



## ***DRAFT***

### **NOTICE OF OPEN MEETING**

The meeting will also be streamed live from the Department's website at:  
***[dnr.mo.gov/videos/live.htm](http://dnr.mo.gov/videos/live.htm)***.

### **DEPARTMENT OF NATURAL RESOURCES HAZARDOUS WASTE PROGRAM HAZARDOUS WASTE MANAGEMENT COMMISSION AGENDA**

**February 16, 2012**

**Department of Natural Resources, Hazardous Waste Program  
Bennett Springs/Roaring River Conference Rooms  
1730 E. Elm Street  
Jefferson City, MO 65102**

**Note: Persons with disabilities requiring special services or accommodations to attend the meeting can make arrangements by calling the commission assistant at (573) 751-2747 or writing to the Hazardous Waste Program, P.O. Box 176, Jefferson City, MO 65102. Hearing impaired persons may contact the Hazardous Waste Program through Relay Missouri at 1-800-735-2966.**

#### **9:45 A.M. EXECUTIVE (CLOSED) SESSION**

In accordance with Section 610.022 RSMo, this portion of the meeting may be closed by an affirmative vote of the Commission to discuss legal matters, causes of action or litigation as provided by Subsection 610.021(1). RSMo.

#### **10:00 A.M. GENERAL (OPEN) SESSION**

The General (Open) Session will begin promptly at 10:00 a.m., unless an Executive (Closed) Session has been requested; after which, the General Session will start as specified by the Commission's chairman.

#### **Commissioner Roll Call**

1. Pledge of Allegiance – Commissioners
2. Approval of Minutes – Executive (Closed) Session, December 15, 2011 – Commissioners  
Approval of Minutes – General (Open) Session, December 15, 2011 – Commissioners

#### **Information Only:**

3. Rulemaking Update – Tim Eiken, Rule Coordinator – HWP

4. Missouri Petroleum Marketers & Convenience Store Association (MPCA) – Tanks Risk Based Corrective Action Presentation – Ron Leone, Executive Director, MPCA
5. Tanks Risk Based Corrective Action Rule Development Update – Tim Chibnall, Director’s Office – HWP
6. Long Term Stewardship Information System and Mapper - Chris Cady, Environmental Specialist – Brownfield/Voluntary Cleanup Section
7. Registry of Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites in Missouri (Registry) Update – Dennis Stinson, Chief – Superfund Section
8. Legal Update – Kara Valentine – Commission Counsel
  - Administrative Hearing Commission Appeals Updates
9. Public Inquiries or Issues – David J. Lamb, Director, HWP
10. Other Business – David J. Lamb, Director, HWP
11. Future Meetings
  - Thursday, April 19, 2012 – to be held at the Bennett Springs/Roaring River Conference Rooms, 1730 E. Elm Street Conference Center, Jefferson City, MO

Adjournment

**MISSOURI DEPARTMENT OF NATURAL RESOURCES  
HAZARDOUS WASTE MANAGEMENT COMMISSION**

**Meeting Date: February 16, 2012**

**ROLL CALL ROSTER**

	<b>In Person:</b>	<b>By Phone:</b>	<b>Absent</b>
<b>Chairman Jamie Frakes</b>	_____	_____	_____
<b>Vice-Chair Andrew Bracker</b>	_____	_____	_____
<b>Commissioner Elizabeth Aull</b>	_____	_____	_____
<b>Commissioner Michael Foresman</b>	_____	_____	_____
<b>Commissioner Charles Adams</b>	_____	_____	_____
<b>Commissioner Deron Sugg</b>	_____	_____	_____

**Missouri Hazardous Waste Management Commission Meeting**

**February 16, 2012**

**Agenda Item # 1**

**Pledge of Allegiance**

**Missouri Hazardous Waste Management Commission Meeting**

**February 16, 2012**

**Agenda Item # 2**

**Approval of Minutes – December 15, 2011 Meeting**

**Issue:**

Commission to review the Executive Session minutes from the December 15, 2011, Hazardous Waste Management Commission meeting.

Commission to review the General Session minutes from the December 15, 2011, Hazardous Waste Management Commission meeting.

**Recommended Action:**

Commission to approve the Executive Session minutes from the December 15, 2011, Hazardous Waste Management Commission meeting.

Commission to approve the General Session minutes from the December 15, 2011, Hazardous Waste Management Commission meeting.

EXECUTIVE

SESSION

MEETING

MINUTES

GENERAL

SESSION

MEETING

MINUTES

GENERAL SESSION  
HAZARDOUS WASTE MANAGEMENT COMMISSION  
December 15, 2011; 10:00 A.M.  
1730 E. Elm Street  
Bennett Springs/Roaring River Conference Rooms  
Jefferson City, MO 65102

(Note: *The minutes taken at Hazardous Waste Management Commission proceedings are just that, minutes, and are not verbatim records of the meeting. Consequently, the minutes are not intended to be and are not a word-for-word transcription.*)

The meeting was streamed live from the Department's website at: [dnr.mo.gov/videos/live.htm](http://dnr.mo.gov/videos/live.htm).

COMMISSIONERS PRESENT IN PERSON

Chairman James Frakes  
Commissioner Michael Foresman  
Commissioner Elizabeth Aull  
Commissioner Deron Sugg  
Commissioner Charles Adams

COMMISSIONERS PRESENT BY PHONE

Vice-Chair Andrew Bracker

Chairman Frakes called the General Session to order at approximately 10:37 a.m.

1. PLEDGE OF ALLEGIANCE

Commissioner Aull led the Pledge of Allegiance, and it was recited by the Hazardous Waste Management Commission (Commission) and guests.

2. APPROVAL OF MINUTES

- Executive Session minutes from the October 20, 2011, meeting:
- General Session minutes from the October 20, 2011, meeting:

Commissioner Sugg made a motion to approve the October 20, 2011, Executive Session minutes. The motion was seconded by Commissioner Aull. Commissioner Aull addressed a question to Ms. Debra Dobson, Commission Assistant, regarding the wording in a portion of the General Session minutes. Ms. Dobson responded. Following the response, Commissioner Aull made the motion to approve the October 20, 2011, General Session minutes. Commissioner Adams seconded the motion.

*A vote was taken; all were in favor, none opposed. Motion carried. Minutes were approved.*

3. EXIDE TECHNOLOGIES APPEAL – COMMISSION REVIEW OF ADMINISTRATIVE HEARING COMMISSION DECISION – FOLLOW-UP

Ms. Kara Valentine, Missouri Attorney General's Office, addressed the Commission and provided an overview of the decision made by the Administrative Hearing Commission, and the pending appeal. She noted that testimony had been heard from both parties, along with presentations, both written and PowerPoint. She advised that a decision by the Commission, on the appeal, had been tabled at the last meeting to allow the Commission time to review and discuss. Ms. Valentine then went on to review the Commission's options; to adopt the AHC's decision, to change the AHC's decision, to adopt the AHC's decision with modifications, or to vacate the AHC's decision. She noted that the Commission needed to deliberate and vote in open session, with their decision being based on the facts already presented in the record.

Chairman Frakes asked if there was any discussion on the issue and called Mr. Price, Exide's counsel, up for any questions the Commission may have on the issue.

Mr. Price addressed the Commission and asked if the Commission had a formal written order that they would be signing on the issue, as he would like a copy of any formal written decision the Commission made. He then provided the Commission with a written order he had drafted, should the Commission's decision be in favor of their appeal filing.

Commissioner Foresman addressed the Commission and Exide's representatives, stating that in looking at the evidence provided, what had been presented by the state was the correct legal interpretation. He went on to advise that the decision that had been made by the Administrative Hearing Commission was the correct one. He stated that even with that being the case, he did not like the consequences. He noted the issue of most concern was vehicles being parked off site that could contain leaking batteries, and the exposure hazards that entailed. But, he noted, that was an issue to address separately. He advised that he would consider a rule change to address these concerns; but, that today, he believed the decision was correct, although he was conflicted with that decision.

Chairman Frakes inquired as to the pleasure of the Commission on the issue?

Commissioner Sugg asked Mr. Price if he could see a copy of his proposed order. Mr. Price handed copies to the Commission and staff.

After the Commission had an opportunity to review the proposed order that Mr. Price had provided, Chairman Frakes inquired if there were any additional comments and what decision the Commission would like to make.

Commissioner Aull read the following motion to adopt the decision of the Administrative Hearing Commission with modifications:

*"The Commission hereby adopts with modifications the July 22, 2011, Recommended Decision of the Administrative Hearing Commission on Case # 09-1417 HWC, which*

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*upholds the contested conditions of the permit (MOD030712822) issued on September 23, 2009, to Exide Technologies In., because those conditions were authorized by law.”*

Chairman Frakes asked if there was a second to the motion.

Commissioner Foresman seconded the motion.

Commissioner Sugg inquired as to the modifications they were suggesting.

Commissioner Aull stated that Exide could come back with a request for a variance.

Chairman Frakes noted that it would be their choice whether to do that, and inquired as to the modification's content.

Commissioner Aull stated that the modification would be the amount of time they would have to store the batteries in trailers on the lot.

Commissioner Foresman stated that the motion as stated was really not a modification, that a variance would be a separate issue and would not be a modification of the decision. He advised that a modification would entail modifying the decision of the Administrative Hearing Commission's decision, and that anything else would not be a modification of that decision.

Commissioner Aull advised that she was rescinding her original motion and read a motion to adopt the AHC's decision.

Chairman Frakes noted that Commissioner Aull was rescinding her original motion and had motioned to

*“... adopt the July 22, 2011, Recommended Decision of the Administrative Hearing Commission on Case # 09-1417 HWC, which upholds the contested conditions of the permit (MOD030712822) issued on September 23, 2009, to Exide Technologies In., because those conditions were authorized by law.”*

Commissioner Sugg seconded the motion.

Chairman Frakes called for any discussion. He then directed his inquiry to Commissioner Bracker who confirmed he had heard the motion and discussion but would be recusing himself from the vote.

*A vote was taken; all participated and were in favor, except for Commissioner Bracker who abstained. None opposed the motion. Motion carried.*

Chairman Frakes noted that following the Commission's decision to adopt the AHC's decision he would like to hear discussion or a recommendation regarding a potential variance for Exide. He asked if Commissioner Foresman would like to address the issue.

Commissioner Foresman turned the floor over to Commissioner Sugg who made the following recommendation:

*"I move that that the Commission direct the Department of Natural Resources to examine the rule regarding holding times for spent batteries with an eye towards determining if a period longer than 24 hours would be beneficial to the state and request that they report back to this Commission by the April 2012 meeting date."*

The motion was seconded by Commissioner Foresman.

Chairman Frakes called for any discussion on the issue.

*A vote was taken; all were in favor, none opposed. Motion carried.*

Commissioner Foresman directed comments to Mr. Price, Exide's counsel, noting that the Commission would be interested in whether Exide wanted to apply for a variance. He advised that if Exide put together a request for a variance then the Commission would be more than happy to consider it.

Mr. Price responded by thanking the Commission for their consideration of the issue. He noted that Exide would take a look at the option of applying for a variance. He went on to state that he believed that there were time limits for variances and to the number of variances that could be requested, but that he was not sure of the particulars at this time.

Mr. Tim Duggan, Attorney General's Office, confirmed the conditions for requesting a variance and the time limitations.

Mr. Price noted that a variance may be the way to go, and they would be looking in to it.

Commissioner Aull thanked Mr. Price for coming and for responding to the Commission's questions.

Mr. Duggan addressed the Commission and referred them to the statute that addressed variances, Section 260.405, subsection 3, which outlined the procedures and time limits associated with variance requests.

Mr. Lamb asked the Commission if they would like staff to research the rule and come back to the Commission with a recommendation by the April meeting.

Commissioner Sugg responded that they would like to have the information, to the extent that the rule process allows, but stakeholder input would likely be needed.

Commissioner Foresman noted that these changes would only affect the two (2) facilities in Missouri that process spent batteries.

A roll call was taken of the Commissioners present, as it had not been done earlier. All Commissioners were present or were participating by phone.

4. TANKS RISK BASED CORRECTIVE ACTION RULE DEVELOPMENT EXTENSION REQUEST

Ms. Leanne Tippet Mosby, Deputy Department Director, addressed the Commission, advising that she was here on behalf of staff requesting that the Commission grant the Department an extension on the deadline for the Tanks RBCA rulemaking schedule. She noted that there were two (2) factors involved in the request. Number one (1) was that the U.S. Environmental Protection Agency was scheduled to release new guidelines in the spring of 2012, regarding Vapor Intrusion, which the Department felt will impact the rulemaking effort. She noted that the final rule was expected by the end of 2012, probably around the November timeframe. Ms. Tippet Mosby explained that the Vapor Intrusion guidance had been underway for some time now, with the science constantly evolving. She advised that one of the components of the Tanks stakeholders group was an Ad hoc committee on Vapor Intrusion, and that they were the ones that had learned of the impending guidance. She noted that they had decided to table further efforts until this guidance had been released. She went on to note that at the last stakeholders meeting there had been some consternation expressed that the Department was proposing to include this guidance into our rule, by reference. She advised that this decision was made on advice from counsel as the Department had been admonished in the past for trying to propose requirements by guidance instead of by rule. She stated that the guidance was voluminous; therefore, it was being incorporated by reference into the rule. She noted that the Joint Committee on Administrative Rules had released instructions to all state agencies to not just rely on guidance. Ms. Tippet Mosby stated that because this was important to the rule the Department was requiring additional time to discuss the impacts with stakeholders. She noted that otherwise, any changes made in the future would have to be done through changes to the rule.

Secondly, on a parallel path, she noted that the Department has continued to have discussions with the Missouri Petroleum and Convenience Store Association and with the Petroleum Storage Tank Insurance Fund. She advised that there were still outstanding issues that the Department was trying to resolve with these two entities.

She noted that discussions had been ongoing since the first group had begun meeting in 2008. Discussions were still ongoing with stakeholders since 2009, with stakeholders having met in January, February, March and June of this year, with good participation. Participants included consultants, both from inside and outside of Missouri, a banker, different health departments, and others through meetings and webinars.

She went on to relate that Department staff has done an extraordinary job in reaching out for input. Given this additional time, she believed the Department could do the guidance justice.

She noted that draft rules would be out by November 2012, and following that schedule, the Regulatory Impact Report would be published in January of 2013. This would put the rule to the Hazardous Waste Management Commission by February 2013, to the Secretary of State by April of 2013, and out for public comment in the May-June 2013, time period; with the public hearing on June 21, 2013. Response to comments would be in June 2013, up for Commission action in August of 2013, and effective in December 2013.

Ms. Tippet Mosby advised the Commission that this schedule was worst case – that the Department may be able to consolidate some of the schedule, but that at this time this was our recommendation and request.

Commissioner Foresman inquired if the EPA was looking at new rule with this guidance document or if it was their guidance for existing rules?

Ms. Tippet Mosby replied that it was just guidance at this time. She noted that the guidance also addresses other issues, and that other states were also dealing with this as it was a critical issue.

Commissioner Aull inquired as to whether guidance had any more teeth than just a suggestion.

Ms. Tippet Mosby responded that it was an interesting question, but that industry and regulators look to it.

Chairman Frakes inquired if Commissioner Bracker had any questions.

Commissioner Bracker addressed Ms. Tippet Mosby and inquired if in the Department's rulemaking history, if (1) anything else has ever been held up awaiting guidance; (2) what happens if the guidance is postponed, and (3) why is the guidance being included in this rule? He stated that this was the first the Commission was hearing about it and the stakeholders group has been meeting for the last several months.

Ms. Tippet Mosby responded to Commissioner Bracker's inquiries. (1) She advised she was not sure if other rules had been held up awaiting guidance. (2) The US EPA was notorious for not making deadlines but that we had received word that Headquarters was behind the push to get this guidance out and that they had expressed confidence that the drafts would be released. She noted that the EPA was under significant pressure on this issue and that the Department would revisit the issue with the Commission in the event of a delay. And in response to (3) she advised that she thought this information had been relayed early on and did not realize that it was not clear.

Commissioner Bracker commented that he believed the Commission should not be in a position to oppose the Department on rulemaking issues but did request that they reconsider their request for an extension. He noted that he was aware of the contentious nature of the rule, but believed there would continue to be contention and disagreement. He advised that

the stakeholders' views have been invited and considered and the best interest of the state is reflected in the current draft language.

He went on to state that he recognized that the guidance from the EPA, and what it may change, was important; but, he believed that getting a rule going was more important. He stated that the difficulties outweighed the inconvenience. He noted that this was his personal viewpoint on the issue and requested the Department continue its efforts and present the rule to the Commission at the February 2012, meeting.

Ms. Tippet Mosby responded that Vapor Intrusion was a critical part of the rule, that the draft comes out in the spring and we may get the rule quicker. She noted that she believed the delay allowed for a critical component which she still believed was best and asked for the revised schedule.

Commissioner Foresman noted that if the guidance was left out, due to the position JCAR had taken on the guidance-vs-rule issue, it would be difficult for an agency to use guidance without reopening the rule.

Chairman Frakes reviewed the efforts on this to date, noting the rulemaking effort of 3 years ago. He discussed the momentum of the effort up until the incident with JCAR and stated he understood the challenges the Department has faced with this effort. He inquired if the Department believed they could overcome these issues, that it was a concern. He noted that he did not want to see the momentum lost again.

Ms. Tippet Mosby responded that she would commit to detailed updates to the Commission at each meeting, including issues, resolutions and any contentious issues.

Commissioner Bracker advised that he hoped, if the Commission chose to grant the Department the extension; that the schedule is adhered to. He asked that there be a plan in place in the event there is a delay with EPA. He noted that the progress needed to be built upon and not have to be revisited.

Commissioner Adams inquired if it could be brought back before the Commission if there is no timeframe granted. Ms. Valentine advised that it could be.

Chairman Frakes read the following motion language:

*"I move that the Missouri Department of Natural Resources', Hazardous Waste Program, be granted an extension as requested to develop Tanks Risk Based Corrective Action rule language, so as to allow for the Department to incorporate the EPA's expected guidance on Vapor Intrusion into their proposed rule language and allow adequate time for stakeholder review and comment on the revised Tanks RBCA guidance that is to be adopted by reference into the proposed rule."*

Commissioner Aull made the motion noted above.

The motion was seconded by Commissioner Sugg.

Chairman Frakes asked if there was further discussion.

Commissioner Bracker asked if he could offer an amendment.

Commissioner Foresman noted that they needed to proceed with the motion made.

Commissioner Bracker discussed a specific timeline, within which the Department must report back. He advised that if the EPA issues the guidance and the Department's rule does not move forward, or if there is a delay in the issuance of the EPA guidance, there needed to be something that drives action. He requested that there be a directive that must be responded to.

Mr. Lamb noted that Ms. Tippet Mosby had provided the Commission with a schedule, and that the schedule is included in the model motion language as the requested extension time.

The Commission discussed alternatives in the event of a delay.

Commissioner Foresman stated that he wanted an update at each meeting.

Chairman Frakes noted that there had been a motion and a second on the issue. He asked for a vote on the motion.

*A vote was taken; five (5) Commissioners were in favor, Commissioner Bracker opposed. Motion carried.*

Chairman Frakes commended staff for their work noting he has seen progress and a positive track record. He noted that everyone wanted to see this rule development go forward and that the Commission really wanted to see progress in 2012. He noted that if there were any opposition he would like to see them back at the table, and would like to see weekly updates if possible as he did not want to see a loss of momentum.

Ms. Tippet Mosby advised the Commission members that she would be providing updates on the fly, as things occurred.

##### 5. RULEMAKING UPDATE

Mr. Tim Eiken, Director's Office, Hazardous Waste Program, addressed the Commission and provided a brief update on the Department's current rulemaking efforts. He advised the Commission that the Department was seeing new regulations on the books, that it is a never ending process. He noted that staff was evaluating new Federal regulations and that the Department anticipated coming before the Commission in the spring of 2012 with recommendations for changes.

Mr. Eiken directed the Commission's attention to a petition the Department had received from REGFORM, which had been included in the Commissioner's meeting packet information. He advised that the Department had responded and that the response was also included in the information that had been provided to the Commissioners prior to the meeting. He noted that the petition requested the Commission go forward with making Missouri's regulations in line with Federal regulations. He advised that the Commission had provided them an audience on the issue at the last meeting.

Mr. Eiken went on to note that the issues raised had been discussed at the last Forum meeting and that Draft rule language had been developed. He advised the Commission that there were still differences, and that emergency responder concerns remained; but, the Department believed the rule was workable to move forward. He noted that Ms. Flippin would provide more information in her presentation.

No questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission.

Chairman Frakes called for a short break at 11:37 a.m.

The meeting reconvened at 11:50 a.m.

## 6. EMERGENCY RESPONSE ACTIVITIES

Mr. Brian Allen, Emergency Response Section Chief, Environmental Services Program, addressed the Commission and provided them with a PowerPoint presentation on the emergency response capabilities of the Department. He provided an overview of the program, the staff, the equipment and the different office locations across the state.

Mr. Allen's presentation provided information on several different types of incidents that the Emergency Services Program responded to, including specific information on incidents of interest to the Commission.

Commissioner Aull inquired as to whether the six (6) vehicles he had noted in his presentation were ones that had been provided by Ameren. Mr. Allen confirmed that they were.

Commissioner Aull then inquired as to the value of each of the vehicles. Mr. Allen responded that, as a conservative estimate, each vehicle was worth approximately \$200,000 in addition to approximately another \$100,000 worth of equipment.

No other questions were asked by the Commission.

Chairman Frakes thanked Mr. Allen and other Commissioners noted their appreciation for the presentation and information.

No other questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission.

7. PACKAGING, MARKING AND LABELING UPDATE

Ms. Kathy Flippin, Chief, Compliance and Enforcement Section, Hazardous Waste Program, addressed the Commission noting that she was intending to provide a quick update on the proposed changes to Missouri's Packaging, Marking and Labeling regulation, and provide information on the draft rule language. She provided a PowerPoint presentation that summarized changes made since the last rule changes were presented to the Commission, and provided an updated anticipated schedule.

She advised the Commission that the Department was proposing to move forward with the rulemaking effort and that there would be multiple opportunities for stakeholder input throughout the process. She noted that the "anticipated" schedule would reflect a sixty (60) day comment period on the Regulatory Impact Report beginning May 21, 2012, with a public comment period during the August – September 2012 timeframe, a public hearing in October 2012 and the rule becoming effective in April 2013.

Ms. Flippin went on to provide a response to a question the Commission had asked at the previous meeting regarding the survey results and the percentages of types of generators that responded to the survey. She noted that the survey specifically asked the generators if they believed the current requirements were overly burdensome, about right, or should more be required. She noted that approximately 1000 surveys were sent out to stakeholders with approximately 128 responding to the question. Of the 128 that responded, approximately 24% responded that they believed the requirements were overly burdensome. And, of those that provided that response, 17 were Small Quantity Generators and 13 were Large Quantity Generators. Responses to the survey that noted the requirements were "about right" totaled 76% with 69 of them being Small Quantity Generators and 29 being Large Quantity Generators. She noted that because some Large Quantity Generators can be very small businesses, there was no way to directly correlate the survey results to the size of the business.

The Commission was provided an opportunity to pose questions.

Chairman Frakes noted that there seems to be some consensus reached on most of the issues, and asked what the environment has been on the draft language? Is it a partnership or are there issues that still need work?

Ms. Flippin responded that there were still some reservations on all sides, but that the state had compromised and stakeholders were aware of that compromise. She noted that the Department felt it could move forward with the current changes.

Chairman Frakes then inquired if Ms. Flippin believed there was stakeholder support even with the reluctance, to which Ms. Flippin advised that she believed there was support to move forward on the issue.

Mr. Lamb addressed the Commission and noted that although some stakeholders would prefer that the Department go with a straight Federal regulation, they had indicated that what was being proposed at this time was better than what they had now and that they would prefer to go forward with what they have developed, rather than not. Mr. Lamb went on to state that even with the changes that had been made, there were still some concerns being received from the emergency response agencies and that the proposed language did not address their concerns on the labeling issue.

Commissioner Foresman noted that there would be ample opportunities for everyone to express their concerns during the public comment periods on the rule.

Chairman Frakes called for a motion for the Department to move forward with the rulemaking effort. The motion read was as follows:

*“The Commission hereby directs the Hazardous Waste Program staff to move forward with formal rulemaking to finalize the Department's draft proposed rule.”*

The motion was seconded by Commissioner Foresman.

*A vote was taken; all were in favor, none opposed. Motion carried.*

Chairman Frakes called for a recess at 12:30 p.m. for lunch. He advised that the meeting would reconvene at 1:00 p.m.

The meeting reconvened at 1:08 p.m.

#### 8. TANKS FINANCIAL RESPONSIBILITY – PROGRAM REFERRALS UPDATE

Ms. Kathy Flippin, Chief, Compliance and Enforcement Section, Hazardous Waste Program, addressed the Commission and provided a quick update to the Commission, based on a request from them in August 2008, regarding the expedited enforcement process for underground storage tanks sites that failed to maintain a financial responsibility mechanism. She provided an overview of the current expedited process, some background information and noted that the process had been working well.

Ms. Flippin advised the Commission that currently there were 3,272 active tanks sites. Of those, 2,602 had coverage through the Petroleum Storage Tank Insurance Fund. 558 of the sites had acceptable coverage through other means, 60 were exempt and compliance on the remaining 52 was unknown at this time and they were being contacted through the compliance process.

Ms. Flippin asked the Commission if they would like to continue to receive this information update on a yearly basis, as had been requested with the original decision, or if there was another means by which they would like to receive the information, such as the Quarterly Report. Chairman Frakes responded that the report would be fine, that the Commission met 6

times per year and that the Commission would like to see an update in the middle of the year also, with two reports per year being made, in June and December.

No other questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission.

#### 9. QUARTERLY REPORT

Mr. Mark Conner, Director's Office, Hazardous Waste Program, addressed the Commission and provided a brief highlight of the last two reports. The first report, from April thru June 2011, had been tabled from the last meeting due to the length of that meeting. The second report, the July thru September 2011, report, was due to the Commission at this meeting. After highlighting several issues and photos in the reports, Mr. Conner inquired as to whether the Commission had any questions, comments or suggestions for future topics.

No questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission.

#### 10. LEGAL UPDATE

Ms. Kara Valentine, Commission Counsel, Missouri Attorney General's Office, addressed the Commission with an update on any Administrative Hearing Commission appeals that were pending. She noted that there was still one (1) appeal with the Commission, for the Buick Recycling Facility.

She noted that there had been an agreement reached the preceding week on that appeal and that the specifics of that agreement would be related when everything was finalized.

Ms. Valentine also advised the Commission that legal actions against Precision Rebuilders had been settled and a penalty had been assessed; and that the DOE Run/Sweetwater/Viburnum Trend action had reached a settlement. She noted that the settlement agreement had been signed by DOE Run, but still needed to be signed by the Department.

No questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission.

## 11. PUBLIC INQUIRIES OR ISSUES

Mr. David J. Lamb, Director, Hazardous Waste Program, addressed the Commission and advised that one (1) request had been received, from Mr. Kevin Perry.

Mr. Perry greeted the Commission and noted that he had decided he was not going to speak at this time, that he had wanted to speak earlier during the Packaging, Marking and Labeling portion of the meeting.

This was provided as information only and required no action on the part of the Commission.

## 12. OTHER BUSINESS

Mr. David J. Lamb, Director, Hazardous Waste Program, addressed the Commission and provided the Commission with a brief update on changes within the Department. He noted that Leanne Tippet Mosby had moved to a Deputy Department Director position within the agency and that Alan J. Reinkemeyer, who had come from the Environmental Services Program, was the Acting Director of the Division of Environmental Quality. He advised the Commissioners that Aaron Schmidt and Steve Feeler were now in a permanent status as Deputy Division Directors and were no longer in an "acting" capacity.

Mr. Lamb went on to update the Commission on concerns the Department/Program were having with regards to the new proposed Federal budget. He noted that the information he had was not formal yet but that it appeared there would be an across the board reduction of approximately 10% in Federal funding. He noted that the Department had received information that there would be a 10% reduction to funding for the Superfund efforts, and a 10% reduction to Brownfield funding. He advised that there had been no specific information on the RCRA funding yet but expected it to follow the same path. Mr. Lamb explained that this totaled approximately a \$450,000 reduction to the grants that he knew about at this time with another \$350,000 reduction if the RCRA reductions were similar. He advised that this equated to a three quarter of a million dollar hit to the Federal funding that the Program received. He noted that the Department had already been looking at vacancies and efficiencies, as a reduction of some kind had been expected. Mr. Lamb stated that the Program was already moving forward with changes to help address the shortages and that two (2) units had already been combined, vacancies were being held open and similar functions were being looked at for consolidation. He noted that the DERT and Brownfields units had been combined but that even without the new reductions the Program/Department had seen a need to make some changes.

Chairman Frakes inquired if Ms. Tippet Mosby would still be working on the Tanks RBCA process in light of her new duties and position. Mr. Lamb assured the Commission that she would still be involved, as she had advised them earlier.

Mr. Lamb went on to inform the Commission that the U.S. EPA had come out with additional Federal Tanks regulations; that the Commission had recently completed a similar state rulemaking effort. He noted that some of the proposed changes were in line with the changes Missouri had made, and some were not. Mr. Lamb stated that the Department was preparing comments and would have to wait and see what impacts they would have to recent rule changes Missouri had made. He noted that he would keep the Commission posted on information regarding this issue.

Mr. Lamb then advised the Commission that the legislative session was just around the corner and that pre-filings had already begun. He noted that one piece of legislation that had not passed last year, regarding sunset dates on administrative rules, was appearing again with a change to a 10 year sunset on any rules. He advised that this would require agencies to revisit rulemakings every 10 years.

Mr. Lamb wished the Commissioners a happy holiday season and expressed hope that they would have a good Christmas.

No other questions were posed by the Commission.

This was provided as information only and required no action on the part of the Commission.

## 12. FUTURE MEETINGS

Chairman Frakes noted that the next meeting was scheduled for February 16, 2012, and would be held in the Bennett Springs/Roaring River Conference Rooms at the 1730 E. Elm Street building. He went on to thank staff for their preparation for the meeting; he thanked his fellow Commissioners and wished everyone a Happy Holiday and a Merry Christmas.

*Chairman Frakes adjourned the meeting at 1:29 p.m.*

Respectfully Submitted,

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Debra D. Dobson, Commission Assistant

APPROVED

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James Frakes, Chairman

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Date

**Missouri Hazardous Waste Management Commission Meeting**

**February 16, 2012  
Agenda Item # 3**

**Rulemaking Update**

**Recommended Action:**

Information Only.

**Presented by:**

Tim Eiken, Rules Coordinator, HWP

**Missouri Hazardous Waste Management Commission Meeting**

**February 16, 2012**

**Agenda Item # 4**

**Missouri Petroleum Marketers & Convenience Store Association (MPCA)  
Tanks Risk Based Corrective Action Presentation to Commission**

**Issue:**

Mr. Ron Leone has requested to address the Commission and provide a short presentation on the MPCA's position on the Tanks Risk Based Corrective Action issue.

**Recommended Action:**

Information Only.

**Presented by:**

Ron Leone, Executive Director, MPCA

**Missouri Hazardous Waste Management Commission Meeting**

**February 16, 2012**

**Agenda Item # 5**

**Tanks Risk Based Corrective Action (RBCA) Rulemaking Update**

**Information:**

Update on the Tanks Risk Based Corrective Action Rulemaking

**Recommended Action:**

Information Only.

**Presented by:**

Tim Chibnall, Directors Office, Hazardous Waste Program

## **Missouri Hazardous Waste Management Commission Meeting**

**February 16, 2012  
Agenda Item # 6**

### **Long Term Stewardship Information System and Mapper**

#### **Issue:**

Informational presentation on HWP's new LTS information system and web-based GIS mapping system.

#### **Information:**

The Brownfields/Voluntary Cleanup Program has created a new GIS-based online mapping and information system that represents a quantum leap in providing information about remediated sites with land use controls as well as active sites.

The new data system improves the visibility of long-term stewardship information to critical users such as local land use and building permitting authorities, developers and environmental professionals. This will enhance the safety of sites closed with contamination left in place and reduce accidental exposures.

The system enhances the level of information available to the general public, including links to key site documents in PDF form, reducing demands on staff to provide copies.

The map is automatically updated daily so that information is made available essentially in real time. The system is expected to replace various static maps and data layers which rapidly become dated and require manual updating.

The system is expandable, and sites from other cleanup programs will be added as their data becomes ready.

These advantages apply equally to active cleanup sites as well, and the HWP envisions the map will eventually serve as a one-stop shop for information on active and closed sites in various programs.

The presentation will also introduce the HWP's new LTS Unit, which has begun the process of unifying LTS tasks and efforts throughout HWP under one roof.

#### **Recommended Action:**

Information Only.

#### **Presented by:**

Chris Cady, Ph.D., Environmental Specialist IV, BVCP

## **Missouri Hazardous Waste Management Commission Meeting**

**February 16, 2012**

**Agenda Item # 7**

### **Registry of Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites in Missouri (Registry) Update**

#### **Issue:**

The Registry of Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites in Missouri (Registry) is maintained by the Missouri Department of Natural Resources pursuant to the Missouri Hazardous Waste Management Law, Section 260.440, RSMo.

#### **Information:**

Sites listed on the Registry appear on a publicly available list, and a notice filed with the Recorder of Deeds documents hazardous waste contamination at the site. The use of a property listed on the Registry may not change substantially without the written approval of the Department.

When the presence of hazardous waste disposal is confirmed at a site, the Department notifies the owner(s) of the site that it intends to place the property on the Registry. The notification is sent by certified mail to the owner 30 days before the site is to be added to the Registry. The owner of the site can appeal the proposed placement on the Registry. If an appeal cannot be resolved, the Administrative Hearing Commission may convene a public hearing or assign a hearing officer to resolve the matter. A site can avoid Registry listing if the property owners elect to remove the contamination. This is achieved by the owner signing a consent agreement and implementing a cleanup with Department oversight. After cleanup of the property is completed, the Department will withdraw the proposal to place the property on the Registry.

According to state law, each site listed on the Registry is placed in one of the following categories\*:

- Class 1: Sites that are causing or presenting an imminent danger of causing irreversible or irreparable damage to the public health or environment. Immediate action is required.
- Class 2: Sites that are a significant threat to the environment. Action is required.
- Class 3: Sites that do not present a significant threat to the public health or the environment. Action may be deferred.
- Class 4: Sites that have been properly closed and require continued management.

*The Department publishes the "Missouri Registry Annual Report: Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites" each January.*

#### **Recommended Action:**

Information Only

#### **Presented by:**

Dennis Stinson, Chief, Superfund Section

**Missouri Hazardous Waste Management Commission Meeting**

**February 16, 2012**

**Agenda Item # 8**

**Administrative Hearing Commission Appeals  
Status Update-Information Only**

**Issue:**

Buick Resource Recycling Facility appeal status update.

**Information:**

- The Notice of Appeal and Motion to Stay was filed on March 18, 2010.
- The Department and Buick Resource Recycling Facility filed a joint motion for cancellation of appeal hearing on December 6, 2011, and the Administrative Hearing Commission approved the motion on December 7, 2011.
- A joint status report is due to the Administrative Hearing Commission on February 8, 2012.
- The Department and Buick Resource Recycling Facility are currently in negotiations to resolve the appeal.

**Missouri Hazardous Waste Management Commission Meeting**

**February 16, 2012**

**Agenda Item # 9**

**Other Business**

**Recommended Action:**

Information Only.

**Presented by:**

David J. Lamb, Director, HWP

**Missouri Hazardous Waste Management Commission Meeting**

**February 16, 2012**

**Agenda Item # 10**

**Public Inquiries or Issues**

**Recommended Action:**

Information Only.

**Presented by:**

David J. Lamb, Director, HWP

**Missouri Hazardous Waste Management Commission Meeting**

**February 16, 2012**

**Agenda Item # 11**

**Future Meetings**

**Information:**

**Meeting Dates:**

Date	Time	Location
Thursday, February 16, 2012	9:45 A.M.	Bennett Spring / Roaring River Room 1730 East Elm Jefferson City, Missouri 65101
Thursday, April 19, 2012	9:45 A.M.	Bennett Spring / Roaring River Room 1730 East Elm Jefferson City, Missouri 65101
Thursday, June 21, 2012	9:45 A.M.	Bennett Spring / Roaring River Room 1730 East Elm Jefferson City, Missouri 65101
Thursday, August 16, 2012	9:45 A.M.	Bennett Spring / Roaring River Room 1730 East Elm Jefferson City, Missouri 65101
Thursday, October 18, 2012	9:45 A.M.	Bennett Spring / Roaring River Room 1730 East Elm Jefferson City, Missouri 65101
Thursday, December 20, 2012	9:45 A.M.	Bennett Spring / Roaring River Room 1730 East Elm Jefferson City, Missouri 65101

**Recommended Action:**

Information Only.