



GENERAL SESSION
HAZARDOUS WASTE MANAGEMENT COMMISSION
June 18, 2009; 10:00 A.M.
1730 East Elm Street
Bennett Spring / Roaring River Conference Room
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.)

COMMISSIONERS PRESENT

Patrick Gleason, Chairman

Ben Kessler

Elizabeth Aull

Jamie Frakes

*Andrew Bracker

*Note: *Commissioner Andrew Bracker arrived at approximately 10:17 a.m.*

CALL TO ORDER

Chairman Gleason called the General Session to order at approximately 10:01 a.m.

1. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited by the Hazardous Waste Management Commission (Commission) and guests.

2. APPROVAL OF MINUTES

A motion was entertained by Chairman Gleason to approve the minutes from the April 16, 2009, General Session; the motion was made by Commissioner Kessler, and was seconded by Commissioner Frakes.

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

The minutes were approved and were signed by Chairman Gleason.

3. ORDERS OF RULEMAKING

An opening statement was read by Chairman Gleason, which instructed the public and the Commission of how the presentation would occur and informed this was not the forum for debate on the issues.

Mr. John Madras, Environmental Policy Director, Division of Environmental Quality, provided the Commission with a PowerPoint presentation on the proposed order. He noted that seeking the Commission's affirmative vote on the rule was the final step before filing it with the Joint Committee on Administrative Rules and the Secretary of State's office. Mr. Madras provided an initial overview of his presentation.

The presentation included information regarding:

- Comments received and the Department's responses.
 - Coordination with other agencies on the rule.
- Outline of the *Order of Rulemaking*.
- Future Work.
 - Memorandum of Understanding with EPA.
 - Technical Tasks.
 - Implementation.
- Rulemaking Schedule.

Commissioner Frakes inquired as to how long it takes to revise the Memorandum of Understanding when it is enforceable.

Mr. Madras responded that there was no real way to determine. He noted that EPA Region VII was involved through this process, and hopefully, the timeframe could be streamlined--due to this coordination--and that there were several advantages to this that may shorten the timeframe.

Ms. Shelley Woods, Commission Legal Counsel, Attorney General's Office, noted that Memorandums of Understanding were not enforceable. She also noted that any changes to the rule must be based on a comment received during the public comment period.

Commissioner Bracker addressed the Commission and attendees, commending all those that have been involved throughout this process. He noted that most of the goals had been reached; a systematic process with limited resources. He then went on to state that after reviewing the public comments, he found that there are elements--within the rules--under which he could no longer support the rule. Commissioner Bracker expounded on his statement stating that the rule requirement that all sites must be delineated to default target levels (DTLs), makes voluntary site cleanup very difficult when the cooperation of adjacent property owners is required, especially in older, urban areas where properties are small and densely packed. He also noted that the requirements of AUL and LTS on sites, including adjacent properties, where contamination remains above DTL, can make site reuse difficult. His main concern was that if these requirements are applied in all cases, although they may be appropriate in most cases, it may have the unintended consequence of making some voluntary site cleanups impracticable, and thereby result in fewer cleanups ultimately being performed in Missouri.

A discussion ensued as to the reuse ability under this proposed rule.

Commissioner Bracker then went on to discuss the uncertainty of the result and up front cost may deter some from entering the process. This was an unintended consequence of government's attempt to provide a process to all address contamination in all cases. He stated that he believed the delineation requirement of the proposed rule will deter some sites that would voluntarily enter in to a voluntary cleanup program, due to the requirements.

He also noted his concern that the Department of Health and Senior Services provided its comments through the public comment process, and that the input of all the state agencies should be made available for public comment through this process.

Mr. Madras addressed the Commission and noted his appreciation to Commissioner Bracker for his point of view. He noted that these issues have been discussed in the past, but there have been no specific changes made to address this issue.

Chairman Gleason inquired as to whether or not it could be fixed.

Mr. Madras responded that the choices were to go on from here and make adjustments during the "future work" or stop the process now and start over.

Commissioner Bracker advised that he felt the substantive issues were too complex to address in the current proceedings, and that, historically, those things that are left to the future rarely get done. He advised he would leave it to the other commissioners for their consideration.

Commissioner Frakes asked Commissioner Bracker to clarify how he felt the DTL issue would impact smaller communities. Commissioner Bracker provided a couple of scenarios and noted that access to adjoining properties was a constant issue in the cleanup of Brownfield sites and that these issues have costs that impact investment in communities.

Commissioner Kessler read the motion to adopt the *Order of Rulemaking*. There was no second to the motion. The motion died for lack of a second.

Commissioner Frakes inquired if there were any modifications that could be made that would address some of Commissioner Bracker's concerns.

Chairman Gleason inquired as to which specific comment the concerns were based on, and Commissioner Bracker responded that it was on page 4, Comment #1 from Regform.

Chairman Gleason then inquired if the State felt the comment was a necessary requirement. Mr. Madras responded, noting that it would be impractical to reach residential reuse standards in certain areas, thus promoting redevelopment.

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Commissioner Bracker advised that there were extremely complicated issues at stake, and expounded on the difference between voluntary and non-voluntary, while discussing the costs associated.

Chairman Gleason and Commissioner Bracker discussed the issues raised.

Ms. Woods suggested a separate rule for BVC sites.

Commissioner Bracker responded that this has been thought about, noting the incentives and that it may be more flexible. He asked the Commission for any additional thoughts on the issue.

Chairman Gleason addressed the Commission and advised that at this point it appeared there were two solutions:

1. Start over because the motion was not seconded.
2. Try to work resolving the specific issues at a later date without starting over.

Mr. Robert Geller, director, Hazardous Waste Program, addressed the Commission, noting that these were the only options the Department saw at this time. He commented on the issue of beneficial reuse, standards and property, and community rights. He also noted that some communities zoning decisions and laws may solve some of the dilemma. The rule strives for residential use or that adequate land use controls are in place.

Chairman Gleason requested that he clarify, with Mr. Geller responding that the Department felt the entity doing the cleanup had the right to all of the available information to make the cleanup decisions.

Commissioner Frakes inquired if zoning would deal with the issue, with Mr. Geller responding that zoning laws were not always in place, nor consistent.

Commissioner Kessler advised that other than this issue, the rule appeared to be okay and asked the Commission to rethink their vote. Chairman Gleason advised him he could bring the matter up for a vote again. Commissioner Frakes inquired if he could ask another question. Chairman Gleason advised that it may be more appropriate to wait until the motion had been made. A scenario regarding the wording of the motion to include later modification was discussed between Commissioner Kessler and Commissioner Bracker. Commissioner Bracker responded that he understands the Department's position but noted that the rule--as written--was too inflexible. Commissioner Kessler then asked Commissioner Bracker if any rule would be 100 percent agreeable. Commissioner Bracker responded that he did not feel that this rule was in the public interest in some areas.

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Commissioner Frakes inquired if there was an option or modification on the proposed order, asking if the Department could see where any modification could be made that would address Commissioner Bracker's concerns, without having to start over.

Ms. Woods interjected that modifications to the proposed rule can be made but only in response to comments, and that there was a time limit involved.

Chairman Gleason noted that if the motion was made again, and it fails to pass, we would have to start over or table it till the next meeting.

Ms. Woods responded that tabling it was not an option, it would be too late – the time line given is until June 23, 2009.

Commissioner Kessler asked if the motion could be changed to include "modify?"

Commissioner Frakes asked if the rule was adopted by the Commission, if it were to go forward, could concerns be revisited to address issues raised by Commissioner Bracker.

Ms. Woods responded that the Commission has clear authority to revisit any provision of the rule that they desired.

Commissioner Frakes asked Commissioner Bracker if he believed that was acceptable. Commissioner Bracker responded that it was an option, but that in his experience once a regulation is adopted, it is difficult to change, and that this type of inflexibility was how this rule had got its' start. He noted that when a regulation takes a more conservative stance to begin with, it is hard to back off of at that point. He continued by stating although this may be a step forward, it may also be a step away from the consensus between the stakeholders. There were concerns that sites would be under this version of the rule until modifications could be made and the rule changed. He finished by noting that he would not approve adopting and fixing later, but would support the Commissions' vote on the issue.

Commissioner Kessler inquired if he would adopt if "modify" were in the wording.

Mr. Marty Miller, Legal Counsel, Division of Environmental Quality, addressed the Commission discussing an amendment to the rule.

Commissioner Kessler again read the motion to adopt the order, with the inclusion of the "modification". No second was received.

Mr. Geller addressed the Commission, asking for a recommendation and a direction to proceed.

Commissioner Frakes addressed Commissioner Bracker and inquired if he would make the commitment to work with the Department between now and June 23, 2009, to see if

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something could be worked out. If a teleconference could be set up at the end of this discussion, he advised that he would provide a second to the motion.

Chairman Gleason asked if they changed the document based on the Regform comment--right now—if the issue would be resolved or if there would be other issues?

Commissioner Frakes responded that the stakeholders and public were given a chance to comment and be involved throughout the process, and that the State had done due diligence on this.

Chairman Gleason asked for specific modifications.

Ms. Woods advised the Chairman that he could direct staff today to do the work and make the motion to modify on the June, 23, 2009.

Commissioner Aull asked if this would require an additional comment period. She was advised that it would not.

Commissioner Frakes worded the motion that directed staff to address the specific comment on Page 4, as it pertains to the *Order of Rulemaking*, and that specific language be developed addressing this. There would be a vote by telephone on July 23, 2009.

Mr. Miller noted that it would have to take place in the morning to enable the package to be to Joint Committee on Administrative Rules by the deadline.

Chairman Gleason repeated the motion to hold a teleconference on July 23, 2009, to vote on the amended motion language. Commissioner Bracker requested the Department note any changes to the Tanks RBCA rule in the ongoing public comment and rulemaking process for that rule, and determine which ones, if any, would apply to the departmental RBCA rule, and propose later appropriate amendments to the departmental rule to make the two rules consistent.

He then seconded the motion.

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

Chairman Gleason called for a brief recess at 11:38 AM.

The General Session was called to order at 11:48 AM.

4. REJAX, L.L.C., EAST PRAIRIE LOCATION (ST0008942)

Ms. Angela Oravetz, environmental specialist, Compliance and Enforcement Section, addressed the Commission and gave a brief history of the Department's involvement with this site. She noted that there have been two inspections at the site and violations with

the Missouri Underground Storage Tank Law and Regulations were observed. There is no power to the site; therefore, the cathodic system cannot work. She also noted that this site was scheduled for the last Commission meeting, but that the Department had received contact from the owner prior to the meeting, with the information again being relayed to him that tanks needed to be closed and the Department needed a timeline. Options were discussed with the site being removed from the agenda.

On June 12, 2009, the Department received a quitclaim deed from the owner--for the property--noting his inability to pay for the work needed. The Department has been unable to make contact with the owners after this point.

Ms. Oravetz advised the Commission, that due to these actions, the Department is requesting the Commission refer Rejax to the Attorney General's Office to compel compliance and negotiate a civil penalty.

Chairman Gleason asked if there was any discussion. There was not any, so Commissioner Bracker read the motion to refer.

The motion was seconded by Commissioner Aull.

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

5. RULEMAKING UPDATE

Mr. Tim Eiken, rules coordinator, Hazardous Waste Program, provided the Commission with an overview and schedule of the current rulemaking process.

Mr. Eiken gave the Commission a brief update on the draft E-scrap rule schedule, noting that an emergency rule was being filed tomorrow to meet the filing deadline. There will be a public hearing during the October meeting on the regular rule.

He then provided the Commission with an update on the Tanks rule, noting it was published on May 1, and that the public comment period was open until August 27, 2009.

The Commission was advised that a rulemaking schedule was included in the packet, with an updated version being provided in each packet. Suggestions were solicited.

6. COMPARATIVE ANALYSIS

Mr. Tim Chibnall, environmental specialist, Hazardous Waste Program, addressed the Commission, providing them a response to their February 5, 2009, request for a comparative analysis of the Department's proposed Tanks rule and the one that the Petroleum Storage Tank Insurance Fund (PSTIF) had submitted to the Commission. He noted that the public comment period did not end until August 27, 2009; therefore, he would be limiting some responses because it was still open.

He provided the Commission with a PowerPoint presentation, noting the following:

- Introduction
- Overview
- Comparison
- RBCA Application Criteria
- Delineation Criteria
- Land Use Determinations
- Plume Stability Evaluations
- Notification of Adjacent Owners
- Long-term Stewardship
- Soil Type Specific RBTLs
- Language Differences
- Rule Structure
- Incorporation of RBTLs
- Appeals Rule
- Conclusion

Mr. Chibnall responded to the Commission's inquiry as to whether PSTIF's comments were included in the public comments, noting that they were not, as they were a separate issue and that they were not submitted during the public comment period.

7. STIMULUS UPDATE

Mr. Ken Koon, environmental manager, Tanks Section, provided the Commission with a PowerPoint presentation, updating them on the stimulus funds the Department has/will be receiving. Items noted:

- Amount
- Timeline
- Requirements
- Role of DNR
- Impacts
- Determination/Identification of sites
- How contractors chosen
- Cost recovery
- Decision points
- Federal Guidance
- Outreach/media events

He responded to the Commission's inquiries.

8. QUARTERLY REPORT

Mr. Mark Conner, public information officer, Hazardous Waste Program, addressed the Commission and noted that the new *Quarterly Report* was not available for this meeting, as it was still under review by upper management. He then provided the Commission with the handout the BVCP program had produced.

Commissioner Frakes requested additional copies be provided for him to take with him.

9. PUBLIC INQUIRIES

Mr. Geller opened the podium up to anyone wishing to address the Commission. No public comment forms have been received.

Roger Walker, Regform, addressed the Commission and commented on an issue raised during the earlier discussion regarding MRBCA, noting that it had been brought up at previous stakeholder meetings--without resolution. He asked for one more meeting before the Commission voted.

Ms. Woods noted that this was outside of what could be discussed at this time.

10. OTHER BUSINESS

Mr. Geller awarded Commissioner Bracker with a plaque of appreciation for his service as vice chairman. He also discussed the upcoming Missouri Waste Control Coalition conference at the Lake of the Ozarks, extending an invitation for the Commission members to participate. An update was given on the program director vacancies, and the Commission was advised that a budget status update would be provided during the next meeting.

11. FUTURE MEETINGS

Mr. Geller noted that the next meeting--a teleconference--was scheduled for June 23, 2009, at 8:30 a.m. He stated that August 20, 2009, would be the next regularly scheduled meeting.

ADJOURNMENT

Chairman Gleason noted the meeting was to be adjourned.

A vote was taken, all were in favor. Motion carried.

Meeting adjourned at approximately 1:04 PM.

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Respectfully Submitted,

(Original signed by Salona Parker)

~~Salona Parker, Commission Secretary~~

APPROVED:

(Original signed by Patrick Gleason)

Patrick Gleason, Chairman

8/20/09
Date