

**MINUTES**  
**MISSOURI AIR CONSERVATION COMMISSION**  
**Governor Office Building**  
**Room 450**  
**200 Madison Street**  
**Jefferson City, MO 65101**  
**December 4, 2008**  
**9:00 a.m.**

**Commissioners Present**

Jack Baker, Member  
Ron Boyer, Member  
Mark Fohey, Chairman  
Mark Garnett, Member  
Gary Pendergrass, Vice-Chairman  
Richard Rocha, Member  
Kevin L. Rosenbohm, Member

**Staff Members Present**

Mike Alesandrini, Ombudsman, Field Services Division  
Jeffrey Bennett, Air Quality Analysis Section, Air Pollution Control Program (APCP)  
Rebecca Birke Scheuler, Public Information Specialist, APCP  
Tiffany Campbell, Air Quality Planning Section, APCP  
Steve Feeler, Compliance and Enforcement Section Chief, APCP  
David Gilmore, Commission Secretary, APCP  
Wayne Graf, Air Quality Planning Section, APCP  
Haskins Hobson, Inspection and Maintenance Program, APCP  
Katy Holmer, Air Quality Planning Section, APCP  
Ron Jeffries, Air Quality Planning Section, APCP  
Jim Kavanaugh, Director, APCP  
David Lamb, Air Quality Planning Section Chief, APCP  
Mark Leath, Air Quality Planning Section, APCP  
Paul McConnell, Air Quality Planning Section, APCP  
Kyra Moore, Permits Section Chief, APCP  
Leanne Tippett Mosby, Deputy Director, Division of Environmental Quality  
Paul Myers, Air Quality Planning Section, APCP  
Brian Newby, Compliance and Enforcement Section, APCP  
Missy Seeligman, Program Secretary, APCP  
Joe Winkelmann, Air Quality Planning Section, APCP

**Others Present by Attendance Record**

Brian Adams, Springfield Air Quality Control  
Julie Baker; Newman, Comley and Ruth, P.C.  
David Bryan, Environmental Protection Agency (EPA) Region VII  
Robert Brundage; Newman, Comley and Ruth P.C.

Chauncy Buchheit, Southeast Missouri Regional Planning Commission  
Heath Clarkston, Gallagher Consultants, LLC  
Milo Daub, Kansas City Air Quality  
Stacy Denison, Renewable Environmental Solutions  
Kathrina Donegan, St. Louis County, Air Pollution Control  
Dave Drennan, Missouri Dairy Association  
Tim Duggan, Attorney General's Office (AGO)  
Dan Engemann, Missouri Department of Agriculture  
Joseph Fallert, Jr.; State Representative  
Steven Frey, Concerned Citizens for Economic Growth  
Albert Fults, Ste. Genevieve County Commissioner  
Michelle Garand, Community Partnership  
Brian Geray, Jackson Chamber of Commerce  
Linda Greaser, Proctor and Gamble  
Tom Grever, Shook, Hardy and Bacon, LLP/AG Processing, Inc.  
Marshall Griffin, KWMU – FM 90.7  
Ken Hagg, URS Corporation  
Garrett Hawkins, Missouri Farm Bureau  
Mike Jennewein, Proctor and Gamble  
Schuyler Johnson, Chemical Lime Company  
Kimberly Lagomarsino, Mississippi Lime  
James Lanzafame, Buick Resource Recycling Facility  
Mat Larsen, Shook, Hardy and Bacon  
Jim Lunan, Holcim (US), Inc.  
John Mehner, Cape Girardeau Area Chamber of Commerce  
Douglas Neidigh, Springfield Air Quality Control  
Don Nikodim, Missouri Pork Association  
David Perkins, Missouri State Highway Patrol  
Kevin Perry, The Forrester Group  
Paul Rehisein, Missouri State Highway Patrol  
Mitch Robinson, Cape Girardeau Area Magnet  
Buffy Santel, Metropolitan Sewer District of St. Louis  
Chris Schreiber, Schreiber Engineering, LLC  
David Shanks, Boeing  
Katina Stewart, City of St. Louis, Air Pollution Control  
Stacy Stotts; Stenson, Morrison and Hecker  
George Thullesen, The Empire District Electric Company  
Hugh Vogel, MOARK  
Roger Walker, Regulatory Environmental Group for Missouri  
Shelley Woods, AGO

**A. Call to Order**

Chairman Mark Fohey called the December 4, 2008, meeting of the Missouri Air Conservation Commission to order. The following commissioners were present: Mark Fohey, Gary Pendergrass, Jack Baker, Richard Rocha, Kevin Rosenbohm, Mark Garnett and Ron Boyer.

**B. Minutes from October 30, 2008, Meeting**

Vice-Chairman Gary Pendergrass moved to approve the October 30, 2008, minutes as written. Commissioner Kevin Rosenbohm seconded the motion and all commissioners voted to approve the minutes.

**C. Reports - The following referenced reports are in the December 4, 2008, Missouri Air Conservation Commission Briefing Document.**

**1) COMPLIANCE/ENFORCEMENT**

Mr. Steve Feeler stated the Complaint Report begins on page 33 of the briefing document. There were 93 complaints received from September 16 – 30, 2008. There are a number of complaints listed for Concentrated Animal Feeding Operations (CAFOs) smaller than Class IA.

Mr. Feeler continued with the second part of the Complaint Report, which is for October 1 – 15, 2008, and begins on page 53. There were 67 complaints during that time.

Mr. Feeler noted the Complaint Report for the second half of October begins on page 67. There were 51 complaints during that time.

Commissioner Richard Rocha noted that half of the odor complaints for the last two weeks of September and the first two weeks of October were for Renewable Environmental Solutions.

Mr. Feeler noted that the Settlement Report begins on page 79. The report lists those cases where an agreement has been reached in principle. Pages 80 through 82 lists the cases that are currently under negotiation and page 83 lists the cases that have been approved by the commission and referred to the Attorney General's Office (AGO). For 2008, 151 cases have been resolved through negotiations with paid penalties in the amount of \$353,000 and \$362,000 in suspended penalties.

## 2) **PERMITS**

Ms. Kyra Moore stated that the Permits Report begins on page 85. For the month of October, the program received 37 construction permit projects and 23 operating permit projects. Ms. Moore noted that the Permit Section is on track with the number of projects it receives for this time of year.

Ms. Moore continued and noted the Permit Applications Completed Report begins on page 93. In October, the program completed 43 construction permit projects and 16 operating permit projects.

The Permit Section Status Report begins on page 102. The number of total open projects for the Permit Section is still below 700 and the section will probably hover continuously around that number. Ms. Moore said she would also confirm that the six Clean Air Interstate Rule (CAIR) applications and the two Sales Tax Requests listed in the Status Report have been closed out.

Ms. Moore stated there are currently five operating permits on public notice and all of them are listed on the department's Web page. Of those five operating permits on public notice, two are Intermediate and three Part 70s. The Part 70 operating permits include the University of Missouri Columbia power plant and also the two Chrysler plants in St. Louis County.

Additionally, Ms. Moore noted there is one construction permit on public notice for American Energy Products in Carrollton, Missouri. This project was issued in two phases. Phase I was for the biodiesel plant and that permit was issued in February 2008. Phase II, the soybean extraction plant, is currently on public notice and is posted on the department's Web page. The public comment period for the draft permit is open until December 22, 2008. If no request for a public hearing is received by December 19, 2008, then the hearing will be cancelled and the Permit Section will respond to any written comments it has received. After the comments have been responded to then the permit will be issued.

Ms. Moore updated the commission on the engineering vacancies in her section. One engineer started on Monday, December 1, 2008, and interviews have been held for the remaining four vacancies. The program hopes to fill these vacancies by the first part of January.

Ms. Moore stated that the Ethanol Map is on page 103 and the Ethanol Reports begin on page 105. There have been no changes to the map or report since the time of printing. The ethanol and biodiesel industry are not progressing at this time.

Commissioner Rosenbohm inquired if permits have an expiration date.

Ms. Moore replied that facilities have two years to commence construction. If they do not commence construction within that time they must notify the Permit Section if they wish to keep their permit valid. The Permit Section was contacted by Mississippi Valley requesting how to keep their permit valid since they do not intend to begin construction before 2010.

Commissioner Rosenbohm inquired about the status of the Ethanex construction permit.

Ms. Moore replied that she did not anticipate the permit for Ethanex to construct the facility in Cape Girardeau since they have declared bankruptcy.

### 3) **Air Quality Planning**

Mr. David Lamb directed the commission to the Air Quality Planning Report which begins with the Rule and State Implementation Plan (SIP) Agenda on page 107 of the briefing document. He noted one small change on the Rule and SIP Agenda: It will be used to focus on future public hearing and adoption items instead of current Rule and SIP Agenda items.

Mr. Lamb stated that there will be a public hearing for five rule items at the February Commission meeting. Those items include three rules related to the New Source Review Reform for Nonattainment Areas. Those rules are 10 CSR 10-6.100, *Alternative Emission Limits*, 10 CSR 10-6.060, *Construction Permits Required* and 10 CSR 10-6.410, *Emissions Banking and Trading*. The other two rules scheduled for public hearing in February include 10 CSR 10-6.350, *Emission Limitations and Emissions Trading of Oxides of Nitrogen* and 10 CSR 10-6.360, *Control of NO<sub>x</sub> Emissions from Electric Generating Units and Non-Electric Generating Boilers*. He noted that those two rules are being amended to remove the sunset dates that were put in place to eliminate those rules in 2009 when CAIR went into place. Mr. Lamb also mentioned that they plan to file emergency rules for those two rules because the regular rulemaking process will not allow those sunset dates to be removed before they would become effective. He indicated that the program would then follow through with the normal rulemaking process to make the rule amendments permanent.

Mr. Lamb then noted the five items being presented at public hearing for the December meeting would be presented for adoption at the February meeting. Those items are 10 CSR 10-5.290, *More Restrictive Emission Limitations for Particulate Matter in the South St. Louis Area*, 10 CSR 10-6.400, *Restriction of Emission of Particulate Matter from Industrial Processes*, 10 CSR 10-5.381, *On-Board Diagnostics Motor Vehicle Emissions Inspection*, 10 CSR 10-6.061, *Construction Permit Exemptions* and 2008 8-Hour Ozone Standard Boundary Recommendation.

Mr. Lamb indicated he did not include any Rule or SIP items for the March meeting on the agenda at this time because there are no public hearing items officially scheduled as the public hearing date is dependent on when the rules are filed. However, he did indicate that he expected several rules to be filed in time that a public hearing would be held at the March meeting. He indicated that he expected to have the public hearing for the two Reasonable Available Control Technology regulations the department is developing as part of the St. Louis PM<sub>2.5</sub> SIP. Those rules are 10 CSR 10-5.070, *Control of Sulfur Emissions from Stationary Boilers* and 10 CSR 10-6.260, *Restriction of Emissions of Sulfur Compounds*. He said there will also likely be a public hearing for rule items 10 CSR 10-6.045, *Open Burning*, 10 CSR 10-6.120, *Restrictions of Emissions of Lead from Specific Lead Smelter Refinery Installations* and a rule rescission for 10 CSR 10-6.320, *Sales Tax Exemption*.

Mr. Lamb then discussed the Rules In Progress Schedule, which began on page 109 of the briefing document. He began by discussing recent rule filings made by the department. He stated that on December 1, 2008, the department filed the Orders of Rulemaking for the two *Heavy Duty Diesel Idle Reduction* regulations, 10 CSR 10-2.385 and 10 CSR 10-5.385. He noted that the rules which were adopted by the commission in October will become effective in February 2009.

Mr. Lamb then mentioned three rules that became effective since the October commission meeting. He stated that on November 30, 2008, 10 CSR 10-6.070, 10 CSR 10-6.075 and 10 CSR 10-6.080, which adopted the federal New Source Performance Standards, Maximum Achievable Control Technology Regulations and National Emission Standards for Hazardous Air Pollutants regulations promulgated as of June 30, 2006, became effective. Those rules, he noted, were originally adopted by the commission in July.

Mr. Lamb then reported that the department is currently accepting comments on the draft rule text and the Regulatory Impact Report (RIR) for a potential rule consolidation on the four existing regional indirect heating rules. He indicated that the department is looking into consolidating the four existing regional indirect heating rules into a single statewide rule. Mr. Lamb said comments will be accepted on the draft rule text and RIR for the draft consolidated rule until December 24, 2008.

Mr. Lamb then continued with the State Air Quality Plans Status Report, which began on page 113 of the briefing document. He said the department continues to work with Doe Run Herculaneum to finalize the ventilation study, which is the final piece of the Herculaneum Lead Plan that Missouri needs to complete in order to have EPA find the Plan approvable. If the department is able to get that ventilation study finalized in the next couple of weeks, he stated it should be able

to have that SIP revision on the agenda for public hearing at the February commission meeting.

**4) DIRECTOR'S REPORT**

**a) Environmental Appeals Board**

On November 13, 2008, the Environmental Appeals Board, a 3-judge panel that acts as the final U.S. Environmental Protection Agency (EPA) arbitrator in federal permitting disputes, released a ruling that EPA must reconsider its decision to grant a construction permit for a waste coal-fired power plant in Utah. EPA did not address carbon dioxide emissions in that permit. The ruling suggested that EPA may reconsider permits for new coal-fired power plants in other states, not just Utah. A quote from the ruling states, "The Board recognizes that this is an issue of national scope that has implications far beyond this individual permitting proceeding." For Missouri, no immediate impact is anticipated. The Air Program has no construction permits in-house for coal-fired power plants.

**b) Clean Air Interstate Rule (CAIR)**

Mr. Kavanaugh updated the commission on CAIR. On October 21, 2008, the D.C. Circuit Court of Appeals issued an order to request petitioners' preference of whether the court should maintain the entire vacatur of the rule or remand the rule back to EPA for revision. Mr. Kavanaugh summarized the responses of the petitioners: 22 of the 28 CAIR states asked the court to remand the rule back to EPA for revision; North Carolina does not want the CAIR vacated, but wants a new rule promulgated by July 2009; Duke Energy, Constellation Energy and others want to keep CAIR in place while EPA revises the rule, but no later than 2014; South Carolina Electric and Gas Company and South Carolina Public Service Authority and others would like the court to vacate the SO<sub>2</sub> portions from Title IV of CAIR; and the Florida Association of Electric Utilities would like the immediate vacatur of the CAIR rule. EPA also filed a brief with the court advising the court to remand the rule back to EPA so it can modify the rule. EPA also asked the court to lift their decision on using Title IV SO<sub>2</sub> allowances for part of this program. The court has not made a decision yet, but they have received all of the petitions. The court has until December 17, 2008, to make a decision.

Vice-Chairman Pendergrass inquired how long Missouri would have to complete the process if it did have to resubmit everything.

Mr. Kavanaugh replied that EPA is currently deliberating on sending "Failure To Submit" letters to all the states that have not submitted an

Annual PM<sub>2.5</sub> State Plan, which were due in April 2008. If that happens, it would start an 18-month clock that we would have to finalize and submit a complete SIP or face the possibility of sanctions. Missouri's reasons for not submitting a SIP, as with most other states, is that EPA was late coming out with their implementation rules so states did not know specific and final requirements for plan development. Secondly, the court vacated the CAIR rule which is a key element. Lastly, the only nonattainment area in the state is the St. Louis area. St. Louis is a bi-state area and requires close coordination with Illinois. Both sides of the river must work closely together to ensure we have all controls and SIP elements complete before we can submit.

Vice-Chairman Pendergrass said the commission may see some emergency rulemakings.

Mr. Kavanaugh said that is possible. The program started discussions with Missouri utilities as soon as the vacatur was announced to begin planning for what may be needed if this vacatur stands.

**c) Ozone**

Mr. Kavanaugh continued with an update on ozone. He discussed the need for additional monitoring in order to comply with the new ozone regulation. Monitoring requirements are primarily based on area populations. He said the department has identified four new areas that, due to population, will need an ozone monitor. Those areas are Columbia, St. Joseph, Joplin and Jefferson City. The department has secured sites to place ozone monitors for St. Joseph, Columbia and Jefferson City. The monitors for these cities will be running and on-line by April 1, 2009. However, the department is still looking for a location to place an ozone monitor in the Joplin area. That monitor may be on-line a month later assuming an area to place the monitor can be found soon.

**d) Updates**

Mr. Kavanaugh then discussed PM<sub>2.5</sub>. He said there are two National Ambient Air Quality Standards for PM<sub>2.5</sub>: an annual and a 24-hour standard. The SIP he mentioned earlier was in regard to the annual PM<sub>2.5</sub> standard. EPA has not made final area designation determinations for the 24-hour PM<sub>2.5</sub> standard. The department submitted a recommendation that no counties in Missouri should be designated as nonattainment for the PM<sub>2.5</sub> 24-hour standard. EPA has disagreed and the department submitted additional information in response to EPA in October 2008. All technical information that the department provided to EPA to defend the

recommendation that Missouri is in attainment with the 24-hour standard is posted on the program's Web page.

Due to an anticipated lengthy commission meeting and a light Forum agenda, the Air Program Advisory Forum meeting scheduled for today has been cancelled. The next forum meeting has been scheduled for February 2009.

Mr. Kavanaugh announced that the department is hosting a reception for Director Doyle Childers on Friday, December 19, 2008, from 2 to 4 p.m. in the Lewis and Clark State Office Building.

#### **D. Public Hearing**

Chairman Fohey called the public hearing to order.

Mr. Mark Leath presented 10 CSR 10-5.290 (rescission) More Restrictive Emission Limitations for Particulate Matter in the South St. Louis Area. The rule begins on page 123 of the briefing document.

Ms. Katy Holmer presented 10 CSR 10-6.400 (amendment) Restriction of Emission of Particulate Matter from Industrial Processes. The rule begins on page 129 of the briefing document.

Mr. David Shanks spoke in support of the proposed amendment to 10 CSR 10-6.400, *Restriction of Emission of Particulate Matter from Industrial Processes*.

Mr. Paul McConnell presented 10 CSR 10-5.381 (amendment) On-Board Diagnostics Motor Vehicle Emissions Inspection. The rule begins on page 135 of the briefing document.

Mr. Ron Jeffries presented 10 CSR 10-6.061 (amendment), Construction Permit Exemptions. The amendment begins on page 181 of the briefing document.

Mr. Jeffry Bennett presented 2008 8-Hour Ozone Standard Boundary Recommendation. The recommendation begins on page 199 of the briefing document.

Mr. Steve Frey spoke against the 2008 8-Hour Ozone Standard Boundary Recommendation.

Representative Joseph Fallert, Jr. spoke against the 2008 8-Hour Ozone Standard Boundary Recommendation.

Mr. David Bryan spoke in regards to the 2008 8-Hour Ozone Standard Boundary Recommendation.

Mr. Chauncy Buchheit spoke against the 2008 8-Hour Ozone Standard Boundary Recommendation.

Mr. Roger Walker spoke in regards to the 2008 8-Hour Ozone Standard Boundary Recommendation.

Mr. Ken Hagg spoke against the 2008 8-Hour Ozone Standard Boundary Recommendation.

Ms. Kimberly Lagomarsino spoke against the 2008 8-Hour Ozone Standard Boundary Recommendation.

Mr. Albert Fults spoke against the 2008 8-Hour Ozone Standard Boundary Recommendation.

To obtain a copy of the public hearing transcript, please contact Ms. Pat Stewart, CCR, by writing to Midwest Litigation Services, 3432 West Truman Blvd., Ste. 207, Jefferson City, MO 65109 or by phone at 1-800-280-3376.

**E. Recommended for Adoption or Actions to be Voted on**

Mr. Joe Winkelmann presented comments and responses to 10 CSR 10-5.430, *Control of Emissions From the Surface Coating of Chrome-Plated and Resist Plastic Parts*. Information on the rescission begins on page 215 of the briefing document.

Commissioner Jack Baker moved to rescind to 10 CSR 10-5.430, *Control of Emissions From the Surface Coating of Chrome-Plated and Resist Plastic Parts* as proposed. Vice-Chairman Pendergrass seconded. All commissioners voted to rescind the rule as proposed.

Mr. Paul Myers presented comments and responses to Missouri State Implementation Plan (SIP) – Springfield Local Code Update. The proposed SIP begins on page 217 of the briefing document.

Commissioner Mark Garnett moved to approve Missouri SIP – Springfield Local Code Update. Commissioner Rosenbohm seconded. All commissioners voted to amend as proposed.

**F. New Business**

**a) Election of Officers for 2009**

Commissioner Jack Baker nominated Gary Pendergrass for Chairman. Commissioner Mark Garnett seconded. All commissioners voted to elect

Gary Pendergrass as Chairman for 2009.

Commissioner Gary Pendergrass nominated Kevin Rosenbohm for Vice-Chairman. Commissioner Jack Baker seconded. All commissioners voted to elect Kevin Rosenbohm as Vice-Chairman for 2009.

**b) Attorney General's Office Referrals**

Mr. Feeler presented a referral request for Mr. Mark Valezquez. Information on the proposed referral for Mr. Mark Valezquez begins on page 221 of the briefing document.

Chairman Fohey inquired if Mr. Mark Valezquez or anyone representing him was present.

No one responded.

Commissioner Baker moved to refer Mr. Mark Valezquez to the AGO. Commissioner Rosenbohm seconded the motion. All commissioners voted for referral to the AGO.

Mr. Feeler presented a referral request for Mr. Jeffery L. Davis. Information on the proposed referral for Mr. Jeffery L. Davis begins on page 223 of the briefing document.

Chairman Fohey inquired if Mr. Jeffery L. Davis or anyone representing him was present.

No one responded.

Vice-Chairman Pendergrass moved to refer Mr. Jeffery L. Davis to the AGO. Commissioner Ron Boyer seconded the motion. All commissioners voted for referral to the AGO.

Mr. Feeler presented a referral request for The Easy Shop. Information on the proposed referral for The Easy Shop begins on page 225 of the briefing document.

Chairman Fohey inquired if The Easy Shop or anyone representing the shop was present.

No one responded.

Commissioner Garnett moved to refer The Easy Shop to the AGO. Commissioner Rosenbohm seconded the motion. All commissioners voted for referral to the AGO.

Mr. Feeler presented a referral request for Mr. Henry Muse and Mrs. Sherry Muse. Information on the proposed referral for Mr. Henry Muse and Mrs. Sherry Muse begins on page 227 of the briefing document.

Chairman Fohey inquired if Mr. Henry Muse or Mrs. Sherry Muse or anyone representing them was present.

No one responded.

Commissioner Rosenbohm moved to refer Mr. Henry Muse or Mrs. Sherry Muse to the AGO. Commissioner Garnett seconded the motion. All commissioners voted for referral to the AGO.

Mr. Feeler presented a referral request for Mr. Vernon Frame and Ms. Susie Thomas. Information on the proposed referral for Mr. Vernon Frame and Ms. Susie Thomas begins on page 229 of the briefing document.

Chairman Fohey inquired if Mr. Vernon Frame or Ms. Susie Thomas or anyone representing them was present.

No one responded.

Vice-Chairman Pendergrass moved to refer Mr. Vernon Frame and Ms. Susie Thomas to the AGO. Commissioner Rocha seconded the motion. All commissioners voted for referral to the AGO.

Mr. Feeler presented a referral request for Mr. Ed Cathers. Information on the proposed referral for Mr. Ed Cathers begins on page 231 of the briefing document.

Chairman Fohey inquired if Mr. Ed Cathers or anyone representing him was present.

No one responded.

Commissioner Boyer inquired if St. Louis County or any of the cities in St. Louis County have a provision in their local ordinances to send these to municipal court or a local court for resolution.

Mr. Feeler replied that they do have that option. However, the penalties are minor so they refer them to the department and allow the department to take enforcement action. Mr. Feeler asked if Ms. Kathrina Donegan could add clarification as to what the fines are limited to by the local court.

Ms. Kathrina Donegan replied that St. Louis County does not have an open burning rule. However, the County does have a nuisance rule that may or may not cover this situation. The open burning rule cited was the Missouri rule.

Mr. Feeler noted that in this case, this case could probably go before the municipal court.

Commissioner Garnett moved to refer Mr. Ed Cathers to the AGO. Commissioner Boyer seconded the motion. All commissioners voted for referral to the AGO.

Mr. Feeler presented a referral request for Mr. Mike Bauer of Bauer Farms. Information on the proposed referral for Mr. Mike Bauer of Bauer Farms begins on page 233 of the briefing document.

Chairman Fohey inquired if Mr. Mike Bauer of Bauer Farms or anyone representing him was present.

No one responded.

Vice-Chairman Pendergrass inquired if Mr. Bauer submitted an application for a permit, and received a permit, which required an air curtain destructor be used and had brought that to the site and had not done anything himself on-site yet.

Mr. Feeler replied that all they were able to find out was that a pit had been dug on the property. He said they were unsure if it was a pit that was to be used as an air curtain destructor. In any event, there were wood-cutters on the property, according to Mr. Bauer, and they were burning material. Initially, Mr. Bauer said it was a warming fire. The photographic evidence indicates it was substantial brush pile and was too big to be a warming fire. It could easily be said that Mr. Bauer used it as an excuse to get around complying with the open burning rules. The department does not know that because it does not have any information from the wood-cutters that he claims started the fire. Unless Mr. Bauer is willing to provide information to back up his claims then the department has to assume that he was intending to have this material illegally burned because he could not afford an air curtain destructor.

Vice-Chairman Pendergrass moved to refer Mr. Mike Bauer of Bauer Farms to the AGO. Commissioner Boyer seconded the motion. All commissioners voted for referral to the AGO.

Mr. Feeler presented a referral request for T & T Pallet Recycling. Information on the proposed referral for T & T Pallet Recycling begins on page 235 of the briefing document.

Chairman Fohey inquired if T & T Pallet Recycling or anyone representing the company was present.

No one responded.

Commissioner Baker moved to refer T & T Pallet Recycling to the AGO. Commissioner Rocha seconded the motion. All commissioners voted for referral to the AGO.

**c) Necessity Findings**

Mr. Wayne Graf presented a Necessity Finding for the commission's approval. Information on the proposed Necessity Finding for 10 CSR 10-6.320, *Sales Tax Exemption* can be found on page 237 of the briefing document. He also noted an error on page 237. The first sentence mentioning the Air Program Advisory Forum should have been removed.

Commissioner Rosenbohm moved to approve the Necessity Findings for 10 CSR 10-6.320, *Sales Tax Exemption*. Commissioner Baker seconded. All commissioners voted to approve the finding.

**G. Appeals and Variance Requests**

**Doe Run Buick Recycling Facility – Variance Extension Request**

Mr. Feeler requested an extension of a variance for Doe Run. Information on the variance request and the extension begins on page 251 of the briefing document.

Vice-Chairman Pendergrass moved to approve the variance extension requested for Doe Run for the period of 12 months or effective date of rule. Commissioner Baker seconded. All commissioners voted to approve the finding.

**Status Update on AG Processing, Inc. Appeal**

Ms. Shelley Woods said she has spoken with Mr. Tom Grever. He indicated that he will provide the requested information by December 15, 2008. This should provide sufficient time to review the information and to bring something to the commission by February 3, 2009. Ms. Woods said she understood why it is taking so long for them to gather, analyze and provide the required information. Furthermore, she said they are still interested in getting this matter heard and resolved.

Commissioner Rocha strongly encourage communication between the two parties.

The commission deferred the matter until the February 3, 2009, meeting.

## H. Open Session

**Mr. Doug Neidigh**, representing Ozarks Clean Air Alliance (OCAA), addressed the commission. He briefly discussed the OCAA and their operations in southwest Missouri to proactively address air quality issues in the region. OCAA was created in 2007 and is made up of over 40 organizations throughout southwest Missouri. Participants include private industry, local and state governments, schools, institutions, non-profit organizations, agriculture and involved citizens. The purpose of OCAA is to proactively and voluntarily address air quality issues in the region to protect public health and the environment. This is important as they continue to see rapid growth. OCAA is facilitated through the Community Partnerships of the Ozarks, which is a regional community organization that addresses several different issues, as well as environmental, social and economic. In January 2008, OCAA began to develop a clean air action plan that was benchmarked from the Kansas City and Tulsa regions to identify voluntary strategies to reduce ground level ozone as well as other air pollutants in the region. To date, OCAA has completed and is currently reviewing a draft with various community and industry leaders in the region to get their comments and potential commitments to adopt various strategies to reduce air pollution.

Mr. Neidigh noted that several businesses and organizations have already committed to idle reduction programs on a voluntary level. OCAA anticipates having the plan completed in February and submitted to the department and the EPA for their review. A draft version of the plan has been submitted to the department for comment. He thanked the department's Air Pollution Control Program staff for holding ozone meetings in their region. He said that ozone for their region was a new and potential nonattainment issue. The ozone meetings provided a great forum for a lot of their county, industry and community leaders to come together and learn about what was happening with the new standard and to be able to provide some comment and input into the process.

Mr. Neidigh also noted that the department is one of OCAA's members and participants. He said they get great participation from Jefferson City as well as the regional office staff in Springfield. Mr. Neidigh said they have been attending the meetings and are a valuable partner in their progress. In the year that OCAA has been in existence, with the help of the department and OCAA partners, they have been able to accomplish some new things for their region: they have acquired federal funding to retrofit school buses to diesel emissions; they have also partnered with the department to provide funding for diesel reductions in the private and public sector; and they created a pollution prevention at Drury University to provide technical assistance to businesses in the region to help them identify ways to reduce air emissions and pollution and provide them technical assistance to help them achieve those reductions.

They have also created an agriculture workgroup to start learning Best Management Practices for agriculture and farms as it relates to ozone and other air pollution issues in their region. They are getting input from as many sectors of the region. The Ozark

Transportation Organization, which is a regional transportation development organization, has recently implemented a Web-based carpooling program called Ozarks Commute.com. He said it is a great step for the region to start educating the public about opportunities to reduce air pollution.

OCAA members have also done a lot with communicating air quality issues through their own organizations as well as publicly. He thanked department staff and said they look forward to more participation with the department as well as EPA Region VII. With continued participation they will be able to do more in reducing air pollution in southwest Missouri.

**Mr. Robert Brundage**, representing the Missouri AgriBusiness Association and Missouri Pork Association, addressed the commission. He thanked the commission for their diligence in working on the odor issue. He said his clients are supportive of the process. They are also generally supportive of the direction the commission took on directing staff to draft a proposal for changes to the odor regulation for the commission to consider at their next meeting.

He briefly commented on three parts of the rule. The first was about amending the odor control plan. Under the current practice, if there was a Class IA CAFO that had a rash of violation, it would force the operation to modify their odor control plan. He said they would not support a provision that states a facility would have to modify their odor control plan, no matter what. He said it makes more sense that if a facility has a certain number of violations, to go back and look at what the problem is and consider amending their odor control plan.

Mr. Brundage then commented on olfactometry. He said that yesterday, the commission agreed to keep olfactometry or at least allow Class IA CAFOs to have that option. He said they strongly support that position and they are appreciative the commission is going down that path to preserve olfactometry. That method of measuring odor was negotiated through the first odor workgroup process and through rulemaking several years ago. He said they think it is the most unbiased way to measure odor that they know of and it is more objective.

Mr. Brundage also commented on land application. He said that as a general rule, CAFOs do not land-apply on the weekends. This year is an exception since there has been a significant amount of rain. If there was land application weather, they had to land-apply on a weekend. But as a general rule there is rarely land-applying on weekends. Their folks take off the weekends just like we try to take off the weekends. So, that shouldn't be a problem where odor is exacerbated during the weekends.

Mr. Brundage said they do have some level of concern about paying for olfactometry costs 100 percent of the time. He said they could probably agree to pay the cost if there was a violation. But if Class IA CAFOs were required to pay the cost 100 percent of the

time it would create an even greater incentive for complainants to increase against these operations, which would put additional pressure on department staff.

**Ms. Leanne Tippett Mosby**, Deputy Director of Division of Environmental Quality, addressed the commission. Ms. Mosby noted a correction to the number of surveys that have been received regarding the odor in Carthage. Ms. Mosby said she received 568 surveys: 474 surveys indicated “Yes” odor was experienced and 94 surveys indicated “No” odor was not being experienced.

## **I. Unfinished Business**

### **Odor Discussion**

Commissioner Rocha stated that the commission met yesterday, December 3, 2008, to discuss the odor issue.

Chairman Fohey noted that the items the commission discussed at their December 3, 2008, meeting can be found on pages 239 through 244 of the December 4, 2008, briefing document. He added that department staff are going to take the commission’s recommendations and draft them into a preliminary draft regulation for the commission’s review at the February 3, 2009, meeting.

Mr. Kavanaugh noted there will be a summary of the commission’s odor deliberation meeting on December 3, 2008, and it will be included in the February 3, 2009, briefing document.

## **J. Future Meeting Dates**

### **February 3, 2009 (Tuesday) – Jefferson City**

Governor Office Building  
Room 450  
200 Madison Street  
Jefferson City, MO 65101

### **March 26, 2009 – Butler**

Community First Bank  
West Entrance  
915 West Fort Scott Street  
Butler, MO 64730

**April 30, 2009 – Jefferson City**

Elm Street Conference Center  
1730 East Elm Street  
Lower Level  
Bennett Springs Conference Room  
Jefferson City, MO 65101

**May 28, 2009 – St. Louis**

Location Pending

**June 25, 2009 – Jefferson City**

Elm Street Conference Center  
1730 East Elm Street  
Lower Level  
Bennett Springs Conference Room  
Jefferson City, MO 65101

**July 29, 2009 (Wednesday) – Lake of the Ozarks**

Location Pending

**August 27, 2009 – Jefferson City**

Elm Street Conference Center  
1730 East Elm Street  
Lower Level  
Bennett Springs Conference Room  
Jefferson City, MO 65101

**September 24, 2009 – Kansas City**

Location Pending

**October 29, 2009 – Springfield**

Location Pending

**December 3, 2009 – Jefferson City**

Elm Street Conference Center  
1730 East Elm Street  
Lower Level  
Bennett Springs Conference Room  
Jefferson City, MO 65101

**K. Discussion of Pending Litigation and Legal Matters**

None.

**L. Missouri Air Conservation Commission**

Commissioner Baker moved to adjourn the December 4, 2008, Missouri Air Conservation Commission meeting. Commissioner Rosenbohm seconded; all commissioners voted to adjourn the meeting.

Chairman Fohey adjourned the December 4, 2008, Missouri Air Conservation Commission meeting.

Respectfully submitted,

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James L. Kavanaugh, Director  
Air Pollution Control Program

Approved:

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Mark Fohey, Chairman  
Missouri Air Conservation Commission