26. In the "Country Club Homes, LLC" permit appeal, Petitioner incurred legal fees and expenses in the amount of: (a) 127.7 hours of attorney time, (b) hourly rate of $175.00 for attorney time, and (c) $712.28 in expenses. *See Exhibit 6, attached hereto and incorporated herein.*

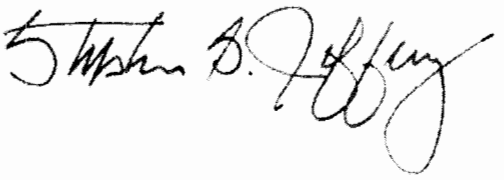
27. The amount of attorneys' fees and expenses incurred by Petitioner are "reasonable fees and expenses" as defined in § 536.085, RSMo.

28. The position of Respondent-DNR in issuing Permit MOG010872 to "Country Club Homes, LLC" was <u>not substantially justified</u> because a cursory examination of the relevant facts conclusively shows that: (a) according to the Missouri Secretary of State, "Country Club Homes, LLC" was not an existing legal entity and, as a result, could not lawfully serve as a continuing authority as required by 10 CSR 20-6.010(3); and (b) the permit applicant failed to comply with the Neighbor Notice requirements in 10 CSR 20-6.300(3) because the Neighbor Notice letters were mailed on January 30, 2018, which is six weeks after the date the permit application was submitted on December 19, 2017.

WHEREFORE, pursuant to § 536.087, RSMo, Petitioner respectfully requests that the Clean Water Commission approve an award of $22,347.50 for reasonable attorney fees and $712.28 in reasonable expenses, for a total award in connection with the permit appeal in the amount of $23,059.78.

Respectfully submitted,

JEFFERY LAW GROUP, LLC



Stephen G. Jeffery, MBE 29949
400 Chesterfield Center, Suite 400
Chesterfield, MO 63107-4800
(855) 915-9500 – Toll-Free
(314) 714-6510 – Fax
E-mail: sjeffery@jefferylawgroup.com

ATTORNEY FOR PETITIONER

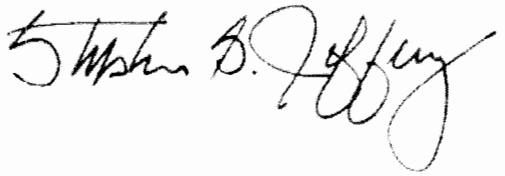
Certificate of Service

I certify that a true copy of the foregoing was served via electronic mail on this 21st day of January 2019 to:

Chris Wieberg, Water Protection Program, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102-0176, e-mail: *chris.wieberg@dnr.mo.gov*;

Chelsey Distler, Acting Secretary, Missouri Clean Water Commission, P.O. Box 176, Jefferson City, MO 65102-0176, e-mail: *chelsey.distler@dnr.mo.gov*; and

Tim Duggan, Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899, e-mail: *tim.duggan@ago.mo.gov*.



NO RECORD

STATE OF MISSOURI

John R. Ashcroft
Secretary of State

CERTIFICATE OF NO RECORD

I, JOHN R. ASHCROFT, Secretary of State of the State of Missouri, do hereby certify that there are no records in my office and in my care and custody as the Secretary of State which show that

Country Club Homes, LLC
1120 NE Eagle Ridge Blvd. Grain Valley Mo. 64029

is not now, or ever has been registered as a Foreign or Domestic Corporation, Foreign or Domestic Limited Partnership, Foreign or Domestic Limited Liability Company, Foreign or Domestic Limited Liability Partnership, Foreign or Domestic Limited Liability Limited Partnership, under the Fictitious Name Act, or any other business entity required by law to file with the Secretary of State.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the GREAT SEAL of the State of Missouri. Done at the City of Jefferson, this 27th day of June, 2018.

Secretary of State

Certification Number: CERT-06272018-0076

EXHIBIT
1

BEFORE THE
MISSOURI CLEAN WATER COMMISSION

In The Matter Of:	)	
	)	
Country Club Homes, LLC	)	**Appeal No. 18-0498**
	)	
	)	
	)	

FINAL DECISION

The Missouri Department of Natural Resources issued general operating permit MOG010872 to Country Club Homes, LLC, for a concentrated animal feeding operation. Lone Jack Neighbors for Responsible Agriculture, LLC filed an appeal. The Administrative Hearing Commission (AHC) heard the appeal on August 27 through 28, 2018, and issued its recommendations to the Commission on October 23, 2018.

The Commission may 1) adopt the AHC's recommendation; 2) change findings of fact or conclusions of law; or 3) vacate or modify the recommended decision.[1] If the Commission either changes findings of fact or conclusions of law or vacates or modifies the recommended decision, it must state the specific reason(s) in writing for the change(s).[2] Commission hereby adopts the AHC's recommended decision. This decision is based on the facts and evidence presented to the Commission pursuant to RSMo 644.026 and its corresponding regulations.

[1]Section 621.250.3, RSMo Supp. 2006
[2]*Id.*

EXHIBIT
2

WHEREFORE, THE UNDERSIGNED MEMBERS APPROVE THIS ORDER ON THIS 10th DAY OF DECEMBER, 2018.

MISSOURI CLEAN WATER COMMISSION

MEMBERS VOTING TO APPROVE THIS FINAL DECISION

Ashley McCarty
Chair

Commissioner

Commissioner

Commissioner

MEMBER VOTING TO DISAPPROVE THIS FINAL DECISION

Commissioner

WHEREFORE, THE UNDERSIGNED MEMBERS APPROVE THIS ORDER ON THIS 10th DAY OF DECEMBER, 2018.

MISSOURI CLEAN WATER COMMISSION

MEMBERS VOTING TO APPROVE THIS FINAL DECISION

_____	Patricia N Thomas
Chair	Commissioner
_____	_____
Commissioner	Commissioner

MEMBER VOTING TO DISAPPROVE THIS FINAL DECISION

_____

Commissioner

WHEREFORE, THE UNDERSIGNED MEMBERS APPROVE THIS ORDER ON THIS 10th DAY OF DECEMBER, 2018.

MISSOURI CLEAN WATER COMMISSION

MEMBERS VOTING TO APPROVE THIS FINAL DECISION

Chair	Commissioner
Commissioner	Commissioner

MEMBER VOTING TO DISAPPROVE THIS FINAL DECISION

Commissioner

WHEREFORE, THE UNDERSIGNED MEMBERS APPROVE THIS ORDER ON THIS 10th DAY OF DECEMBER, 2018.

MISSOURI CLEAN WATER COMMISSION

MEMBERS VOTING TO APPROVE THIS FINAL DECISION

_____	_____
Chair	Commissioner
_____	_____
Commissioner	Commissioner

MEMBER VOTING TO DISAPPROVE THIS FINAL DECISION

_____

Commissioner

WHEREFORE, THE UNDERSIGNED MEMBERS APPROVE THIS ORDER ON THIS 10th DAY OF DECEMBER, 2018.

MISSOURI CLEAN WATER COMMISSION

MEMBERS VOTING TO APPROVE THIS FINAL DECISION

Chair	Commissioner
Commissioner	Commissioner

MEMBER VOTING TO DISAPPROVE THIS FINAL DECISION

Allen Rowland

Commissioner

AFFIDAVIT

COMES NOW the undersigned Affiant who upon oath states:

1. I am Rachel Lynn Foley. I practice bankruptcy law at Foley Law, PC, 4016 S Lynn Ct Dr., Independence, Missouri 64055.

2. I live in the Rock Lake Village subdivision, and my home address is 1719 NW 775th Street, Bates City, Missouri 64011. My property is located in the vicinity of the proposed Valley Oaks concentrated animal feeding operation or CAFO.

3. After I first learned of this proposed facility, I met with several other affected property owners. I assisted the group called Lone Jack Neighbors for Responsible Agriculture, LLC to oppose the proposed CAFO.

4. I am familiar with the background facts and legal issues in *In Re Country Club Homes, LLC*, Missouri Clean Water Commission, Appeal No. 18-0498, which involved the appeal of the CAFO permit issued by the Missouri Department of Natural Resources.

5. I was involved in the efforts to locate an attorney to represent us in our opposition to the proposed facility. Because of the complexity of the issues involved, we could not find an attorney in the area that would accept our case.

6. As an attorney, I believe specialized knowledge and skills were necessary to successfully try this case. These specialized knowledge and skills include a detailed understanding of the Missouri Administrative Procedure Act, Chapter 536, RSMo; significant experience in litigation involving administrative hearings at the Administrative Hearing Commission; and the permitting process set forth in the Missouri Clean Water Law, Chapter 644, RSMo.

EXHIBIT
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7. It is my professional opinion that the average attorney in Missouri does not handle cases like this on a regular basis, and our group could not find any attorneys who have these specialized knowledge and skills who were available at an hourly rate of $75.00.

8. Our group retained Stephen G. Jeffery as our attorney. It is my professional opinion that Mr. Jeffery possesses these specialized knowledge and skills set forth in paragraph 6. My opinion is based on the facts that Mr. Jeffery formerly served as the General Counsel at the Department of Natural Resources for several years, and he has litigated a significant number of cases and administrative appeals in Missouri courts and the Administrative Hearing Commission regarding environmental issues, including CAFO permit appeals.

9. I know that Mr. Jeffery's rate to litigate this case was $175.00 per hour, and in my professional opinion, this hourly rate is extremely reasonable for the type of case that was involved.

Rachel Lynn Foley

Date 1/17/19

STATE OF MISSOURI)
) SS.
CITY OF JACKSON)

Before me, the undersigned Notary Public, personally appeared on this 17th day of January, 2019, Rachel Lynn Foley, a person known to me, who acknowledged that the foregoing is true and correct to the best of her personal knowledge and belief.

In witness hereof, I hereunto set my hand and official seal.

Notary Public

MICHAEL J. BELL
MY COMMISSION EXPIRES 6/16/2021
NOTARY PUBLIC
NOTARIAL SEAL
COMMISSION #13494692
JACKSON COUNTY
STATE OF MISSOURI

AFFIDAVIT

COMES NOW the undersigned Affiant who upon oath states:

1. I am Roger A. Walker. I am a Principal at RAWalker & Associates LLC, which provides high-level client-centered services on environmental and energy matters focusing primarily on compliance, permitting, and enforcement in all media; regulatory advocacy, due diligence and analysis of property and financial transactions involving contamination; risk management of complex legal and regulatory issues, and other related matters. My business address is 238 E. High Street, Suite 200, Jefferson City, Missouri 65101.

2. My educational background is: LL.M, Environmental Law, Lewis & Clark School of Law (1997); J.D., University of Missouri – Kansas City (1991) (Law Review); M.A., History, University of Missouri – Columbia; and B.S., Education/Journalism , University of Missouri – Columbia (cum laude).

3. I have reviewed the case background and legal issues in the *In Re Country Club Homes, LLC*, Missouri Clean Water Commission, Appeal No. 18-0498, which involved the appeal of a permit issued by the Missouri Department of Natural Resources.

4. It is my professional opinion that specialized knowledge and skills were necessary to successfully litigate this case. These specialized knowledge and skills include a detailed understanding of the Missouri Administrative Procedure Act, Chapter 536, RSMo, significant experience in conducting hearings at the Administrative Hearing Commission, and the permitting process set forth in the Missouri Clean Water Law, Chapter 644, RSMo.

EXHIBIT
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5. Further, it is my professional opinion that there are no attorneys in Missouri available at an hourly rate of $75.00 who have these specialized knowledge and skills.

6. Further, I have known Stephen G. Jeffery for several years. It is my professional opinion that Mr. Jeffery possesses these specialized knowledge and skills set forth in paragraph 4. My opinion is based on the facts that Mr. Jeffery formerly served as the General Counsel at the Department of Natural Resources for several years, and he has litigated a significant number of cases and administrative appeals in Missouri courts and the Administrative Hearing Commission regarding environmental issues, including permit appeals.

7. I am advised that Mr. Jeffery's hourly rate to litigate this matter was only $175.00. In my professional opinion, this hourly rate is extremely reasonable for the type of case that was involved.

Further Affiant Sayeth Naught.

Roger A. Walker

Roger A. Walker

Date: 1-17-19

STATE OF MISSOURI)
) SS.
COUNTY OF COLE)

Before me, the undersigned Notary Public, personally appeared on this 17 day of January, 2019, Roger A. Walker, a person known to me, who acknowledged that the foregoing is true and correct to the best of his personal knowledge and belief.

COLE RUSSUM
Notary Public - Notary Seal
STATE OF MISSOURI
County of Callaway
My Commission Expires 3/29/2021
Commission # 17773916

AFFIDAVIT

COMES NOW the undersigned Affiant who upon oath states:

1. I am Eugene P. Schmittgens, Jr. I practice law with the law firm of Rouse Frets White Goss Gentile Rhodes, P.C. I represent clients in environmental law issues including compliance, enforcement, including administrative litigation, insurance, permitting, transportation requirements and transactional issues arising out of the sale of real estate and businesses. I am a past chair of the Illinois State Bar Association's Environmental Law Section Council, and I am active in a number of other environmental law committees of various bar associations and civic groups. I have also been an Assistant Adjunct Professor at Saint Louis University of Law where I taught a course on Environmental Due Diligence.

2. My educational background is: St. Louis University, St. Louis, Missouri, Juris Doctorate, 1982; University of Missouri – St. Louis Masters of Arts (Political Science, Phi Sigma Alpha Honor Society for Political Science), 2014; MacMurray College, Jacksonville, Illinois, Bachelor of Science (Political Science, with honors; Sociology), 1979.

3. I am familiar with the background facts and legal issues in *In Re Country Club Homes, LLC*, Missouri Clean Water Commission, Appeal No. 18-0498, which involved the appeal of a permit issued by the Missouri Department of Natural Resources.

4. I believe that specialized knowledge and skills were necessary to successfully try this case. These specialized knowledge and skills include a detailed understanding of the Missouri Administrative Procedure Act, Chapter 536, RSMo; significant experience in litigation involving administrative hearings at the Administrative Hearing Commission; and the permitting process set forth in the Missouri Clean Water Law, Chapter 644, RSMo.

5. It is my professional opinion that the average attorney in Missouri does not handle cases like this on a regular basis, and there are not any attorneys who have these specialized knowledge and skills in Missouri available at an hourly rate of $75.00.

EXHIBIT
5

6. I have known Stephen G. Jeffery for several years. It is my professional opinion that Mr. Jeffery possesses these specialized knowledge and skills set forth in paragraph 4. My opinion is based on the facts that Mr. Jeffery formerly served as the General Counsel at the Department of Natural Resources for several years, and he has litigated a significant number of cases and administrative appeals in Missouri courts and the Administrative Hearing Commission regarding environmental issues, including permit appeals.

7. I know that Mr. Jeffery's rate to litigate this case was $175.00 per hour, in my professional opinion, this hourly rate is extremely reasonable for the type of case that was involved.

Eugene P. Schmittgens, Jr.

Date 1/21/2019

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

Before me, the undersigned Notary Public, personally appeared on this 21st day of JANUARY, 2019, Eugene P. Schmittgens, Jr., a person known to me, who acknowledged that the foregoing is true and correct to the best of his personal knowledge and belief.

ROBERT W. HOFFMAN
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis County
My Commission Expires: July 09, 2021
Commission Number: 13510141

JEFFERY LAW GROUP, LLC
400 Chesterfield Center
Suite 400
Chesterfield, MO 63017-4800

(855) 915-9500 - Toll-Free
(314) 714-6510 - Fax
FEIN: 27-4821891

January 18, 2019

Carolyn Wilkinson
37605 E US 50 Hwy
Lone Jack, MO 64070

In Reference To:

Invoice # 17183

Professional Services

		Hrs/Rate	Amount
04/03/18 SGJ	Preparation for DNR meeting. Conference with clients. Attend DNR public meeting. Travel from St. Louis to Warrensburg.	6.80	
04/04/18 SGJ	Phone call with Carolyn. Travel from Warrensburg to St. Louis.	4.10	
04/23/18 SGJ	Draft Freedom of Information Act request to USDA, Farm Services Agency. Draft e-mail to Carolyn and Karen. Call from Aimee Davenport (Powell Gardens counsel).	1.20	
05/08/18 SGJ	Phone call with Carolyn and Karen. Review Groebbel report.	1.20	
05/16/18 SGJ	Voicemail from Aimee Davenport (Powell Gardens' attorney). Draft e-mails to Aimee Davenport. Review replies.	0.40	
06/18/18 SGJ	Start work on Complaint. Review permit application and supporting documents.	1.80	
06/19/18 SGJ	Continue work on Complaint. Review DNR regulations. Review hydrogeologic investigation at Valley Oak lagoon. Review Grobbel report. Draft e-mail to Carolyn and Karen. Review e-mails from Aimee Davenport. Draft replies.	4.20	

EXHIBIT
6

		Hrs/Rate	Amount
06/21/18 SGJ	Continue work on Complaint. Review e-mails from Carolyn Wilkenson. Draft replies. Review FEMA website for FIRM information for Johnson County, Missouri.	2.60	
06/25/18 SGJ	Review and Revise Complaint. Review permit application, Secretary of State website, DNR permit. File Complaint with AHC.	4.20	
06/26/18 SGJ	Review and revise Amended Complaint. File same. Draft e-mails to Carolyn and Karen. Review replies. Review and revise Motion for Stay. Review Complaint and Motion for Stay filed by Powell Gardens.	4.80	
06/27/18 SGJ	Review and revise Amended Motion for Stay. File same. Calls with Marie Gellerstedt. Draft Affidavit for Marie Gellerstedt. Draft e-mail to Marie Gellerstedt. Call with Secretary of State's Office. Obtain Certificate of No Record from Secretary of State's Office. Draft e-mails to Carolyn and Karen. Review replies. Review executed Affidavit from Marie.	6.20	
06/28/18 SGJ	Draft Notice of Affidavit for Marie Gellerstedt affidavit. File same.	0.40	
07/06/18 SGJ	Preparation for July 9 hearing on motion for stay. Review AHC rules, statutes, and case law. Review e-mails from Carolyn and Karen. Draft revised questions for Carolyn and Karen. Assemble exhibits. Call with Aimee Davenport (Powell Gardens).	4.80	
07/08/18 SGJ	Review documents and exhibits for hearing. Travel from Chesterfield - Jefferson City.	3.10	
07/09/18 SGJ	Final preparation for Stay hearing. Conference with clients. Attend hearing on motion for stay. Conference with clients. Travel from Jefferson City -	10.20	

		Hrs/Rate	Amount
	Chesterfield.		
07/10/18 SGJ	Draft First Interrogatories and First Request for Admissions to DNR and Valley Oaks. Draft e-mail to opposing counsel. Draft e-mail to Carolyn, Karen, and Rachel.	2.40	
08/13/18 SGJ	Phone call from CEC (Ivan Cooper) regarding depo preparation. Revise depo outline. Draft e-mail to John Bognar (CEC). Review VO discovery responses. Draft Motion to Compel Discovery. File same with AHC. Draft e-mail to clients.	2.40	
08/19/18 SGJ	Review August 9, 2018 re-issued Permit and correspondence. Draft Motion for Contempt against DNR. Draft Motion to file amended Complaint and to reschedule hearing. File same with AHC.	4.90	
08/20/18 SGJ	Deposition of Ivan Cooper, PE. Revisions to Amended Motion to Compel Discovery. File same.	5.20	
08/26/18 SGJ	Review documents, exhibits, witness outlines for hearing. Travel from Chesterfield - Jefferson City.	3.90	
08/27/18 SGJ	AHC Hearing.	10.60	
08/28/18 SGJ	AHC Hearing. Travel from Jefferson City - Chesterfield.	8.60	
10/01/18 SGJ	Start work on draft Recommended Decision. Review transcripts and exhibits.	5.60	
10/02/18 SGJ	Continue work on Recommended Decision. Review case law. Review transcripts and exhibits. Draft e-mail to Carolyn, Karen, and Rachel.	6.20	

		Hrs/Rate	Amount
10/03/18 SGJ	Draft Designations for Cooper deposition. Review and revise draft Recommended Decision. Review transcript of hearing. Review e-mails from Carolyn, Karen, and Rachel.	2.30	
11/08/18 SGJ	Draft Motion to Disqualify Ashley McCarty. Review photos from April 3 public hearing. Draft e-mail to Karen, Carolyn, and Rachel. Review e-mails from Karen. File motion with AHC. Draft e-mail to Shawna Bligh, Jennifer Hernandez, and Jennifer Griffin.	2.10	
11/20/18 SGJ	Revisions to draft Motions to Disqualify CWC Commissioners. Draft cover letter. Draft e-mail to Chris Wieberg, Shawna Bligh, Jennifer Hernandez, and Jennifer Griffin.	1.40	
12/08/18 SGJ	Preparation for December 10 Clean Water Commission meeting. Draft e-mail to Carolyn, Karen, Rachel, Amy Davenport, and Chuck Hatfield. Review e-mail from Carolyn.	1.10	
12/09/18 SGJ	Preparation for Clean Water Commission meeting. Travel to Columbia.	3.20	
12/10/18 SGJ	Attend Clean Water Commission meeting to argue permit appeal in Country Club Homes LLC matter. Conference with clients. Travel from Columbia-Jefferson City. Return travel.	7.40	
01/16/19 SGJ	Draft affidavits in connection with Application for Award of Attorneys' Fees. Draft e-mails to Rachel Foley, Gene Schmittgens, and Roger Walker. Review replies.	1.40	
01/17/19 SGJ	Draft affidavits in support of Application for Award of Attorneys' Fees. Draft e-mails to Roger Walker, Gene Schmittgens,	1.90	

		Hrs/Rate	Amount
	and Rachel; Foley. Review replies.		
01/18/19 SGJ	Review e-mails from Rachel Foley and Roger Walker. Revisions to Application.	1.10	
	For professional services rendered	127.70	$0.00

Additional Charges :

		Qty/Price
04/03/18 SGJ	Comfort Inn, Warrensburg	1 98.77
SGJ	Mileage to/from St. Louis - Warrensburg	404 0.55
06/27/18 SGJ	Postage	1 3.26
SGJ	Secretary of State charge for No Record Certificate	1 10.00
07/06/18 SGJ	FedEx charge.	1 15.22
07/08/18 SGJ	Mileage - Chesterfield - Jefferson City	117 0.55
07/09/18 SGJ	Mileage Jefferson City - Chesterfield	117 0.55
08/25/18 SGJ	FedEx copying cost.	1 4.87
08/26/18 SGJ	Mileage Chesterfield - Jefferson City	117 0.55
08/27/18 SGJ	Parking	1 7.00
08/28/18 SGJ	Parking.	1 7.00
SGJ	Mileage Jefferson City - Chesterfield.	117 0.55

		Qty/Price	Amount
11/21/18 SGJ		1	
	Postage for certified mail to DNR.	8.46	
12/09/18 SGJ		107	
	Mileage - Chesterfield - Columbia	0.55	
12/10/18 SGJ		35	
	Mileage - Columbia - Jefferson City	0.55	
	Total additional charges		$712.28

Tab E4

Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Application for Attorney's Fees Appeal No. 18-0501

Background: Stinson Leonard Street LLP submitted correspondence to the Department on behalf of Elizabeth and Ryan Deich filing an Application for Award of Attorney's Fees in connection with the subject permit appeal.

Recommendation: The Department recommends that the Commission consult with their attorney regarding this request.

Attachments:

Application for Attorney's Fees Appeal No. 18-0501

BEFORE THE
CLEAN WATER COMMISSION
STATE OF MISSOURI

IN RE: COUNTRY CLUB HOMES, LLC	)	
Permit No. MOG010872	)	Case No. 18-0501
	)	

APPLICATION FOR ATTORNEYS' FEES

Pursuant to Section 536.087 of the Missouri Revised Statutes, Petitioners Elizabeth and Ryan Deich respectfully submit this application for attorneys' fees they incurred in this action. Petitioners support this application with their contemporaneously filed "Suggestions in Support," which are incorporated herein by this reference. Petitioners seek fees totaling $40,612.50 calculated at the statutory rate of $75.00/hour. Petitioners do not seek their expert witness fees.

Petitioners request that the Clean Water Commission allow them an opportunity to respond to any briefs in opposition that may submitted by the Missouri Department of Natural Resources. Petitioners also request that the Clean Water Commission hold a hearing on this application, but only to the extent that the Missouri Department of Natural Resources files a brief in opposition or if the Clean Water Commission is not inclined to summarily grant the application.

Respectfully submitted,

STINSON LEONARD STREET LLP

/s/ Aimee D. Davenport
Charles W. Hatfield, No. 40363
Aimee D. Davenport, No. 50989
230 W. McCarty Street
Jefferson City, Missouri 65101
Telephone: 573-636-6263
Facsimile: 573-636-6231
chuck.hatfield@stinson.com
aimee.davenport@stinson.com

BEFORE THE
CLEAN WATER COMMISSION
STATE OF MISSOURI

IN RE: COUNTRY CLUB HOMES, LLC	)	
Permit No. MOG010872	)	Case No. 18-0501
	)	

SUGGESTIONS IN SUPPORT OF
APPLICATION FOR ATTORNEYS' FEES

Petitioners are entitled to their attorneys' fees in this action. "A party who prevails in an agency proceeding . . . shall be awarded those reasonable fees and expenses incurred by that party . . . unless the court or agency finds that the position of the state was substantially justified or that special circumstances make an award unjust." §536.087(1) RSMo. Petitioners are prevailing parties and they "shall" be awarded fees unless this Commission finds that MoDNR's position in granting the permit was "substantially" justified. The purpose of the statute is to "require agencies to carefully scrutinize agency and court proceedings and to increase the accountability of the administrative agencies." *Carpenter v. State Board of Nursing*, 508 S.W.3d 110, 115 (Mo. banc. 2016) (citation omitted).

There can be no dispute that Petitioners meet the first part of the statute. The only issue is whether MoDNR was "substantially justified." It is clear that MoDNR should not have issued a permit for the Valley Oaks CAFO. The AHC so found and this Commission affirmed the AHC's ruling without changing a word. The word "substantial" in the statute should be interpreted using its dictionary meaning. *See, e.g., Great Southern Bank v. Director of Revenue*, 269 S.W.3d 22, 25 (Mo. banc 2008) ("When a statutory term is not defined, courts apply the ordinary meaning of the term as found in the dictionary"). "Substantial" means "solidly built" or "ample." Webster's II New College Dictionary 1999. MoDNR's position here was not solidly built or ample. Among

3. On June 27, 2018, Petitioners filed a complaint captioned *In re: Country Club Homes, LLC* (AHC No. 18-0501) with the Administrative Hearing Commission ("AHC"), appealing MoDNR's decision to issue the permit (the "Action"). *See* Ex. A. Petitioners named the State of Missouri, acting through MoDNR, as Respondent.

4. The Action was a contested case, in which Assistant Attorneys General Jennifer Hernandez and Shawna Bligh represented MoDNR. *See* Ex. A at p. 2. The applicants intervened through their counsel of record at Lathrop Gage LLP.

5. Petitioners are a married couple whose net worth, both individually and together, did not exceed two million dollars ($2,000,000.00) at the time this Action was filed. *See* Ex. B at ¶ 5.

B. Petitioners are the Prevailing Party.

6. Through the Action, Petitioners sought an order from the Clean Water Commission ("Commission") revoking the Permit.

7. On June 27, 2018, Petitioners moved the AHC to stay the effectiveness of the Permit through the merits hearing. The AHC held a one-day hearing on July 9, 2018, during which Petitioners, MoDNR and the applicant put on evidence supporting their respective positions.

8. The AHC granted Petitioners' motion to stay on July 26, 2018. *See* Ex. C. In so doing, the AHC determined that Petitioners had shown a "reasonable likelihood of success" on proving that: (i) the applicant's cool season grass hay yields were overinflated and not supported by any historical data or other information in MoDNR's records; (ii) the applicant did not have sufficient manure storage capacity; and (iii) MoDNR issued a the permit "to an entity does not exist." *See* Ex. C at pp. 8-9.

time expended by counsel and discussing the manner in which those fees were calculated. Petitioners are not seeking the expert fees they incurred in pursuing this Action.

13. This was a complex Action that involved technical questions of fact and sophisticated questions of law. The parties extensively briefed these issues, engaged in written discovery, and participated in three evidentiary hearings. *See* Ex. G (Docket). Petitioners' attorneys' fees are reasonable, given the nature of this Action, the special expertise required, and the quality of services necessary to obtain a favorable result.

D. MoDNR's position was not "Substantially Justified."

14. As discussed above, the real issue here is substantial – solidly built or ample – justification. In the Action, Petitioners asserted three principal arguments for why MoDNR erred in issuing the Permit. First, MoDNR approved the applicant's nutrient management plan, even though the "Cool Season Grass Hay" yields reflected therein were three times higher than the state average, and did so without consulting any literature as to whether such yields were reasonable. Second, MoDNR approved the applicant's manure storage calculations, even though they were based on unreasonable inputs (*e.g.*, "dry" manure with an 80% moisture content, stacking manure to the very top of the stem walls while covering the animals' drinking sources, etc.). Finally, MoDNR approved the permit even though the applicant – "Country Club Homes, LLC" – does not actually exist.

15. Any one of these arguments, standing alone, would be a sufficient basis for revoking the Permit; however, the AHC – and this Commission – agreed with all three of them. After conducting a two-day hearing, during which the State and the applicant put on evidence supporting their positions, the AHC and this Commission determined that the nutrient management plan was based on unreasonable yield goals, the manure storage calculations were flawed, and the Permit was issued to an invalid entity.

> submit historical yields or other referenced sources for the identified fields. [Greg] Caldwell acknowledged that **the Department did not receive any historical yields or other information for the identified fields**. Instead, Caldwell relied on his recollection of having seen 6-ton-per-acre yields reported in the annual reports of other CAFOs in the northern part of the state. These reports were **not made a part of the record** of the review of Valley Oaks' application.
>
> * * *
>
> [T]he average cool season grass hay yields in Johnson County, Missouri (as reported by the University of Missouri), ranged from 1.95 tons per acre to 2.20 tons per acre for 2015, 2016, and 2017.
>
> Given the ready availability of data – even assuming that none was available specific to the proposed application fields – we conclude that Valley Oaks' application as was deficient in that it failed to provide realistic crop yield goals as part of its Nutrient Management Plan. **The Department approved the permit based solely on Caldwell's recollection of having seen anecdotal instances of yields reported in the range of Valley Oaks' submitted figures.** The **Department failed** in its burden to prove that the yield goals it approved – 6 tons per acre for cool season grass hay – are realistic as required by 10 CSR 20-6.300(3)(G)2.A.

Ex. A at p. 11-12 (emphasis added).

2. Manure Storage

23. Under Missouri law, a CAFO must have at least 180 days' manure storage in order to obtain a Class 1B operating permit. *See* Ex. A at p. 12.

24. The applicant claimed to have just 186 days of storage capacity, just above the regulatory minimum. *See* Ex. A at ¶ 22. However, that figure was only reached by unrealistically relying on manure being stacked to the top of the stem walls and covering the animals' only sources of fresh drinking water. *Id.* at ¶¶ 22-24.

25. The applicant also relied upon an 80% moisture content to calculate its days of storage, even though it was purportedly "dry" waste that cannot exceed 75% moisture content. *See* Ex. A at ¶¶ 25-26.

> The entity identified in the application to serve the function of the continuing authority simply did not exist in the records of the Secretary of State. Caldwell's discovery of a similarly named entity is of no import, because he did not have the authority to change or make the corrections to the application. **The correct course of action would have been to call attention to the mistake to the applicant or engineer**... Instead, the Department granted a permit based on a deficient application. **Compounding the error, the permit issued by the Department on June 15, 2018 was issued in the name of 'Country Club Homes, LLC', a name so obviously wrong that none of the parties bothered to submit evidence as to whether an entity by that name exists in the records of the Secretary of State.**

Ex. A at p. 18 (citations omitted).

32. The AHC and this Commission further determined that MoDNR's attempt to transfer the permit from a non-existent entity to "Valley Oaks Real Estate, LLC" was invalid because, as Petitioners argued, "the permit was issued unlawfully and the transfer of a void instrument to a new owner cannot revive it." *See* Ex. A at 19.

II. LAW AND ARGUMENT

A. MoDNR was not "Substantially Justified" in issuing the Permit.

Petitioners are entitled to their attorneys' fees because MoDNR's decision to issue the Permit was not substantially justified. Section 536.087(1) states: "A party who prevails in an agency proceeding or civil action arising therefrom, brought by or against any the state, shall be awarded those reasonable fees and expenses incurred by that party in the civil action or agency proceeding, unless the court or agency finds that the position of the state was substantially justified or that special circumstances make an award unjust." The purpose of the statute is to "require agencies to carefully scrutinize agency and court proceedings and to increase the accountability of the administrative agencies." *Carpenter v. State Board of Nursing*, 508 S.W.3d 110, 115 (Mo. banc. 2016) (citation omitted). This Commission should hold MoDNR accountable by awarding modest attorneys' fees to the Petitioners.

crop yields in the area, requested data historical data from the applicant, or even performed a quick search on the University of Missouri's website – where actual data is readily available – to see whether the applicant's yield goals were roughly reasonable. Instead, MoDNR approved them as-is, no questions asked.[1]

The same is true with regard to the applicant's manure storage calculations. The applicant claimed to have just 186 days of storage – 6 days more than the absolute bare minimum required by state law, and almost half of what is recommended in the regulation. In order to make the numbers work, the applicant relied on plainly unreasonable inputs. For example, under their assumptions, manure would be stacked 2.3 feet high, to the very top of the stem walls and covering the animals' only source of drinking water. Moreover, the applicant used an 80% moisture content to reduce the amount of bedding required (and, conversely, increase the amount of storage capacity). This Commission adopted the AHC's finding that this input was "facially inaccurate." The result of the applicant's creative math is significant. If reasonable inputs are applied, the facility has just 152 days of manure storage – far below the legal requirement. Given that the applicant purported to meet the minimum storage requirements by just 6 days, one would have expected MoDNR to at least review the basic inputs used to calculate those figures. Instead, MoDNR glossed over them and issued the permit anyway.

And of course, there is the error of MoDNR issuing the permit to a non-existent entity. Missouri law requires that CAFO permits be issued to permanent, continuing entities who accept liability for the operation. As such, applicants are required to prove that their entity lawfully exists and MoDNR is required to review that proof and confirm its accuracy. Here, the applicant never submitted any proof of its existence. MoDNR never requested such proof. Instead, its

[1] Mr. Caldwell purportedly recalled seeing similar yield goals on other CAFOs; however, MoDNR never identified those CAFOs or put forth any evidence at all supporting the reasonableness of the yield goals it approved. Had such documents existed, MoDNR surely would have introduced them during the Action to justify its decision.

The facts speak for themselves. While the case was pending at the AHC, Petitioners' counsel prepared for and attended two separate hearings – a one-day hearing on Petitioners' motion for stay (which was granted) and a two-day evidentiary hearing on the merits. Several live witnesses testified at these hearings. Dozens of documents were introduced as evidence. Multiple expert witnesses were called. After that, Petitioners prepared for and attended another hearing before this Commission. Sufficiently preparing for these hearings takes time and effort.

The pretrial schedule at the AHC was equally labor intensive. By Petitioners' count, there were no fewer than 141 separate docket entries in a case that spanned fewer than six months. There was an incredible amount of activity in this Action during the short time while it was pending. Those motions included, *inter alia*, motions to amend pleadings, motions to stay the effectiveness of the permit, motions for expedited discovery, and proposed findings of fact and conclusions of law. Petitioners also were required to respond to a litany of motions from the other parties, including, *inter alia*, motions to dismiss for lack of standing, motions to reconsider the commission's stay order, and motions for protective order related to discovery. The parties also served and responded to written discovery. This level of activity is unusual in agency proceedings.

Further complicating matters were the applicants' participation in this Action. As this Commission is aware, the applicant moved to intervene in the Action and vigorously worked with MoDNR in an attempt to defend the validity of the permit. Thus, Petitioners were effectively fighting a war on two fronts – against MoDNR and the applicants, both of whose counsel are well-versed in representing clients in CAFO cases. These factors increased the work that was required to bring this case to a successful result for Petitioners.

Respectfully submitted,

STINSON LEONARD STREET LLP

/s/ Aimee D. Davenport
Charles W. Hatfield, No. 40363
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230 W. McCarty Street
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ATTORNEYS FOR PETITIONERS

Before the
Administrative Hearing Commission
State of Missouri

IN RE COUNTRY CLUB HOMES, LLC,	)	
Permit No. MOG010872	)	No. 18-0501
	)	

RECOMMENDED DECISION

The Administrative Hearing Commission ("AHC") recommends that the Missouri Clean Water Commission ("CWC") reverse the Department of Natural Resources' ("Department") decision to issue Permit No. MOG010872 (the permit) to County Club Homes, LLC, [sic] and subsequently to Valley Oaks Real Estate, LLC, ("Valley Oaks") to operate a Class IB concentrated animal feeding operation ("CAFO").

Procedure

On June 27, 2018, Powell Gardens, Inc., Ryan and Elizabeth Deich and the Robert M. Chamness Trust (collectively, "Powell Gardens"), filed a complaint appealing the Department's decision to issue the Permit. On July 2, 2018, Valley Oaks filed a motion to intervene, which we granted by order dated July 5, 2018. On July 2, 2018, Valley Oaks also filed its answer to the complaint. On August 3, 2018, the Department filed a motion to file its answer to the complaint out of time and its answer. By order dated August 3, 2018, we granted the motion. On August 7, 2018, with our leave, Valley Oaks filed an amended answer to the complaint. On August 20, 2018, Powell Gardens and the Petitioners in Case No. 18-0498 filed motions for leave to file amended complaints. On August 21, 2018, Valley Oaks filed a response to the motion to file an

Griffin and Doug Nelson, with Lathrop Gage, represented Valley Oaks.[1] The matter became ready for our decision on October 10, 2018, the date the last written argument was filed.

Findings of Fact

1. Powell Gardens is a non-profit public charity that owns and operates a 970-acre botanical garden, located approximately three miles from the Valley Oaks CAFO. Powell Gardens uses clean water to, among other things, irrigate its property.

2. Ryan and Elizabeth Deich (the "Deichs") reside on a family farm next to Valley Oaks, in a home located less than 1,900 feet from a Valley Oaks CAFO building. The Deichs use clean water, among other things, for recreational purposes and for agriculture.

3. Powell Gardens and the Deichs are adversely affected by the Department's decision to issue the permit.

4. Countryclub Homes, LLC, is Missouri limited liability company registered in good standing with the Secretary of State. David Ward is the sole member of Countryclub Homes, LLC. Ward testified at the stay hearing on July 9, 2018.

5. Ward, through business entities owned by him, began operating an animal feeding operation ("AFO") in September 2016.

6. The AFO was comprised of approximately 900 head of cattle.

7. On December 19, 2017, Ward submitted a Permit Application (Form W) to the Department for a proposed CAFO to be located on the property comprising the AFO in Johnson County, Missouri. ("the facility" or "Valley Oaks").

[1] The Petitioner in Case No. 18-0498 was represented by Stephen G. Jeffery, with Jeffery Law Group, LLC.

18. As of June 15, 2018, there were approximately 900 head of cattle at the facility, and since that time, the facility has added 1,000 head of cattle. Ward plans to add 2,600 additional head of cattle to the Valley Oaks CAFO by the end of 2018.

19. With the permit application, plans were submitted for a facility with six confinement barns and two manure storage sheds that Valley Oaks projects that, when operating at full capacity, the allotted capacity of 6,999 beef cattle raised on the facility would generate approximately 111,134 tons of manure and urine on an annual basis.

20. In its application materials, Valley Oaks projected that it would dispose of approximately 70% of that process waste by land application (under the Nutrient Management Plan), and approximately 30% of that waste by exporting it from the site.

21. Valley Oaks indicated in its application that it would store the process waste in the animal confinement barns and the manure storage sheds.

22. Valley Oaks proposed to have 186 days of temporary manure storage available on site, a conclusion reached by determining that manure will be stacked 2.3 feet high against the stem walls in the animal confinement pens.

23. The stem walls in the animal confinement buildings are also 2.3 feet high.

24. The automatic waterers supplying drinking water to the cattle are located 2.0 feet high on the stem walls. If manure stored in the animal confinement pens reaches the maximum permitted capacity, the manure will completely bury the animals' only source of drinking water.

25. Valley Oaks' storage calculations are based upon 17 pounds of bedding per 100 pounds of waste, resulting in 80% moisture content.

26. Pursuant to 10 CSR 20-6.300(1)(A)11, dry process waste must not exceed 75% moisture content.

acre. The Department's record does not contain any historical records for the particular fields on which cool season grass hay will be grown, any scientific literature that suggests 6.0 was a reasonable tonnage, any explanation of how Valley Oaks came up with 6.0 tons, or any record that Valley Oaks consulted with anyone regarding the cool season grass hay yields.

37. Caldwell determined that the Nutrient Management Plan was reasonable based on his recollection of having seen cool season grass hay yields of 6.0 tons per acre in the annual reports of other CAFOs in the northern part of Missouri.

38. Valley Oaks' application indicates that the facility, as designed, will have 186 days of dry process waste storage. Dry process waste consists of feces, urine, and bedding. Pursuant to 10 CSR 20-6.300(1)(A)11, dry process waste must not exceed 75% moisture content.

39. The capacity of bedding to absorb moisture depends upon the type of bedding used.

40. Valley Oaks' manure storage calculations require storage in the animal confinement areas up to 2.3 feet in depth. The stem walls in the animal confinement areas are 2.3 feet tall. The automatic waterers supplying drinking water to the cattle are located approximately 2.0 feet high on the stem walls.

41. An unnamed tributary to East Branch Crawford Creek bisects the Valley Oaks property, flowing from the North to the South.

42. Valley Oaks' CAFO buildings, including its actual and planned manure storage sheds, are located immediately to the West and uphill from the tributary.

43. In between the CAFO buildings and the tributary, Valley Oaks has a northern pond and a southern pond. The ponds are located within 100 to 200 feet of the tributary. The northern pond is located in the floodplain of the tributary.

44. The topography of the site is such that water will flow downhill from the Valley Oaks CAFO buildings to the ponds.

(Mo. banc 2004), overruled *Craven* and found that because the Director of DNR issues the permits, § 640.010.1 was the applicable statutory provision authorizing appeals. "Section 644.051.6 does not limit the right of appeal to the commission solely to those denied a permit, and 10 CSR 20–6.020(5)(C) [authorizing appeals by those adversely affected] is not in conflict. . . . Therefore, the commission has subject matter jurisdiction to hear the coalition's appeal." *Id.* at 702. Powell Gardens and the Deichs have demonstrated that they are adversely affected by the Department's decision to issue the permit. We therefore conclude that Powell Gardens has standing to appeal the Director's decision.

Evidentiary Rulings

At the hearing, we took a number of objections with the case. Valley Oaks and the Department objected to our consideration of evidence presented at the stay hearing because the purpose for which it was presented – threatened harm – was an operational concern, and therefore not relevant to the sole issue in this case, regulatory permitting requirements. We are able to take official notice of the entire content of the case file; as a result, the objections are overruled at this time. However, with the exception of certain background information and evidence relating to parties and standing, all the evidence reflected in our findings of fact was taken from the August 27-28 hearing.

In addition, the Department filed a motion *in limine* to exclude testimony regarding geological formations underlying the permitted facility; any evidence related to groundwater monitoring systems at the permitted facility, or land application areas potentially utilized by the permitted facility; any evidence or testimony regarding the administration of veterinary drugs to animals at the facility and the potential discharge of such pharmaceutical residue in manure through land application; and evidence or testimony regarding non-point source runoff from the permitted facility or land application areas or storm water runoff from fresh water retention

manner that prevents surface runoff of process wastewater beyond the edge of the field. Such measures will include, but not be limited to, restricting the timing, soil conditions, and placement of manure during land application[.]"

Powell Gardens alleges that the Department erred in two ways in approving Valley Oaks' Nutrient Management Plan. First, the Department did not consider any historical data, referenced sources, or other discrete information prior to approving the plan, and second, the cool season grass hay yields are unrealistic.

Valley Oaks proposed yield goals of 6 tons per acre on cool season grass hay fields. The NMTS requires that "yield goals be based on crop yield records from multiple years for the field," and only when a field's yield history is not available may another source be considered to estimate yield goals. The Department did not consider either here. Valley Oaks did not submit historical yields or other referenced sources for the identified fields. Caldwell acknowledged that the Department did not receive any historical yields or other information for the identified fields. Instead, Caldwell relied on his recollection of having seen 6-ton-per-acre yields reported in the annual reports of other CAFOs in the northern part of the state. These reports were not made a part of the record of the review of Valley Oaks' application.

At the hearing, Powell Gardens produced an interrogatory answer showing that Valley Oaks intended to obtain 6 tons per acre through an "intensive management strategy." Ex. 202. Valley Oaks' expert, Darrick Steen, opined that an "intensive management strategy" and/or different species of grass could lead to yields of 6 tons per acre. But the weight of the evidence is to the contrary. Exhibit 1003A is a copy of e-mail correspondence with a Kansas State University Extension Specialist who stated she believed a 4- or 5- ton-per-acre yield would be realistic, absent "a source that has seen 6 tons/acre within the same area....." Patrick Splichal, Powell Gardens' expert, admitted that there is a large margin for error and a wide range of

reach a minimum of 180 days' storage, the waste would have to be stacked to the very top of the stem walls of the confinement barns, covering the animals' source of fresh drinking water and allowing waste to spill over the walls.

Pursuant to 10 CSR 20-6.300(1)(A)11., dry process waste is defined as:

> A process waste mixture which may include manure, litter, or compost (including bedding, compost, mortality by-products, or other raw materials which is commingled with manure) and has less than seventy-five percent (75%) moisture content and does not contain any free draining liquids[.]

Valley Oaks' calculations are based upon 17 pounds of bedding per 100 pounds of waste, resulting in 80% moisture content. According to Sweeten's calculations, in order to meet the regulatory requirement of 75% moisture content, 25 pounds of bedding per 100 pounds of waste are necessary. Using Valley Oaks' formula, Sweeten calculated that 4.72 million cubic feet of manure plus bedding will need to be stored rather than the 3.87 million cubic feet used by Valley Oaks to justify its storage capacity, an increase of approximately 22%. Given Valley Oaks' maximum storage volume from Exhibit B, 857 of 1,179,210 cubic feet, Sweeten calculated 152 days' storage capacity.

Valley Oaks argues that 10 CSR 20-8.300(5)B.2 only requires a CAFO facility to be designed to have 180 days of storage for manure that will be land applied by the CAFO itself, not all the manure generated by the CAFO, e.g. waste exported and land applied by third parties. The calculations for the Valley Oaks CAFO include all manure to be generated even though the Valley Oaks CAFO only will land apply 70% of it. This argument ignores the very next subsection of the regulation, which provides:

> 3. Solid manure and dry process waste to be sold or used as bedding shall have a minimum design storage period of ninety (90) days unless justification is given for a shorter time period.

All dry process waste, whether land applied by the CAFO operation or sold, must be accounted for in the storage calculations. Valley Oaks chose to make its calculations, under an engineer's

and it is beyond the Department's statutory authority to apply 10 CSR 20-8.300(12) to an application in this class. A case-specific determination was therefore unnecessary, and the Department's decision to issue the permit was not unlawful on this basis.

Count IV – Protection of Water Quality

There is an unnamed tributary to the East Branch Crawford Creek that bisects the property on which the Valley Oaks CAFO is located. Valley Oaks' original CAFO application did not identify any ponds to be constructed near the facility. During the application process, however, Valley Oaks submitted a revised site plan that proposed building two new ponds located downhill and to the east of the confinement buildings, less than 200 feet from the tributary. One of the ponds is located in a flood zone for the tributary. Powell Gardens alleges that due to the design of facility, there is a significant likelihood that rainwater will contact manure and flow into the ponds, making them process wastewater ponds subject to additional regulatory requirements.

10 CSR 20-6.300(2)(E) provides:

> 1. The Department will not examine the adequacy or efficiency of the structural, mechanical, or electrical components of the waste management systems, only adherence to rules and regulations. The issuance of permits will not include approval of such features.

The Valley Oaks application has the required seal and signature of an engineer, and his statement indicating the project was designed in accordance with 10 CSR 20-8.300 as a no-discharge facility. No evidence suggests the ponds are intended to store process wastewater. And although there may be a significant likelihood of some spillage into the ponds, this is an operational concern, not a permitting concern. The Department is not permitted to inquire further into the design. 10 CSR 20-6.300(2)(E). We conclude that the Department's decision to issue the permit was not unlawful on this basis.

notice itself was dated January 30, 2018. The permit application that was reviewed and ultimately approved by the Department was filed by Valley Oaks on December 19, 2017. Caldwell testified on cross examination that neighbor notices are required to be provided prior to the submission of a permit application. The Department did not offer excuse, justification or authority for waiving this requirement. Darrick Steen, a former employee of the Department, testified that in his experience, if there had been residences that did not receive a neighbor notice during his tenure, the Department would have called that to the applicant's attention and allowed the error to be corrected. He did not offer an opinion as to what he thought should happen where, as here, the applicant skipped over the process entirely.

The timelines for review of permit applications set forth by the legislature in § 644.051 mandate a speedy process. We conclude that providing the required neighbor notices before, rather than during, the Department's review is essential to preserving the balance between the legislature's desire that the Department issue a timely and definitive decision and its mandate for a meaningful public participation process. Because Valley Oaks submitted its application before providing the required neighbor notices, the permit was issued unlawfully.

Count VI – Continuing Authority

Counts I and VIII of Powell Gardens' second amended complaint allege that in its application, Valley Oaks failed to furnish proof that a "permanent organization exists which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application [was] made" as is required by 10 CSR 20-6.010(3)(A). In *In the Matter of Trenton Farms Re, LLC v. Missouri Dep't of Natural Resources*, the Court of Appeals provided guidance as to what this regulation requires, which is simply to identify the entity that will serve the function. 504 S.W.3d 157, 166 (Mo. App. W.D. 2016). Valley Oaks failed in this

During the pendency of the case before the AHC, the Department re-issued Permit MOG010872 to "Valley Oaks Real Estate, LLC" as owner and continuing authority. The AHC permitted Powell Gardens to amend its complaint to address this change is circumstance. Powell Gardens argues that the rule authorizing such a transfer requires "an application to transfer signed by the existing owner and/or continuing authority and the new owner and/or continuing authority." 10 CSR 20-6.010(11)(A). For the Department, Caldwell testified at the hearing that if the Department discovers a typographical error, then it has the option of an "internal modification." Tr. at 145-46. Authority for such a modification may be found in § 644.052.8. This section refers to "name changes, address changes, or other nonsubstantive changes to the operating permit," and prescribes a fee. But even assuming that Valley Oaks intended to apply for the permit in the name of Countryclub Homes, LLC, the change made by the Department is neither a name change nor nonsubstantive. "Country Club Homes, LLC," a non-existent entity, is listed as both owner and continuing authority on the Form W application. The permit issued on August 9, 2018 was issued to "Valley Oaks Real Estate, LLC," a completely different entity. We agree with Powell Gardens that this was a purported transfer of the permit, and because no one can sign for a non-existent entity, the transfer was ineffective. In any case, for the reasons stated here and below, we have found that the permit was issued unlawfully, and the transfer of a void instrument to a new owner cannot revive it.

Summary

The AHC recommends that the Missouri Clean Water Commission reverse the Department's decision to issue Permit No. MOG010872 because the applicant failed to provide realistic yield goals for the fields it identified for land application of manure in violation of 10 CSR 20-6.300(3)(G)2.A; failed to provide for adequate storage by misapplying the definition of dry process waste in violation of 10 CSR 20-6.300(1)(A)11 and 10 CSR 20-8.300(5)B.2; failed

Exhibit B

FURTHER AFFIANT SAYETH NOT.

Elizabeth Deich

Elizabeth Deich

Sworn to before me and subscribed in my presence this 5th day of February, 2019.

Suzanne Williams

Notary Public

My commission expires:

SUZANNE WILLIAMS
Notary Public - Notary Seal
STATE OF MISSOURI
Jackson County
Commission # 13448122
My Commission Expires: 8/22/20 21

Before the
Administrative Hearing Commission
State of Missouri

IN RE COUNTRY CLUB HOMES, LLC,	)	
PERMIT NO. MOG010872	)	Nos. 18-0498 and 18-0501
	)	

ORDER

We stay of the Department of Natural Resources' ("Department") action of June 15, 2018 granting Permit No. MOG010872 pending this Commission's findings and determination in the cause.

Procedure

On June 25, 2018, Lone Jack Neighbors for Responsible Agriculture, LLC, filed a complaint appealing the Department's decision to issue Class IB CAFO Permit No. MOG010872 in the name of Valley Oaks Steak Company, LLC ("Valley Oaks"). On June 27, 2018, Powell Gardens, Inc., Ryan and Elizabeth Deich, and the Robert M. Chamness Trust filed a complaint appealing the same permit. On July 3, 2018, Valley Oaks filed a motion to intervene in both cases, which we granted. The Petitioners in both cases filed a motion for a stay of the Department's action granting the permit. On July 9, 2018 we held a combined hearing in both cases on the issue of the stay. Stephen G. Jeffery appeared for Lone Jack Neighbors; Charles W. Hatfield and Aimee Davenport appeared for Powell Gardens, Inc., *et al.*; Assistant Attorneys General Jennifer Hernandez and Shawna Bligh appeared on behalf of the Department; and Jean Paul Bradshaw II and Jennifer Griffin appeared for Valley Oaks.

13. On December 19, 2017, Ward submitted a Permit Application (Form W) to the Department for a proposed concentrated animal feeding operation ("CAFO") to be located on the property comprising the AFO in Johnson County, Missouri. ("the facility" or "Valley Oaks"). "Country Club Homes, LLC" was listed on the application as the continuing authority that is responsible for the operation, maintenance, and modernization of the facility to which the permit is issued.

14. On June 15, 2018, DNR issued Permit No. MOG010872 to "Country Club Homes, LLC, 1120 NE Eagle Ridge Blvd., Grain Valley, Mo 64029" for the operation of a Class IB CAFO.[1] A Class IB CAFO requires a permit from the Department.

15. A "Certificate of No Record," dated June 27, 2018, from the Missouri Secretary of State indicates than no entity named "Country Club Homes, LLC, 1120 NE Eagle Ridge Blvd., Grain Valley, Mo 64029" exists.

16. The holder of a Class IB CAFO permit may hold up to 6,999 animal units in its facility. One cow is equal to one animal unit. No permit is required for a facility holding up to 1,000 beef cattle.

17. As of June 15, 2018, there were approximately 900 head of cattle at the facility, and since that time, the facility has added 1,000 head of cattle. Ward plans to add 2,600 additional head of cattle to the Valley Oaks CAFO by the end of 2018.

18. With the permit application, plans were submitted for a facility with six confinement barns and two manure storage sheds that Valley Oaks projects that, when operating at full capacity, the allotted capacity of 6,999 beef cattle raised on the facility would generate approximately 111,134 tons of manure and urine on an annual basis.

[1] The permit is actually issued in the name of "County Club Homes, LLC."

29. The Permit requires process wastes to be "collected and reused as a soil amendment by spreading onto agricultural fields at agricultural rates", as set forth in the nutrient management plan attached thereto as Attachment A (the "Nutrient Management Plan").

30. The Nutrient Management Plan was submitted to the Department on behalf of Valley Oaks and, ultimately, approved by the Department.

31. Some of the lands on which Valley Oaks has indicated it will land apply manure are in the same watershed (Blackwater) as Powell Gardens.

32. The Nutrient Management Plan projects cool season grass hay yields of 6.0 tons per acre on fields 18A, 18B, 18C, 18D, 19A, 19B, 20A, 36A, 37A, 40A, 40B, 40C, 40D, 76A, 76B, 76C, 76D, 76E, 76F, 76G, 77A, 77B, 77C, 93C, 93D, 93E, 93F, 93G, 93H, and 93I.

33. 17. Valley Oaks' projections for cool season grass hay yields at 6.0 tons per acre are nearly three times the state historical average and the historical average for the counties in which the fields are located.

34. In 2017, the average cool season grass hay production in the state of Missouri, as a whole, was 1.95 tons per acre.

35. In 2017, the average cool season grass hay production in Johnson County, Missouri, was approximately 2.20 tons per acre.

36. Caldwell does not know how Valley Oaks calculated its cool season grass hay yield goals.

37. Caldwell testified that "I have seen other hayfield, other cool season grass hayfields achieve that goal and higher." Tr. 206.

38. The Department record does not contain any evidence of how Valley Oaks arrived at its cool season grass hay yields.

Absent a specific statutory framework outlining the conditions for a stay, this Commission follows the guidelines set forth in *State ex rel. Director of Revenue, State of Missouri v. Gabbert*, 925 S.W.2d 838, 839-840 (Mo. banc 1996). The person seeking a stay of an administrative order must justify the stay. An administrative order or decision will not be stayed pending appeal where the applicant has not sustained his or her burden of proof or otherwise has not made the required showings. *Id.* To decide whether to issue a stay, we consider four factors:

(1) the likelihood that the party seeking the stay will prevail on the merits;

(2) the likelihood that the moving party will be irreparably harmed absent a stay;

(3) the prospect that others will be harmed if the court grants the stay; and

(4) the public interest in granting the stay.

To obtain a stay, Petitioners must present evidence to:

> Show that the probability of success on the merits and irreparable harm decidedly outweigh any potential harm to the other party or to the public interest if a stay is issued. . . . Of course, this inquiry should not be rigid or "wooden" and cannot be accomplished with "mathematical precision." . . . "The equitable nature of the proceeding mandates that the court's approach be flexible enough to encompass the particular circumstances of each case."

Id.

(1) Likelihood of Success on the Merits

(A) Continuing Authority

To successfully challenge the issuance of the permit, Petitioners must show that the permit was issued in violation of statute or regulation. 10 CSR 20-6.010(3)(A) provides:

> All applicants for construction permits or operating permits shall show, as part of their application, that a permanent organization exists which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application is made. Construction and first-time operating permits shall not be issued unless the applicant provides such proof to the department and the continuing authority has submitted a statement indicating acceptance of the facility.

6.300(3)(G)2.A. The "Missouri Concentrated Animal Feeding Operation Nutrient Management Technical Standard (NMTS) approved by the Clean Water Commission on March 4, 2009", which is incorporated by reference into the regulations governing Class IB CAFOs and into Valley Oaks' Permit, require that yield goals be justified by historical data:

> Yield goals should be based on crop yield records from multiple years for the field. Good judgment should be used to adjust yield goals to counteract unusually low or high yields. When a field's yield history is not available another referenced source may be used to estimate yield goal.

Petitioners produced evidence indicating that the cool season grass hay yields submitted by Valley Oaks and approved by the Department, as part of its Nutrient Management Plan, are not supported by any historical data. The evidence indicates that Valley Oaks' projected cool season grass hay yields of 6.0 tons per acre are approximately three times the average for the Johnson County, Missouri, and the state of Missouri as a whole. Valley Oaks did not submit any historical data to support its cool season grass hay yields, and no such information exists in the Department's record. The permit approval appears to be based on Caldwell's anecdotal recollection that "I have seen other hayfield, other cool season grass hayfields achieve that goal and higher." Tr. 206. We conclude that Petitioners have shown a reasonable likelihood of success on this point.

(2) Likelihood of Irreparable Harm to the Moving Party

Petitioners submitted evidence that Valley Oaks has ramped up its operation in the weeks since June 15. Ward's testimony was that as of the date of our stay hearing, he had increased the number of cattle on site from approximately 900 to approximately 1,900, and had plans to increase the number further to approximately 4,500 by year's end. He has built additional confinement structures and a manure storage shed, and testified that another storage shed will be completed in about 60 days. Valley Oaks' facility design submitted with its permit application purports to assure the Department and the public that the facility, when constructed, will be able

facility with the ability to keep up to 1,000 beef cattle on the premises. The lion's share of the costs listed by Ward were incurred or contracted-for prior to June 15, 2018 – in other words, when Valley Oaks was an unpermitted facility with the ability to keep up to 1,000 beef cattle on the premises. We conclude that while a stay may result in financial harm to Valley Oaks, the bulk of that harm is the result of Ward's own actions in anticipation of receiving a permit, and as a result, does not outweigh the other factors in our analysis.

(C) Public Interest

The public at large, and the government of the State of Missouri, have an interest in protecting water quality and the environment. The public and the government also have an interest in promoting responsible agriculture and a reliable food supply. The Department received thousands of pages of letters from concerned citizens opposing the CAFO and expressing concern about its environmental impacts. Considered along with the frailties outlined above in Valley Oaks' permit application and the Department's approval process, we conclude that the environmental protection interests outweigh Valley Oaks' interests in accelerating its operations during the time in which this appeal is pending.

Summary

We grant a stay of the Department's action of June 15, 2018 granting Permit No. MOG010872 pending this Commission's findings and determination in the cause.

SO ORDERED on July 26, 2018.

BRETT W. BERRI
Commissioner

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18AC-CC00336 - MO DEPARTMENT OF NATRUAL V COMM. BRETT BERRI, ADMI (E-CASE)

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11/26/2018 Order

case dismissed as moot. PSJ/rlo

11/09/2018 **Judge/Clerk - Note**

Order of dismissal printed for judge review. rlo

11/07/2018 Proposed Order Filed

Proposed Order of Dismissal; Electronic Filing Certificate of Service.Forwarded to Div IV queue for Judge's review. mlf

Filed By: JENNIFER HERNANDEZ

On Behalf Of: MO DEPARTMENT OF NATRUAL RESOURCES

11/05/2018 Motion Hearing Held

Petitioner by Attorney Hernandez. Intervenors appear by Attorney Hatfield and Davenport. Homes and Valley Real Estate Country Club is granted leave to intervene. Case continued to 11-9-18. PSJ/rlo

Scheduled For: 11/05/2018; 1:30 PM ; PATRICIA S JOYCE; Cole Circuit

Entry of Appearance Filed

Entry of Appearance; Electronic Filing Certificate of Service.

Filed By: JENNIFER HERNANDEZ

On Behalf Of: MO DEPARTMENT OF NATRUAL RESOURCES

10/29/2018 **Notice of Service**

Notice of Service Complete; Electronic Filing Certificate of Service.

Filed By: SHAWNA MARIE BLIGH

On Behalf Of: MO DEPARTMENT OF NATRUAL RESOURCES

Corporation Served

Document ID - 18-C230-10; Served To - ADMINISTRATIVE HEARING COMMISSION; Server - COLE COUNTY SHERIFF'S DEPARTMENT; Served Date - 22-OCT-18; Served Time - 09:00:00; Service Type - Sheriff Department; Reason Description - Served; Service Text - See return

10/25/2018 Notice of Hearing Filed

Notice of Hearing; Electronic Filing Certificate of Service.

Filed By: CHARLES WILLIAM HATFIELD

On Behalf Of: POWELL GARDENS, ROBERT M CHAMNESS TRUST, RYAN DEICH, ELIZABETH DIECH

10/23/2018 Request Filed

09/17/2018 Order

The Powell Gardens, Inc., Ryan and Elizabeth Deich, the Robert M Chamness Trust and the Lone Jack Neighbors for Responsible Agriculture, LLC Joint Motion to Intervene is granted and deemed the Answer of Intervenors filed. /s/JEB/jw

Filed By: JON EDWARD BEETEM

Order

Case placed on 10-12-2018 law day at 9:00 am to schedule hearing on cause. /s/JEB/jw

Filed By: JON EDWARD BEETEM

09/05/2018 Motion to Intervene

Request to Grant Motion to Intervene; Proposed Order; Electronic Filing Certificate of Service.

08/28/2018 Order

The Court clarifies it's Writ of Preliminary Prohibition as being limited to barring Commissioner Berri in his official capacity from enforcing the stay order entered on July 26, 2018 in AHC case #'s 18AC-CC00498 and 18AC-CC00501 pending further order of the Court. Nothing in the Preliminary Writ should be interpreted to mean the the underlying AHC case cannot proceed to hearing. /s/JEB/jw

Filed By: JON EDWARD BEETEM

08/27/2018 **Note to Clerk eFiling**

Filed By: CHARLES WILLIAM HATFIELD

Motion to Intervene

Joint Motion to Intervene and Suggestions in Support; Exhibit 1; Exhibit 2; Exhibit 3; Exhibit 4; Exhibit 5; Exhibit 5 part 2; Exhibit 5 part 3; Exhibit 5 part 4; Intervenors Joint Proposed Answer to Petition for Writ of Prohibition; Electronic Filing Certificate of Service.

Filed By: CHARLES WILLIAM HATFIELD

08/24/2018 Writ Issued

Document ID: 18-C230-10, for ADMINISTRATIVE HEARING COMMISSION.Attorney to print two copies of service document created to issue for service and return. Service copy to include filings to serve, if applicable. msh

08/22/2018 Other Proposed Document Filed

Proposed Writ of Prohibition.Forwarded to Div I queue for Judge's review. msh

08/21/2018 **Filing Info Sheet eFiling**

Filed By: SHAWNA MARIE BLIGH

Pet Filed in Circuit Ct

Petition for Writ of Prohibition; Suggestion in Support of Petition in Mandamus; Exhibit A; Exhibit B; Exhibit C; Exhibit D; Exhibit E; Exhibit F. msh

Filed By: SHAWNA MARIE BLIGH

On Behalf Of: MO DEPARTMENT OF NATRUAL RESOURCES

Judge Assigned

11/26/2016 **Dismiss by Ct w/o Prejudice**

RECEIVED
JAN 07 2019
Water Protection Program

BEFORE THE
MISSOURI CLEAN WATER COMMISSION

In The Matter Of:	)	
	)	
Country Club Homes, LLC	)	**Appeal No. 18-0501**
	)	
	)	
	)	

FINAL DECISION

The Missouri Department of Natural Resources issued general operating permit MOG010872 to Country Club Homes, LLC, for a concentrated animal feeding operation. Powell Gardens, Inc., Mr. Ryan and Ms. Elizabeth Deich and Mr. Robert M. Chamness Trust (collectively referred to as Powell Gardens) filed an appeal. The Administrative Hearing Commission (AHC) heard the appeal on August 27 through 28, 2018, and issued its recommendations to the Commission on October 23, 2018.

The Commission may 1) adopt the AHC's recommendation; 2) change findings of fact or conclusions of law; or 3) vacate or modify the recommended decision.[1] If the Commission either changes findings of fact or conclusions of law or vacates or modifies the recommended decision, it must state the specific reason(s) in writing for the change(s).[2] Commission hereby adopts the AHC's recommended decision. This decision is based on the facts and evidence presented to the Commission pursuant to RSMo 644.026 and its corresponding regulations.

[1]Section 621.250.3, RSMo Supp. 2006
[2]*Id.*

BEFORE THE
MISSOURI CLEAN WATER COMMISSION

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Exhibit F

4. In this case, I relied on the assistance of other professionals at Stinson in the successful litigation of this case. The other professionals at Stinson who rendered services in this matter were partners Charles W. Hatfield, associates Matthew D. Moderson and Brett A. Shanks, and paralegal Marsha Presley. I am personally familiar with the skills and experience of these professionals. These professionals' standard rates are significantly higher than $75.00 per hour.

5. Mr. Hatfield graduated from the University of Missouri-Columbia School of Law in 1993 and has practiced in Jefferson City, Missouri, for his entire career, first with the State of Missouri (1993-2003) and then with Stinson (2003-Present). Prior to joining Stinson, Mr. Hatfield served as Chief of Staff and Counsel to the Missouri Attorney General in Jefferson City where he participated in and supervised a broad range of complex litigation, and represented multiple state agencies to defend the validity of state statutes. Mr. Hatfield is rated AV by Martindale-Hubbell, listed in Best Lawyers in America for Commercial Litigation and Government Relations, and has first-chaired more than 20 appeals to the Missouri Supreme Court on various issues related to Missouri government.

6. Mr. Moderson has been practicing law for more than 7 years. He graduated *cum laude* from Auburn University, with a bachelor's degree in finance. Mr. Moderson attended the University of Missouri-Kansas City School of Law, from which he graduated *cum laude* and with other distinctions in 2011, including serving as an editor on the law review and publishing in both of the school's journals. Mr. Moderson has represented clients in a number of complex commercial matters, including two prior matters in which the construction of CAFOs were at issue. He performed the bulk of associate work on this matter.

7. Mr. Shanks also provided assistance on this case. He graduated *summa cum laude* from Park University in 2008, earned a master's degree from Avila University in 2010, and

sophisticated questions of fact and law. It was vigorously contested from the outset by counsel for the State and for Intervenors. During the approximately six months during which it was active, the parties engaged in extensive motion practice on a variety of issues, ranging from motions to dismiss, motions to stay the effectiveness of the permit, and detailed briefing setting forth proposed findings of fact and conclusions of law. Our firm prepared for and successfully represented our clients in three separate evidentiary hearings. In effect, the parties compressed a complex civil case and took it to trial in fewer than six months.

FURTHER AFFIANT SAYETH NOT.

Aimee D. Davenport, Esq.

State of Missouri)
) ss.
County of ~~Cole~~ Boone)

Subscribed and sworn to before me, a notary public, this 6th day of February, 2019.

Notary Public

My commission expires: 6.3.22

STEPHANIE KREITNER
Notary Public - Notary Seal
Boone County - State of Missouri
Commission Number 12723370
My Commission Expires Jun 3, 2022

Timekeeper Name	Tkpr Title	Work Date	Work Hrs	Statutory Rate	Work Amt	Narrative
Shanks, Brett A	Associate	6/6/2018	0.90	75.00	67.50	Research [redacted] for potential expert witness services related to [redacted].
Davenport, Aimee	Partner	6/14/2018	2.70	75.00	202.50	Correspondence to [redacted] regarding issuance of permit; correspond with experts regarding issuance of permit; correspond with [redacted] regarding issuance of permit; begin drafting permit appeal.
Presley, Marsha	Paralegal	6/15/2018	0.70	75.00	52.50	Review and retrieve documents from links provided by Department of Natural Resources in response to Powell Garden's Comments on permit being issued to Valley Oak Steak.
Presley, Marsha	Paralegal	6/15/2018	0.20	75.00	15.00	Draft sunshine request to Department of Natural Resources for all records associated with the actual permit application.
Moderson, Matt	Associate	6/16/2018	2.10	75.00	157.50	Analyze relevant background materials (e.g., [redacted]), as necessary to begin drafting appeal to the Administrative Hearing Commission.
Hatfield, Charles W	Partner	6/18/2018	1.80	75.00	135.00	Confer with Ms. Davenport to prepare for [redacted] call; review motion for preliminary injunction.
Davenport, Aimee	Partner	6/18/2018	3.00	75.00	225.00	Prepare for meeting with the [redacted]; travel to/from [redacted].
Davenport, Aimee	Partner	6/18/2018	0.50	75.00	37.50	Email correspondence with C. Nelson and M. Moderson regarding pending legal matters; email correspondence with [redacted] and team regarding press release for the appeal and injunction.
Moderson, Matt	Associate	6/18/2018	1.70	75.00	127.50	Conference with Ms. Davenport to discuss case strategy; conference with SES regarding [redacted]; prepare petition for appeal to the Administrative Hearing Commission.
Moderson, Matt	Associate	6/18/2018	2.90	75.00	217.50	Continue drafting petition for appeal to the Administrative Hearing Commission (which project was started earlier in the day).
Davenport, Aimee	Partner	6/19/2018	2.20	75.00	165.00	Email correspondence with C. Hatfield and C. Nelson regarding Jackson County litigation matter; conference and email correspondence with [redacted]; revisions to Notice of Appeal and Motion for Stay for the Administrative Hearing matter.
Presley, Marsha	Paralegal	6/19/2018	0.70	75.00	52.50	Review Department of Natural Resources document response to additional Sunshine request and request Practice Support to upload materials into Relativity.
Presley, Marsha	Paralegal	6/19/2018	0.10	75.00	7.50	Telephone call to Mr. Baker to clarify Department of Natural Resources' response to Sunshine request.
Moderson, Matt	Associate	6/19/2018	2.60	75.00	195.00	Revise petition for appeal to the Administrative Hearing Commission, and forward to Ms. Davenport for review; begin drafting Motion for Stay.
Davenport, Aimee	Partner	6/21/2018	1.90	75.00	142.50	Revisions and Review to the final drafts and gathering of supporting evidence for Notice of Appeal and Motion to Stay; email correspondence with M. Moderson.
Presley, Marsha	Paralegal	6/21/2018	1.80	75.00	135.00	Meet with Ms. Davenport regarding materials to be reviewed from Department of Natural Resources; prepare materials to be reviewed by [redacted].
Moderson, Matt	Associate	6/21/2018	3.30	75.00	247.50	Conference with Ms. Davenport regarding AHC appeal; locate additional legal authorities to support petition for appeal; conference with [redacted] regarding [redacted] related to the appeal; review background materials and pertinent state regulations as necessary to draft motion for stay.
Davenport, Aimee	Partner	6/25/2018	1.90	75.00	142.50	Email correspondence with M. Moderson regarding the Petition and Motion for Stay regarding the Permit Appeal; final revisions to appeal and motion for stay.
Presley, Marsha	Paralegal	6/25/2018	0.30	75.00	22.50	Telephone calls with Mr. Moderson regarding Petition and Stay with Administrative Hearing Commission; meet with Mr. Hatfield and Ms. Davenport regarding Petition and Stay to be filed with the Administrative Hearing Commission.
Davenport, Aimee	Partner	6/26/2018	1.60	75.00	120.00	Email correspondence with team to finalize documents for the Administrative Hearing Commission.
Moderson, Matt	Associate	6/26/2018	2.50	75.00	187.50	Finalize Petition and Motion for Stay, and oversee timely filing and gathering of exhibits.

Moderson, Matt	Associate	7/11/2018	6.40	75.00	480.00	Prepare first version of Findings of Fact and Conclusion of Law, related to July 9, 2018 hearing on motion to stay.
Moderson, Matt	Associate	7/12/2018	0.80	75.00	60.00	Review Valley Oaks' response to motion for stay.
Moderson, Matt	Associate	7/12/2018	4.30	75.00	322.50	Revise proposed findings of fact and conclusions of law, related to July 9, 2018 hearing on motion to stay.
Davenport, Aimee	Partner	7/12/2018	2.90	75.00	217.50	Review and revise draft of Findings of Facts and Conclusions of Law.
Presley, Marsha	Paralegal	7/13/2018	1.60	75.00	120.00	Review file to determine exhibits utilized at the hearing; telephone call to Tiger Court Reporting to request copy of the hearing transcript in ASCII format; load transcript into TextMap; confer with Mr. Moderson, Ms. Davenport and Ms. Ryan regarding the transcript being loaded.
Moderson, Matt	Associate	7/13/2018	2.70	75.00	202.50	Revise findings of fact and conclusions of law, related to July 9, 2018 hearing on motion to stay.
Moderson, Matt	Associate	7/13/2018	1.00	75.00	75.00	Conference with [redacted] regarding his comments to proposed findings of fact and conclusions of law.
Davenport, Aimee	Partner	7/13/2018	2.20	75.00	165.00	Review Transcript of Hearing and make additional revisions to Findings of Facts and Conclusions of Law.
Presley, Marsha	Paralegal	7/16/2018	0.10	75.00	7.50	Confer with Ms. Davenport and Mr. Hatfield regarding Findings of Fact.
Moderson, Matt	Associate	7/16/2018	8.20	75.00	615.00	Review Volumes I and II of transcript from July 9, 2018 hearing; identify transcript citations and exhibits to support findings of fact; revise proposed findings of fact and conclusions of law; phone conference with [redacted] to discuss various matters related to proposed filing.
Davenport, Aimee	Partner	7/16/2018	1.20	75.00	90.00	Review and respond to emails from group regarding upcoming meeting and Stay. Powell Gardens (NPDES) – Review and Respond to ownership and control for land application purposes; follow up with [redacted] regarding the same.
Presley, Marsha	Paralegal	7/17/2018	0.10	75.00	7.50	Telephone call with Ms. Davenport regarding Findings of Fact submission.
Presley, Marsha	Paralegal	7/17/2018	0.20	75.00	15.00	Meet with Ms. Ryan regarding exhibits.
Presley, Marsha	Paralegal	7/17/2018	1.80	75.00	135.00	Revise Findings of Fact, prepare for filing and file; notify [redacted] and opposing counsel that the pleading was filed.
Moderson, Matt	Associate	7/17/2018	7.70	75.00	577.50	Revise findings of fact and conclusions of law related to July 9, 2018 hearing on motion to stay; confirm accuracy of all cited transcripts, exhibits, and legal references; work with Ms. Davenport and Mr. Hatfield to file final brief.
Hatfield, Charles W	Partner	7/17/2018	1.40	75.00	105.00	Confer with Ms. Davenport regarding proposed order; review and edit revisions; two calls with Mr. Moderson regarding edits.
Hatfield, Charles W	Partner	7/17/2018	0.60	75.00	45.00	Review joint proposed judgment from State and Valley Oaks.
Davenport, Aimee	Partner	7/17/2018	3.80	75.00	285.00	Final review and revisions made to Petitioners' Proposed Findings of Fact and Conclusions of Law.
Presley, Marsha	Paralegal	7/18/2018	0.10	75.00	7.50	Confer with Ms. Ryan regarding Findings of Fact.
Presley, Marsha	Paralegal	7/18/2018	0.40	75.00	30.00	Draft Amended Certificate of Service and file; email opposing counsel regarding filing.
Moderson, Matt	Associate	7/18/2018	2.20	75.00	165.00	Review Valley Oaks' and the Department's proposed findings of fact and conclusions of law; review legal authorities cited therein concerning [redacted]; conference with [redacted].
Davenport, Aimee	Partner	7/19/2018	2.40	75.00	180.00	Prepare, travel to/from, and attend meeting with [redacted] to review and discuss [redacted].
Presley, Marsha	Paralegal	7/20/2018	0.40	75.00	30.00	Review and revise amendment; confer with Mr. Hatfield; prepare amendment for electronic filing and file.
Moderson, Matt	Associate	7/20/2018	1.40	75.00	105.00	Conference with Ms. Davenport; prepare amendment to Powell Garden's proposed findings of fact and conclusions of law, to clarify [redacted].
Davenport, Aimee	Partner	7/20/2018	1.70	75.00	127.50	Amend Proposed Findings of Facts [redacted].
Presley, Marsha	Paralegal	7/23/2018	0.20	75.00	15.00	Confer with Ms. Ryan and Ms. Davenport regarding the proposed discovery; prepare materials for Ms. Davenport.

Davenport, Aimee	Partner	8/7/2018	3.80	75.00	285.00	Draft responses regarding Valley Oaks motion for protective order; draft witness outlines for upcoming hearing.
Shanks, Brett A	Associate	8/8/2018	0.70	75.00	52.50	Review Intervenors' motion to dismiss for lack of standing and suggestions in support in preparation of drafting response to same.
Davenport, Aimee	Partner	8/8/2018	2.20	75.00	165.00	Prepare for and attend conference call with [redacted]. Draft and revise response to Motion for Reconsider Stay.
Shanks, Brett A	Associate	8/8/2018	7.20	75.00	540.00	Draft framework for suggestions in opposition to Intervenors' motion to dismiss; draft suggestions in opposition to Intervenors' motion to amend answer to include a new affirmative defense; research Missouri statutory, administrative, and case law regarding: [redacted]
Moderson, Matt	Associate	8/9/2018	0.80	75.00	60.00	Finalize Petitioners' first production of documents.
Shanks, Brett A	Associate	8/9/2018	3.70	75.00	277.50	Draft substantive portions of Suggestions in Opposition to Intervenors' Motion for Leave and Motion to Dismiss; review and revise same based on comments from litigation team.
Moderson, Matt	Associate	8/9/2018	7.00	75.00	525.00	Review and prepare response to Intervenors' and Respondent's motion for reconsideration, including legal research to support opposition to same.
Moderson, Matt	Associate	8/10/2018	3.10	75.00	232.50	Finalize Petitioners' opposition to Respondent and Intervenors' motions to reconsider the Order to Stay by, inter alia, reviewing relevant pleadings, revising as necessary, and confirming accuracy of statements made therein.
Shanks, Brett A	Associate	8/10/2018	0.20	75.00	15.00	Incorporate Mr. Hatfield's edits into draft suggestions in opposition to motion to dismiss.
Davenport, Aimee	Partner	8/10/2018	1.80	75.00	135.00	Finalize response to Intervenor's Valley Oaks and Respondent Missouri Department of Natural Resources Motion to Reconsider.
Davenport, Aimee	Partner	8/10/2018	1.60	75.00	120.00	Finalize response to Intervenor's Valley Oaks Motion to Dismiss.
Presley, Marsha	Paralegal	8/13/2018	0.60	75.00	45.00	Confer with Mr. Hatfield regarding deposition of Corporate Representative and if protective order was filed in the Administrative Hearing Commission case; telephone call to Alaris to setup court reporter and confer with Ms. Cox regarding confirmation of conference room for deposition.
Presley, Marsha	Paralegal	8/14/2018	0.90	75.00	67.50	Telephone call with Ms. Davenport regarding status of case; prepare status [redacted]; review orders regarding deadlines for respond to Protective Order and Separate Hearing to notify Ms. Davenport; confer with Mr. Hatfield regarding canceling corporate designee deposition; contact Alaris to cancel court reporter.
Presley, Marsha	Paralegal	8/14/2018	0.10	75.00	7.50	Email to counsel postponing the Valley Oaks Corporate Designee deposition.
Moderson, Matt	Associate	8/14/2018	0.80	75.00	60.00	Review discovery responses served by Intervenors.
Moderson, Matt	Associate	8/14/2018	1.10	75.00	82.50	Prepare initial "Golden Rule" letter to Ms. Griffin regarding Intervenors' discovery responses.
Davenport, Aimee	Partner	8/14/2018	2.30	75.00	172.50	Review discovery responses submitted by Valley Oaks; draft reply.
Moderson, Matt	Associate	8/15/2018	1.50	75.00	112.50	Prepare first draft of Petitioners' opposition to motion for protective order (related to deposition of Valley Oaks).
Shanks, Brett A	Associate	8/15/2018	0.50	75.00	37.50	Attend and participate in team conference call to discuss [redacted].
Shanks, Brett A	Associate	8/15/2018	1.60	75.00	120.00	Draft suggestions in opposition to Intervenors' motion to bifurcate Commission hearing; research statute/administrative law in support of the same.
Presley, Marsha	Paralegal	8/16/2018	0.50	75.00	37.50	Review and prepare for electronic filing response to motion for protective order; confer with Ms. Davenport and Mr. Moderson regarding filing.
Presley, Marsha	Paralegal	8/16/2018	0.70	75.00	52.50	Review and revise opposition for separate trials; prepare for electronic filing and file; send email to opposing counsel; confer with Ms. Ryan regarding [redacted].
Moderson, Matt	Associate	8/16/2018	1.30	75.00	97.50	Finalize Powell Gardens' opposition to Intervenors' motion for protective order.
Shanks, Brett A	Associate	8/16/2018	0.30	75.00	22.50	Incorporate litigation team's suggestions in Opposition to Motion for Separate Commission hearings.
Davenport, Aimee	Partner	8/16/2018	1.80	75.00	135.00	Draft and revise pleadings in response to Valley Oaks pending motions; conference call with [redacted] to prepare for upcoming hearing.

Moderson, Matt	Associate	8/24/2018	8.50	75.00	637.50	Prepare for hearing by, among other things, finalizing deposition outlines, overseeing preparation of exhibits, reviewing new filings served by Intervenors, reviewing Intervenors' supplemental discovery responses, performing research and gathering cross-examination materials on Intervenors' designated experts, and otherwise.
Hatfield, Charles W	Partner	8/24/2018	2.20	75.00	165.00	Prepare for hearing with Ms. Davenport.
Davenport, Aimee	Partner	8/24/2018	6.10	75.00	457.50	Prepare for AHC hearing; prepare expert cross-examination outlines; draft Motion to Intervene in Cole County.
Presley, Marsha	Paralegal	8/25/2018	0.70	75.00	52.50	Prepare additional exhibits and revise exhibit list.
Presley, Marsha	Paralegal	8/26/2018	2.80	75.00	210.00	Prepare additional exhibits; update exhibit index; confer with Mr. Hatfield and Mr. Moderson.
Hatfield, Charles W	Partner	8/26/2018	0.70	75.00	52.50	Review and comment on suggestions in opposition to motion for stay.
Moderson, Matt	Associate	8/26/2018	7.50	75.00	562.50	Prepare for merits hearing on August 27-28, 2018.
Presley, Marsha	Paralegal	8/27/2018	2.30	75.00	172.50	Prepare additional exhibits and demonstrative exhibits; confer with Mr. Moderson and Mr. Hatfield on final trial preparation; telephone call from Mr. Hatfield and travel to hearing with materials requested.
Presley, Marsha	Paralegal	8/27/2018	1.90	75.00	142.50	Review answers from intervenors, prepare for electronic filing and file; prepare exhibits for motion to intervene and electronically file.
Davenport, Aimee	Partner	8/27/2018	12.10	75.00	907.50	Prepare for and attend AHC trial; [redacted].
Hatfield, Charles W	Partner	8/27/2018	13.50	75.00	1,012.50	Prepare for and attend Day 1 of permit appeal (witnesses Caldwell, Sweeten and Aley); [redacted].
Presley, Marsha	Paralegal	8/28/2018	1.10	75.00	82.50	Meet with Mr. Moderson and prepare additional exhibits for hearing.
Presley, Marsha	Paralegal	8/28/2018	0.80	75.00	60.00	Confer with Mr. Hatfield regarding notice of hearing in Cole County matter; draft notice of hearing; telephone call to Ms. Walters regarding early hearing date than law day; email counsel regarding conversation with Ms. Walters.
Davenport, Aimee	Partner	8/28/2018	11.30	75.00	847.50	Prepare for and attend AHC trial; [redacted].
Hatfield, Charles W	Partner	8/28/2018	4.20	75.00	315.00	Prepare for and participate in Day 2 of hearing; call with Mr. Moderson to outline expert cross.
Moderson, Matt	Associate	8/29/2018	2.50	75.00	187.50	Address various follow-up issues resulting from hearing on August 27-28, 2018, including [redacted].
Davenport, Aimee	Partner	8/29/2018	2.20	75.00	165.00	Draft summary of proceedings [redacted].
Presley, Marsha	Paralegal	9/5/2018	1.10	75.00	82.50	Review email from State regarding notice to court; revise request; meet with Ms. Davenport; revise proposed order; prepare request and order for electronic filing and file; confer with Ms. Davenport regarding due dates of finding of facts; telephone call to Tiger Court Reporter to get ASCII copy of transcripts; load transcript.
Presley, Marsha	Paralegal	9/6/2018	0.20	75.00	15.00	Confer with Ms. Ryan regarding transcripts and case; confer with Mr. Moderson regarding deadlines.
Moderson, Matt	Associate	9/13/2018	3.20	75.00	240.00	Review Volume 1 of transcript from August 27-28, 2018 hearing and excerpt key sections for findings of fact [redacted].
Moderson, Matt	Associate	9/14/2018	4.40	75.00	330.00	Review Volume 2 and part of Volume 3 of transcript from August 27-28, 2018 hearing, and excerpt relevant portions for findings of fact [redacted].
Moderson, Matt	Associate	9/17/2018	2.20	75.00	165.00	Review Volume 3 of transcript from hearing on August 27-28, 2018, and excerpt relevant portions for findings of fact [redacted].
Davenport, Aimee	Partner	9/17/2018	2.80	75.00	210.00	Revise Statement of Facts; draft conclusions of law regarding nutrient management.
Moderson, Matt	Associate	9/18/2018	1.40	75.00	105.00	Review transcript from AHC hearing on August 27-28, 2018 and identify key excerpts for findings of fact [redacted].
Davenport, Aimee	Partner	9/19/2018	2.10	75.00	157.50	Analyze findings of fact and conclusions of law filed by Valley Oaks, prepare response for filing.
Davenport, Aimee	Partner	9/20/2018	2.50	75.00	187.50	Analyze findings of fact and conclusions of law filed by Attorney General's Office, prepare response for filing.
Moderson, Matt	Associate	9/21/2018	5.60	75.00	420.00	Analyze proposed findings of fact filed by DNR and Intervenors; prepare initial outline of response to same.

Davenport, Aimee	Partner	12/6/2018	5.50	75.00	412.50	Prepare presentation and exhibits for upcoming Clean Water Commission hearing.
Moderson, Matt	Associate	12/6/2018	3.20	75.00	240.00	Perform legal research [redacted] and otherwise assist as necessary with preparations for Clean Water Commission hearing.
Presley, Marsha	Paralegal	12/7/2018	5.30	75.00	397.50	Download complaints submitted to the Department of Natural Resources from sunshine request; prepare materials for hearing; phone calls with Mr. Moderson; meeting with Ms. Davenport and Mr. Hatfield.
Moderson, Matt	Associate	12/7/2018	3.80	75.00	285.00	Assist with preparing for Clean Water Commission hearing, including by gathering relevant legal authorities and revising PowerPoint presentation.
Hatfield, Charles W	Partner	12/7/2018	1.80	75.00	135.00	Review and edit powerpoint and related documents for CWC meeting; general preparation for meeting.
Hatfield, Charles W	Partner	12/7/2018	0.70	75.00	52.50	Call with [redacted].
Davenport, Aimee	Partner	12/7/2018	4.00	75.00	300.00	Prepare presentation and exhibits for upcoming Clean Water Commission hearing.
Presley, Marsha	Paralegal	12/9/2018	0.50	75.00	37.50	Update materials for hearing before the Water Commission.
Presley, Marsha	Paralegal	12/10/2018	1.20	75.00	90.00	Last minute revisions and preparation for hearing before the Clean Water Commission; email from Ms. Davenport regarding needing materials while at hearing; send materials; meet with Ms. Davenport and Mr. Hatfield after Clean Water Commission hearing regarding [redacted].
Moderson, Matt	Associate	12/10/2018	1.60	75.00	120.00	Assist with various issues related to Clean Water Commission hearing, including pulling legal authorities and other documents as necessary.
Hatfield, Charles W	Partner	12/10/2018	6.20	75.00	465.00	Prepare for and attend CWC meeting; obtain revocation of permit; related [redacted].
Davenport, Aimee	Partner	12/10/2018	8.00	75.00	600.00	Prepare for and attend Clean Water Commission hearing on appeal; draft correspondence [redacted]; correspondence with various media outlets regarding the same.
			541.50		**40,612.50**	

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

POWELL GARDENS, INC., *et al.*	)	
	)	
Petitioners,	)	
	)	
v.	)	Case No. 18-0501
	)	
MISSOURI DEPARTMENT OF NATURAL RESOURCES,	)	
	)	
Respondent.	)	

Document Number	Date	Matter ID	Type	Event Notes	Action
69888	6/27/2018	18-0501	Complaint	Complaint	Preview document
69889	6/27/2018	18-0501	PDF Copy	Motion for stay with Exhibits A - G	Preview document
69897	6/27/2018	18-0501	Hearing Notice - DNR Non-Applicant	Hearing Notice - DNR Non-Applicant	Preview document
70044	7/3/2018	18-0501	PDF Copy	Motion to intervene filed by Valley Oaks Real Estate and Countryclub	Preview document
70045	7/3/2018	18-0501	PDF Copy	Intervenors' answer to petition for appeal	Preview document
70075	7/5/2018	18-0501	Order - General	Order - grant motion to intervene	Preview document
70362	7/9/2018	18-0501	PDF Copy	Resp. Exhibit B Supporting Documentation	Preview document
70363	7/9/2018	18-0501	PDF Copy	Resp. Exhibit C Comments from Neighbor Notice	Preview document
70401	7/9/2018	18-0501	PDF Copy	Intervenors' Suggestions in Opposition to Motion for Stay	Preview document
70446	7/10/2018	18-0501	PDF Copy	Resp. Ex. A	

71035	7/20/2018	18-0501	PDF Copy	Certificate of Service Filed	Preview document
71281	7/26/2018	18-0501	Order	Order granting mtn for stay	Preview document
71288	7/27/2018	18-0501	Objection Letter	Objection Letter to Petitioner on mtn to shorten deadline to respond	Preview document
71338	7/27/2018	18-0501	PDF Copy	Certificate of Service	Preview document
71400	7/30/2018	18-0501	PDF Copy	Petitioner's Response to Intervenors' Motion to Shorten Deadline to	Preview document
71401	7/31/2018	18-0501	PDF Copy	Consent Motion to Shorten Deadline for Intervenors to Respond to	Preview document
71402	7/31/2018	18-0501	Order - General	Order granting Intervenors' motion to shorten time to respond to	Preview document
71581	8/2/2018	18-0501	PDF Copy	Entry of appearance for Respondent	Preview document
71623	8/3/2018	18-0501	PDF Copy	Respondent's Answer	Preview document
71628	8/3/2018	18-0501	Order - Grant Motion to File Answ. Out of Time	Order - Grant Motion to File Answer Out of Time	Preview document
71701	8/3/2018	18-0501	PDF Copy	Respondent's Motion to File Answer out of Time	Preview document
71731	8/7/2018	18-0501	PDF Copy	Respondent's Motion to Reconsider Stay Order	Preview document
71732	8/7/2018	18-0501	PDF Copy	Petitioner's Certificate of Service	Preview document

72092	8/10/2018	18-0501	PDF Copy	Petitioners Suggestions in Opposition to Response to Motions to	Preview document
72176	8/13/2018	18-0501	PDF Copy	Certificate of Service	Preview document
72194	8/14/2018	18-0501	PDF Copy	Intervenor's Motion for Protective Order	Preview document
72200	8/14/2018	18-0501	PDF Copy	Intervenor's Motion to Hold Separate Hearing	Preview document
72202	8/14/2018	18-0501	Objection Letter	Objection letter to Petitioner on mtn for protective order	Preview document
72206	8/14/2018	18-0501	Objection Letter	Objection Letter to Pet and Resp on mtn to hold separate hearings	Preview document
72217	8/14/2018	18-0501	Order	Order on reconsideration of stay order	Preview document
72218	8/14/2018	18-0501	Order	Order denying Intervenors' mtn to dismiss	Preview document
72223	8/14/2018	18-0501	Order	Order on motion for contempt	Preview document
72380	8/16/2018	18-0501	PDF Copy	Petitioner's Suggestions in Opposition to Intervenors' Mtn to Hold	Preview document
72383	8/16/2018	18-0501	PDF Copy	Petitioner's Response to Intervenors' Mtn for PO and or Ps' Mtn to	Preview document
72384	8/16/2018	18-0501	PDF Copy	Powell Exh A	Preview document
72385	8/16/2018	18-0501	PDF Copy	Powell Exh B	Preview document
72386	8/16/2018	18-0501	PDF Copy	Powell Exh C	Preview document

73237	8/23/2018	18-0501	PDF Copy	Petitioner's Certificate of Sercive	Preview document
73279	8/23/2018	18-0501	PDF Copy	Certificate of Service filed that a copy of Intervenors' Countryclub	Preview document
73326	8/24/2018	18-0501	PDF Copy	Exhibit A Permit	Preview document
73327	8/24/2018	18-0501	PDF Copy	Exhibit B Amended Form W	Preview document
73328	8/24/2018	18-0501	PDF Copy	Exhibit C Modified Permit	Preview document
73329	8/24/2018	18-0501	PDF Copy	Powell First Amended Petition for Appeal - Copy	Preview document
73330	8/24/2018	18-0501	PDF Copy	Petitioner's Objection to Kempker Affidavit	Preview document
73331	8/24/2018	18-0501	PDF Copy	Petitioner's Objection Flick Affidavit	Preview document
73332	8/24/2018	18-0501	PDF Copy	Petitioners Objection to Tara Markley Affidavit and Records	Preview document
73336	8/24/2018	18-0501	PDF Copy	Intervenors' Motion to Strike/and Object to Portions of the Stay	Preview document
73337	8/24/2018	18-0501	PDF Copy	Intervenors Supplemental Record Designation for Hearing on the Merits	Preview document
73340	8/24/2018	18-0501	PDF Copy	Motion and Suggestions in Support of Motions in Limine	Preview document

73544	7/6/2018	18-0501	PDF Copy	Respondent's Exhibit C	Preview document
73547	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1010	Preview document
73548	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1009	Preview document
73551	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1008	Preview document
73552	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1007	Preview document
73553	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1006	Preview document
73557	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1005	Preview document
73558	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1004B	Preview document
73561	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1004A	Preview document
73563	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1003A	Preview document
73564	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1002B	Preview document
73567	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1002A	Preview document
73568	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1001	Preview document
73571	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1000	Preview document
73573	8/29/2018	18-0501	PDF Copy	Petitioner's's Exhibit 260	Preview document
73574	8/29/2018	18-0501	PDF Copy	Petitioner's's Exhibit 252	Preview document
73576	8/29/2018	18-0501	PDF Copy	Petitioner's's Exhibit 250	Preview document
73577	8/29/2018	18-0501	PDF Copy	Petitioner's's Exhibit 246	Preview document
73578	8/29/2018	18-0501	PDF Copy	Petitioner's's Exhibit 238	Preview document
73579	8/29/2018	18-0501	PDF Copy	Petitioner's's Exhibit 217	Preview document
73580	8/29/2018	18-0501	PDF Copy	Petitioner's's Exhibit 215	Preview document
73581	8/29/2018	18-0501	PDF Copy	Petitioner's's Exhibit 213	Preview document

Tab F

Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

New Business

Issue:

Any new business can be presented to the Commission.

Recommended Action:

None

List of Attachments:

None

Tab F1

Missouri Clean Water Commission
April 29, 2019
Lewis and Clark State Office Building

Financial Assistance Center Stormwater Grant and Loan Program

Issue: The Financial Assistance Center will be offering approximately $9 million dollars to first class counties, entitlement cities and the Metropolitan St. Louis Sewer District for stormwater projects.

Background: The Storm Water Grant and Loan program was established by Missouri voters in 1998 with passage of Article III, Section 37(h) of the Missouri Constitution. The Constitution authorizes the Board of Fund Commissioners[1] to issue stormwater bonds with approval from the General Assembly. Between state fiscal years 2000 and 2002, $45,000,000 in stormwater bond proceeds were generated through bond sales authorized by the General Assembly through budget legislation[2]. The Department of Natural Resources administers the fund on behalf of the Clean Water Commission, per 10 CSR 20-4.061.

Per the Missouri Constitution, eligible recipients are first class counties, entitlement cities and the Metropolitan St. Louis Sewer District for stormwater projects. Funds are offered to each eligible recipient from an allocation that is a percentage of the fund based on the population of the qualifying receiver in relation to the total population of all eligible entities, based on the most recent federal decennial census. Eligible entities can utilize half of their allocation as a grant, and half as a loan.

Proceeds from the last stormwater bond sale were fully expended through grants and loans in 2007. Since that time, the fund has been growing with repayments and interest from the loans made with bond proceeds. The fund balance is presently over $9 million, and the Department had determined funds are sufficient to offer to eligible recipients.

In March 2019, the Financial Assistance Center sent letters notifying eligible entities that funds will be available and provided information concerning program requirements and expectations. This early notice provides eligible recipients the ability to establish a Storm Water Coordinating Committee (as required by10 CSR 20-4.061(2)I), responsible for project screening and selection. The Financial Assistance Center will send each eligible entity an invitation to apply for their assigned allocation of the available funds in mid-summer.

Funds may be used for projects including development of stormwater control plans, engineering services, construction costs, land purchase costs, and demolition of structures in stormwater control areas. Following the invitation to apply, stormwater loans and/or

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[1] The Board of Fund Commissioners is comprised of the Governor, Lieutenant Governor, Attorney General, State Treasurer, and the Commissioner of Administration.
[2] The total Constitutional Authorization for stormwater bond sales is $200,000,000, of which $155,000,000 remains.

grants will be awarded within 12 months. Stormwater loans may include a term of up to 20 years, with repayment beginning within one year of project completion. Grant funds must be spent within three years of award.

No action from the Commission is necessary to make financial assistance awards from the Storm Water Grant and Loan Program.

Recommended Action: Information Only

List of Attachments:

- Funding Allocation Chart

Stormwater Fund Allocations to Counties and Cities

Population Information is from 2010 Census

Available Funds = $ 8,572,000

Recipient	First Class County Population	County % of Total First Class County Population	Preliminary County Share of Available Funds	City Population (within 1st class county)	City % of County Population	City Allocation of County Funds	County Allocation
Boone	162,642	3.95%	$ 338,594				**$ 112,718**
Columbia				108,500	66.71%	**$ 225,876**	
Buchanan	89,201	2.17%	$ 186,012				**$ 25,893**
St. Joseph				76,780	86.08%	**$ 160,119**	
Camden	44,002	1.07%	$ 91,720				**$ 91,720**
Cape Girardeau	75,674	1.84%	$ 157,725				**$ 78,642**
Cape Girardeau				37,941	50.14%	**$ 79,083**	
Cass	99,478	2.42%	$ 207,442				**$ 203,023**
Kansas City				197	0.20%	**$ 415**	
Lee's Summit				1,917	1.93%	**$ 4,004**	
Clay	221,939	5.39%	$ 462,031				**$ 112,365**
Gladstone				25,410	11.45%	**$ 52,903**	
Kansas City				113,415	51.10%	**$ 236,098**	
Liberty				29,149	13.13%	**$ 60,665**	
Cole	75,990	1.84%	$ 157,725				**$ 68,358**
Jefferson City				43,057	56.66%	**$ 89,367**	
Christian	77,422	1.88%	$ 161,154				**$ 161,154**
Springfield city				2	0.00%	**$ -**	
Franklin	101,492	2.46%	$ 210,871				**$ 210,871**
Greene	275,174	6.68%	$ 572,610				**$ 240,725**
Springfield city				159,496	57.96%	**$ 331,885**	
Jackson	674,158	16.37%	$ 1,403,236				**$ 173,300**
Blue Springs				52,575	7.80%	**$ 109,452**	
Independence				116,830	17.33%	**$ 243,181**	
Kansas City				302,499	44.87%	**$ 629,632**	
Lee's Summit				89,447	13.27%	**$ 186,209**	
Raytown				29,526	4.38%	**$ 61,462**	
Jasper	117,404	2.85%	$ 244,302				**$ 152,835**
Joplin				43,955	37.44%	**$ 91,467**	
Jefferson	218,733	5.31%	$ 455,173				**$ 455,173**
Platte	89,322	2.17%	$ 186,012				**$ 95,052**
Kansas City				43,676	48.90%	**$ 90,960**	
St. Charles	360,485	8.75%	$ 750,050				**$ 278,269**
O'Fallon				79,329	22.01%	**$ 165,086**	
St. Charles				65,794	18.25%	**$ 136,884**	
St. Peters				52,575	14.58%	**$ 109,357**	
Wentzville				29,070	8.06%	**$ 60,454**	
St. Francois	65,359	1.59%	$ 136,295				**$ 136,295**
St. Louis (MSD)	998,954	24.26%	$ 2,079,567				**$ 2,079,567**
Taney	51,675	1.25%	$ 107,150				**$ 107,150**
St. Louis City (MSD)	319,294	7.75%	$ 664,330				**$ 664,330**
Total	**4,118,398**	**100.00%**	**$ 8,572,000**			**$ 3,124,559**	**$ 5,447,441**
						Grand Total	**$ 8,572,000**

Missouri Total Population	**5,988,927**
% in First Class Counties	**68.77%**

City of Kansas City Summary		
Cass	$	415
Clay	$	236,098
Jackson	$	629,632
Platte	$	90,960
Total	$	957,105

MSD Summary		
St. Louis County	$	2,079,567
St. Louis City	$	664,330
Total	$	2,743,897

Notes & Sources:

* List of counties from Missouri Association of Counties list, published 1/1/17.
http://www.mocounties.com/images/1282/document/2017-classification_854.pdf
* Population data is from the US Census Bureau's America Fact Finder web site, 2010 census.
https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml
* 2010 Census shows all of Independence's population in Jackson county.
* State regulations show MSD as the stormwater permitting authority for St. Louis city and county.

Tab F2

Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Rulemaking Process

Issue:

This is a presentation to the Clean Water Commission review the Department's Rulemaking process.

Recommended Action:

None

List of Attachments:

- PowerPoint presentation

MISSOURI
DEPARTMENT OF
NATURAL RESOURCES

Rule Coordination

Jane Davis, Planner III
Clean Water Rule Coordinator

MISSOURI
DEPARTMENT OF
NATURAL RESOURCES

Rule Coordination

The Rulemaking Coordinator provides:

- ✓ Assistance in regulatory development
- ✓ Rule language review
- ✓ Regulatory scheduling assistance
- ✓ Stakeholder and work group coordination
- ✓ Fiscal note review

MISSOURI DEPARTMENT OF NATURAL RESOURCES

Why do Rulemaking?

- Meet a statutory requirement
- Implement the purpose of the statute
- Help regulated entities understand the requirements of the statute
- Address compliance problems
- Update requirements to reflect new findings

MISSOURI DEPARTMENT OF NATURAL RESOURCES

The Clean Water Commission What is Your Role?

- The Clean Water Commission may ask the Department to develop a rulemaking
- Rulemaking is developed for various reasons
- WPP Rulemakings are promulgated under the authority of the Clean Water Commission (RSMo 644.021)

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NATURAL RESOURCES

Department Rulemaking

The Department will develop rulemakings and associated reports, fiscal notes, and other documentation under a standardized process to:

- Ensure compliance with state law
- Achieve and maintain high-quality rulemakings
- Facilitate legal and management review
- Offer sufficient opportunity for public review and input

MISSOURI
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NATURAL RESOURCES

Department Rulemaking Policy

Administrative Rules

- Have the force of law when properly promulgated
- Authorizing statute - Section 536.016, RSMo
- Include an assessment of the effectiveness and cost of implementing the rule to the state and any private/public person or entity affected by the rule

MISSOURI
DEPARTMENT OF
NATURAL RESOURCES

Stages of Rulemaking

Step 1 – Request to Begin

1

The request to begin rulemaking package includes a memo to the Department Director which should:

- Describe the necessity of the rule and what it will accomplish
- Discuss any expected support or opposition
- Provide any potential stakeholder involvement
- Include a brief timeline

It is not required but, if available, the Request to Begin rulemaking package should include draft rule language

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NATURAL RESOURCES

Step 1 – Request to Begin

1

The Request to Begin rulemaking package moves through the Department's approval process as follows:

1. The Clean Water Rule Coordinator prepares the package for review/approval.
2. The WPP Program Director reviews the package and approves it or returns it to the Rule Coordinator for edits/additional information.
3. The Division Director reviews the package and approves it or returns it to the program for edits/additional information.
4. The Department's General Counsel reviews the package and approves it or returns it to the program for edits/additional information.
5. The Department Director reviews the package and approves it or returns it to the program for edits/additional information.

This process may take up to six weeks to complete.

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NATURAL RESOURCES

Step 1 – Request to Begin 1

- Once the Request to Begin package has been approved, the program schedules stakeholder meetings to discuss the rulemaking
- Draft rule language is provided to stakeholders at this meeting so changes to the rule can be discuss and stakeholders can provide input
- After stakeholder involvement is completed the draft rule language is finalized

MISSOURI
DEPARTMENT OF
NATURAL RESOURCES

2 Stages of Rulemaking
Step II – Proposed Rulemaking Package

The proposed rulemaking package should include the draft proposed rule text and supporting documents such as:

- Rule proposal summary
- Rulemaking report
- Regulatory impact report (RIR)
- Finding of necessity
- Small business impact statement
- Takings analysis determination
- Affidavit for public entity costs – more than/less than $500
- Fiscal notes – public and private

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NATURAL RESOURCES

2 Step II – Proposed Rulemaking Package

- The proposed rulemaking package will be reviewed and approved through the Department (as noted previously for the Request to Begin package)
- The Governor's office reviews and approves the proposed rulemaking package
- An Interagency Review is conducted concurrent with the Governor's review - interagency review includes the Departments of Economic Development, Agriculture, and Health and Senior Services (Ex. Order 02-05)
- If the rulemaking package includes an RIR, the RIR will be placed on public notice for 60 days
- The rulemaking package is filed with the Small Business Regulatory Fairness Board, the Joint Committee on Administrative Rules (JCAR) and the Secretary of State
- The proposed rulemaking is published in the *Missouri Register*
- A 30-day public comment period for the proposed rulemaking begins the same day as it is published

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NATURAL RESOURCES

Stages of Rulemaking
Step III – Order of Rulemaking 3

Once all public comments have been addressed, the Clean Water Rule Coordinator will put together the documents needed for the Order of Rulemaking package, which should include:

- Signed Affidavit for revised fiscal note, if applicable
- Revised fiscal note, if applicable
- Order of Rulemaking text
- Summary of Comments and Response to Comments
- Small Business Impact Statement, if applicable
- Various cover letters – SOS, JCAR

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NATURAL RESOURCES

Stage III – Order of Rulemaking ③

- The Order of Rulemaking package will be routed through the Division of Environmental Quality, the General Counsel's office, and to the Department Director for approval
- At this stage of the rulemaking process there is a short turn-around for approval; the General Counsel's Office should receive this package within fifteen days of the close of the public comment period
- The Water Protection Program will present the Order of Rulemaking to the Clean Water Commission with a recommendation for adoption – the Commission will be asked to formally adopt the Order of Rulemaking

MISSOURI
DEPARTMENT OF
NATURAL RESOURCES

Stage III – Order of Rulemaking ③

- After adoption by the Clean Water Commission the Order of Rulemaking is filed with JCAR (and Small Business Regulatory Fairness Board, if applicable) no later than fifty-nine days after the close of the public comment period
- No sooner than thirty days after filing with JCAR and no later than ninety days after the close of the public comment period, the Order of Rulemaking is filed with the Secretary of State
- Any changes to the proposed rule text that affect the original cost estimate requires a revised fiscal note to be filed with the Order of Rulemaking

MISSOURI
DEPARTMENT OF
NATURAL RESOURCES

Stage IV – Rule Becomes Effective 4

- At this stage of the rulemaking process little program staff involvement is necessary after filing the Order of Rulemaking with the SOS
- The rulemaking is published in the *Missouri Register*, then the *Code of State Regulations*
- Rule becomes effective thirty days after it is published in the *Code of State Regulations* (Section 536.019, RSMo.)

*Pursuant to Section 536.200, RSMo., if the actual cost to public entities at the end of the first full fiscal year after implementation exceeds either the estimated cost in the Department's Public Entity Fiscal Note by greater than 10 percent, OR if actual costs have exceeded the estimated cost of less than $500, a Statement of Actual Cost must be published in the *Missouri Register* within ninety days of the close of the fiscal year or the rule becomes null and void. In order to meet this deadline, the Statement of Actual Cost must be filed with the SOS by mid-August.

MISSOURI
DEPARTMENT OF
NATURAL RESOURCES

Fee Rules

Some fee rules in Chapters 259, 260, 444, 640, 643, and 644 must follow a different promulgation process that results in a different timeline. For these rules, the Order of Rulemaking must be filed no later than December 1. The Missouri General Assembly has sixty calendar days after the start of the next regularly-scheduled legislative session to review the rules and determine whether to disapprove the regulation. If the General Assembly does not act on the rule, the rule becomes effective on January 1 of the following calendar year. In addition to early engagement with the Director's Office, Division management, and General Counsel's Office during development, these rules require coordination with the Division of Administrative Support and specific stakeholder involvement.

MISSOURI
DEPARTMENT OF
NATURAL RESOURCES

Emergency Rules

In rare instances, the Department may promulgate an emergency rule to address an issue more quickly than could be accomplished by following the normal rulemaking process. Although the Director's Office, Division management, and General Counsel's Office will be involved, the emergency rule process does not require interagency review, public comment period, or fiscal notes. Emergency rules can become effective as early as 10 days after filing with the SOS. Emergency rules are effective no longer than 180 days. If it is necessary for a regulation to remain in effect for longer than 180 days, the program will promulgate a regular rulemaking package in parallel to the emergency rulemaking.

MISSOURI
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NATURAL RESOURCES

Public Comment Period

Public engagement plays an important role in the development of a rulemaking.

All rulemakings must be filed with notice of a public comment period of at least thirty days - begins the day the notice of the proposed rulemaking is published in the *Missouri Register*.

If a hearing is required by the applicable statute, the notice must also include the time and location of a public hearing to take place at least thirty days after the publication of the notice of proposed rulemaking.

The Department must accept public comments for at least seven days after the date of the public hearing.

MISSOURI
DEPARTMENT OF
NATURAL RESOURCES

Five-Year Rule Reviews

- Changes to Chapter 536, RSMo: Rules Review, Administrative Procedures & Review was effective August 28, 2012
- Any person may petition an agency concerning rules. The agency must respond in 60 days with a concise summary of facts and findings with respect to specific criteria per Chapter 536.175 4., RSMo.
- JCAR produces a Notification of Agency Review in the *Missouri Register*
- Anyone may submit comments no later than 60-days after publication
- The agency responds to the comments and prepares a report according to the criteria in Chapter 536.175.4., RSMo.
- An appendix of the summary and review, and response to comments received is attached
- Must include whether the rule is necessary, obsolete, overlaps, or conflicts, is least restrictive to protect, needs amendment or rescission to reduce the burden, meets criteria for incorporation, indicates a public purpose and justifies rules affecting small business

MISSOURI
DEPARTMENT OF
NATURAL RESOURCES

QUESTIONS??

Tab G

Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Appeals and Variances

Issue:

This portion of the meeting allows for the Commission to review and vote on specific actions.

Recommended Action:

None

Tab G1

Missouri Clean Water Commission Meeting
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Administrative Hearing Commission's Decision Regarding Midwest Forest City, LLC, Appeal No. 18-1238

Issue: On November 13, 2018, Midwest Forest City, LLC (MFC) filed a complaint appealing the Department's October 24, 2018 order to pay administrative penalties and abatement order, No. 2018-WPCB-1563. On March 12, 2019, the Administrative Hearing Commission (ACH) affirmed Order to Pay Administrative Penalties and Abatement Order No. 2018-WPCB-1563 issued by the Missouri Department of Natural Resources (Department) to MFC including an administrative penalty in the amount of $5,313.22.

Background: On February 21, 2017, the case was referred, under previous ownership, to the Department's Water Pollution Compliance and Enforcement Section (WPCE), for failure to renew the Missouri State Operating Permit (Permit). In requesting a response from the previous owner, the Department determined that ownership had transferred to MFC. The Department contacted MFC notifying them of the expired Permit and requesting a permit renewal application. Due to the failure of MFC to submit an application for renewal, the Department issued Abatement Order No. 2018-WPCB-1554, on May 9, 2018, requiring MFC to submit an application for renewal within 30 days. On October 24, 2018, the Department issued Order to Pay Administrative Penalties and Abatement Order No. 2018-WPCB-1563. This order included an administrative penalty of $5,313.22 for failure to comply with the previous order No. 2018-WPCB-1554. On November 13, 2018, Midwest Forest City, LLC (MFC) filed a complaint appealing the Department's October 24, 2018 Order to Pay Administrative Penalties and Abatement Order, No. 2018-WPCB-1563. On March 12, 2019, the Administrative Hearing Commission (ACH) affirmed Order to Pay Administrative Penalties and Abatement Order No. 2018-WPCB-1563 issued by the Department to MFC.

Recommended Action: The Department recommends the Commission accept the March 12, 2019, AHC decision.

Suggested Motion Language: I move to accept the decision of the AHC Appeal No.18-1238 relating to Midwest Forest City, LLC

List of Attachments:

- Administrative Hearing Commission's Decision Regarding Midwest Forest City, LLC, Appeal No. 18-1238
- Abatement Order No. 2018-WPCB-1554
- Order to Pay Administrative Penalties and Abatement Order No. 2018-WPCB-1563

Before the
Administrative Hearing Commission
State of Missouri

MIDWEST FOREST CITY, LLC, Petitioner, v. DEPARTMENT OF NATURAL RESOURCES, Respondent.	)))))))))))	No. 18-1238

AMENDED (RECOMMENDED) DECISION

This Commission recommends that the administrative penalty order issued by the Missouri Department of Natural Resources (Department) to Midwest Forest City, LLC (MFC) in the amount of $5,313.22 should be affirmed.

Procedure

On November 13, 2018, MFC filed a complaint appealing the Department's October 24, 2018 order to pay administrative penalties and abatement order, No. 2018-WPCB-1563. On December 13, 2018, the Department filed a motion for a more definite statement. On December 27, 2018, MFC filed its response to the motion for more definite statement. On December 31, 2018, we denied the Department's motion for definite statement as moot and deemed MFC's response a more definite statement. On January 11, 2019, the Department filed an answer.

On January 30, 2019, we convened a hearing. Attorney Jennifer Hernandez represented the Department. Roshanee Bindra, a member of MFC, appeared at the hearing; MFC's attorney

failed to appear. Bindra and a Department representative reached a tentative agreement to settle the case, and we continued the hearing so that the parties could finalize a settlement agreement. We reconvened the hearing on February 6, 2019. Hernandez represented the Department. Attorney Stephanie Hazelton represented MFC. We ordered the parties to file simultaneous written arguments by February 27, 2019, and reply briefs by March 6, 2019.

On February 27, 2019, the Department filed its proposed findings of facts and conclusions of law. On February 28, 2019, MFC filed a written argument. The Department filed a reply brief on March 6, 2019. MFC filed a reply brief on March 7, 2019. On March 8, 2019, MFC filed a motion for leave to file a response to the Department's reply brief. We grant MFC's motion and deem its sur-reply filed on March 8, 2019, and the case became ready for decision on that date.

Findings of Fact

1. MFC owns a truck stop at 27478 Holt 223, Mound City, Missouri (Property). The Property contains a two-cell lagoon for processing waste.

2. A "two-cell" treatment process refers to a system for processing waste from a facility or area. The two cells consist of a primary cell (also known as "Cell 1") and secondary cell (also known as "Cell 2"). Wastewater enters the primary cell, where facultative reactions with air and sunlight produce bacteria that breaks down waste and removes ammonia from the water. From the primary cell, wastewater transfers to the secondary cell where waste breaks down further before being discharged into a receiving stream.

Prior Ownership of the Property

3. Prior to August 9, 2012, the Iowa Tribe of Kansas and Nebraska (Iowa Tribe) owned the Property. Iowa Tribe held an operating permit for facilities that receive primarily domestic waste, No. MO-0103683.

4. Shortly before August 9, 2012, Iowa Tribe sold the Property to New Legacy, LLC (New Legacy). The operating permit transferred with the Property.

5. On August 9, 2012, the Department performed a "technical assistance visit" at the Property. Following the technical assistance visit, the Department issued a report that found numerous problems with the Property's lagoon disposal system.

6. The Department's report noted the following problems and violations with Cell 1:

- Water level was "extremely low." 10 CSR 20-8.200(6)(A)6.
- Berms covered in dense non-woody vegetation. 10 CSR 20-8.200(6)(A)7.A.
- Influent pipe to cell one not submerged. It discharged influent wastewater to exposed lagoon leaving sludge deposits over the area. 10 CSR 20-8.200(6)(D)5 & 6.
- Manhole between cells was dry, so owner could not cause water flow to cell one. Infrequent use causes failure. 10 CSR 20-6.010(8)4.[1]

7. The Department noted the following problems and violations with Cell 2:

- Cell 2 appeared to have no water at all, but verification was impossible because of dense non-woody vegetation growing across the bottom of the cell. 10 CSR 20-8.200(6)(A)6.
- Several woody trees growing on cell bottom. Deep rooted trees have the potential to compromise the cell's clay seal and berms. Trees must be removed by cutting tree down to sump and treating it to kill roots.
- Floating baffle curtain that divides Cell 2 was sitting at bottom of the cell. Inspection required to ensure integrity before returning to use.
- Heavy erosion on one of Cell 2's berms and filled by trees.
- Discharge pipe from cell two was open and horizontal, thus permitting floating solids and duckweed to pass to the receiving stream. Pipe needs to be fitted with a partially submerged t-fitting to prevent discharge of solids.

8. The Department's report noted the following problems and violations with the lagoon's outfall:

- No clear path to reach outfall location.
- Outfall pipe extended several feet over area that had been washed out, so that an operator could not safely reach the discharge point to collect a sample. 10 CSR 8.020(11)(C)7.
- No means at the outfall to measure the lagoon system's flow.

[1] Pet. Ex. 2.

9. The Department's report identified "Mandatory Repairs" that New Legacy must completed by September 28, 2012, including:

- All woody and non-woody vegetation must be completely removed. Grass must be planted to prevent erosion.
- Damaged berms must be repaired with clay in compliance with 10 CSR 20-8.200(A)1.
- Influent pipe to cell one must be serviced to ensure that flow to the lagoon does not erode lagoon bottom
- Variable level control valves in manhole between cells must be made functional.
- Floating baffle must be inspected or replaced if damaged.
- Once vegetation is cleared from lagoons, their seals must be inspected for damage or compromised and, if damaged, properly compacted.
- After clearance and compaction, the cells should be prefilled to prevent the seal from drying and cracking.
- Outfall pipe must be repaired for safe access to obtain samples.
- A means of measuring lagoon flow must be provided.

10. On October 7, 2013, the Department issued a notice of violation to New Legacy for failure to submit a Discharge Monitoring Report for March and April 2013 and failure to respond to a letter of warning.

11. On December 9, 2013, the Department issued a notice of violation to New Legacy for failure to comply with reporting guidelines contained in Part A of New Legacy's operating permit for the property.

12. On December 31, 2013, the Department issued a notice of violation to New Legacy for failure to submit monthly reports from March through August 2013.

13. On April 8, 2014, the Department issued a notice of violation to New Legacy for failure to comply with reporting guidelines contained in Part A of New Legacy's operating permit for the property.

14. On April 30, 2014, the Department issued another notice of violation to New Legacy for failure to submit monthly reports from March through August 2013. No fines were imposed.

15. On May 6, 2014, the Department conducted a water pollution compliance inspection of the Property. The Department determined that the Property contained several features that violated the Missouri Clean Water Law (MCWL). The Department issued a report to New Legacy detailing the violations. The report stated that New Legacy must either close the lagoon in accordance with the MCWL or return it to compliance.

16. Also on May 6, 2014, the Department issued a notice of violation to New Legacy for failure to apply for renewal of its operating permit, submit timely discharge monitoring reports, and operate and maintain compliance with the MCWL, §§ 644.006, et. seq.

17. On September 2, 2014, the operating permit for the Property expired.

18. On October 23, 2014, the Department issued a notice of violation to New Legacy for failure to submit discharge monitoring reports and multiple violations of the MCWL.

19. On December 11, 2015, the Department sent New Legacy a letter advising it that its failure to submit discharge monitoring reports constituted a violation of its permit.

20. On December 22, 2015, the Department sent New Legacy another letter advising it that its failure to submit discharge monitoring reports constituted a violation of its permit.

21. On January 30, 2016, the Department sent New Legacy a letter notifying it that it had failed to submit a discharge monitoring report for October 2015 and demanding it submit said report by March 5, 2016.

22. On February 21, 2017, the Department issued New Legacy a referral notice for its multiple violations of the MCWL. The notice stated that the Department's Kansas City Regional Office had referred the case to the Department's Water Protection Program for further enforcement action.

23. New Legacy did not take any corrective action to bring the lagoon at the Property into compliance with the MCWL. New Legacy continued to use the lagoon until it sold the

Property to MFC in March 2017. The Department never issued an abatement order or imposed a penalty for New Legacy's violations of the MCWL.

MFC's Ownership of the Property and
Department Enforcement Actions

24. In early 2017, the Department assigned environmental case manager Robert Besalke to the Property's case. In his assignment, Besalke was aware of all developments and correspondence concerning the Property.

25. In March 2017, New Legacy sold the Property to MFC. New Legacy did not disclose its expired permit or MCWL violations to MFC.

26. At all relevant times, the members of MFC consisted of Roshanee Bindra (Bindra) and her parents, Soheila and Surinder Bindra.

27. After purchasing the Property, MFC began a renovation project at the Property. MFC renovated the Property's main building, parking lot, plumbing, canopies, and light fixtures. The cost of MFC's renovations totaled approximately $1.5 million.

28. With respect to the Property's plumbing system and lagoon, MFC replaced all piping from toilets in the building to restore flow to the Property's manhole and then on to the lagoon. MFC replaced the motor in the manhole to provide flow to the lagoon and all piping from the manhole into the lagoon. The cost of these plumbing renovations totaled approximately $70,000. MFC also replaced the gates and fencing surrounding the lagoon for $2,194.

29. MFC completed the renovations by August 8, 2017.

30. Prior to June 2, 2017, Bindra made a request to the Department to perform an inspection of the Property.

31. On June 2, 2017, Andrea Smith, an Environmental Specialist in the Department's Water Pollution Unit, performed an onsite inspection at the Property. Smith met with Bindra in

person and accompanied her on a tour of the Property. Smith informed Bindra that she needed to submit a permit renewal application.

32. On June 19, 2017, the Department sent MFC a letter of warning that stated it had identified violations of statutory and regulatory requirements during its June 2, 2017 compliance inspection. The Department enclosed its "Report of Investigation" and a copy of "Form B: Application for Operating Permit for Facilities That Receive Primarily Domestic Waste and Have A Design Flow Less Than or Equal to 100,000 Gallons Per Day."

33. On October 5, 2017, during a phone call with Bindra, Smith asked Bindra why MFC had not submitted an application for permit renewal or otherwise contacted the Department. Bindra represented that she was pursuing legal action against the previous owner and was "afraid that submitting the application would then mean that [the previous owner] would no longer hold responsibility for the past violations."[2] Smith informed her that the current owner is responsible for any violations on the Property and she must submit an application. At the end of the conversation, Smith reiterated the necessity for MFC to submit an application for the operating permit.

34. On October 26, 2017, the Department conducted a compliance inspection of the Property. During the compliance inspection, Smith met with Bindra and accompanied her on a tour through the premises. At the outset of the inspection, Smith and Bindra discussed issues identified during the June 2, 2017 onsite visit, including MFC's failure to submit an application.

35. On December 5, 2017, the Department sent MFC a letter of warning that identified violations of statutory and regulatory requirements during its October 26, 2017 compliance inspection. The letter notified MFC that a written response was required and offered MFC the opportunity to meet in person, stating:

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[2] Resp. Ex. C.

> If you have any questions regarding the report or would like to schedule a time to meet in person, please contact Ms. Rachel Rush at the Kansas City Regional Office at 816-251-0752, rachel.rush@dnr.mo.gov, or 500 Northeast Colbern Road, Lee's Summit, Missouri 64086-4710.[3]

36. The Department attached to the letter its inspection report for its October 26, 2017 compliance inspection. In a section titled "Required Action," the Department stated:

> By January 8, 2017 [sic], you must submit a completed Form B, Application for an Operating Permit, and ownership transfer application to the Water Protection Program[.]"[4]

37. As noted in the October 26, 2017 inspection report, the following problems and violations persisted at the Property:

- MFC continued to operate a wastewater lagoon that intermittently discharges to waters of the state without an operating permit in violation of §§ 644.051.2 and 644.076.1 and 10 CSR 20-6.010(1)(A) and (5)(A).
- MFC placed a water contaminant, domestic wastewater, in a location where it was reasonably certain to cause pollution of waters of the state in violation of §§ 644.051.1(1) and 644.076.1, in that the lagoon was observed to be receiving, but not holding wastewater, and the presence of deep rooted vegetation and wildlife indicate leaks in the lagoon's seal to subsurface water.

38. The inspection report listed in sections titled "Required Action," that MFC must submit a completed operating renewal permit and a written statement documenting actions that will be taken to abate the violations concerning the lagoon system by January 8, 2018. The report concluded with contact information for a Department representative if MFC had any questions regarding the report.

39. MFC did not respond to the December 5, 2017 letter of warning and October 26, 2017 inspection report or accept the Department's offer to meet.

40. On May 9, 2018, the Department issued an abatement order, No. 2018-WPCB-1554, to MFC (first abatement order). In the first abatement order, the Department found that

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[3] Resp. Ex. D.
[4] *Id.*

MFC violated §§ 644.051.2 and 644.076.1 because it operated, used, or maintained a water contaminant or point source without a valid operating permit. The Department ordered MFC to submit a Form B Application within thirty days. The first abatement order warned MFC that non-compliance may result in penalties up to $10,000 per day. Furthermore, the order noted that requests for extensions would be considered on a case-by-case basis if MFC responded in ten business days.

41. On May 14, 2018, the Department mailed the first abatement order to MFC at 2111 Orein Road, Toms River, New Jersey 02755 by certified mail.

42. MFC did not respond to the Department regarding the first abatement order.

43. The first abatement order also included a notice of MFC's right to appeal the first abatement order. MFC did not appeal the first abatement order.

44. On October 24, 2018, the Department issued an order to pay administrative penalties and abatement order No. 2018-WPCB-1563 to MFC (second abatement order). In the second abatement order, the Department found that MFC had violated § 644.076 by failing to comply with the terms of the first abatement order and §§ 644.051.2 and 644.076.1 because it operated, used, or maintained a water contaminant or point source without a valid operating permit. The Department ordered MFC to submit a Form B Application within 30 days and pay an administrative penalty of $5,313.22.

45. On November 13, 2018, MFC filed its complaint appealing the second abatement order with this Commission.

Conclusions of Law

We have jurisdiction to hear this appeal and to issue a final decision pursuant to §§ 621.250.1 and 644.079.2.[5] The Department has the burden of proof.[6] This Commission must

[5] All statutory references are to RSMo 2016, unless otherwise indicated.
[6] Section 640.012.

judge the credibility of witnesses, and we have the discretion to believe all, part or none of the testimony of any witness.[7] We may choose to disbelieve the testimony of a witness, even if it is not refuted.[8] Our findings of fact reflect determinations as to credibility.

MFC's complaint, in nine "Points on Appeal," alleges the Department has violated multiple provisions of Chapter 644, RSMo. The first six of these points contain the allegation that the Department "did not fully comply with the express and implied obligations" of Chapter 644, RSMo. In its seventh point, MFC alleges there "were no costs or expenses relating to any restoration based on any action by [MFC] under [§] 644.096." In its eighth point, MFC alleges it "did not violate, and there is no basis for a penalty against [MFC] under, [§§] 644.051, 644.056, 644.076, 644.079 or 644.096." In its ninth point, MFC alleges the "penalty assessed is not appropriate under 10 CSR 20-3.010 or [§§] 644.051, 644.056, 644.076, 644.079 or 644.096."

At the hearing, MFC clarified that it only disputes the Department's imposition of a penalty for failure to renew its operating permit and not the substantive violations the Department found at the Property. Based on MFC's complaint, representations at the hearing, and post-hearing arguments, we determine that there are three primary issues in the case. First, MFC claims it complied with the Department's May 9, 2017 abatement order by submitting an application for permit renewal and, therefore, should not be subject to penalty for failing to renew its permit. Second, MFC argues the Department could not legally assess a penalty because it failed to attempt to resolve violations through "conference, conciliation and persuasion" as required by § 644.079. Third, MFC argues that the Department's imposition of a penalty is inequitable and unfair based on the Department's treatment of previous permit holders for the Property. We consider these issues in turn.

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[7] *Dorman v. State Bd. of Registration for the Healing Arts*, 62 S.W.3d 446, 455 (Mo. App. W.D. 2001). *Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App. W.D. 1992).

[8] *Krider v. State*, 44 S.W.3d 850, 858 (Mo. App. W.D. 2001).

Compliance With the First Abatement Order

The Department argues it lawfully imposed a penalty on MFC because it failed to comply with the first abatement order. Section 644.079.1 provides, in relevant part:

> In addition to any other remedy provided by law, upon a determination by the director that a provision of sections 644.006 to 644.141 or a standard, limitation, order, rule or regulation promulgated pursuant thereto, or a term or condition of any permit has been violated, the director may issue an order assessing an administrative penalty upon the violator under this section...

Section 644.051.2 prohibits any person to operate, use, or maintain any water contaminant point source in Missouri without an operating permit. The Permit for the Property expired on September 2, 2014. Therefore, the Department lawfully issued its first abatement order to MFC and could assess a penalty under § 644.079.1, if MFC failed to comply with its order to submit an application for permit renewal. The parties disagree on whether MFC submitted a permit renewal application.

Besalke, testifying for the Department, stated that the Department never received a renewal application for MFC and he would have been made aware if one was received. Bindra testified that after receiving the first abatement order, she consulted her attorney, who advised her to submit the application, and she then submitted the application by mail. To support Bindra's claim, MFC produced its Exhibit 18, a copy of a completed permit renewal application signed by Bindra and dated May 15, 2018. As stated previously, this Commission must assess credibility and is free to believe or disbelieve a witness' testimony. For the following reasons, we do not consider Bindra's testimony or Exhibit 18 credible evidence that MFC submitted a permit renewal application.

The evidence MFC presented to show it applied for renewal within 30 days of the first abatement order lacks any viable means to test its authenticity. MFC simply asks us to accept Bindra's word that she submitted an application and that Exhibit 18 is an accurate copy of that

application. This absence of supporting evidence raises inherent concerns about its reliability. Specifically, we cannot rule out the possibility that the completed form was never sent or was fabricated. We acknowledge the difficulty of disproving a negative, but several things about this case suggest that we should not accept MFC's argument as true.

Most concerning is the manner in which MFC argued its case and presented evidence of its permit application. As all parties recognize, the timely filing of a permit application after the first abatement order represents the simplest dispositive factual issue in this case. So much so, that it defies logic that such an argument would not have been presented clearly in the pendency of this case and supported with all available evidence at the hearing. MFC failed to do so.

In what we deemed MFC's complaint, it argued in significant detail the long history of the Property with the Department, the repairs MFC performed there, and its lack of awareness of the issues at the Property prior to purchase. A single sentence at the end of the "Case Background" section provides, "[MFC] has filed its lagoon permit application and has additionally considered alternatives to use of the lagoon for its truck stop."[9] However, MFC failed to state *when* this application was supposedly submitted or otherwise tie the submission to the first abatement order. This failure and the lack of attention paid to such a crucial fact makes it difficult to believe MFC filed an application within 30 days of the first abatement order as it now claims. If it had, we would expect to see this argument presented prominently with sufficient detail to show its dispositive nature. The absence of this simple, critical argument at the outset, suggests that it may have been manufactured later.

Finally, certain affirmative facts concerning timing cast doubt on the plausibility of MFC's argument. The Department mailed the first abatement order from Missouri on May 14,

[9] Complaint, *filed December 27, 2018.*

2018. Bindra dated Exhibit 18, "5/15/18." It is possible that this correspondence arrived in New Jersey the next day and Bindra was able to immediately forward the first abatement order to legal counsel. It is also possible that Bindra misdated the application. However, this seeming incongruence only further supports what Exhibit 18's weaknesses and MFC's failures in presenting its argument confirmed to us. MFC's evidence and arguments are not credible.

We find that MFC failed to comply with the first abatement order and may be subject to a penalty under § 644.079.

Conference, Conciliation, and Persuasion

MFC argues its penalty assessment is unlawful because the Department failed to seek to resolve violations at the Property by conference, conciliation, and persuasion. Section 644.079.1 provides, in relevant part:

> ... An administrative penalty shall not be imposed until the director has sought to resolve the violations through conference, conciliation and persuasion and shall not be imposed for minor violations of sections 644.006 to 644.141 or minor violations of any standard, limitation, order, rule or regulation promulgated pursuant to sections 644.006 to 644.141 or minor violations of any term or condition of a permit issued pursuant to sections 644.006 to 644.141. If the violation is resolved through conference, conciliation and persuasion, no administrative penalty shall be assessed unless the violation has caused, or has the potential to cause, a risk to human health or to the environment, or has caused or has potential to cause pollution, or was knowingly committed, or is defined by the United States Environmental Protection Agency as other than minor. Any order assessing an administrative penalty shall state that an administrative penalty is being assessed under this section and that the person subject to the penalty may appeal as provided by this section. Any such order that fails to state the statute under which the penalty is being sought, the manner of collection or rights of appeal shall result in the state's waiving any right to collection of the penalty.

Neither party has cited an appellate case interpreting § 644.079.1, and we know of none. Similar language has arisen in other cases, but only related discretionary procedures. The language of

§ 644.079.1 provides that the Department *shall* seek to resolve violations through these specified methods, so the failure to do so would invalidate its penalty order.[10] The phrase "conference, conciliation, and persuasion" means:

> a process of verbal or written communications consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance[.[11]]

From June 2, 2017, when the Department conducted an onsite visit of the Property, to December 5, 2017, when the Department sent a final warning letter, the Department and MFC had significant contact with each other. These communications included verbal and written communications, two reports, and telephone calls. The Department made an offer to meet MFC in its December 5, 2017 letter by stating, "if you have any questions regarding the report or would like to schedule a time to meet in person, please contact Ms. Rachel Rush at the Kansas City Regional Office[.]"[12] These facts show that the Department sought to resolve the violations and offered to meet with MFC. MFC did not accept that offer or comply with the Department's written and oral requests to submit an operating permit application. The Department has satisfied its obligation to seek to resolve violations under § 644.079.1.

<u>Inequitable Enforcement by the Department</u>

To the extent MFC seeks relief from the Department's penalty assessment based on inequitable or unfair enforcement procedures undertaken by the Department, we must deny MFC's request. Administrative bodies such as this Commission have no powers of equity.[13]

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[10] *Cf. State ex rel. Nixon v. Boone*, 927 S.W.2d 892, 897 (Mo. App. W.D. 1996).

[11] Section 644.016(3).

[12] Resp. Ex. D.

[13] *See Straube v. Bowling Green Gas Co.*, 227 S.W.2d 666, 668 (Mo. 1950) (administrative body has no power to declare or enforce any principle of equity).

Our jurisdiction comes from statutes alone.[14] We allowed the facts into the record that may be relevant to such arguments so that the parties can raise these issues on appeal.

Summary

This Commission recommends that the administrative penalty order issued by the Department to MFC in the amount of $5,313.22 should be affirmed because MFC failed to comply with the Department's first abatement order and the Department has satisfied its obligation to seek to resolve violations under § 644.079.1.

SO RECOMMENDED on March 18, 2019.

SREENIVASA RAO DANDAMUDI
Commissioner

[14] *State Bd. of Reg'n for the Healing Arts v. Masters*, 512 S.W.2d 150 (Mo. App. W.D. 1974).

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:	)	
	)	
MIDWEST FOREST CITY LLC	)	
	)	**Order No. 2018-WPCB-1554**
	)	
Proceeding under the	)	
Missouri Clean Water Law	)	

ABATEMENT ORDER

SERVE BY CERTIFIED MAIL # 7016 0600 0000 2590 3519
RETURN RECEIPT REQUESTED

TO: MIDWEST FOREST CITY LLC
2111 Orein Road
Toms River, NJ 08755

You are hereby notified that on this date the Missouri Department of Natural Resources (Department) has issued Abatement Order No. 2018-WPCB-1554 (Order) to MIDWEST FOREST CITY LLC (Respondent) under the Missouri Clean Water Law (MCWL), Chapter 644 of the Revised Statutes of Missouri (RSMo), specifically section 644.056 RSMo.

Failure to comply with this Order is, by itself, a violation of the MCWL under section 644.076 RSMo. Continued non-compliance may result in the Department pursuing legal action for injunctive relief, penalties of up to $10,000 per day for each day or part thereof of non-compliance, and/or any other remedy authorized by law, including but not limited to sections 644.056, 644.076, 644.079, and/or 644.096 RSMo.

FINDINGS OF FACT

1. The Respondent is an active limited liability company registered with the Missouri Secretary of State.

2. According to the Holt County Recorder of Deeds, the Respondent owns a 30.9 acre tract of land identified as parcel number 12-5-21-00-00-05.00 located in the NW ¼, SW ¼, Section 21, Township 61 North, Range 38 West, Holt County. The Respondent owns and operates a gas station with convenience store, a restaurant, and a motel located on this property. Wastewater generated by the Respondent's businesses discharges to a wastewater lagoon located on the Respondent's property.

3. Section 644.051.2 RSMo, makes it unlawful for any person to operate, use or maintain any point source in this state that is subject to standards, rules or regulations promulgated pursuant to the provisions of 644.006 to 644.141 unless such person holds an operating permit.

4. The lagoon located on the Respondent's property is a point source as defined in 644.016(16) RSMo.

5. On June 2, 2017, Department staff met with Ms. Roshanee Bindra, representing the Respondent, to discuss the requirements necessary to obtain an operating permit for the wastewater lagoon. On June 19, 2017, the Department sent a letter to Ms. Bindra that included a completed Compliance Assistance Visit form describing the findings and recommendations.

6. On October 5, 2017, Department staff spoke to Ms. Bindra by telephone and requested that the Respondent submit an application for an operating permit.

7. On October 26, 2017, Department staff conducted an inspection of the lagoon located on the Respondent's property. Staff met with Ms. Bindra and explained the purpose of

the inspection. Staff observed that the lagoon was in disrepair and deep rooted vegetation growing in the lagoon. Staff also reviewed the Department's records and found that the Respondent had not submitted an application for an operating permit. On December 5, 2017, the Department issued a Letter of Warning, to the Respondents, for operating the lagoon without an operating permit.

8. As of the date of this Order, the Department has not received an application, for an operating permit, from the Respondent.

9. This Order is necessary to compel compliance and/or minimize threats to human health and the environment.

STATEMENT OF VIOLATIONS

The Respondent violated the MCWL and its implementing regulations as follows:

10. Operated, used, or maintained a water contaminant or point source without a Missouri State Operating Permit, in violation of Sections 644.051.2 and 644.076.1, RSMo and 10 CSR 20-6.010(1)(A)and (5)(A).

CORRECTIVE ACTIONS

Pursuant to section 644.056 RSMo, the Department hereby orders the Respondent to complete each of the following corrective actions:

11. Within 30 days of issuance of this Order, submit a complete Form B-Application for operating permit to the Department.

SUBMISSIONS

12. All documentation submitted to the Department for compliance with this Order shall be submitted within the timeframes specified to:

Mr. Paul Dickerson
Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, MO 65102-0176

OTHER PROVISIONS

13. Any request for an extension of time or to otherwise modify this Order may be considered on a case-by-case basis, if the Respondent makes a written request to the Department within ten business days of this Order, and otherwise provide appropriate justification and/or documentation to the Department in a timely manner. Any modification of this Order shall be in writing.

14. Compliance with this Order resolves only the specific violations described herein, and this Order shall not be construed as a waiver or modification of any other requirements of the MCWL and regulations, or any other source of law. Nor does this Order resolve any future violations of this Order or any law or regulation. Consistent with 10 CSR 20-3.010(5), this Order shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

15. This Order shall apply to and be binding upon the Respondent and any of its agents, subsidiaries, successors, assigns, affiliates, or lessees, including the officers, agents, servants, corporations and any persons acting under, through, or for the Respondent. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not relieve the Respondent of its obligation to comply with this Order.

NOTICE OF APPEAL RIGHTS

16. If you are adversely affected by this decision, you may be entitled to pursue an appeal before the Administrative Hearing Commission (AHC) pursuant to 10 CSR 20-1.020 and Sections 644.056, 640.013, and 621.250, RSMo. To appeal, you must file a petition or notice of appeal with the AHC within 30 days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the AHC. Any appeal should be directed to:

Administrative Hearing Commission
P.O. Box 1557
Jefferson City, MO 65102
phone: 573-751-2422
fax: 573-751-5018
website: http://ahc.mo.gov/ahc

SIGNATURE AUTHORITY

SO ORDERED this 9th day of May, 2018 by:

DEPARTMENT OF NATURAL RESOURCES

Chris Wieberg, Director
Water Protection Program

c: Mr. Steve Sturgess, Director, Kansas City Regional Office
General Counsel's Office
Northwest Registered Agent Services, Inc.

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:	)	
	)	
MIDWEST FOREST CITY LLC	)	
	)	**Order No. 2018-WPCB-1563**
	)	
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Proceeding under the	)	
Missouri Clean Water Law	)	

ORDER TO PAY ADMISTRATIVE PENALTIES AND ABATEMENT ORDER

CERTIFIED MAIL # 7099 3220 0009 3706 9336
RETURN RECEIPT REQUESTED

FILED
November 13, 2018
ADMINISTRATIVE HEARING COMMISSION

TO: MIDWEST FOREST CITY LLC
2111 Orein Road
Toms River, NJ 08755

You are hereby notified that on this date the Missouri Department of Natural Resources (Department) has issued Order to Pay Administrative Penalties and Abatement Order No. 2018-WPCB-1563 (Order) to MIDWEST FOREST CITY LLC (Respondent) under the Missouri Clean Water Law (MCWL), Chapter 644 of the Revised Statutes of Missouri (RSMo), specifically section 644.056 RSMo.

Failure to comply with this Order is, by itself, a violation of the MCWL under section 644.076 RSMo. Continued non-compliance may result in the Department pursuing legal action for injunctive relief, penalties of up to $10,000 per day for each day or part thereof of non-compliance, and/or any other remedy authorized by law, including but not limited to sections 644.056, 644.076, 644.079, and/or 644.096 RSMo.

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FINDINGS OF FACT

1. The Respondent is an active limited liability company registered with the Missouri Secretary of State.

2. On May 10, 2018, the Department issued Abatement Order No. 2018-WPCB-1554 to the Respondent for violations of the MCWL under Sections 644.056 and 644.079, RSMo. Abatement Order 2018-WPCB-1554 required the Respondent to submit a complete Form-B Application for operating permit to the Department within 30 days of issuance.

3. On May 18, 2018, the Respondent received Abatement Order No. 2018-WPCB-1554 from the United Parcel Service. Abatement Order No. 2018-WPCB-1554 contains the Notice of Appeal Rights provision granting the Respondent the ability to pursue an appeal of the order before the Administrative Hearing Commission (AHC). The Respondent had 30 days from the date of issuance to file an appeal. The Respondent did not file an appeal of the Notice and Order to Abate Violations No. 2018-WPCB-1554.

4. On June 10, 2018, Abatement Order No. 2018-WPCB-1554 became final and fully enforceable.

5. As of the date of this Order the Respondent have failed to comply with the Corrective Actions contained in Abatement Order No. 2018-WPCB-1554.

6. The amount of the administrative penalty included herein was assessed according to the criteria of 10 CSR 20-3.010. From a gravity-based analysis, the violations posed at least a minor potential for harm based on the potential risk to human health, safety and the environment. The violations were also at least a moderate deviation from the standard required by the MCWL and its implementing regulations. Using the gravity-based matrix, and finding both the deviation from the standard and the potential for harm the base penalty falls within a range of $1,501 to

$2,500. Since the Department documented one violation of the MCWL, and the Respondent failed to correct the non-compliance after being informed of the requirements by the Department, an administrative penalty in the amount of $5,313.22 is justified.

7. This Order is necessary to compel compliance and/or minimize threats to human health and the environment.

STATEMENT OF VIOLATIONS

The Respondent violated the MCWL and its implementing regulations as follows:

8. Since July 8, 2016, the Respondent failed to comply with the terms and conditions of Abatement Order No. 2018-WPCB-1554, in violation of Section 644.076, RSMo; and

9. Operated, used, or maintained a water contaminant or point source without a Missouri State Operating Permit, in violation of Sections 644.051.2 and 644.076.1, RSMo and 10 CSR 20-6.010(1)(A)and (5)(A).

CORRECTIVE ACTIONS

Pursuant to section 644.056 RSMo, the Department hereby orders the Respondent to complete each of the following corrective actions:

10. Within 30 days of issuance of this Order, submit a complete Form B-Application for operating permit to the Department.

PENALTY

Pursuant to Section 644.079 RSMo and 10 CSR 20-3.010, the Department hereby orders the Respondent to pay administrative penalties for the above-referenced violations as follows:

11. Within 60 days from the date of issuance of this Order, the Respondent is ordered to pay to the Department an administrative penalty in the amount of $5,313.22.

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12. Such payment shall be made by check made payable to: Holt County Collector as Custodian of the Holt County School Fund.

13. Such payment must be delivered to the Department of Natural Resources, C/O Accounting Program, P.O. Box 477, Jefferson City, MO 65102-0477, for forwarding to the Holt County Collector.

SUBMISSIONS

14. All documentation submitted to the Department for compliance with this Order shall be submitted within the timeframes specified to:

Mr. Robert Besalke
Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, MO 65102-0176

OTHER PROVISIONS

15. Any request for an extension of time or to otherwise modify this Order may be considered on a case-by-case basis, if the Respondent makes a written request to the Department within ten business days of this Order, and otherwise provide appropriate justification and/or documentation to the Department in a timely manner. Any modification of this Order shall be in writing.

16. Compliance with this Order resolves only the specific violations described herein, and this Order shall not be construed as a waiver or modification of any other requirements of the MCWL and regulations, or any other source of law. Nor does this Order resolve any future violations of this Order or any law or regulation. Consistent with 10 CSR 20-3.010(5), this Order shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

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17. This Order shall apply to and be binding upon the Respondent and any of its agents, subsidiaries, successors, assigns, affiliates, or lessees, including the officers, agents, servants, corporations and any persons acting under, through, or for the Respondent. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not relieve the Respondent of its obligation to comply with this Order.

NOTICE OF APPEAL RIGHTS

18. If you are adversely affected by this decision, you may be entitled to pursue an appeal before the AHC pursuant to 10 CSR 20-1.020 and Sections 644.056, 640.013, and 621.250, RSMo. To appeal, you must file a petition or notice of appeal with the AHC within 30 days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the AHC. Any appeal should be directed to:

Administrative Hearing Commission
P.O. Box 1557
Jefferson City, MO 65102
phone: 573-751-2422
fax: 573-751-5018
website: www.oa.mo.gov/ahc

SIGNATURE AUTHORITY

SO ORDERED this 24th day of October, 2018 by:

DEPARTMENT OF NATURAL RESOURCES

Chris Wieberg, Director
Water Protection Program

c: Kansas City Regional Office
General Counsel's Office
Accounting Program
Northwest Registered Agent Services, Inc.

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Tab H

Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Public Comment and Correspondence

Issue:

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

Recommended Action:

Information only.

Tab I

Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 29, 2019

Future Meeting Dates

Information:

Missouri Clean Water Commission Meeting dates and locations:

July 10, 2019
Lewis and Clark State Office Building
1101 Riverside Drive
LaCharrette / Nightingale Conference Rooms
Jefferson City, MO 65101

October 9, 2019
Lewis and Clark State Office Building
1101 Riverside Drive
LaCharrette / Nightingale Conference Rooms
Jefferson City, MO 65101

January 9, 2020
Lewis and Clark State Office Building
1101 Riverside Drive
LaCharrette / Nightingale Conference Rooms
Jefferson City, MO 65101

April 2, 2020
Lewis and Clark State Office Building
1101 Riverside Drive
LaCharrette / Nightingale Conference Rooms
Jefferson City, MO 65101

July 8, 2020
Lewis and Clark State Office Building
1101 Riverside Drive
LaCharrette / Nightingale Conference Rooms
Jefferson City, MO 65101

October 7, 2020
Lewis and Clark State Office Building
1101 Riverside Drive
LaCharrette / Nightingale Conference Rooms
Jefferson City, MO 65101

Recommended Action:

Information only.