

1 BEFORE THE CLEAN WATER COMMISSION
2 DEPARTMENT OF NATURAL RESOURCES
3 STATE OF MISSOURI

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7 AUDIO TRANSCRIPTION OF MEETING

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JANUARY 6, 2010

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13 CONDUCTED BY:
14 CHAIRMAN RON HARDECKE

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18 TRANSCRIBED FROM AUDIO BY:
19 DANIELLE Y. MOSER
20 MIDWEST LITIGATION SERVICES
21 3432 WEST TRUMAN BOULEVARD
22 SUITE 207
23 JEFFERSON CITY, MISSOURI 65109
24 (573) 636-7551
25 (573) 636-9055 Facsimile

1 P R O C E E D I N G S

2 CHAIRMAN HARDECKE: **First item on the agenda is the**

3 **election of officers.** And I'm going to ask Jenny

4 Frazier to conduct the election.

5 MS. JENNIFER FRAZIER: Thank you, Mr. Chairman. The

6 nominations for the position of Chair if you'd like

7 to proceed with that one first.

8 VICE-CHAIR HUNTER: **I would like to nominate Mr. Ron**

9 **Hardecke as Chair of the Clean Water Commission.**

10 COMMISSIONER EASLEY: **Second.**

11 MS. JENNIFER FRAZIER: We have a chair and a

12 second is there -- are there any other nominations?

13 (No response.)

14 MS. JENNIFER FRAZIER: Any discussion?

15 (No response.)

16 MS. JENNIFER FRAZIER: All right. Malinda, would

17 you, please, take the vote?

18 MS. MALINDA OVERHOFF: **Commissioner Easley?**

19 COMMISSIONER EASLEY: **Yes.**

20 MS. MALINDA OVERHOFF: **Commissioner Hunter?**

21 VICE-CHAIR HUNTER: **Yes.**

22 MS. MALINDA OVERHOFF: **Commissioner Leake?**

23 COMMISSIONER LEAKE: **Yes.**

24 MS. MALINDA OVERHOFF: **Chair Hardecke?**

25 CHAIRMAN HARDECKE: **Yes.**

1 MS. JENNIFER FRAZIER: Thank you.

2 I will now accept nominations for Vice-chair of
3 the Clean Water Commission.

4 COMMISSIONER EASLEY: Yes. I would like to nominate
5 Sam Hunter for Vice-chair of the Clean Water
6 Commission.

7 COMMISSIONER LEAKE: And I would second that.

8 MS. JENNIFER FRAZIER: Are there any other
9 nominations?
10 (No response.)

11 MS. JENNIFER FRAZIER: Any discussion?
12 (No response.)

13 MS. JENNIFER FRAZIER: Malinda, please, take the
14 vote.

15 MS. MALINDA OVERHOF: Commissioner Hunter?

16 VICE-CHAIR HUNTER: Yes.

17 MS. MALINDA OVERHOFF: Commissioner Leake?

18 COMMISSIONER LEAKE: Yes.

19 MS. MALINDA OVERHOFF: Commissioner Easley?

20 COMMISSIONER EASLEY: Yes.

21 MS. MALINDA OVERHOFF: Chair Hardecke?

22 CHAIRMAN HARDECKE: Yes.

23 MS. JENNIFER FRAZIER: Thank you.

24 CHAIRMAN HARDECKE: Thank you.

25 Next item on the agenda is the public hearing.

1 The Commission will begin the public hearing on
2 proposed amendment to 10 CSR 20-7.015, Effluent
3 Regulations.

4 These rule changes were first published for
5 public comment in the Missouri Register, Volume 34,
6 Number 21, on November 2nd, 2009.

7 The purpose of this public hearing is to
8 provide the Department opportunity to present
9 testimony and to provide an opportunity for the
10 public to provide comments on this proposed
11 rulemaking.

12 The public hearing is not a forum for debate or
13 resolution of issues. The Commission asks that those
14 commenting limit their testimony to five minutes and
15 not repeat comments that have already been made. The
16 Commission will first hear testimony from the
17 Department, following the Department's testimony the
18 Commission will give the public an opportunity to
19 comment.

20 We ask that all individuals present fill out an
21 attendance card so our records are complete. If you
22 wish to present verbal testimony, please, indicate
23 that on your attendance card.

24 The Commission is holding this hearing to assist
25 the public in commenting on a proposed rulemaking.

1 The public comment will close on January 13th, at 5:00
2 p.m.

3 When you come forward to present testimony,
4 please, speak into the microphone and begin by
5 identifying yourself to the court reporter.

6 Will the court reporter swear in those wishing
7 to give testimony?

8 MR. SCOTT TOTTEN: If anybody wishes to testify,
9 please, stand.

10 (Witnesses were sworn in by the court reporter.)

11 (Public Hearing heard in regards to Proposed
12 Amendment 10 CSR 20-7.015, Effluent Regulations,
13 presented by John Rustige, Permits and Engineering,
14 transcribed by Ms. Stephanie Darr of Midwest
15 Litigation Services, 711 North Eleventh Street, St.
16 Louis, Missouri 63101. Transcript of the public
17 hearing proceedings will be found in a separate
18 transcript provided by Ms. Stephanie Darr.)

19 CHAIRMAN HARDECKE: Okay. The Commission will
20 receive written testimony on the proposed rule
21 changes until 5:00 p.m., January 13th, 2010. You may
22 submit this written testimony to John Rustige,
23 Missouri Department of Natural Resources, Water
24 Protection Program, P.O. Box 176, Jefferson City,
25 Missouri, prior to that deadline.

1 On behalf of the Commission I thank everyone who
2 has participated in this process. This hearing is
3 now closed.

4 Thank you.

5 Okay. We'll move forward to **Tab No. 3** which is
6 the **approval of the minutes of the November 4th,**
7 meeting; are there any comments or questions on the
8 minutes?

9 (No response.)

10 **VICE-CHAIR HUNTER: Mr. Chairman, I move that the**
11 **minutes be approved.**

12 **COMMISSIONER EASLEY: Second.**

13 **CHAIRMAN HARDECKE: Malinda, please, take the vote.**

14 **MS. MALINDA OVERHOFF: Commissioner Hunter?**

15 **VICE-CHAIR HUNTER: Yes.**

16 **MS. MALINDA OVERHOFF: Commissioner Leake?**

17 **COMMISSIONER LEAKE: Yes.**

18 **MS. MALINDA OVERHOFF: Commissioner Easley?**

19 **COMMISSIONER EASLEY: Yes.**

20 **MS. MALINDA OVERHOFF: Chair Hardecke?**

21 **CHAIRMAN HARDECKE: Yes.**

22 Okay. Next is **Tab No. 4** the minutes of the
23 telephone conference meeting on December 2nd.

24 **COMMISSIONER EASLEY: I move that we approve the**
25 **December 2nd, 2009, teleconference meeting minutes.**

1 VICE-CHAIR HUNTER: Second.

2 CHAIRMAN HARDECKE: Malinda, please, take the vote.

3 MS. MALINDA OVERHOFF: Commissioner Hunter?

4 VICE-CHAIR HUNTER: Yes.

5 MS. MALINDA OVERHOFF: Commissioner Leake?

6 COMMISSIONER LEAKE: Yes.

7 MS. MALINDA OVERHOFF: Commissioner Easley?

8 COMMISSIONER EASLEY: Yes.

9 MS. MALINDA OVERHOFF: Chair Hardecke?

10 CHAIRMAN HARDECKE: Yes.

11 Okay. Thank you. Next is **Tab No. 5 and the**

12 **Transform Missouri IUP.** Joe?

13 MR. JOE BOLAND: Good morning, Mr. Chairman, members

14 of the Commission. My name's Joe Boland. I'm the

15 director of the Financial Assistance Center within

16 the Department.

17 Fortunately, we do not have any formal action

18 for you to take this morning, but I do want to let

19 you know on the stimulus projects we're -- I'll give

20 you a brief update later on during our normal

21 update period.

22 But we did have three projects that we were

23 struggling with as of the end of last week. We were

24 originally going to recommend bypass for two or three

25 of those projects and those were Carterville,

1 Cassville and Lake Ozark. And we ran into problems
2 on the loan side, basically, some bonding
3 issues. And we have actually worked with those
4 communities to -- essentially they're going to be
5 pursuing financing on their own for the loan half of
6 their project. So we're going to honor the grant
7 side.

8 We've done this with several other projects
9 throughout this process so just to let you know
10 though that we did -- if you want to know the
11 specifics of those I could talk through them or just
12 very briefly, Carterville has, just in general, has
13 some credit issues. They had not submitted
14 some audit, financial audits that they were required
15 to over the past several years. And there are
16 various reasons for that. But from a legal
17 standpoint that put us in a tough position to provide
18 a loan through our program.

19 Cassville was very similar. The way
20 they had their loan structured it was backed by a
21 capital improvement sales tax. It already had two
22 bond issues in place. They could not meet the
23 coverage with that capital improvement sales tax
24 alone. Now, that's not to say they couldn't afford
25 it because of system revenues that they could have

1 used however the bonding instrument we had to use was
2 only backed by that capital improvement sales tax.

3 So it gets a little complicated, but
4 needless to say we've worked with all those
5 communities. They're going to work through the
6 financing for the loan on their own through
7 conventional means and we'll be providing the grant
8 for those, so --

9 That's about it for the Transform. Luckily, we
10 don't have any projects to move off and on,
11 right now. We're -- we only have about 16
12 working days left before the end of January and
13 that's our goal to have all these financings in
14 place.

15 So that'll leave us approximately two weeks if
16 we have to do anymore moving before the February 17th
17 deadline, so --

18 Yes, sir?

19 MR. SCOTT TOTTEN: Joe, did you want to ask for
20 permission?

21 MR. JOE BOLAND: Yeah. Now, might be a good
22 opportunity. I know during the last teleconference
23 we requested permission -- blanket authority to make
24 adjustments to projects as they came in, as their
25 bids came in. Normally, we have -- as you know, we

1 have the authority to make adjustments up to 10
2 percent. Down is never a problem.

3 We can always adjust loans and grants down, but
4 moving them up creates other issues with allocations
5 to all other projects and -- but you provided that to
6 us. Luckily, we didn't have to use that during that
7 period, but looking forward as we -- we're up against
8 our deadline at the end of this month. That's
9 our goal, like I said.

10 What Scott and I have talked about was if
11 you were willing to provide us the authority to
12 bypass projects that did not make all their deadlines
13 by the end of this month or -- basically, meet the
14 schedules they've provided to us in order for us to
15 meet our deadline. If we cannot get a Commission
16 meeting together or teleconference at the last
17 meeting -- at the last minute, rather, if we would
18 have some kind of approval in place to go ahead and
19 move those projects off and on.

20 Like I said, we have about 16 working days left
21 until the end of this month. That gives us another
22 approximately 10 working days after that to make any
23 adjustments we may need to. Just as an example the
24 scenario may be some of our projects that are closing
25 at the end of this month, if they cannot make those

1 commitments or they can't make those deadlines we may
2 have to make a hard decision and pull the
3 funding from them and redistribute it to the
4 projects that are already underway or under contract.

5 Now, our management is very firm in
6 making sure we get this money out. That's been
7 stated in no uncertain terms. So we have to
8 have the mechanism to do that, and if we linger
9 into February that leaves us absolutely no time to
10 make those necessary adjustments.

11 Those adjustments include getting grant/loan
12 amendments done with -- you know, possibly up to 60 -
13 - 60 projects. That's quite an undertaking, right
14 there. So if you could consider that we would
15 appreciate your --

16 COMMISSIONER LEAKE: Joe, one question that I -- from
17 reading the minutes, I think, you had approval to do
18 this previously by the teleconference, but the
19 Commissioners were to be advised of changes made; is
20 that correct?

21 MR. JOE BOLAND: Right.

22 I think the -- what we requested and what you
23 approved at the last meeting was just to make
24 adjustments to those projects. As bids came in,
25 whether we, basically, to adjust up; if we could --

1 needed to allocate more funding to a project as
2 bids came in. What we're asking for here is to bas-
3 -- essentially bypass these projects if they can't
4 make their deadline we would take the funding from
5 them and reallocate it to projects that are
6 successful.

7 COMMISSIONER LEAKE: If the rest of the Commission
8 would be open to it, I thought if -- I like the
9 notification just so we know if we get a phone call
10 from somebody --

11 MR. JOE BOLAND: Well, we would certainly do that.
12 Absolutely.

13 COMMISSIONER LEAKE: Continue with the notification,
14 I'd appreciate that.

15 MR. JOE BOLAND: Yes, sir?

16 CHAIRMAN HARDECKE: One question. If -- would you be
17 adding new projects on or would you be chang- -- add
18 -- taking -- say if one drops off that money would be
19 split up between others or a new one added on?

20 MR. JOE BOLAND: That's the decision that's
21 going to be very, very hard. If -- as we get down to
22 two weeks left there may not be enough time to pull a
23 contingency project up. We may have to redistribute
24 and that's one of the scenarios we've worked through
25 with our management. So, again, I think

1 it may be in consultation with you as we get --
2 hopefully, we'll not get to this point.

3 But if we do, we have to have the tools in
4 place to make those decisions whether it's --
5 and we will be working very hard to have a
6 contingency project in place to move that money to
7 them, but if that's not possible one of the scenarios
8 is to redistribute that to successful projects.

9 CHAIRMAN HARDECKE: But your first priority would be
10 to bring another contingency project up?

11 MR. JOE BOLAND: Yes. Yes.

12 COMMISSIONER EASLEY: I think I would prefer to have
13 a teleconference to approve -- to approve these. In
14 most cases we would be able to get together a quorum.
15 It would be my preference.

16 VICE-CHAIR HUNTER: I agree. And the reason I feel
17 that way is at the last teleconference meeting
18 Commissioner Tupper was very specific that you not
19 move any new projects on to the list. He says, you
20 aren't asking for blanket approval to move them from
21 the contingency list to the fundable list, are you?

22 MR. JOE BOLAND: That's correct.

23 VICE-CHAIR HUNTER: He says, okay, then I have no
24 problem with that. So I think maybe we should -- we
25 should take a little harder look at it.

1 MR. JOE BOLAND: That's fine. That's fine.

2 VICE-CHAIR HUNTER: Anything going on. Now, as far
3 as redistributing I don't have a problem with that on
4 any decision.

5 COMMISSIONER EASLEY: I think moving it on or off the
6 list we should have --

7 VICE-CHAIR HUNTER: Maybe not off, but definitely on.
8 What do you think?

9 COMMISSIONER EASLEY: Well, I think on or off.

10 MR. JOE BOLAND: Well, with that direction, I think,
11 we'll continue moving forward as we ha- --
12 as we are and -- I mean, we'll work with Scott and
13 the Chairman if we come to that point. And if
14 we -- certainly, I'm hope- -- hopeful we can get a
15 teleconference together no problem with a quorum, so
16 --

17 VICE-CHAIR HUNTER: And this is just for ARRA
18 projects?

19 MR. JOE BOLAND: Yes, sir. Yes.

20 CHAIRMAN HARDECKE: Okay.

21 MR. JOE BOLAND: Thank you.

22 CHAIRMAN HARDECKE: Thank you.
23 You're up on the next one, too.

24 MR. JOE BOLAND: Yes. I'm up again.

25 CHAIRMAN HARDECKE: No. 6.

1 MR. JOE BOLAND: And, again, **Tab No. 6** is our base
2 program FY -- State FY -- **Fiscal Year 2010 Intended**
3 **Use Plan.** This was originally -- we had a public
4 hearing back in March of 2009. And then ARRA came
5 along and we made adjustments -- well, we
6 developed the whole ARRA IUP and basically put the
7 base program Intended Use Plan on hold, but since
8 we're coming down to the wire we wanted to get this
9 back on public notice. We wanted to finalize it for
10 the rest of this fiscal year.

11 So we put it back on public notice December 9th.
12 We received three comments and one was from
13 Joplin who -- they were requesting revision to their
14 priority points. We had them for 140 priority points
15 on the planning list and they brought some
16 information to our attention where we do
17 support and recommend that their priority points
18 should be revised to 145 points.

19 If -- when they're successful in closing on
20 their ARRA loan that will allow them to receive
21 another 50 points for a phased project. So they --
22 they have the potential to move to 195 points after
23 that loan closing. And they have also met their
24 readiness to proceed criteria. So we are
25 recommending that they be moved from the planning

1 list to the fundable/contingency list.

2 The City of Piedmont was inadvertently omitted
3 from the fundable/contingency list and, again, they
4 meet the readiness to proceed criteria, also. So we
5 would recommend that they be moved to the
6 fundable contingency list.

7 And the City of Waynesville has also met the
8 readiness to proceed criteria and should be moved to
9 the fundable contingency.

10 And those are the only comments we received
11 during this time. And I know we talked about
12 this IUP a couple times in the last year. The only
13 major revisions we made to this were the ARRA
14 contingency projects we moved a lot of those that did
15 not make the fundable list on to the contingency list
16 for the 2010. And -- so the list has grown
17 considerably, but, again, we're -- we needed to
18 move forward with just finalizing the 2010
19 just to kind of neaten things up a little bit and
20 have it in place for the rest of the year.

21 And then we'll be coming to you very soon with
22 the 2011 already. So I -- at this time, we're --
23 we're asking that you adopt this final IUP for State
24 Fiscal Year 2010.

25 CHAIRMAN HARDECKE: Now, would that include these

1 changes?

2 MR. JOE BOLAND: Yes, sir.

3 CHAIRMAN HARDECKE: Phil, comments?

4 MR. PHIL WALSAK: No. I think I'll stand down on
5 this one. Thank you.

6 CHAIRMAN HARDECKE: Thank you.

7 (Laughter.)

8 CHAIRMAN HARDECKE: Any other questions?

9 (No response.)

10 VICE-CHAIR HUNTER: Mr. Chairman, I move the Clean
11 Water Commission approve the State Fiscal Year 2010
12 Clean Water State Revolving Fund Intended Use Plan as
13 presented today including the addition of Joplin,
14 Piedmont and Waynesville.

15 COMMISSIONER LEAKE: I would second that.

16 CHAIRMAN HARDECKE: Malinda, please, take the vote.

17 MS. MALINDA OVERHOFF: Commissioner Hunter?

18 VICE-CHAIR HUNTER: Yes.

19 MS. MALINDA OVERHOFF: Commissioner Leake?

20 COMMISSIONER LEAKE: Yes.

21 MS. MALINDA OVERHOFF: Commissioner Easley?

22 COMMISSIONER EASLEY: Yes.

23 MS. MALINDA OVERHOFF: Chair Hardecke?

24 CHAIRMAN HARDECKE: Yes.

25 MR. JOE BOLAND: Thank you.

1 CHAIRMAN HARDECKE: Thank you.

2 **Tab No. 7, Boone County and** Refaat.

3 MR. REFAAT MEFRAKIS: Good morning, Chairman.

4 COMMISSION: Morning.

5 MR. REFAAT MEFRAKIS: Well, my name is Refaat
6 Mefrakis. I'm chief of permits and engineering. The
7 Boone County Regional Sewer District and the City of
8 Columbia are jointly requesting Level 2 Continuing
9 Authority pursuant to 10 CSR 20-6.010(3)(B)2. This
10 started back in -- at the July 2009 Commission
11 meeting where Boone County Sewer District and the
12 City of Columbia made a presentation in regard to
13 this request.

14 At the Dec- -- at the September 2nd, 2000,
15 Commission meeting the Department recommended that
16 the City and the County hold a public meeting and a
17 30-day comment period to present their regional
18 collection and treatment system proposal.

19 And, in addition, the Department requested that
20 an annual -- provide at least one public
21 meeting annually and also submit an update to a Level
22 2 Regional Authority Plan to this Commission by July
23 1st, 2013.

24 To our understanding the Boone -- the District
25 and the City of Columbia have complied with the 30-

1 day public comment period and also held the public
2 meeting on October 22nd of 2002 -- 2009. They also
3 indicated that they will be willing to conduct the --
4 at least, one public meeting annually and submit an
5 updated Level 2 Regional Authority Plan to the
6 Commission in July 2010.

7 The affidavits to these meetings are also
8 attached in your booklet. My understanding from the
9 District is they had received one comment. There are
10 about 56 privately permitted facilities; 17 of those
11 unlikely to be affected by this proposal; 28 have
12 potential to be affected by this Regional Authority.

13 Now, Staff recommends that the Missouri Clean
14 Water Commission designate in accordance with 10 CSR
15 20-6.010(3)(C), the Boone County Regional Sewer
16 District and the City of Columbia as continuing
17 authorities providing sewage collection and treatment
18 services on the regional basis in Boone County
19 pursuant to 10 CSR 20-6.010(3)(B)2. Under this
20 designation, the City will provide regional services
21 inside the city limits and in any subsequently
22 annexed area not served by the by the
23 District. The District will provide regional
24 services in the unincorporated area of Boone County
25 as they exist at the date of this Commission's

1 approval.

2 David Shorr and -- from the District and Steve
3 Hunt are here and I'll be glad to answer your
4 questions or they could answer any of the questions
5 you have.

6 CHAIRMAN HARDEKCE: Any questions?

7 VICE-CHAIR HUNTER: Refaat?

8 MR. REFAAT MEFRAKIS: Uh-huh.

9 VICE-CHAIR HUNTER: When you were reviewing the
10 recommended action you said that the City will
11 provide regional services inside the City's corporate
12 limits that are not already served by the District;
13 is that -- is that the way you described that?

14 MR. REFAAT MEFRAKIS: Yeah. Any -- any -- the Ci- --
15 there are no services provided by the District inside
16 the city limits right now.

17 VICE-CHAIR HUNTER: Okay. But -- but in the future -
18 -

19 MR. REFAAT MEFRAKIS: That's my understanding.

20 VICE-CHAIR HUNTER: -- in the future --

21 MR. REFAAT MEFRAKIS: Uh-huh.

22 VICE-CHAIR HUNTER: -- if a portion of the
23 unincorporated county was annexed and was already
24 served by the District, which is basically the County
25 then would that shift that responsibility to the City

1 or would it stay with the District?

2 MR. REFAAT MEFRAKIS: That's -- that's a good
3 question. That's the same concern our attorney has
4 raised and we want to make sure this approval
5 addresses that issue. And our understanding that as
6 long -- if the District is serving that and its
7 annexed by the City it will be under the jurisdiction
8 of the District unless there is an agreement been
9 reached between the City and the County to transfer
10 that authority.

11 And we want to make sure that we -- as we
12 approve this we note that in the approval. Does that
13 answer your question?

14 VICE-CHAIR HUNTER: Yes.

15 CHAIRMAN HARDECKE: Other questions?

16 (No response.)

17 MR. REFAAT MEFRAKIS: Steve Hunt and David Shorr can
18 maybe elaborate a little bit more if they would like.

19 CHAIRMAN HARDECKE: David?

20 MR. REFAAT MEFRAKIS: Thank you.

21 MR. DAVID SHORR: Mr. Chairman, members of the
22 Commission, it's good to see you again. This is the
23 third opportunity we've had to talk about this item.

24 To answer the last question, first, from Mr.
25 Hunter. There are three basic methods of which the

1 City and the County -- or the District use with
2 regard to transfer of land area. When an area is
3 annexed, annexation rates still belong to the
4 citizens of that area. So they have a say as part of
5 this exercise.

6 We use connection agreements between the City
7 and the Coun- -- the District with regard to new
8 interceptor sewers because in part we pay a portion
9 of those interceptor sewers. And those agreements
10 include transfer arrangements with regard to when
11 annexation will occur.

12 They also include a specific map of customers
13 that is agreed upon prior to entering into that
14 agreement. And those agreements generally are part
15 of our grant requests for Mr. Boland's shop regarding
16 both ARRA and State Revolving Loan funds.

17 So it is an integrated approach from the
18 standpoint of each of the most recent agreements, at
19 least since I've been a part of the Board, we have
20 put in a provision in all of our new agreements that
21 provide for the City to be able to reacquire
22 customers with regard to the areas that have been
23 annexed. That's a bigger issue than just the sewer
24 district. It involves some of the public policies of
25 the City that they wish to do -- deal with as a

1 result of some negotiations they've had with the fire
2 district. And so the transfer provisions have been
3 agreed to in advance.

4 And so if the City -- as long as the District
5 maintains its bonding capability for capital
6 improvements to pay back the debt owed to the State
7 Revolving Loan fund under its rate structure
8 generally speaking about 6,200 customers then the
9 City can request to transfer customers back to the
10 City that may be in annexed areas.

11 And so that's been -- that's been a pre-approved
12 agreement by both counsel and the Board of Trustees.
13 Does that answer your question on that?

14 VICE-CHAIR HUNTER: Yes. But one thing is still a
15 little bit hazy to me. Are the rates the same in
16 both the City and the District?

17 MR. DAVID SHORR: No.

18 VICE-CHAIR HUNTER: All right. So it would be in
19 someone's interest to try to stay in one or the other
20 to receive a lower rate; is that right?

21 MR. DAVID SHORR: Correct.

22 And in fact --

23 VICE-CHAIR HUNTER: Is that possible?

24 MR. DAVID SHORR: For somebody to quote, request
25 annexation --

1 VICE-CHAIR HUNTER: No. No. For -- well, for an
2 area that becomes annexed to say we want to be in the
3 City because they're lower or we want to be in the
4 District --

5 MR. DAVID SHORR: And that's why that provision was
6 put into the connection agreements that we negotiated
7 on all the new interceptor sewers.

8 The best example that I can give and if Steve
9 wishes to elaborate we do have an enclave that is
10 fully inside the city limits where the District is
11 the operating authority. And it's completely
12 surrounded by the City. And as the City has picked
13 up additional annexed areas it's been surrounded.

14 That area was specifically discussed in our
15 agreements for the City to be able to reacquire those
16 customers. It is a petition process. It is not a
17 cost-exchange process. It just merely is a
18 requirement that we've able to maintain our bonding
19 authority.

20 So as our areas external to the City of
21 Columbia expand and more customers come in the City
22 gains the rights to recover individuals who might be
23 within the city limits, now, as a result of the
24 changes.

25 It's the best that was -- that was the best

1 that was available for both enterprises in order to
2 make sure we meet all the federal requirements for
3 our bond notes and all our requirements jointly for
4 the rights and responsibilities of the City. Now,
5 the City itself has multiple agreements with other
6 enterprises such as water districts, Boone County
7 Electric. The City is a municipal provider of
8 electricity. So these transition agreements are --
9 are -- the City is very knowledgeable with regard to
10 these transitions. And that's the purpose of why we
11 negotiated the way we did on all the new expansions.
12 And you have authorized all those new expansions.

13 But the rate is different and it's
14 significantly different. A District customer in 2013
15 will probably pay about \$63 a month. A City customer
16 will probably pay about \$20-22. So if I'm a City
17 resident, okay? And I was a former District resident
18 I would want to be encouraging the City to examine
19 the provision to allow them to come back in the City.

20 VICE-CHAIR HUNTER: Right.

21 MR. DAVID SHORR: Now, the treatment is actually
22 going to still be done by the City in most cases
23 'cause it goes to the regional plant that you've
24 helped us eliminate, these smaller plants. And
25 that's how we pick them up as plants.

1 Debt amortization is a big issue.

2 VICE-CHAIR HUNTER: That -- I understand now. And I
3 can see why you would want that or someone would want
4 that agreement in place to be able to do that at a
5 future date.

6 MR. DAVID SHORR: Now, there are some areas, just for
7 your information not to belabor the point, there are
8 some areas where -- that we know will be coming into
9 the City that the District does not have the
10 capability to serve, but the City might have the
11 capability to serve. There are pre-annexation
12 agreements entered into that provide sewer service in
13 the District with the District signoff and with the
14 consent of the current property owner as part of
15 their development.

16 Now, those are a specific contract agreement
17 that the City enters into directly. It's anticipated
18 they will be brought in by annexation. They're not
19 directly adjacent at this point in time. So there is
20 another way for that to occur. The District would
21 not get any customers in that case.

22 VICE-CHAIR HUNTER: And they pay the City rate?

23 MR. DAVID SHORR: They pay the City rate. Okay?

24 Any other questions, I can ask -- answer for
25 you?

1 CHAIRMAN HARDECKE: Your bonding capability is -- is
2 based on a number of customers though, right?

3 MR. DAVID SHORR: That is correct.

4 And it's pretty close, Mr. Chairman, to I
5 believe right now it's sitting about 6,500 customers.

6 And we're floating around 6,200ish is where --

7 (Tape One, Side A Concluded.)

8 MR. DAVID SHORR: -- ring around the City. And
9 those are already pre-negotiated.

10 CHAIRMAN HARDECKE: Okay.

11 MR. DAVID SHORR: Other questions?

12 CHAIRMAN HARDECKE: Do you have anything else?

13 MR. DAVID SHORR: No. The only thing I just wanted
14 to make sure -- make you aware that as part of the
15 discussion that Refaat brought up there is a
16 requirement that in 2013 we have a new plan in place
17 going forward as you're aware from the last meeting.
18 2013 is the deadline with the credit to disinfection
19 and a very large portion of our elimination of plants
20 is predicated on the cost relating to disinfection
21 and rather than do plant upgrades we're eliminating
22 those plants.

23 I believe there's 13 of them that are being
24 eliminated as part of our grant process with the --
25 with the fund. Those are all pre-funded. They've

1 all been pre-approved with regard to rate.

2 Two things I'd like to report to you on that.

3 First, we have authorized consulting engineers to
4 develop that report for 2013. So that has been
5 authorized by the Board of Trustees and the other
6 item I wanted to mention and it's more inside that
7 anything else and maybe in part of thanks.

8 We just reevaluated rates for this year and I
9 can't certainly speak further out, but we were
10 expecting a 10 percent rate increase for our citizens
11 this year and we're going from a \$35 a month rate to
12 a \$63 a month rate by 2013.

13 We were able to keep that down to 3 percent.
14 And that's a direct result of the State Revolving
15 Loan fund. The Staff -- of our Staff having cued up
16 things properly with both our bond elections and
17 other things and as a direct result our citizens, at
18 least, for the year are going to have a nominal rate
19 reduction from what their expectations were. Instead
20 of being 10 percent higher we're only going to be 3
21 percent higher.

22 And I want to say thanks because that's --
23 that's part of the ARRA as well as the State
24 Revolving Loan fund and without those two programs we
25 wouldn't be able to do that, so --

1 CHAIRMAN HARDECKE: I wanted to thank you for your --
2 everything you've presented us with. Your public
3 meeting it looked liked you had about seven of the 53
4 affected entities in attendance.

5 MR. DAVID SHORR: Yes.

6 And, also, a couple who, quite frankly, I
7 expected to be more vocal, which they were not
8 so I believe at least we've communicated well-enough
9 to them that -- that the purpose of this relates to a
10 lot of factors including how close they are to the
11 potential interception.

12 Now, on the City side the City remember their --
13 the goal and objective here was not to interfere with
14 local governments. So Centralia's not included in
15 this. Harrisburg's not included in this. All the
16 incorporated small towns that have their own
17 responsibility unless they want us to assume their
18 responsibility under our rights as a District they
19 are still autonomous. And that was shown to you at
20 the first meeting that we had. The City, of course,
21 is integrated with us because of our sewage treatment
22 techniques. And I believe or at least right now
23 you've -- we've -- Steve, didn't we authorize your
24 plant is going to be built, ground breaking is in two
25 weeks isn't it?

1 So -- so the big plant which has a \$60 million
2 improvement for the City, which part of it is for the
3 District will be initiated in two weeks with
4 construction. Again, State Revolving Loan fund and
5 ARRA, so --

6 CHAIRMAN HARDECKE: Any questions, comments?

7 (No response.)

8 CHAIRMAN HARDECKE: Refaat, do you have other
9 comments?

10 MR. REFAAT MEFRAKIS: Yes. As you propose to approve
11 this, we would like you to include those conditions
12 that they would hold at least one public meeting
13 annually and a submittal of the 20- -- the Regional -
14 - Tier 2 Regional Plan by July 2013.

15 COMMISSIONER EASLEY: And what was the last point?

16 MR. REFAAT MEFRAKIS: The first one is hold annual
17 public meeting and the second one is submittal of
18 Tier 1 -- Tier 2 Regional Plan by July 1st, 2013.

19 COMMISSIONER EASLEY: 2013?

20 MR. REFAAT MEFRAKIS: 2013, correct.

21 COMMISSIONER EASLEY: July 31st?

22 MR. REFAAT MEFRAKIS: July 1st.

23 COMMISSIONER EASLEY: July 1st. Okay.

24 **I move the Missouri Clean Water Commission**

25 **approve in accordance with the recommendation of the**

1 Department the Boone County Regional Sewer District
2 and the City of Columbia's request for designation as
3 a Continuing Authority Level 2 pursuant to 10 CSR 20-
4 6.010(3)(B) and (C) condition that they hold a public
5 meeting annually and submit a sub- -- well, a Tier 2
6 Plan by July 1st, 2013.

7 COMMISSIONER LEAKE: Second that motion.

8 CHAIRMAN HARDECKE: Malinda, please, take the vote.

9 MS. MALINDA OVERHOFF: Commissioner Easley?

10 COMMISSIONER EASLEY: Yes.

11 MS. MALINDA OVERHOFF: Commissioner Hunter?

12 VICE-CHAIR HUNTER: Yes.

13 MS. MALINDA OVERHOFF: Commissioner Leake?

14 COMMISSIONER LEAKE: Yes.

15 MS. MALINDA OVERHOFF: Chair Hardecke?

16 CHAIRMAN HARDECKE: Yes.

17 Okay. Tab No. 8, Jenny.

18 MS. JENNIFER FRAZIER: Um-huh.

19 Thank you, Mr. Chairman. Jenny Frazier with the
20 Attorney General's Office and I'm here to summarize
21 for you the recommended decision of the
22 Administrative Hearing Commission in a permit appeal
23 with by Missouri Agribusiness Association, Missouri
24 Dairy Association and the Missouri Pork Producers
25 Association.

1 This is a different kind of appeal. These
2 associations are basically appealing a template of
3 the general storm water permit authorizing land
4 disturbance activities. So it is not appeal -- an
5 appeal of a permit to an applicant that's actually
6 been issued. And it's upon that fact that the
7 Administrative Hearing Commission is recommending
8 that you grant the Department's Motion to Dismiss
9 this appeal for lack of standing.

10 The Section 644.051.6 gives applicants the right
11 to appeal permit denials and permit conditions. The
12 Petitioners are not applicants even though they claim
13 to represent future applicants. And that is the
14 basis for the AHC recommending denial -- or
15 dismissing this appeal.

16 I believe the attorneys for the associations,
17 Robert Brundage and Tim Duggen for representing the
18 Department are here. I'd be happy to answer any
19 questions and let them make any statements that they
20 might have.

21 CHAIRMAN HARDECKE: Any questions for Jenny?

22 (No response.)

23 MS. JENNIFER FRAZIER: Questions for me?

24 CHAIRMAN HARDECKE: No. I just asked if they did.

25 MS. JENNIFER FRAZIER: Okay.

1 CHAIRMAN HARDECKE: I guess we'll go ahead and hear
2 from Robert.

3 MR. ROBERT BRUNDAGE: Good morning, Commissioners.
4 Robert Brundage with the law firm Newman, Comley &
5 Ruth in Jefferson City and I'm here representing
6 Missouri Agribusiness Association, Missouri Pork
7 Association and the Missouri Dairy Association.

8 I'd like to introduce two of my clients that are
9 here today on the far side here in the front row is
10 Don Nikodim, executive director of the Missouri Pork
11 Association and sitting next to him is Dave Drennan
12 the executive director of the Missouri Pork
13 Association. They represent a lot of dairy farmers
14 and hog farmers all across the state of Missouri.

15 Mr. Steve Taylor, executive director of
16 Missouri Agribusiness Association could not be here
17 today all though he wanted to be here today. Today,
18 their having their annual convention down at the Lake
19 of the Ozarks so he could not be with us.

20 The purpose of this appeal is to challenge the
21 land disturbance permit that is issued by the
22 Department of Natural Resources. It was issued back
23 in February of 2007 and my clients challenge that
24 permit. In that permit was a sentence under the
25 applicability statement that said, it specifically

1 said, Animal Feeding Operations must apply for this
2 permit.

3 We challenged that sentence and we challenged
4 the Department and the Clean Water Commission's
5 jurisdiction to reissue and require permits for
6 agriculture operations that are exempt under the
7 agriculture storm water exemption from the definition
8 of point sources.

9 We all know that point sources are required to
10 have permits, but we also know that the federal and
11 Missouri definition of point source specifically
12 excludes agricultural operations. I think we also
13 know in its common knowledge that the Department of
14 Natural Resources has never required a land
15 disturbance permit.

16 Should I pause for a moment?

17 CHAIRMAN HARDECKE: That's fine. Sorry about that.

18 MR. ROBERT BRUNDAGE: The Department of Natural
19 Resources has never required any type of permitting
20 for farmers who till the ground. And why is that?
21 It's because of the agricultural storm water
22 exemption to the definition of point source.

23 The purpose of this appeal is to interpret that
24 agricultural storm water definition as regard to
25 other agricultural operations namely people who raise

1 livestock. During the appeal process on this there
2 was discovery that went on and discussions between my
3 clients and the director of the Department of Natural
4 Resources and my clients tell me that the director of
5 the Department of Natural Resources said I'm not sure
6 of the answer to this question. Let's get a
7 determination on an appeal -- on this appeal to the
8 Clean Water Commission.

9 So we took him upon his word on that. We
10 proceeded through the discovery process and I asked
11 the Department in an interrogatory question, I said,
12 oh, by the way how many permits have you issued, land
13 disturbance permits have you issued to CAFOs or AFOs?
14 And the Department through Tim Duggen at the Attorney
15 General's Office objected to the interrogatories.
16 Said it was not relevant to anything discoverable in
17 this -- this appeal. And by the way, we don't really
18 know because we don't track it in a database. So I
19 can't give you a number anyway.

20 So we had the hearing on this. We each
21 submitted our briefs and our proposed Findings of
22 Fact, Conclusions of Law. Much to my surprise the
23 Attorney General's Office in their brief challenged
24 the Clean Water Commission's authority to render a
25 decision on this matter.

1 They said there was no standing by my
2 associations who represent lots of AFOs and CAFOs all
3 across the state. I was surprised for that for two
4 reasons, one, the director of the DNR said he wanted
5 a decision on this matter and, number two, in their
6 discovery the DNR said it really wasn't relevant
7 whether Department ever issued any permits on these
8 matter.

9 When I was reading the -- the Attorney General's
10 Office brief challenging standing saying this is only
11 going to be -- that our clients are seeking a
12 declaratory judgment on a hypothetical situation.
13 They say that the Petitioners are not directly in
14 adversely affected by the Department's adoption of a
15 template for a general permit and we present no
16 evidence that our members have been harmed. There's
17 no evidence that our -- any members or the members
18 applied for any permit, intend to apply for one
19 voluntarily, is being compelled to apply for one as
20 they're under the threat of sanctions. Petitioners
21 and their members cannot be harmed by terms and
22 conditions in a permit which none of them has applied
23 in which none has been issued to any of them.

24 That is a false statement. Many, many of our
25 members have applied for land disturbance permits.

1 Why? Because they've been told by the DNR that they
2 have to apply for them, and they don't want to be
3 sued even though they disagree with it.

4 That's why my clients are here. They think the
5 Department is unlawfully requiring land disturbance
6 permits for these types of activities. And the
7 Department through the discovery process refused to
8 answer the question about how many permits. Oh, it
9 was too hard. We're going on a fishing expedition.
10 We really don't have a database to look into this.

11 Well, this week I spent maybe 20 minutes
12 submitting an open records request just to one of the
13 regions because I represent clients who have got
14 these permits in the past even the last several
15 years. You have handled appeals from Cin-Way just
16 last year. They applied for one. So I -- I get
17 copies of these permits. So they're right here. So
18 it is an absolute false statement to say that the
19 Department has never issued these. It's a
20 hypothetical question. The Clean Water Commission
21 should not be rendering declaratory judgments and
22 wasting their time on hypothetical situations.

23 This is not a hypothetical situation. It's
24 affecting all of our members and causes us to spend a
25 lot of money and time and effort and that's why

1 you're here. The Attorney General's Office would say
2 you don't have legal authority to render a
3 declaratory judgment on a matter like this. I've
4 already talked about the hypothetical situation, but
5 just think about why is there a Clean Water
6 Commission? Do we even need a Clean Water
7 Commission?

8 Of course, we need a Clean Water Commission. If
9 you read the Missouri Clean Water Law you are to
10 administer Missouri Clean Water Law. You are to
11 administer and oversee the permitting process. This
12 is part of the permitting process, issuing permits,
13 temp- -- templates but now many of our clients'
14 members have applied for these permits because they
15 know if they didn't they would be threatened with --
16 with lawsuits.

17 So that's the purpose of the Clean Water
18 Commission. What are the options if you don't handle
19 this today? The Attorney General's Office suggest in
20 their -- in their brief if Petitioners are correct
21 that an AFO or a CAFO is already exempt as a matter
22 of law then a rulemaking would not be necessary
23 because an owner of an oper- -- of a facility is
24 presently able to defend against an enforcement
25 action by the Department to compel him to obtain a

1 permit or sanction him for failing to obtain one.

2 So the Attorney General's Office would like my
3 associations to tell their clients, hey, don't apply
4 for the permit. Let the Department sue you. Then
5 let the Department come to the Clean Water Commission
6 seek a referral to go to the Attorney General's
7 Office to file a lawsuit. Well, then we're right
8 back where we started from.

9 You would be ruling on -- on whether or not you
10 should refer somebody to the Attorney General's
11 Office to sue them because the Attorney General's
12 Office would like you to believe that we're supposed
13 to go out and say, oh, we're not going to apply for
14 the permit, please, sue us so we can get a
15 determination. That doesn't make any sense
16 whatsoever.

17 So I submit to you this -- the purpose of the
18 Clean Water Commission is to administer these
19 permitting programs, to oversee the Department of
20 Natural Resources if they issue one of these permits.
21 What happens if they issue a land disturbance permit
22 that specifically says farmers who till the land to
23 raise crops must have a land disturbance permit and
24 here's the template? Are you supposed to sit idly by
25 and wait for a farmer to till the ground and not get

1 a permit and then get sued?

2 No. You're to oversee the Department and make a
3 legal determination. You're to administer the law.
4 That is one of your core functions is to interpret
5 the Missouri Clean Water Law. That's what the
6 Department and you do every time; you oversee one of
7 these permits that are issued, that you have to apply
8 the law.

9 What about the regulation that we had a hearing
10 on today? You interpreted the federal law and the
11 State law and the requirements that you have to
12 administer in a permitting program and you changed
13 the regulations because you had to interpret the law.
14 I'm asking the Clean Water Commission to interpret
15 whether they have authority to issue a template
16 permit that many of our clients are applying for and
17 receiving and that's -- that's kind of the sole issue
18 that we're here today for.

19 I was -- we're here to determine whether or not
20 the Administrative -- whether you should uphold the
21 recommended decision from the Administrative Hearing
22 Commission. If we look at the Administrative Hearing
23 Commission's recommended decision they were clearly
24 misled or they clearly misunderstood. Just a few of
25 the quotes out of their -- out of their recommended

1 decision, we agree with the Department that there is
2 no applicant aggrieved by a decision. There has been
3 no decision issued that it adversely affected any
4 party. False; our clients, our members of our
5 associations are applying for these permits and have
6 been getting them for a long time.

7 We agree with the Department that Petitioners
8 do not have standing to challenge a sentence in a
9 template permit simply because they dis- -- disagree
10 with it and because it might apply to their fut- --
11 members in the future. In the future? Again, a
12 misunderstanding of the facts, this is not the
13 future; our clients have been getting these permits
14 for some time now.

15 At this time there's no decision. Petitioners
16 own prayer for relief references a future event
17 rather than a current controversy. We have a current
18 controversy. So how do we remedy this situation?

19 We can do two different things procedurally, in
20 my mind, one, you can simply reject the recommended
21 decision remand this back to the Administrative
22 Hearing Commission and say, listen we do think there
23 is a controversy here and we do need to make a
24 decision on the merits on this so, please, give us
25 decision on the merits. You can do that. As part of

1 that process, if you want and I would welcome the
2 opportunity to subpoena several DNR people to say
3 that they've issued these permits or just introduce
4 the permits themselves that the Department has
5 already issued. That will clear the matter up.

6 And the Department at that point in time have a
7 difficult -- or the Attorney General's Office would
8 have a difficult time saying it's not relevant. Are
9 they going to object at that point in time? No. We
10 have an actual controversy here that needs to be
11 resolved and that's -- that is the purpose of the
12 Clean Water Commission.

13 I have not argued the merits of this matter at
14 all. I'm just simply today responding to the
15 recommended decision to determine whether or not the
16 Clean Water Commission should go to the merits of
17 this. Getting all procedural, I think, that's how I
18 should proceed today. So we have to get past this
19 point of whether or not the Clean Water Commission is
20 going to hear this case or not.

21 So with that, I'll conclude my remarks. And
22 take any opportunity to provide any response to Mr.
23 Duggen's comments if appropriate.

24 Thank you.

25 Unless you have any questions, right now.

1 VICE-CHAIR HUNTER: Just one question, Robert.
2 How many of those permits that you've got have
3 been denied?
4 MR. ROBERT BRUNDAGE: None that I'm aware of.
5 VICE-CHAIR HUNTER: Okay.
6 MR. ROBERT BRUNDAGE: The Department would gladly
7 issue a permit if you apply for it to give them a
8 permit fee. So they've never denied any that I know
9 of.
10 VICE-CHAIR HUNTER: Okay.
11 CHAIRMAN HARDECKE: The -- go ahead, Sam.
12 COMMISSIONER LEAKE: Further, has anybody went
13 forward without applying for this permit? Has there
14 been any action taken against anybody who did that?
15 MR. ROBERT BRUNDAGE: Not that I'm aware of 'cause
16 two reasons, one, generally my clients try to stay
17 out of trouble. Number two, the ones that didn't
18 apply for it are hiding in the weeds somewhere.
19 (Laughter.)
20 COMMISSIONER EASLEY: What's the cost of these
21 permits?
22 MR. REFAAT MEFRAKIS: Three hundred dollars.
23 MR. ROBERT BRUNDAGE: Three hundred dollars.
24 COMMISSIONER EASLEY: How much?
25 MR. REFAAT MEFRAKIS: Three hundred for a five-year period.

1 CHAIRMAN HARDECKE: So the question is whether or not
2 an AFO or a CAFO construction site falls under the ag
3 exemption?

4 MR. ROBERT BRUNDAGE: That's the core issue on the
5 merits. If we even get to the merits.

6 MS. JENNIFER FRAZIER: That's the substance issue at
7 the front of the core, Robert's right. But we have a
8 procedural issue that you have to decide first and
9 that's if you have jurisdiction to even get to that
10 issue. That was the substance of the issue is if you
11 don't have jurisdiction to get to that issue.

12 CHAIRMAN HARDECKE: Because there is -- the
13 Petitioners do not have standing?

14 MS. JENNIFER FRAZIER: Correct.

15 They are not applicants of a permit. They are
16 associations of people who could be applicants for a
17 permit and your authority is tied by statute to hear
18 appeals from applicants of permits if they want to
19 appeal a position of a permit or a permit
20 (inaudible.)

21 MR. ROBERT BRUNDAGE: Jenny, I disagree with what you
22 just said.

23 MS. JENNIFER FRAZIER: Well, I'm summarizing the
24 Administrative Hearing Commission's recommendation.

25 MR. ROBERT BRUNDAGE: I think you inaccurately

1 summarized it.

2 MS. JENNIFER FRAZIER: All right.

3 MR. ROBERT BRUNDAGE: We -- there is something called
4 associational standing. If a member of an
5 organization had a right to appeal then an
6 association has a right to do that. I don't think
7 there was any discussion about whether or not we
8 don't have associational standing. It was just -- it
9 was based upon two assumptions, one, Department's not
10 issuing these permits or, number two, you can't issue
11 a declaratory judgment on a hypothetical type of
12 situation.

13 MS. JENNIFER FRAZIER: Well, the Commission's
14 jurisdiction is established by statute and the
15 association -- or I'm sorry -- the Administrative
16 Hearing Commission quoted the statute under which you
17 have authority to hear permit appeals. And that's
18 where they're getting the language for an applicant
19 to appeal.

20 Mr. Duggen would like to comment as well.

21 CHAIRMAN HARDECKE: Okay. Thank you.

22 MR. TIM DUGGEN: Good morning. I'm Tim Duggen with
23 the Attorney General's Office and I represented the
24 Department when this appeal was referred to our
25 office to handle the hearing in front of the

1 Administrative Hearing Commission.

2 I was never aware of any agreement that any
3 Department director made to anybody that we would
4 just simply go forward and let the Clean Water
5 Commission answer the general policy question, which
6 is: Are Animal Feeding Operations agricultural and
7 therefore exempt from having to obtain land
8 disturbance permits when they conduct construction of
9 barns for their animal operations?

10 I was not aware of any such agreement and
11 frankly it wouldn't have made any difference if such
12 an agreement existed because parties cannot waive a
13 standing requirement. We cannot confer jurisdiction
14 on an -- on an administrative commission or a court
15 if jurisdiction simply does not exist. We don't have
16 that ability.

17 And Robert probably was surprised by my brief.
18 The Administrative Hearing Commission was surprised
19 by my brief as well. And I'll take responsibility
20 for the fact that after the hearing was completed and
21 we were put on a briefing schedule by the AHC and Mr.
22 Brundage's proposed findings of fact, conclusions of
23 law and brief came in the door I sat down to prepare
24 my own findings and conclusions it finally occurred
25 to me why this case is so strange. Why there is

1 something wrong with this case? It didn't hit me
2 until late in the game that there was a standing
3 problem from the very beginning.

4 I -- it had always been there I just hadn't
5 caught it and hadn't raised it until I had the
6 opportunity to file a response brief. When the AHC
7 received my response brief they didn't get findings
8 of fact and conclusions of law, I didn't know how to
9 write them because to me there were no disputed facts
10 to set forth. There were no conclusions of law to
11 apply to any facts. This was purely to me a question
12 of whether we had any reason to even have a hearing
13 in the first place and so I wrote a brief basically
14 about standing.

15 When the Commission received that brief they
16 immediately ordered a revised briefing schedule to
17 give the Petitioners an opportunity to argue in a
18 brief that there indeed is standing. And that they
19 had a right to bring this appeal. And then I was
20 given an opportunity to reply to that. So when you
21 see in the recommendation of the AHC that the parties
22 filed briefs on the issue and the final brief was
23 filed on November 7. They're talking about my reply
24 to their response to my original brief. It was all
25 about standing.

1 So they had a full and fair opportunity to
2 present the standing issue to the Administrative
3 Hearing Commission. The AHC agreed with me and not
4 them. It's as simple as that.

5 Now, they also filed a motion to reopen the
6 record. And they wanted to bring in the kind of
7 information that Mr. Brundage talked about today.
8 They wanted to -- to show that somebody, at some
9 point in time, had in fact applied for a land
10 disturbance permit to construct a confinement
11 building on an Animal Feeding Operation. That's very
12 interesting, but that is beside the point at this
13 point. It was too little. It was too late. They
14 never did present anybody with an actual problem
15 related to this permit. They never presented anybody
16 who challenged some sort of compulsion by the
17 Department that they had to get such a permit.

18 And let me back up, now, and tell you how this
19 case even came up. These templates as you are well
20 aware are examined on five-year cycles. This is a
21 general permit. This is the kind of thing that's off
22 the shelf. Anybody that walks in the door and wants
23 to be covered by this existing, available general
24 permit applies for that and pays a fee. It is a
25 voluntary process.

1 Their option if they don't want to be covered
2 by a general permit is to apply for a site-specific
3 permit. And there are times when that's advantageous
4 to them. There are times -- it's usually more
5 expensive because of the review process that has to
6 be undertaken by the Department, but nevertheless
7 sometimes the general permits cover a whole host of
8 sources and they cover a whole host of issues that
9 may have no bearing on the particular applicant. And
10 it may be simpler and -- and just make more sense for
11 them to say, well, let's get a permit that applies to
12 us. And we don't have to comply with a whole bunch
13 of conditions and requirements that really have no
14 bearing on our operation. And we'll get out of a lot
15 of stuff whether it's reporting, sampling or whatever
16 it happens to be.

17 So these general permits are supposed to be
18 very efficient and very easy to -- to obtain and
19 people can simply walk in the regional office and get
20 the form and fill it out and pay the fee and that's
21 pretty much the long the short of it. Then they have to
22 comply with it of course.

23 But it's -- it's a voluntary process. Now, in
24 the most recent five-year cycle this particular
25 general permit for land disturbance activities where

1 more than an acre of land is disturbed, it's put out
2 on public notice. And the difference between this
3 particular version of the general permit and its
4 predecessor which had existed for five years was the
5 addition of a sentence. Okay?

6 The general permit had always included the
7 following sentence: Exemptions from permit
8 requirements include: agricultural storm water
9 discharges and irrigation return flows. It always
10 said that. But what was different, Staff decided to
11 add a sentence which reads: Animal Feeding
12 Operations, AFO, are not included in the agricultural
13 exemption.

14 That was what generated the appeal. There's
15 also another requirement in the new permit version
16 which says you have to post a sign at your entrance
17 to show that you in fact are covered by a land
18 disturbance permit and there's a phone number that
19 you can call the Department about questions. They
20 didn't like that either.

21 But the main thing they didn't like was the
22 addition of a sentence; Animal Feeding Operations are
23 not included in the agricultural exemption.

24 Now, since they had never seen that sentence
25 before they took it as a policy change by the

1 Commission and the Department that suddenly Animal
2 Feeding Operations are required to get these permits.
3 They assumed that they didn't have to get them before
4 this sentence was added to the template. That
5 assumption is incorrect. All the sentence did was
6 state the Department's position that these kinds of
7 things simply are not exempt from having to get
8 permits to disturb property if it's larger than an
9 acre or more than an acre is going to be disturbed
10 you got to get this. Okay?

11 It was not anything more than that. And the
12 inclusion of the sentence in a template is not
13 something that imposes anything on anybody. It's
14 simply a statement of what the Department understands
15 the law to be. Okay?

16 This is what they appealed. And when I came up
17 with my standing problem it occurred to me, well,
18 what we have here is a disagreement about what the
19 law is. And what they want is a declaration from
20 this Commission that that sentence is wrong. That in
21 fact Animal Feeding Operations are exempt for
22 whatever reasons. And that is what they're trying to
23 get through this appeal process.

24 And these appeals are simply not designed to
25 handle that kind of broad position or policy

1 question. From the Department's perspective there
2 are reasons for that sentence and they're grounded in
3 the Clean Water Law at both the federal and state
4 level. They are grounded in federal regulations.
5 They are grounded in these -- in this Commission's
6 own regulations. And if they were to take some sort
7 of action against somebody they caught building a
8 barn and disturbing more than an acre to do it and
9 having not obtained one of these permits, which is
10 designed to keep silt from running into the creek.
11 Essentially it's an erosion control permit is what it
12 is, if the Department caught somebody and brought
13 some kind of an action they would bring it under
14 those laws and under those regulations.

15 This sentence in this template permit would not
16 be the basis of their enforcement action. What they
17 are saying is they're not exempt, period. And we
18 have the authority to enforce the requirement that
19 these kinds of facilities get this kind of permit for
20 this kind of activity.

21 Now, if you have a disagreement with what we
22 think the law is your remedy is to take it to the
23 Legislature because the Department has the position,
24 now, here's what the law says. You don't like the
25 law, you want to change it you go to the Legislature

1 to fix it or if you think that the Department has a
2 regulation you don't think is supported by statute
3 you come to this Commission and you say I need this
4 regulation changed. And that's the process for
5 establishing such big policy questions as who is
6 exempt and who is not exempt from getting this permit
7 or not.

8 And that is a very public process that involves
9 an awful lot of stakeholders coming forward and
10 weighing in including the EPA, including those
11 persons who are affected by whether or not you're
12 going to exempt this type of facility or that. It
13 will be impact it's going to have on their water
14 resources so sure they'll -- they will want to
15 comment on that. And there are processes for doing
16 that. But what the associations here are trying to do
17 is get this Commission in the context of this opposed
18 appeal to just make a broad declaration that their
19 members who operate Animal Feeding Operations never
20 have to worry about this permit ever again.

21 And that is not what the appeals process
22 established by statute is designed to do. It's
23 designed to find out is there an actual fight between
24 an actual person whose rights are at stake and the
25 Department. Is there a controversy that is affecting

1 somebody today, right now, that needs to be resolved?

2 Okay? That's what the appeal process is for.

3 And you figure out what the facts are that
4 frame that dispute between those two parties and then
5 you apply the law to those facts and you come up with
6 a conclusion that establishes how that specific
7 individual is to be affected in this particular case
8 by the decision you reach. But that -- you do not
9 take a -- a request to remove a sentence from a
10 template permit and use that to launch into a
11 rewriting of the Clean Water Law and reestablishment
12 of your regulations. It just isn't supposed to work
13 that way.

14 And that's why I took the stand I did on
15 standing. I basically raised three points in my
16 brief. The first point was the standing issue. Who
17 has a right to come in to an administrative hearing
18 and say I have a disagreement with a sentence in a
19 form that the Department is using and I want that
20 sentence removed from the form. It's an academic
21 dispute. It's -- it's an interesting debate about
22 whether the sentence is accurate or not, but that is
23 not an appropriate appeal issue. There's no
24 standing. No one has standing to do that.

25 The second point I raised was, well, if they

1 want some sort of broad declaration that Animal
2 Feeding Operations will never ever, ever have to
3 apply for a land disturbance permit just because they
4 can call themselves agricultural and because they
5 have an SIC code that -- that suggests they're
6 agricultural and that they should be treated the same
7 as row crop farmers, which are exempt. Well, then go
8 to a court to get a declaration like that. You still
9 have to establish standing but you go to a court of
10 general jurisdiction that has the impow- -- that has
11 the power to declare what the law is. That is not
12 what administrative commissions do. That's what the
13 courts are for.

14 Administrative commissions set policy, but they
15 do not have the authority to declare what the law is.
16 You find facts in contested cases, you apply the law
17 to those facts, you come up with results but you do
18 not have the same power as a Circuit Court. So even
19 if they had standing they're in the wrong forum for a
20 declaration of law, which is what they're looking for
21 here.

22 And then my third point in the brief and the
23 Commission did not reach it was that they in fact are
24 not exempt. My brief marshals all the points of law
25 and regulation, court decisions, policy, statements

1 by the EPA, I explain Rob Morrison's witness
2 testimony as he walked the Commission through those
3 authorities and how the Department implements those
4 authorities. If you ever got to the merits, I
5 believe, we -- we should win.

6 They simply are not exempt, period. If they
7 want to be exempt in the future they're going to have
8 to change the law to get that done, period. But the
9 -- the Administrative Commission -- Hearing
10 Commission couldn't get past point one, which is show
11 me somebody who actually has a problem.

12 And this isn't just a hypothetical or academic
13 exercise. Show me something more than you don't like
14 a sentence in a form that the Department uses. A
15 sentence that isn't a decision by the Department
16 about anything, a sentence that isn't a decision by
17 the Department that affects any particular
18 individual, it's simply a sentence on a form and it
19 may be an inaccurate sentence, it may be a sentence
20 that needs to be fixed somehow but this isn't the
21 place. This isn't the way you get that sentence
22 fixed. You go through some other public process
23 maybe, but you don't appeal here and get something
24 that only benefits you, your members and somehow
25 bypasses the other public stakeholders who would show

1 up for a rulemaking or a change in legislation.

2 So I think the decision is the appropriate one.

3 I make no apologies other than for the fact that I
4 didn't think of it much sooner. It would have saved
5 me a heck of a lot of aggravation if I read the
6 standing right up front I might have gotten the case
7 thrown out much earlier than it was from the point of
8 view of the AHC, but you simply have no other option
9 but to follow the -- the recommendation in my
10 opinion.

11 I don't think you can remand it by the way. I
12 don't see any provision of law that allows you to do
13 that. I don't think you can just simply say you know
14 what Administrative Hearing Commission, thank you,
15 for your recommendation but we think we do have
16 jurisdiction. We do want to reach the merits go back
17 and do something different. I see nothing in the law
18 that authorizes you to do that. If you depart from
19 the AHC's recommendation you have to do so in writing
20 and you have to explain your reasons.

21 And if you want to somehow get to this broad
22 policy question are they exempt or not you have a
23 full record in front of you. The AHC did have a
24 full-blown hearing. They had evidence. They had
25 exhibits. The exhibits include statutes and

1 regulations and court opinions and so forth that we
2 all talked about. So there's no need to remand it
3 even if you had the authority to do that, but I don't
4 think you do.

5 And with that I'll -- I'll answer any
6 questions.

7 CHAIRMAN HARDECKE: I guess in reference to standing
8 the addition to this sentence that they're not
9 included in the ag exemption if -- if this isn't the
10 forum to discuss that then where is that because this
11 is a broad deviation from what has been historical in
12 the ag exemption?

13 And to say that they don't have standing you --
14 you've got a broad group of people affected here.
15 Any potential applicants that are applying for a
16 construction permit for an Animal Feeding Operation.

17 So without getting down to an individual case I
18 -- I don't understand why this wouldn't be an
19 appropriate place for associations to try to get the
20 clarification on a policy.

21 MR. TIM DUGGEN: Well, it is.

22 CHAIRMAN HARDECKE: We're not talking about --

23 MR. TIM DUGGEN: Right.

24 CHAIRMAN HARDECKE: -- an individual case. We're
25 talking about a policy because these general permits

1 are policy setting for the Department.

2 MR. TIM DUGGEN: Yes. They are. Yes. They are.

3 And this is a forum for that.

4 CHAIRMAN HARDECKE: And it's a deviation from past
5 definition of the ag exemption.

6 MR. TIM DUGGEN: No. It is not.

7 But that's why as the forum you would hear this
8 in the context of some proposed rule that would
9 clarify this. You have the authority to write the
10 rules. And the rules --

11 CHAIRMAN HARDECKE: Okay. Well, why didn't this come
12 to a rulemaking then instead of just being added?

13 MR. TIM DUGGEN: It's a different process. It was
14 put on public notice and comments were received, but
15 to my knowledge these five-year reviews are not
16 vetted to the Commission before that -- that template
17 is put out there. And it probably should be. And
18 I'm not here to argue that that's a bad idea, I
19 think, it's a good idea.

20 If it were up to me that would make a lot more
21 sense. The problem with it if you go through
22 rulemaking, of course, that comes with all kinds of
23 bells and whistles that takes six months or longer to
24 -- to accomplish. You've got your fiscal notes.
25 You've got your Regulatory Impact Reports. You've

1 got all kinds of stuff you have to do. You got to go
2 through JCAR. And that is a very, very cumbersome
3 way to do these permits.

4 And it -- it's probably not the best way to do the
5 permits, however, that said there -- there should be
6 a way that these public comments that these
7 associations have about things, like, is this
8 sentence accurate ought to come to this Commission.
9 And there should be some sort of a process whereby
10 you are presented with that information and have an
11 opportunity to -- to weigh in on whether that form in
12 fact is accurate. I think you should have that
13 opportunity.

14 CHAIRMAN HARDECKE: But it seems to me like this was
15 added without the associations having the benefit of
16 questioning that before it was put into -- to policy.

17 MR. TIM DUGGEN: Well, they had an opportunity to
18 question it. I don't know that it came to this
19 Commission directly. I -- I suspect it did not
20 because as I understand when these permits are put
21 out there on public comment and they say okay here's
22 our new version of the permit that's going to run for
23 the next five years. I don't -- it's my
24 understanding that that is not brought to this
25 Commission for a yea, or nay vote, at that time, and

1 it would make sense for something to be set up to
2 allow you to do that.

3 The reason I say that -- we have this internal
4 debate; when is one of these things appealable if
5 it's appealable at all? And it is a bit of problem
6 because I don't think you can appeal a form that
7 really doesn't affect anyone's rights. I think you
8 have to be an actual person with a problem. And the
9 way --

10 (Tape One, Side B Concluded.)

11 MR. TIM DUGGEN: -- wasn't strict enough or it
12 shouldn't have been issued in the first place.

13 Those are the three ways you -- you have an
14 appeal set up. This isn't fit. By the same token if
15 you had a one-time shot in an appeal of template like
16 this that's not really fair to everybody else who
17 wants to -- who has a problem with a permit in the
18 future that didn't know about it five years earlier.
19 See once this thing's out there for five years I can
20 come in year four and apply for it.

21 And if it has something in there that violates
22 my rights and I -- I want to appeal that I still
23 should be able to do that because the triggering
24 event is the issuing to me of my permit not what
25 happened four years before that.

1 CHAIRMAN HARDECKE: Yeah. But I'm going back to
2 where -- the comment you made about policy and
3 rulemaking. That is the question here. This was
4 added without going through the normal venting
5 process --

6 MR. TIM DUGGEN: Well, it went through the normal
7 process. I think that process needs to be improved.

8 CHAIRMAN HARDECKE: I think that's what the whole
9 situation stems from is a rather significant
10 deviation from the ag exemption.

11 MR. TIM DUGGEN: Okay. Now, let me -- we disagree on
12 that. Okay? And if you get to the merits you'll
13 understand why. The point source definition does
14 exempt agricultural storm water but it doesn't exempt
15 CAFOs. A CAFO is a point source, period. It's in
16 the definition. Okay?

17 CHAIRMAN HARDECKE: But this is different from the
18 CAFO permit. This is an added -- we're not
19 discussing the merits of the CAFO permit which is a
20 non-discharge permit.

21 MR. TIM DUGGEN: No. We're talking land disturbance
22 permits.

23 CHAIRMAN HARDECKE: Right.

24 MR. TIM DUGGEN: Okay.

25 CHAIRMAN HARDECKE: But we have to differentiate

1 between the CAFO permitted construction permit.

2 MR. TIM DUGGEN: Right. What -- what --

3 CHAIRMAN HARDECKE: And land disturbance permits.

4 MR. TIM DUGGEN: -- what we said on the merits in this
5 case was that these are construction related permits
6 not agricultural in the traditional sense of row
7 cropping and disturbing property to put manure on
8 crops that have been planted. There -- that is
9 exempt from land disturbance permits, but building is
10 not; if you're going to put a building on a farm for
11 animals that is no different than putting a warehouse
12 on a lot for another type of business.

13 Construction is construction is construction was
14 basically our case on the merits. And we do not feel
15 that the inclusion of a sentence that Animal Feeding
16 Operations are not included in the agricultural
17 exemption was a deviation from anything.

18 Construction has always been construction and has
19 always been subject to the land disturbance permit
20 requirements and those regulations make no
21 distinction whatsoever between agriculture and non-
22 agriculture or anything else.

23 If its construction of a building and it
24 disturbs more than an acre you have to get a land
25 disturbance permit, period. So that's not deviation

1 from anything. All it's a deviation from is what
2 maybe their members thought the law was. They may
3 have been disabused of any assumption if they weren't
4 applying for construction -- or permits to disturb
5 land in advance of construction.

6 The sentence tells them, well, you probably are
7 supposed to be doing that. If they were assuming
8 they were exempt we were -- the Department's trying
9 to disabuse them of that assumption because it's not
10 correct. But that sentence didn't suddenly create a
11 new law. The law was always the same. All this
12 sentence does -- did was -- it was a red flag waved
13 in front of these associations and it got them
14 stirred up. That's what it did.

15 Now, if there were a way to appeal -- I mean, to
16 settle this case and we spent a long time talking
17 about that; what would happen if you took that
18 sentence out? Let's say you had a new round of a
19 general permit for the next five-year cycle and you
20 said as a Commission, you know what, we're taking
21 that sentence out. Have you changed the law? No.
22 No. Not from the Department's point of view.

23 Have you declared any change in policy? No.
24 You just took out a sentence that caused people to
25 get upset. That's all you've done. Until somebody

1 actually fails to apply for a permit to disturb land
2 in order to construct something on their property and
3 gets caught you really don't have a case for
4 controversy that will trigger the question, well,
5 they didn't have to 'cause they were exempt. That's
6 their defense. Okay?

7 Or if they want something in advance they
8 somehow get a decision from the Department that
9 applies to them. Maybe they -- they write a letter
10 to the Department and say I want you to tell me that
11 I am exempt from having to get this permit. And they
12 say we're going to give you a letter that says you're
13 not exempt. Okay? Well, now, maybe -- maybe under
14 those circumstances we have a case of controversy and
15 maybe they can go to a court and get a declaratory
16 judgment as to whether or not they're exempt.

17 That's the appropriate -- that's a tool they
18 have in their toolbox. Now, I understand that the
19 members of these associations don't want to have to
20 get into a legal battle like that. Nobody likes to
21 get into legal battles like that. But when you're
22 talking about what are the jurisdictional boundary
23 lines of commissions and courts; what kinds of things
24 do they deal with as part of their business? That's
25 the kind of stuff you have to deal like or not

1 because that's how the Legislature set it up.

2 But on a broad policy question like that if --
3 if these associations proposed a rule and said
4 Department we want you to take this to the Clean
5 Water Commission. We want the rule 10 CSR 20-
6 6.010(Z) to say Animal Feeding Operations are exempt
7 from land disturbance permits. That's what we want.
8 We want that on the rule books. Well, then you go
9 through the rulemaking process and we'll see how it
10 turns out.

11 That's the way you fix it because that's the way
12 the Legislature has set up the process for you to
13 look at stuff like that. This appeal is not the
14 appropriate tool in the toolbox.

15 CHAIRMAN HARDECKE: Questions?

16 VICE-CHAIR HUNTER: Tim, I -- I have one question.
17 In my mind there seems to be a little bit of
18 confusion. You say that we could simply -- well,
19 simply? Remove that sentence and it wouldn't change
20 anything.

21 MR. TIM DUGGEN: In my opinion, it would not change a
22 thing.

23 VICE-CHAIR HUNTER: All right. And -- and so then
24 that falls back in my mind, again, where this sort of
25 pivots on what actually is exempted under the ag

1 exemption, correct?

2 MR. TIM DUGGEN: Right.

3 VICE-CHAIR HUNTER: And -- and if we take that one
4 step farther then are CAFOs or AFOs actually excluded
5 from the ag exemption? Is there anything specific
6 that says that in the ag exemption? Just definition.

7 MR. TIM DUGGEN: Malinda, do they get copies of our
8 briefs that we filed?

9 (No response.)

10 MR. TIM DUGGEN: We talk about that in our brief.
11 Since you don't have the benefit of a discussion of
12 that subject in the Administrative Hearing
13 Commission's recommendation I would urge you to table
14 this matter, go back and read the briefs.

15 And then if you want to set it for further
16 discussion with Robert and myself at a later meeting
17 before figuring out what to do that -- that would
18 perhaps make sense. And by law before you vote yea
19 or nay on the recommendation you're supposed to read
20 the entire record anyway. I just want to make sure
21 those briefs were provided. Sometimes the AHC
22 doesn't send you the entire file. But those should
23 have been included in there.

24 MS. MALINDA OVERH: Yes they were sent to the Commission in July.

25 VICE-CHAIR HUNTER: Oh. Okay. Last year? Or, I

1 mean, in July?

2 COMMISSIONER LEAKE: In June or July.

3 MR. TIM DUGGEN: In June or July, yeah.

4 I mean I know my brief talks about it. I
5 haven't recently reread Robert's, but I think his
6 does as well. On that particular subject he -- he
7 points out that there is a lack of definition of certain
8 terms such as agricultural -- what is that exact
9 wording? Agricultural storm water discharges and
10 irrigation return flows. Those terms are not
11 expressly defined by regulation anywhere. But those
12 are the terms you find in the definition of point
13 source in both the federal and Clean Water Law. They
14 say a point source is blah, blah, blah and then it
15 says except the term point source does not include
16 agricultural storm water discharges and irrigation
17 return flows.

18 And what we spent a lot of time at the hearing
19 talking about was, well, how do you know what an
20 agricultural storm water discharge is?

21 And that is where we got into, well, they're
22 definitions of farmlands and they're definitions of
23 croplands and they're definitions of this and they're
24 definitions of that. And we have guidance from EPA
25 and we have our own internal policies on that and you

1 sort of glob that all together and what we had in the
2 -- on the -- in the final analysis was, at least from our
3 point of view, Rob Morrison saying, well, we think it
4 has to do with applying manure on crop fields.
5 That's what that's about. It's not about
6 construction. That was our bottom line.

7 Their bottom line took a different tack looking
8 at other things such as, well, what is the standard
9 industry code? And is there an agricultural code
10 that applies to these kinds of things? And so we had
11 to deal with -- with those kinds of angles, too,
12 there -- there was a whole way -- a whole host of
13 angles to these questions and Robert and I were often
14 kind of missing each other in a sense. We weren't
15 really arguing. We just weren't really in agreement
16 about anything because we're talking about different
17 things.

18 But to answer your question directly, I think,
19 I even conceived in my brief that these terms are not
20 defined anywhere. But there's an understanding of
21 how this is applied.

22 CHAIRMAN HARDECKE: You made the statement that the
23 ag storm water exemption applied to applying manure
24 to crop land.

25 MR. TIM DUGGEN: Right.

1 CHAIRMAN HARDECKE: Is that the only def- -- only? I
2 mean, there's a lot more storm water, ag storm water
3 than just the application of manure.

4 MR. TIM DUGGEN: There is, but that is the
5 Department's understanding of what we're talking
6 about in that phrase. And I -- I point out that we,
7 both sides talked about a federal case in which the
8 Second Circuit took a look at, well, what do you do
9 with a CAFO that does crop management as well as
10 confine animals? And they may need a permit for one
11 purpose but be exempt for another. And that case
12 suggests, and I don't know that we've ever as a
13 Department come up with an issue like this that we
14 could rule or not, if a CAFO in fact has crop lands
15 upon which it agronomically applies manure, do they -
16 - and it's more than an acre that they're doing this
17 on; do they need a land disturbance permit for that?

18 We've never looked at the question, it's never
19 come up but Rob's testimony was, well, we probably
20 would exempt that. And certainly the -- the federal
21 case suggests, well, yeah, that's an exempt activity
22 so long as that's what you're doing. But if you're
23 talking about discharges from a CAFO for anything
24 else that requires an NPDES permit. And from our
25 perspective if you're going to build a barn that

1 requires a land disturbance permit.

2 So, I mean, but, yeah, this is the kind of stuff
3 you'll find in the record and in the briefs. So what
4 I -- I seriously would urge you and, of course, Jenny
5 Frazier will give you her -- her advice because she's
6 your counsel on this, but I would recommend that you
7 table this. Go through the entire record so you have
8 a better handle on how we flushed out the issues that
9 we had. I mean, this business of did somebody, since
10 this template went out on the streets apply for a
11 land disturbance permit in order to build a barn for
12 a CAFO. Well, the answer turns out to be, yes. And
13 I'm not here to argue that point.

14 The way it was dealt with before they had made
15 an interrogatory request, we had objected to it, they
16 hadn't pushed to get that enforced by the AHC to make
17 us answer the question or produce the documents and
18 so forth, but it does not surprise me at all. And
19 I'm certainly not going to argue with Robert today
20 but some member of theirs in fact has gone through
21 the process of getting a land disturbance permit to
22 build a barn. So what? I don't think that really
23 answers anything. But sure, it's happening. Did it
24 happen before this last round of -- this five-year
25 cycle? I have no idea. It would take a manual

1 permit-by-permit search in every regional office to
2 figure that out. It was too erroneous. It was too
3 burdensome. We thought it was ridiculous. We didn't
4 want to -- you know, we opposed it. And nobody made
5 us do it so we didn't do it.

6 But, yeah, are there people since this new
7 permit went out on the street that have gone out
8 there and maybe they'd even testify, yeah, we
9 wouldn't have except that we saw this sentence
10 somewhere and we decided that maybe we should. Yeah,
11 that's possible.

12 But your -- your overall question are they
13 exempt or not that -- that you just need to look at
14 our record. I don't think you'll have a more
15 thorough record. I would point out to you; however,
16 that what you don't have is input from the rest of
17 the public in this case. And if it's a policy issue
18 you really need to take that into account.

19 CHAIRMAN HARDECKE: My question is: Was there input
20 before this was added?

21 MR. TIM DUGGEN: Yes.

22 Well, it was proposed. I mean, they put out a
23 proposed template. And, yes, comm- -- it drew
24 comments from the agricultural sector.

25 VICE-CHAIR HUNTER: That's in the record, also?

1 MR. TIM DUGGEN: I'm trying to remember if it is.

2 Robert, did you attach the comments your folks
3 made in the -- to your petition or something like
4 that?

5 (No response.)

6 MR. TIM DUGGEN: That's usually how it shows up. We
7 certainly wouldn't have objected if they had offered
8 it as an exhibit, but this was put on public notice
9 and here are the letters of comments we submitted and
10 here's what DNR -- 'cause DNR responds to those
11 comments by the way. They -- they file letters
12 saying, well, we agree with this and we're fix --
13 we're going to change that sentence. We disagree
14 with that and here's why ...

15 That may well be in the record. If it is not in
16 the record we can certainly figure out a way to get
17 it in front of you so that you can see that. It's
18 public record.

19 So anyway that's my -- that's my information to
20 you.

21 CHAIRMAN HARDECKE: Thank you. Robert?

22 MR. ROBERT BRUNDAGE: First of all, I would oppose
23 you tabling this today. And my course- -- my
24 suggested course of action is, is that reject the
25 Administrative Hearing Commission's recommended

1 decision and say that there is standing to proceed
2 with this trial.

3 There's nothing that you prevents you to -- to
4 remand this to them 'cause you have to have a
5 recommended decision before you can rule. Right now,
6 you only have one on a procedural issue. You need to
7 tell the Administrative Hearing Commission that they
8 do have standing and that we need a recommended
9 decision on the merits 'cause you cannot rule on the
10 merits unless you get that.

11 So I disagree with Tim on that issue is that
12 that's what you need to do. There's nothing that
13 prevents you from doing that. You are the -- the
14 tribunal of this science procedurally how this
15 proceeds. You are the one that makes the final
16 decision. They are your hearing officer. You can
17 direct them what to do.

18 And to discuss a few other points that if we did
19 get to the merits on this and there was a recommended
20 decision this is what I'm asking the Clean Water
21 Commission to do. I want you to strike that sentence
22 from the template permit. And as a matter of law,
23 rule and interpret what the ag storm water exemption
24 is in regards to whether or not Animal Feeding
25 Operations have to have permits or not.

1 So, therefore, you're not just, hey, I'm just
2 deleting a little sentence out of a permit. You are
3 ruling as a matter of law. Commissioner Hardecke
4 your questions of Tim in regards to -- you know,
5 general permits you have -- what opportunity does
6 this Commission have to participate in that process
7 that hit the nail on the head.

8 Tim would have you to believe that DNR has carte
9 blanche to go ahead and issue these. There just a
10 template permit out there. And you don't have a
11 thing to say about it. It's got to go to some court
12 of law. It's got to go to the Legislature for
13 somebody else. No. That's -- that is an issued
14 permit and it was issued in the template form and now
15 it's been issued to our members.

16 We have a case of controversy before you, today,
17 that needs to be ruled upon. The Missouri Clean
18 Water Law specifically says in 644.051.5- -- or 6
19 that issued permits or terms in issued permits may be
20 appealed. You've got to have some say in general
21 permits. If you don't that's a huge loophole. So I
22 submit to you that this an issued permit.

23 Tim said that if somebody came in on your four
24 of this five-year permit and applied for a permit and
25 they didn't -- and they didn't like it they could

1 appeal. Well, what's wrong with somebody appealing
2 it right out of the box? I'd be glad to put on
3 evidence that the prior permit that CAFOs apply for
4 land disturbance permits and that's why it was teed
5 up during a public comment period that we said that
6 you should put in there that CAFOs, AFOs and
7 agricultural operations are exempt from these storm
8 water permits.

9 And the Department specifically rejected that
10 and put in this specific sentence. The Department
11 teed this thing up to be appealed in this permit. So
12 you cannot only just delete a mere sentence out of an
13 applicability statement, but you can also make a
14 ruling as a matter of law on whether or not the
15 Department can -- can issue these type of permits
16 because the Clean -- you know, the powers and duties
17 provision of the Clean Water Law 644.026 says that
18 you have the authority to be issuing these permits.

19 Scott Totten is the director of Staff. He's
20 your Staff. He's issuing permits every single day.
21 You're there as a backstop. If you don't have any
22 backstop against general permits; where do they go?
23 It's like I said hypothetically; what if the
24 Department issued a land disturbance permit for
25 tilling crop land? Now, they've said today that

1 their legal interpretation is, well, that's clearly
2 exempt, but what if they did that. It's a general
3 permit template, sorry, you can't do a thing about
4 it. That's why we have a Clean Water Commission to
5 handle these types of decisions.

6 So in conclusion I think that you clearly have
7 authority to rule on this. There are a lot of our
8 members of our clients that we have an associational
9 standing that are being adversely impacted today and they
10 have been for years and it's time that this be ruled
11 upon. There's no need to go through rulemaking or go
12 to the Legislature or anything else. You have
13 statutory authority hear to permit appeals and general
14 permits should not fall through the cracks and the
15 Department should not have free will to issue any
16 type of general permits that they want and cause our
17 members or anybody else in this state to undergo the
18 time and expense and worry for applying for permits that
19 legally the Department and these are ultimately your
20 permits asserting your jurisdiction under the Clean
21 Water Law should have to have or not to have these
22 types of permits.

23 So in conclusion I ask you to reject the
24 recommended decision, today, remand this to the
25 Administrative Hearing Commission to issue a

1 recommended decision on the merits and at a later
2 meeting when you have a time to read the complete
3 record and to read the recommended decision on the
4 merits then we can get to that point in time. And I
5 would -- and I look forward and cherish the
6 opportunity to discuss the merits of this -- this
7 appeal.

8 Thanks.

9 CHAIRMAN HARDECKE: Questions for Robert?

10 (No response.)

11 CHAIRMAN HARDECKE: Jenny?

12 MS. JENNIFER FRAZIER: Just in conclusion I might
13 suggest I would like the opportunity to advise you in
14 closed session and so table it at least until closed
15 session at lunch.

16 CHAIRMAN HARDECKE: That'd be fine.

17 Okay. Thank you.

18 Why don't we take a ten minute break?

19 COMMISSIONER LEAKE: That would be good.

20 (Laughter.)

21 (Break in proceedings.)

22 CHAIRMAN HARDECKE: **Tab No. 9**, Richard?

23 MR. RICHARD LAUX: Morning Commissioners. In October
24 we received an application, variance application and
25 fee from **Kids Across America**. It was later revised

1 in November. It's requesting a variance for four of
2 their Kanakuk Kamps. The application is seeking a 50
3 percent reduction in permit fees due to the fact that
4 these facilities are operated only seasonally for
5 camping.

6 Staff formed a committee to investigate this and
7 make a recommendation as per the statute. What we
8 found was that Kids Across America operates these
9 four summer camps in Stone and Barry counties.
10 Wastewater facilities at each site consist of re-
11 circulating sand filters, which discharge effluent to
12 Table Rock Lake or to small tributaries to Table Rock
13 Lake. I think two of them are direct and two of them
14 are short tributaries.

15 Discharges generally occur in the months of May,
16 June, July and August. The facility usually report
17 no discharges in months of September through April.
18 There are seasonal workers during this period of
19 time, but generally the flow is negligible out of
20 these facilities. So during the actual months of
21 operation, however, the flows generally exceed 60
22 percent of the permitted design flow.

23 The reason that's in the recommendation here is
24 because if your design flow -- or your actual flow is
25 60 percent or under your design flow there's a

1 process already to get your fees reduced. So they
2 don't really qualify for that since when they are
3 loaded they are over the 60 percent.

4 The committee recommends that the Commission
5 deny the variance request due to the following
6 factors, number one, the costs of regulating,
7 inspecting, sampling and other Department activities
8 for a seasonal facility are quite similar to the
9 costs associated with year-round facilities. The
10 variance statute does not allow a variance
11 specifically for seasonal facilities. There's only
12 really two reasons in the statute that variances can
13 be granted.

14 The current permit fees are not covering the
15 costs associated with Department regulatory
16 activities and I -- you've had extensive discussions
17 about that. Number three, the application does not
18 provide information as to whether the current fees
19 result in quote, result in unreasonable costs without
20 comparable public benefit, unquote. That's directly
21 out of the statutes. One of the two reasons why you
22 could grant a variance and it's the one they check
23 marked on their application but there's really no
24 supporting evidence to that affect.

25 So, therefore, the Staff is recommending denial

1 and I'm not sure there is anybody here from the
2 company or not.

3 CHAIRMAN HARDECKE: Is there anyone here from Kanakuk
4 Kamps?

5 (No response.)

6 CHAIRMAN HARDECKE: Questions?

7 COMMISSIONER EASLEY: This is just simply a request
8 in reduced fees -- fees by 50 percent?

9 MR. RICHARD LAUX: That's correct. Right.

10 Basically, their -- their attitude is that
11 because their discharges are for four or five months
12 only that they should be granted, you know, about
13 half-price permits.

14 COMMISSIONER LEAKE: Is that correct they're asking
15 for a 10-year reduction?

16 MR. RICHARD LAUX: Yes. I believe that's correct.

17 COMMISSIONER LEAKE: For just my information what --
18 Kids Across America what is that?

19 MR. RICHARD LAUX: Basically, these are summer camps.
20 Kids Across America has in this area more than just
21 these four facilities, they have a number of other
22 facilities. They have a clothing manufacturing
23 facility down there also that makes all the camp
24 clothing and stuff like that. These are pretty nice summer
25 camps. They have pools, waterslides and things like

1 that. Rustic kind of, you know, look to them. You
2 know, basically log cabins, things like, but it is
3 teenage-type summer camp.

4 COMMISSIONER LEAKE: They charge a fee for the --

5 MR. RICHARD LAUX: Yes. They do.

6 COMMISSIONER EASLEY: Most of them are from inner city--
7 -- the kids are from inner cities.

8 MR. RICHARD LAUX: My understanding is a lot of them
9 are city people that come down there to the lake.

10 COMMISSIONER EASLEY: I'm familiar with (partial
11 statement inaudible; speaker not present at
12 microphone).

13 MR. RICHARD LAUX: There's also -- it's not involved
14 in this one, but they have like orienteering-type
15 place down there. So it's a pretty extensive group
16 of camps down there in Table Rock. And, I think,
17 they're mostly on Table Rock.

18 CHAIRMAN HARDECKE: What is the annual fee?

19 MR. RICHARD LAUX: The annual fee looks to be about
20 \$760 a year currently for these four facilities.

21 VICE-CHAIR HUNTER: Seven -- did you say 76 -- 760 --

22 MR. RICHARD LAUX: Well, this --

23 VICE-CHAIR HUNTER: -- or 7,600?

24 MR. RICHARD LAUX: Basically, here what they're
25 getting is the cost for all four of these facilities

1 for the period of time they're asking for which --

2 VICE-CHAIR HUNTER: Oh. Okay.

3 COMMISSIONER LEAKE: Ooh, that's a 10-year number.

4 VICE-CHAIR HUNTER: That's 10 years for all of them.

5 MR. RICHARD LAUX: I believe.

6 COMMISSIONER LEAKE: Oh. Okay.

7 VICE-CHAIR HUNTER: Okay.

8 MR. RICHARD LAUX: That might be the annual cost.

9 I'm pretty sure it is the annual cost come to think

10 of it. So the four camps are paying maybe 1,200

11 somewhere. They'll be different because the size of

12 these camps they're not all the same and it's based

13 on their design flow. And I believe one of them was,

14 like, 40,000 and that was a bigger one. Some of them

15 were as small as 20,000 so that would -- I mean, that

16 would be half the price of the other one roughly, so

17 --

18 COMMISSIONER LEAKE: Are the camps located on

19 government property?

20 MR. RICHARD LAUX: No.

21 COMMISSIONER LEAKE: No.

22 MR. RICHARD LAUX: This -- they -- as far as I know

23 they own all of this property including the

24 headquarters and the manufacturing facility for the

25 camp clothing, so --

1 COMMISSIONER LEAKE: Thank you.

2 CHAIRMAN HARDECKE: But do you think this 7,600 is an
3 annual or is that for the 10 years?

4 MR. RICHARD LAUX: I'm pretty sure. Originally when
5 they submitted this it was an annual basis and when
6 we told them that they had to pick a time frame,
7 which is in the statute you got to give a variance
8 time -- a time frame they then requested the 10
9 years, but I believe this -- the figures didn't
10 change so those would be the annual figures for all
11 four facilities they're asking for a 50 percent
12 reduction.

13 COMMISSIONER LEAKE: Well, I just -- I'd like to know
14 for sure if that's 10 years or if that is a year for
15 sure.

16 COMMISSIONER EASLEY: See they're showing here
17 complying with the laws or regulations would cost
18 them \$7,600.

19 MR. RICHARD LAUX: I'm sure it is --

20 COMMISSIONER EASLEY: Now, that can't be an annual --
21 annually, would it? Would that be for 10 years?

22 COMMISSIONER LEAKE: Four camps.

23 COMMISSIONER EASLEY: Well, I know but that's still a
24 lot for four camps --

25 COMMISSIONER LEAKE: Yeah. Yeah.

1 COMMISSIONER EASLEY: -- because you -- you indicated
2 the fee was like \$750.

3 MR. RICHARD LAUX: Well, I'm thinking that -- I was
4 thinking that was 10 years, but I -- my recollection
5 is --

6 COMMISSIONER LEAKE: I think an answer may be coming
7 or do I not.

8 MS. DEBBIE BRUNS: That's an annual fee for all four
9 of their -- their camp facilities.

10 COMMISSIONER LEAKE: Thank you.

11 COMMISSIONER EASLEY: \$7,600 in annual fees?

12 MR. RICHARD LAUX: Again, we're talking some fairly
13 large design flow facilities or camps so to speak.

14 I think they're designed that way so that things
15 like the pool filters and things like that can go to
16 them also.

17 COMMISSIONER LEAKE: Follow-up question: Are there
18 other facilities of a similar nature who pay this fee
19 that are in that area now?

20 MR. RICHARD LAUX: Oh. Yes. Numerous.

21 COMMISSIONER LEAKE: So if there is one exemption
22 then there are others who might qualify for the same
23 exemption?

24 MR. RICHARD LAUX: I believe the Springfield office
25 had that upper most in their mind when they were

1 looking at this variance request. We have a lot of
2 people on those lakes who could say that they're
3 there only seasonally, also.

4 Lake of the Ozarks would also potentially be
5 another place where we could see that same -- you
6 know, people claim they're not there year round.
7 Sometimes they are, sometimes they're not, sometimes
8 it is only the summertime. But we have some unique
9 challenges in facilities like that to start and stop
10 them. The one good thing about these is they're sand
11 filters and there is not that kind of operational
12 issues like you would have with activated sludge or a
13 small mechanical plant of some sort.

14 COMMISSIONER LEAKE: But -- but in your opinion this
15 could reach out to a lot more people if a variance
16 were to be granted?

17 MR. RICHARD LAUX: I would assume that this could set
18 a precedent, at least, in peoples minds that if the
19 Commission granted it for one group; why wouldn't
20 they grant it to us for this very same reason?

21 COMMISSIONER LEAKE: Of course, they'd each have to
22 apply individually.

23 MR. RICHARD LAUX: Well, yes, they would.

24 COMMISSIONER EASLEY: Have you had other requests for
25 variances that -- I mean, have there been any

1 variances granted?

2 MR. RICHARD LAUX: No. Not for this reason. Again,
3 that's one of the reasons why we put in the findings
4 that the stat- -- the variance statute really does
5 not look at this. If it was enough to actually
6 impact them financially to were maybe they couldn't
7 continue the camp that would be grounds for a
8 variance and we could look at that.

9 Now, we have had people who claim just the
10 permit fee itself would bankrupt them or -- you know,
11 basically, mean that their project couldn't go
12 forward and the Commission has granted some temporary
13 variances in situations like that. But not for any
14 seasonal facilities, this would be a first.

15 And the concern the Springfield office had is
16 that a lot of their permittees around these lakes are
17 probably in that seasonal char- -- you know,
18 characteristics.

19 (Off record discussion was held.)

20 COMMISSIONER EASLEY: You ready for a motion?

21 (No response.)

22 **COMMISSIONER EASLEY: I move that the Commission deny**
23 **the variance request based on the factors listed in**
24 **the Staff's recommendation.**

25 **COMMISSIONER LEAKE: Second that motion.**

1 CHAIRMAN HARDECKE: Malinda, take the vote, please.

2 MS. MALINDA OVERHOFF: Commissioner Hunter?

3 VICE-CHAIR HUNTER: Yes.

4 MS. MALINDA OVERHOFF: Commissioner Leake?

5 COMMISSIONER LEAKE: Yes.

6 MS. MALINDA OVERHOFF: Commissioner Easley?

7 COMMISSIONER EASLEY: Yes.

8 MS. MALINDA OVERHOFF: Chair Hardecke?

9 CHAIRMAN HARDECKE: Yes.

10 Okay. Tab No. 10.

11 MR. RICHARD LAUX: This relates to a previous

12 variance that was approved by the Commission five

13 years ago. I would make one note in here; I

14 indicated that there were two separate variance

15 terms, I believe, there may have only been one.

16 We've been talking about this for quite a while, but

17 it was only put in their permit about five years ago.

18 Back in March of 2005 the Commission approved

19 an order establishing a variance for **Empire District**

20 **Electric Company** from the applicable Water Quality

21 Standards for sulfate plus chloride and allowed the

22 establishment of alternate less stringent limits

23 under a variance until action to establish a site-

24 specific standard or alternate statewide standards

25 for sulfate plus chloride could be addressed in a

1 future Water Quality Standards rulemaking.

2 We have not had any opportunity really to
3 change the statewide ones at this point. The order
4 required periodic updates for the Commission and
5 Empire Electric's 48-month update is attached. And
6 it goes over what they have done during this period
7 of time to address the conditions of the variance.

8 Empire District Electric Company operates steam
9 electric power plant in Jasper County near Asbury,
10 Missouri. The plants cooling -- cooling water blow
11 down and ash pond overflow both discharge to
12 Blackberry Creek which is a tributary to the Spring
13 River. These discharges create in stream
14 concentrations of sulfate plus chloride that exceed
15 the State Water Quality Standards and because of that
16 the state -- the Staff then did put sulfate plus
17 chloride limits in the previous permit.

18 The Company requested and obtained a variance
19 term of five years to study and address the issue.
20 What we're recommending is that it's very likely
21 they'll have to reapply for this and if they're to
22 reapply we'd like to see that include a schedule to
23 bring this to a conclusion either to change the State
24 standard or to establish an in stream standard that
25 would be specific to this particular stream.

1 The letter from Empire goes over the studies
2 they've already conducted both engineering wise and
3 biological studies they've done in the stream. It --
4 the bottom line is they have not at this point
5 actually been able to get all the way to where we
6 have information to either change the statewide
7 standard or to actually nail what the in stream
8 standard for that location would be.

9 There are representatives of the Company and
10 their consultant here. If you have any questions
11 about the work that's been done it's probably good to
12 address them to them. If you have any procedural
13 questions, I'd be happy to answer them.

14 CHAIRMAN HARDECKE: Okay. Thank you. Trent Stober?

15 MR. TRENT STOBER: Good morning. My name is Trent
16 Stober with Geosyntec formerly MEC Water Resources.
17 We were retained by Empire Electric to work on the
18 various issues related to this variance and NPDES
19 permit.

20 We've conducted several studies including
21 engineering evaluations of various alternatives to
22 meet the state's standards which included treatment
23 of the -- of the cooling water source -- source water
24 and its discharge which is very difficult. Also,
25 alternative discharge locations probably the most

1 viable option would have been further pumping of
2 ground water resources in the area to try to come
3 into compliance which is a very negative disadvantage
4 in that part of the world as you're probably familiar
5 with there's an extreme amount of -- of issues with
6 respect to water quantity and so forth.

7 So after that we've conducted various in stream
8 and discharge studies including evaluation of stream
9 macroinvertebrate communities in comparison to
10 regional streams as well as testing for chronic
11 toxicity within the discharge and all those studies
12 have come back very positive. Nationally there's a -
13 - there's a lot of new (inaudible) towards evaluating
14 the national chloride criteria particularly in Iowa,
15 Wisconsin and Illinois.

16 And -- and so there's a -- there's a lot of
17 rational for thoroughly evaluating the applicability
18 of these criteria to this discharge. We've worked
19 with the Department substantially over this variance
20 term and the Department has been in communication
21 with both EPA Region 7 and then through EPA Region 7
22 to some of the research laboratories that EPA runs to
23 develop water quality criteria and so forth.

24 So with that there's been quite a bit of an
25 extensive amount of work that's been completed and we

1 hope to build consensus on how to move forward but as
2 Richard alluded to we'll likely be in front of the
3 Commission again to -- to ask for some more -- for
4 more time to come to resolution.

5 So we expect that you could see this -- or we
6 will submit a variance application shortly and may be
7 in front of you again in May or so. So with that I'd
8 ask if there any questions. We also have the folks
9 from Empire Electric here and they're available to
10 answer any questions as well. But with that, is
11 there any questions of -- of us?

12 (No response.)

13 MR. TRENT STOBBER: Okay.

14 CHAIRMAN HARDECKE: Thank you.

15 MR. TRENT STOBBER: Well, I appreciate your time.

16 Thank you, again.

17 CHAIRMAN HARDECKE: Lorin Crandall?

18 MR. LORIN CRANDALL: I am here representing the
19 Coalition for the Environment and I just wanted to
20 point out a couple of things, one, is that Blackberry
21 Creek which is the receiving water body is listed on
22 the 303(d) List in 2008 and 2006. And it's also
23 listed on the 305(b) List for chloride and sulfate.

24 Based on this and the fact there have already
25 been two five-year variances we would like to

1 recommend that the variance be conditional on a
2 compliance schedule that completes compliance action
3 within the next five years of variance.

4 In the case of violation of compliance schedule
5 the permit shall be revoked and enforcement fees
6 exceeding the cost of compliance shall be levied.
7 And that's all.

8 CHAIRMAN HARDECKE: Questions?

9 (No response.)

10 CHAIRMAN HARDECKE: Thank you.

11 Okay. We'll move on to **Tab No. 11**.

12 MR. KEVIN MOHAMMADI: Good morning, Mr. Chairman,
13 members of the Commission. The first item
14 recommended for referral to the Office of Attorney
15 General office is **Terre Du Lac wastewater treatment**
16 **facilities**.

17 Terre Du Lac Utilities Corporation is a Public
18 Service Commission regulated utility company which
19 owns and operates three wastewater treatment
20 facilities that serve the private community of Terre
21 Du Lac located in St. Francois County. Wastewater
22 from approximately 646 residential homes in the
23 development is treated by an oxidation ditch with
24 chlorination. Effluent from the oxidation ditch
25 discharges to a tributary to Big River pursuant to

1 Missouri State Operating Permit.

2 Wastewater generated from approximately 500
3 homes in the communities is treated by a three cell
4 lagoon, north lagoon in which the primary and
5 secondary cells are aerated. Effluent from the north
6 lagoon discharges to Three Hill Creek pursuant to
7 Missouri State Operating Permit.

8 The final 18 homes in the communities are served
9 by a single cell lagoon and effluent from the lagoon
10 discharges to tributary to Cabanne Course pursuant to
11 Missouri State Operating Permit.

12 On August 2006, and July 2009, Department Staff
13 conducted an inspection of all the wastewater treatment
14 facilities in Terre Du Lac. During these
15 inspections, Staff observed sludge in the effluent
16 trail of each facility and in the receiving streams.
17 Staff further documented that the Department had not
18 been notified of these bypasses. During inspection
19 conducted on the July 2009, Staff documented that the
20 oxidation ditch was not equipped with sludge storage
21 basins; was not properly enclosed by a fence; and the
22 clarifier was cloudy and contained a deep blanket of
23 sludge.

24 Staff next inspected the north lagoon and
25 observed the following conditions: duckweed covering

1 the second and third cells of the lagoon and
2 excessive vegetation covering the surrounding area.
3 Staff noted that the lagoon was in deplorable
4 conditions and that the effluent contained a strong
5 septic odor. Staff continued the inspection and
6 observed single cell lagoon. At this time, Staff
7 observed duckweed covering the lagoon cell and all --
8 and tall grass and trees covering the berms. Staff
9 also found that effluent contained strong odor.

10 In addition, Department record indicated that
11 facility has not conducted operation control testing,
12 has failed to submit quarterly Discharge Monitoring
13 Reports since August 2008, and has violated the
14 Schedule of Compliance contained in all operating
15 permits. Based upon the violations documented by the
16 Department, Staff has issued the Corporation six
17 Notices of Violation to compel the Corporation to
18 take appropriate action to resolve the violations.

19 To date the Corporation has failed to bring its
20 wastewater treatment facilities into compliance with
21 Missouri Clean Water Law and its implementing
22 regulations. Therefore, Staff recommends matter to
23 be referred to the Office of Attorney General for
24 appropriate legal action.

25 CHAIRMAN HARDECKE: Any questions?

1 (No response.)

2 CHAIRMAN HARDECKE: We have Mike Tilley.

3 MR. MIKE TILLEY: My name is Mike Tilley. I'm
4 representing Terre Du Lac Utilities and I guess I've
5 never been in a proceeding like this so I'm --
6 please, forgive me, I'm a little nervous about I
7 guess.

8 I just wanted to remind that -- that we are --
9 Terre Du Lac Utility is a private entity and we are
10 regulated by the Public Service Commission. We've
11 recently gone through a rate case to try to remedy
12 some of these problems. And the rate that we had
13 asked for to correct some of these problems was
14 rejected and we are working with the Public Service
15 Commission, now, we're trying to and there is a
16 series of meetings with other owners and things to --
17 to help remedy some of the -- the issues that -- that
18 have arose out of -- from other owners as well as
19 ourselves as far as getting rates where they need to
20 be and so forth.

21 It had been in the neighborhood of 10 years
22 since we've had a rate increase and, of course, we
23 don't want to unduly affect the -- the customers that
24 we have with the large increase, but there are
25 numerous things that obviously we need to be --

1 problems need to be corrected, I guess.

2 But we are -- you know, from our standpoint we
3 are trying to work on it. And it is taking the
4 cooperation of the Public Service Commission in which
5 we're trying to -- trying to get.

6 COMMISSIONER LEAKE: Question. I'm reading here that
7 -- well, let me just; based upon the violations there
8 were six Notices of Violations were there -- did you-
9 all respond to those?

10 MR. MIKE TILLEY: We had -- we had been operating
11 without a certified operator for -- for a while now.
12 And, I guess, the bottom line was we tried to correct
13 some of those things but we didn't directly, I guess,
14 address those to the Department of Natural Resources.

15 COMMISSIONER LEAKE: Can you tell me why you didn't?

16 MR. MIKE TILLEY: We had thought -- I guess, we
17 thought we were trying to address those problems and we
18 didn't necessarily address them to the extent that --
19 that we -- we thought we had addressed them to the
20 extent we needed to, I guess, in some ways. But --
21 (Tape Two, Side A Concluded.)

22 CHAIRMAN HARDECKE: Any other comments?

23 MR. MIKE TILLEY: I don't have any I guess.

24 CHAIRMAN HARDECKE: Well, you know, we appreciate you
25 coming. And encourage you to keep working on this

1 and even though it's referred to the Attorney General
2 why you continue to work with the Department to bring
3 things up to standard because the goal is to get
4 things fixed.

5 MR. MIKE TILLEY: Absolutely.

6 CHAIRMAN HARDECKE: So that process needs to continue
7 irregardless.

8 MR. MIKE TILLEY: Yes.

9 CHAIRMAN HARDECKE: Thank you.

10 VICE-CHAIR HUNTER: Mr. Chairman, I move that the
11 Missouri Clean Water Commission refer Terre Du Lac
12 Utilities Corporation to the Attorney General's
13 Office for appropriate legal action in order to
14 compel compliance, pursue a civil penalty, and seek
15 any other appropriate form of relief.

16 COMMISSIONER LEAKE: And I would second that motion.

17 CHAIRMAN HARDECKE: Take the vote, Malinda, please.

18 MS. MALINDA OVERHOFF: Commissioner Hunter?

19 VICE-CHAIR HUNTER: Yes.

20 MS. MALINDA OVERHOFF: Commissioner Leake?

21 COMMISSIONER LEAKE: Yes.

22 MS. MALINDA OVERHOFF: Commissioner Easley?

23 COMMISSIONER EASLEY: Yes.

24 MS. MALINDA OVERHOFF: Chair Hardecke?

25 CHAIRMAN HARDECKE: Yes.

1 **No. 12?**

2 CHAIRMAN HARDECKE: Or do you have other comments?

3 MR. MIKE TILLEY: No.

4 CHAIRMAN HARDECKE: Twelve? **Carterville.**

5 MR. KEVIN MOHAMMADI: Under Missouri Clean Water
6 Commission and EPA regulation the City of
7 Carterville, population 1,850, is subject to
8 Municipal Separate Storm Water Sewer Systems MS4
9 permitting requirement because it is within the City
10 of Joplin Urbanized Area as defined by U.S. Census
11 Bureau.

12 Carterville operates its MS4 program pursuant to
13 Missouri State Operating Permit which expired under
14 its own terms on March 9, 2008.

15 Since June 2007, the Department has sent regular
16 e-mails updating and informing communities with
17 regard to MS4 requirements; including deadlines and
18 useful tips for completing all forms and
19 applications. The Department also conducted several
20 informational meetings regarding the MS4 program
21 prior to March 9, 2008, expiration. Application to
22 renew MS4 permits were supposed to be submitted by
23 September 10, 2007; however, the Department granted
24 two extensions, October 10 and November 10, 2007, due
25 to delays in publishing the revised general operating

1 permit. Submittal of a complete renewal application
2 for Missouri State Operating Permit by the October
3 2008, final dead- -- deadline. In this
4 correspondence, the Department also requested that
5 Carterville submit its 2007 annual progress report.
6 The Department did not receive a response.

7 On July 28 and October 30, 2009, the Department's
8 Water Protection Program Compliance and Enforcement
9 Section sent a letter to Carterville requesting a
10 submittal of a complete MS4 renewal application and
11 2007 annual report to bring the city into compliance
12 with the Missouri Clean Water Law and its
13 implementing regulations. To date, the Department
14 has not received a complete application or annual
15 report.

16 Therefore, Staff recommends the matter to be
17 referred to the Office of Attorney General for
18 appropriate legal action.

19 COMMISSIONER EASLEY: Kevin, have you had any type of
20 communication with them since July the 28th?

21 MR. KEVIN MOHAMMADI: We have had several
22 communication including my Staff and Ms. Ruth Wallace
23 who is our MS4 coordinator, as of yesterday, I
24 believe. That we have not received a complete
25 application and their position is that there has been

1 lots of turnover. They didn't have staff. They
2 thought somebody was taking care of it. But this has
3 been going on.

4 COMMISSIONER EASLEY: Have you given them a new
5 deadline?

6 MR. KEVIN MOHAMMADI: The deadline was -- originally
7 we were going to present this case at last Commission
8 meeting and we were directed by Director Leanne
9 Tippett Mosby to work with them to see if we can get
10 the application from them. And we delayed that not
11 recommending for referral at last Commission meeting
12 and we've been working with them since and we still
13 have not been able to get the application that's why
14 we're bringing it back to you. Originally this was
15 recommended for previous Commission meeting.

16 CHAIRMAN HARDECKE: Is there anyone here from the
17 City of Carterville?

18 (No response.)

19 **COMMISSIONER EASLEY: I move that the Commission**
20 **refer this matter to the Attorney General's Office**
21 **for appropriate legal action in order to compel**
22 **compliance, pursue a civil penalty, and/or seek any**
23 **other appropriate form of relief.**

24 COMMISSIONER LEAKE: I'll second the motion.

25 CHAIRMAN HARDECKE: Take the vote, please.

1 MS. MALINDA OVERHOFF: Commissioner Hunter?

2 VICE-CHAIR HUNTER: Yes.

3 MS. MALINDA OVERHOFF: Commissioner Leake?

4 COMMISSIONER LEAKE: Yes.

5 MS. MALINDA OVERHOFF: Commissioner Easley?

6 COMMISSIONER EASLEY: Yes.

7 MS. MALINDA OVERHOFF: Chair Hardecke?

8 CHAIRMAN HARDECKE: Yes.

9 Is that all of yours?

10 MR. KEVIN MOHAMMADI: That's all of mine. We have
11 under **Tab No. 13, Village of Duquesne**, which is an
12 MS4 case but we have received application.

13 Therefore, we are **withdrawing our recommendation**.

14 CHAIRMAN HARDECKE: Okay.

15 MR. KEVIN MOHAMMADI: Thank you.

16 CHAIRMAN HARDECKE: Thank you.

17 I think it's time to break for lunch. And why
18 don't we meet back in 45 minutes. So people can try
19 to get out of here as soon as possible.

20 VICE-CHAIR HUNTER: You want to do this?

21 CHAIRMAN HARDECKE: Yeah. We'll go into closed
22 session.

23 VICE-CHAIR HUNTER: **Mr. Chairman, I move the Clean**
24 **Water Commission go into closed session to discuss**
25 **legal, confidential or privileged matters under**

1 Section 610.021(1), RSMo; personnel actions under
2 Section 610.021(3), RSMo; personnel records or
3 applications under Section 610.021(13), RSMo.
4 COMMISSIONER EASLEY: Second.
5 COMMISSIONER LEAKE: Second.
6 CHAIRMAN HARDECKE: Malinda, take the vote, please.
7 MS. MALINDA OVERHOFF: Commissioner Easley?
8 COMMISSIONER EASLEY: Yes.
9 MS. MALINDA OVERHOFF: Commissioner Hunter?
10 VICE-CHAIR HUNTER: Yes.
11 MS. MALINDA OVERHOFF: Commissioner Leake?
12 COMMISSIONER LEAKE: Yes.
13 MS. MALINDA OVERHOFF: Chair Hardecke?
14 CHAIRMAN HARDECKE: Yes.
15 (Break in proceedings.)
16 MR. REFAAT MEFRAKIS: Good afternoon, Commissioners.
17 **Tab No. 14, Permit** -- for permit report.
18 The first page is a graph that depicts our back-
19 -- permit backlog. As you can see we're meeting the
20 -- the EPA goal of 10 percent so far. We want you to
21 be aware that another wave of permits are coming up
22 in the next 12 months, 15 months so we're going to
23 get another peek so don't be surprised to see that
24 graph may exceed the 10 percent. So we're trying to
25 work -- trying to get a lot of the permits down right

1 now so when the -- the next wave comes up we -- we'll
2 catch that. So at least we're making some progress
3 here.

4 On the next page is the NPDES or state operating
5 permit completeness. On the first table permits
6 issued on time based on the data from January 2006 to
7 today is around 72 percent.

8 The next two tables -- the second table is --
9 our basic site-specific permits. And as you can see
10 that we still have a backlog and we are working on.
11 You can see a downward trend, not that significant.
12 However, on the general permits you see that there's
13 a huge drop back from April to today. The numbers
14 have gone down from 345 to 124 and that's due to our
15 efforts to get all the general permit templates
16 renewed on time. So I've got a table towards the end
17 that shows that most of our -- or at least all our
18 general permits have been renewed.

19 Page 477, the next page, is our Water Quality
20 Review Assistance Report which is the Antidegradation
21 Report. On the first page here are project that are
22 active. Since I made that report, I think, most of
23 these projects have been processed or completed with
24 the exception of a few.

25 The -- the last two -- two or three pages of

1 this report are the projects that have been completed
2 since the -- the effective date of the
3 Antidegradation rule. So we're -- we're making
4 progress and, I think, the process is working. And
5 we're able to do some of these Antidegradation
6 reviews.

7 I'll stop right here and see if you have any
8 questions about the Water Quality Review sheets. If
9 not, I can --

10 CHAIRMAN HARDECKE: Go ahead.

11 MR. REFAAT MEFRAKIS: -- move on and --

12 Page 481 is our consum- -- our CAFO and ag
13 chemical construction permits, permit status. You'll
14 see, I think, we're on track. We've issued most of
15 them. There are about five under review. Four of
16 those are awaiting public notice period before they
17 can be issued.

18 There's one that says ag chem is under review,
19 raw production services and, I think, that has to do
20 with the Antidegradation review and the -- it's a
21 general permit that -- that is on the -- on public --
22 public notice right now, so --

23 But, I think, we're catching up with all our
24 construction permit activities. And the last page is
25 just the -- our master general permit list. And as I

1 indicated earlier we have pretty much been
2 (inaudible) all of them. The few of them -- there's
3 one apparently its -- just expired is on public
4 notice right now it's the wood treater.

5 And that really concludes my permit report
6 unless you have a question.

7 CHAIRMAN HARDECKE: Questions?

8 (No response.)

9 CHAIRMAN HARDECKE: Okay. Thank you.

10 MR. REFAAT MEFRAKIS: Thank you.

11 CHAIRMAN HARDECKE: Before we go on I wanted to
12 announce that the Commission took action in closed
13 session to **table the** -- let's see that was **Tab No. 8**,
14 I believe. The land disturbance appeal until the
15 **next meeting** and we asked Jenny to gather some
16 information for us, so I wanted to make that
17 announcement.

18 Next is **Tab No. 15, Financial Assistance Update**.

19 MR. JOE BOLAND: Good afternoon, Joe Boland, again,
20 with the financial assistance center.

21 First as usual just a quick update on our \$50
22 million bond sale from November of 2007. We've --
23 we're up to about 270 -- or 269 applications for \$109
24 million in project funding. We've awarded over \$32
25 million of that funding and have several projects

1 waiting in the wings as the ARRA dust settles.

2 So we're moving along quite well with that money.

3 The only other material that you have in your
4 packet on this tab was at the time a summary of our
5 ARRA projects that have closed.

6 MR. SCOTT TOTTEN: Page 48- --

7 MR. JOE BOLAND: I'm sorry?

8 MR. SCOTT TOTTEN: It's on Page 489.

9 MR. JOE BOLAND: Yeah. Page 489, unless -- I'm sorry
10 -- does anybody have any questions on the state bond
11 summary?

12 (No response.)

13 CHAIRMAN HARDECKE: Go ahead.

14 MR. JOE BOLAND: Okay.

15 As I was saying the -- the summary for the ARRA
16 projects at the time this briefing packet was
17 prepared we had about 10 loans that we had closed on
18 in Clean Water for a total of \$59 million. As of
19 today that's up to 23 -- 23 loan and grant closings
20 for a total of over \$98 million. So the last three
21 weeks have been very busy. And the next three weeks
22 are going to be just as busy to close out on the
23 balance of these projects.

24 Again, between Clean Water and Drinking Water we
25 have about 65 projects total. Clean Water we've

1 closed on 23 once again. Drinking Water we've closed
2 on about 10. So we're well over half way -- well,
3 we're more -- way more than half way, but this -- we
4 do have every project scheduled to close in January
5 unless something goes wrong. But -- so we have a
6 plan in place. I'm hoping everything -- everything
7 comes through on the local side.

8 Other than that I'll entertain any questions.
9 That we're -- it's important to know that there's a
10 lot of activity behind these grants and loans and
11 between our bond council, financial advisors and our
12 Staff they've been doing a tremendous job in trying
13 to get this volume -- volume of projects through in
14 such a short time, so a lot of effort behind these,
15 so --

16 CHAIRMAN HARDECKE: Thanks a lot.

17 MR. JOE BOLAND: All right. Thank you.

18 CHAIRMAN HARDECKE: Okay. Jenny, do you have
19 anything?

20 MS. JENNIFER FRAZIER: No.

21 CHAIRMAN HARDECKE: Thank you. Scott?

22 MR. SCOTT TOTTON: I just have a couple of items.
23 Just a reminder that the Ethics Statute requires our
24 Commissioners to file a personal financial disclosure
25 form and Malinda will be getting -- make sure

1 everybody gets copies of that to fill out. That's
2 due by May the 1st. I want to make sure you --

3 MS. MALINDA OVERHOFF: And those will be sent to you
4 directly.

5 MR. SCOTT TOTTEN: Oh. Sent directly. Okay.

6 MS. MALINDA OVERHOFF: I will be sending you
7 reminders if haven't done them as deadline gets closer.

8 MR. SCOTT TOTTEN: Okay.

9 So if when you -- if you -- when you turn them
10 if you'll let Malinda know she quit badgering you.

11 And then, also, I think, she's provided
12 information -- new information on the travel and
13 expense accounts to everybody so that you know what
14 the -- the limits of expenditures are.

15 MS. MALINDA OVERHOFF: The difference on that now is
16 before we were allowing you to -- if you went over
17 the meal you could justify it. That's no longer the
18 case. It's strictly by the CONUS is all that you'll
19 get reimbursed for. And that's a State, OA decision
20 that's not -- it's a mandate.

21 MR. SCOTT TOTTEN: And then I want to report that the
22 -- that EPA has notified us that the -- that State's
23 2008 303(d) List has been approved by them. And if
24 you have any questions about that I'm sure we can
25 answer those. But I'm not expecting anything at

1 least at this point in time.

2 CHAIRMAN HARDECKE: Okay. Questions?

3 (No response.)

4 CHAIRMAN HARDECKE: Are we ready for Ruth Wallace?

5 (No response.)

6 CHAIRMAN HARDECKE: We're going to have an **MS4**
7 **presentation** next.

8 MS. RUTH WALLACE: Good afternoon, Mr. Chairman,
9 members of the Commission. I'm Ruth Wallace with the
10 permits and engineering section at DNR.

11 And I've tried to shorten this and make
12 it a pretty brief presentation. So hopefully if you
13 have any questions there will be time for that.

14 One of the first things I wanted to talk about
15 is that storm water quality is one of the more
16 recent items that have come under regulation. And
17 you will have note that the regulations
18 have changed over time to go from flood management.
19 Local governments have really been dealing a lot with
20 flood management issues. And because of the storm
21 water regulations federally, this is a federal
22 program, water quality has really come under the
23 scope.

24 So in the late 1990s the major metropolitan
25 areas came under regulation and were required to do

1 storm water quality management programs but
2 the majority of our communities here in Missouri and
3 across the nation became subject to the regulations
4 in March of 2003 when they were issued their first
5 permit that requires them to implement a
6 comprehensive storm water management program.

7 So in the beginning you can see the methods
8 and the style of storm water management really had to
9 do with quantity management and management for flood control.
10 It really was not affective for water quality as a
11 lot of the studies have shown over time. Water
12 quality was unregulated. It was partially effective
13 for flood management and it constituted a great deal
14 of extensive curb, gutter and basin systems -- large
15 structures primarily.

16 The current and forward emphasis is really to change methods
17 in order to incorporate water quality management.
18 we're really looking at managing quality
19 by managing the smaller storm events. And the
20 industry has pretty much evolved into structural and non-
21 structural methods of managing for storm water. And
22 in particular slowing the water down instead of
23 speeding it up as much as possible and getting it
24 offsite as fast as possible: It's more about slowing
25 it down as much as possible (without causing flooding

1 issues) and disbursing the treatments through a series of smaller
2 practices that would result in better water quality treatment.

3 So I just wanted to kind of lay that foundation
4 for why -- why the regulations and why the changes in
5 approached storm water management. And there's a
6 list of urban storm water pollutants. I
7 won't go into those, but I just wanted you to know
8 those are real issues and have been up
9 front. You've seen these pollutants before, but
10 those are the kinds of pollutants
11 you will see in an urban environment as opposed to
12 those that you're used to seeing in a more rural
13 environment.

14 I think the emphasis here is the industry has
15 really evolved as a result of this program to
16 studying what the impacts have been on urban
17 storm water quality from urban storm water runoff
18 and like I had indicated it really has to do with --
19 with managing for smaller storm events. In
20 the past, it's really been the large storm events.
21 You have heard a lot of conversations about the 100-
22 year storm event and managing for that. And, now,
23 from a water quality perspective the -- the studies
24 have shown that state of the practice is to really
25 manage for those small storm events that happen 95

1 percent of the time because that's where
2 approximately 75 percent of the urban pollution
3 runoff comes from the small storm events.

4 So that's why the industry has really turned
5 around and gone that direction. And since these
6 regulations, there's been a lot of guidance and
7 technical advice put out there to manage for small
8 storm events. So getting to -- getting to the
9 regulations -- oh, first of all, I should mention
10 that doesn't mean that we can't manage for
11 large storm events. We still have to manage the once
12 in a blue moon really large storm events, but
13 the focus now is on managing for these smaller storm
14 events for water quality.

15 The regulations themselves really it's founded
16 in the federal regulation you can see the
17 parts there in 40 CFR and then our State regulation is
18 10 CSR 20-6.200. And essentially, in Missouri we
19 have 153 regulated entities, and if you look at the
20 back of your handout you can actually see the list of
21 those particular communities.

22 I'm talking about Phase II here so let me back
23 up and just talk about Phase I briefly. But Phase II
24 is where the majority of our communities came under
25 regulation so that's why I'm talking quite a bit

1 about that here. But in Phase I in the late 1990s
2 communities that had a population of 100,000 or more
3 came under regulation. And in Missouri
4 that meant the City of Kansas City, the City of
5 Independence and the City of Springfield came under
6 regulation. St. Louis was able to argue for coming
7 in under Phase II because of their unique situation
8 with their combined systems -- some combined sewer systems
9 but also their storm system that goes county wide.
10 It's managed by the Metropolitan St. Louis Sewer
11 District. So our Phase I's were those three
12 Springfield, Kansas City and Independence. At that
13 particular time when Phase I came in to being, that's
14 when you would hear about land disturbance activities
15 that occurred on 5 acres or more required to get a
16 land disturbance permit. And then there was a
17 multitude of industrial operations that came under
18 regulations for storm water management as well.

19 Well, then in 2003 when it kicked in that's when
20 the requirement for land disturbance permit went from
21 5 acres or more per project to 1 acre or more per
22 project. And that is also when all of the other
23 communities less than 100,000 came into regulation.
24 States were given the option of exempting those
25 communities that are less than 1,000 in population

1 within our urbanized areas.

2 No more ice tea just means that up until 2003,
3 between the late '90s and 2003, the municipalities
4 were allowed to be exempt from certain industrial
5 permitting requirements, but once Phase II
6 kicked in, in 2003 those exemptions no longer apply.
7 There's a much bigger story than that, but that's one
8 of the gists here related to what we're speaking about
9 today.

10 So, now, all the municipalities no matter where
11 you are and whatever industry you are the
12 exemption is not there and everybody needs to have
13 their permit application in that is subject to a
14 particular industrial storm water permit requirement.

15 This map here and it's probably better, more
16 legible in your actual handouts here, these large
17 area represent the urbanized areas
18 -- one of the three ways that a community can come
19 under regulation. We have eight urbanized areas as
20 defined by the U.S. Census Bureau and anybody within
21 those particular areas if they're a 1,000 or more in
22 population then they're subject to the regulation.

23 Outside of those areas if it's a
24 population of 10,000 or more -- then that
25 particular community comes into regulation, and the

1 third way for a community to be regulated is
2 for the Department to specially designate them. So
3 that's how we arrived at this particular list of
4 communities that need to be regulated under the
5 federal and state program.

6 Basically, this is our clearing water website.
7 Clearing house -- storm water information clearing
8 house webpage if you want to know the details
9 about different stormwater permits the industries themselves that
10 have to get an industrial storm water permit or the
11 land disturbance permit requirements that requires
12 permitting or the municipalities themselves that
13 become subject to the program you'd go behind one of
14 these three doors here and look for that particular
15 information. So it's a fairly comprehensive website.
16 And just to put it in perspective these permits here,
17 we have three major categories. Municipal,
18 industrial and land disturbance
19 municipal separate storm sewer system is what the MS4
20 stands for. And that's to be distinguished
21 from a wastewater treatment system. You'll have
22 sometimes three different sets of pipes within the
23 jurisdiction, within any municipality; one will be
24 for wastewater, one will be for storm water or
25 there's one that combines the storm water and the

1 wastewater into one which is our combined sewer
2 overflow.

3 So if it's a combined sewer or CSO we
4 don't regulate that under the storm water program
5 here. That's regulated under wastewater. So,
6 basically, we have two kinds of MS4 permits; we have
7 ones that are site-specific for our three major
8 metropolitan areas and basically everybody else
9 operates under a general permit. And we have a whole
10 slue of industrial storm water permits.

11 And then we have three different types of land
12 disturbance permits. So these are -- these are the
13 types of permit issues you see come before you. They
14 come from generally one of these three categories.
15 Okay.

16 Of course, there's another host -- a whole host
17 of other things that applicants need to be concerned
18 about or aware of -- other permits that might be
19 needed for in stream activities. Something related
20 to building dams, sand and gravel mining. So that's
21 pretty much the construction side.

22 Just so you'll know the permit, the MS4 permit,
23 itself requires a municipality to build or construct
24 and implement a comprehensive storm water management
25 program plan and this is an example of the plan that

1 would be put together as directed by the permit.
2 This is the St. Louis County-wide storm water
3 management program plan. And in St. Louis County,
4 the Metropolitan St. Louis Sewer District is the
5 permitting coordinator for the 61 regulated entities
6 within the county. So they share this common plan.
7 And the District is kind enough to coordinate that
8 and they do a lot of work coordinating it for the
9 cities and county. So there's a lot of benefits -- they even do
10 all the education for those communities or a great
11 deal of education for them.

12 So the idea is that you have the permit and then
13 you have this comprehensive plan that has to be
14 implemented and, of course, the permit lasts for five
15 years and every five years it needs to be updated,
16 the plan needs to be updated along with the permit.
17 But the core of the program really involves these
18 basic components and the important thing to mention
19 here is that the three -- the three there in the
20 middle. Illicit discharge, detection and elimination,
21 construction site runoff which is land disturbance
22 and the post-construction site runoff control. Those
23 all required ordinances.

24 So not only is the state issuing land
25 disturbance permits, now, there's a federal

1 requirement that the local governments who fall under
2 the MS4 program also have to regulate land
3 disturbance activities for an acre or more project.
4 So we have a dual regulation requirement here, and
5 there are some opportunities to streamline that
6 process. There is an opportunity down the road for
7 municipalities to argue that they can handle this
8 program on their own and they can carry it forward.
9 Right now, I don't think we have any municipalities
10 that are wanting to argue that sole responsibility or
11 many of them are not ready to take that on. But
12 there is a provision in federal regulation that we
13 can ultimately delegate or at least share that
14 authority with -- with a local government, but for
15 now a developer has to get a permit from the
16 city and a permit from the state or, at least, they must
17 comply with or some other regulatory option on the city level.

18 So anyway there is an opportunity to streamline
19 that. We do work with the cities to do our
20 best to have them coordinate with the regions on that
21 particular streamlining process. So I'm not going to
22 cover these next few slides, but I did want
23 to mention the permit language just briefly because
24 it does reflect what EPA -- where EPA is going and
25 this is one of the most emphatic

1 pieces of this particular program and it has to do
2 with the post-construction component. Like I said,
3 it actually requires an ordinance to go with
4 that. But this is the requirement that takes
5 a look at storm water management not just from a
6 quantity standpoint anymore. This is the part of the
7 permit and this is part of the permit language that
8 says the city has to do something to be regulating
9 for water quality.

10 And EPA has just recently announced their
11 intention -- or they just public noticed their
12 intention to strengthen a great deal this
13 particularly piece of the permit -- or this
14 particular piece of the program for the
15 municipalities. So by November 2012 you
16 will see this particular one batten down pretty hard
17 and they're probably going to have standards in there
18 that they're going to have -- they're going to
19 require them to manage small storm events for water
20 quality.

21 And the other reason I wanted to mention this is
22 that this is perhaps the most challenging and it's
23 the most important for communities that have a high
24 growth potential because this particular approach of
25 managing small storm events is really most affective

1 when there's a lot of new growth opportunities. So
2 the cities are wanting to know about this ahead of
3 time. And the other thing is that it's
4 a 180 degrees different from how we've been doing
5 business, and how we've been managing storm water for the
6 last 30 years. So for those two reasons this is an
7 important piece to pay attention to in this program.
8 And for for this reason also EPA provided us
9 with a grant to develop guidance to the cities for
10 this particular piece of the program. So you can go
11 ahead. I'd keep going up to emerging standards.

12 So as I indicated EPA published their intention
13 to strengthen storm water regulations in particular
14 on this particular part, post-construction and
15 they're sending out questionnaires to the
16 municipalities, to the development industry and the
17 states, the NPDES permitting authorities, to gather
18 information so that to inform rulemaking. Okay.
19 Next one.

20 I did want to mention that EPA and DNR have
21 done some audits. And we -- we've done a few audits
22 and EPA has done a few audits, but we haven't really
23 done that many. But the bottom line is that -- that
24 most of the communities were supposed to have their
25 ordinances in place by March of 2008. And when DNR

1 is inspecting or auditing these programs, the few
2 that we've done, if we find that a community has --
3 did not meet that deadline then we'll basically give
4 them a time frame for getting into compliance. EPA,
5 however, has completed some audits and is actually
6 doling out some penalties for -- for that same
7 violation -- or same non-compliance issue, if you
8 will. So that's kind of the difference between where
9 EPA is going with it and where the state is going
10 with it. So the cities are very interested in DNR
11 kind of being the one involved with their audits and
12 inspections.

13 I think that's it. Any questions?

14 (No response.)

15 MS. RUTH WALLACE: Thank you.

16 CHAIRMAN HARDECKE: Thank you.

17 Next we'll have a **fees presentation**. Debbie?

18 MS. DEBBIE BRUNS: Good afternoon, Mr. Chairman,
19 members of the Commission. My name is Debbie Bruns.
20 I'm the chief of the Fiscal Management Section for
21 the Water Protection Program.

22 And my purpose is to provide you an overview of
23 the funding for the Department's water pollution
24 control efforts and just give you an overview of the
25 fee presentation that was made to the stakeholders in

1 September.

2 Okay. We have two sources, primary sources of
3 funds, State funds and our State funds include our
4 water permit fees which we have operating permit fees
5 ranging from \$75 to \$5,000 per year and we also have
6 user fees that are collected by our municipal POTW
7 facilities and those fees range from 40 cents per
8 connection to \$25 per connection. Our FY, Fiscal
9 Year 2009 revenues for those fees totaled \$4,152,080.
10 We also had \$95,545 in miscellaneous receipts, cost
11 recovery, interest earned on those funds. So our
12 total revenues for Fiscal Year 2009 was \$4,236,977.

13 Another source of our funds are SRF
14 administration fees. That is a fee of one-half
15 percent of the current outstanding loan balance each
16 year charged for the loans that the Financial
17 Assistance Center issues. These fees may only be
18 expended for management of the said SRF program and
19 for management of projects receiving financial
20 assistance from the SRF. Our revenues in Fiscal Year
21 2009 totaled \$5,229,599 for those fees.

22 Then our Fiscal Year 2009 appropriation of
23 general revenue funds was \$3,096,117. Our -- in
24 these -- these funds provide the operating cost for
25 the Division of Environmental Quality which now

1 includes the regional office programs and also our
2 Division of Geology and Land Survey for some of the
3 services that they provide to help us support our
4 activities.

5 We have several federal grants. We have our
6 Section 106 grant, which you'll hear us refer to a
7 lot of the times as our PPG grant or our Performance
8 Partnership Grant. The purpose of this grant is to
9 assist administration of the prevention reduction and
10 elimination of water pollution. And this is pretty
11 flexible money as far as what we can do with that
12 money, what it can be used for. It's for NPDES
13 permitting, water quality monitoring, enforcement
14 activities, administration of the program. This is
15 an allotment formula. It's -- we receive an
16 allotment each year from the federal government. Our
17 allotment for Fiscal Year 2009 was \$3,305,600. We
18 are required to match these dollars through a
19 maintenance of effort level and that was -- our efforts
20 -- what we were expending in Fiscal Year 1971 so our
21 match requirement -- I'm sorry, I must be too close -
22 - is \$600,173 that we match for those funds each
23 year.

24 The next pot of federal grant that we get is our
25 water quality management planning grants, our 604B

1 grants. This is an allotment of funds that's carried
2 out water quality planning under 2- -- Section 205(J)
3 and 303 of the Clean Water Act and this allotment is
4 1 percent of the state's allotment for SRF
5 capitalization grants each year for the Clean Water
6 SRF.

7 We are required to announce 40 percent of this
8 money as available to regional planning organizations
9 as pass-through grants if we don't receive proposals
10 from the organizations to fully allocate that money
11 then we can request a waiver through the Governor's
12 Office and then we can use that money to direct it
13 towards water quality activities that are priorities
14 of the Department. Our allotment for FY 2009 was
15 \$489,826 and there is no match required for this
16 money.

17 I'll state that the grant that we applied for in
18 Fiscal Year 2009, we did request a waiver so that was
19 all money that came to the program to be used for
20 water quality activities. We also apply for other
21 targeted federal grants as they become available.
22 We've got two small grants, one, Ruth mentioned was
23 the MS4 to develop some training for communities and
24 then we also have a small grant to develop
25 and provide training to SSO communities.

1 Okay. Then another federal grant that we
2 receive and this is -- this money is not quite as
3 flexible as our non-point source implementation
4 grants, our Section 319 grants. The purpose of these
5 grants are to -- we pass through a large portion of
6 this grant, make it available as sub-grants to
7 universities, non-profit organizations. And this
8 grant emphasizes the watershed approach and funds
9 watershed plan development and implementation to
10 result in non-point source pollutant load reduction
11 and water quality restoration and protection. We
12 applied -- we requested a program -- programmatic
13 flexibility of this money in Fiscal Year 2009 and we
14 received that flexibility of \$1,032,466. The flexib-
15 -- that flexibility allowed us to take that money and
16 help fund some of our water quality
17 activities, like, the water quality monitoring, the
18 permitting, inspection, enforcement activities; this
19 grant does require a 40 percent match. So the match
20 required on that million dollars is \$688,000.

21 And then the last source of funds, that we
22 receive from the federal government are
23 capitalization grants for Clean Water State Revolving
24 fund. And our FY '09 grant for that program
25 was \$18,864,965 and that is all to be used as pass

1 through for loans to communities for the construction
2 of their infrastructure.

3 Is there any questions on any of those?

4 (No response.)

5 MS. DEBBIE BRUNS: So this pie chart just shows the
6 breakdown of how we're funded; 28 percent of our
7 program is funded for -- with federal funds, 24
8 percent with our water permit fees, 30 percent is SRF
9 admin fees and 18 percent is for -- from general
10 revenue.

11 Now, the clean water and the storm water fees
12 this is the -- go through this, this is the
13 presentation that was given at the September 25th,
14 stakeholders meeting. The pie that we have up here
15 reflects our projected operating costs for
16 Fiscal Year 2011. The total projected costs are
17 \$15,007,361. General revenue would
18 provide 23 percent of that, 37 percent from federal
19 funds, 28 percent through our water permit fees and
20 then we have a -- reduc- -- we'd be short, I think,
21 that says 12 percent and we anticipate that shortfall
22 needs to come from our water permit fees because we
23 are limited on our general revenue. We're limited on
24 our federal grants. The only place we would have any
25 opportunity to gain any additional money would be

1 through our water permit fees.

2 And this total effort includes expenses
3 for the Water Protection Program, the regional
4 offices, DGLS-Division of Geology and Land Survey and
5 also the Attorney General's Office.

6 Okay. This chart shows over the course of five
7 -- over a five-year period from 2011 through 2015 the
8 red line shows our annual operating -- projected
9 operating expenditures. And the green line shows our
10 annual available funds. You can see there's a -- we
11 start out in 2011 with a shortfall of \$1,792,000. In
12 FY 2015 that shortfall has increased to \$3,442,094.
13 Our five-year average annual shortfall is \$2,666,000.

14 Okay. The assumptions that we made is that
15 there would be no reductions in GR funds. GR
16 increases would relate to pay plan and fringe
17 increases only. That there would be no change in our
18 available federal funding, permit revenues would
19 remain constant. Our expenditure assumptions for FY
20 '11 we had assumed a 3.55 percent pay plan increase
21 and then 3 percent each year after that. We assumed
22 3 percent increase for fringe benefits
23 through 2013. We assumed a 3 percent inflation
24 factor for expense and equipment each year and we
25 assumed an indirect rate of 25.93 percent each year.

1 CHAIRMAN HARDECKE: What is that?

2 MS. DEBBIE BRUNS: I'm sorry?

3 CHAIRMAN HARDECKE: What's the indirect rate?

4 MS. DEBBIE BRUNS: That -- the indirect is

5 basically covers the cost of Department

6 administration, our --

7 (Tape Two, Side B Concluded.)

8 MS. DEBBIE BRUNS: Right.

9 That we use now and we assume no increase in
10 that rate. Okay? Relating to general revenue as of
11 August 31st, 2009, general revenue funds were down 4.5
12 percent from last year, previous year. It's highly
13 likely that our FY 2011 budget will include general
14 revenue reductions. And we've assumed general
15 revenue funds of \$3,418,882 with 5 percent reduction
16 that would reduce that amount by \$171,000. A 10
17 percent reduction would reduce it by \$342,000 and a 20
18 percent reduction would reduce our general revenue by
19 \$684,000.

20 In summary, our FY 2011 revenue shortfall is
21 \$1,792,202. Our FY 2016 revenue shortfall is
22 \$3,442,094. And our average annual shortfall over a
23 five-year period is \$2.6 million. The increase that
24 we would need for FY '11 shortfall to meet the
25 average five-year shortfall is \$867,798. And our

1 general revenue reductions, we just don't know what
2 those are going to be but we anticipate there will be
3 some.

4 This chart is difficult to read but what
5 it demonstrates is by each permit type the blue line
6 shows the level of expenditures for each of these
7 permit types. And those permit expenditures include
8 permitting, inspection, enforcement activities. The
9 purple line shows the amount of revenue relative to
10 the expenditures so, like, for the first -- the first
11 column, the site-specific municipals we -- the
12 revenues that came in for the site-specifics covered
13 77 percent of the cost to service those
14 permits.

15 Land disturbance revenue covered 7 percent of
16 the cost; for general permits 10 percent of the cost
17 were covered by the revenues we received; for
18 chemical -- the ag chem. permits 7 percent of the
19 fees covered the cost; for general CAFOs and AFOs 1
20 percent of the revenues covered the cost; site-
21 specific industrials 95 percent of the revenue
22 covered the cost; site-specific storm water, we had
23 revenues of 135 percent so that particular one
24 covered the cost; site-specific CAFOs is 19 percent;
25 domestic sewage-small domestics is 10 percent; other

1 domestics is 78 percent and 401 certification is 1
2 percent.

3 Now, what we had to do is we had developed some
4 potential options in the event that we would need to
5 try to identify what portions of our program we would
6 like to try to return back to EPA because we didn't
7 have the money to fund it. The first option that we
8 identified is our TMDL and modeling and our water
9 quality monitoring.

10 The first two columns show what our total effort
11 is and the total cost. The green in the middle, the
12 highlighted green column in the middle shows what the
13 reduction would be and the dollar amount of those
14 reductions. In some cases we can't reduce the full
15 FTE amount because some of the money that is used to
16 fund those positions is restrictive money and can
17 only be used for certain types of activities. So it
18 wouldn't be -- if we freed up the money we wouldn't
19 be able to just shift it over to cover our other
20 activities.

21 Another option that we identified was to reduce
22 or eliminate the environmental assistance visits and
23 general assistance provided by the -- primarily by
24 the regional offices, provide those services. Then
25 we looked at eliminating some specific activities,

1 specifically, CAFO permitting, land disturbance
2 permitting and 401 certifications. We looked -- we
3 considered, but -- elimination of compliance and
4 enforcement activities and also just looking at
5 specific permit types CAFO permits, MS4, 401
6 certifications, land disturbance, site-specific and
7 municipal permits and then all other permits. And we
8 looked at portions of some of those.

9 Is there any questions I can answer
10 for anybody, for anyone?

11 (No response.)

12 CHAIRMAN HARDECKE: Questions?

13 (No response.)

14 MS. DEBBIE BRUNS: Leanne, would you --

15 CHAIRMAN HARDECKE: Thank you.

16 MS. DEBBIE BRUNS: -- like to add?

17 MS. LEANNE TIPPETT MOSBY: And to please the
18 Commission. I'm Leanne Tippett Mosby. I'm the
19 acting director of the Division of Environmental
20 Quality for those in the audience who don't know me.
21 If it pleases the Commission, I just like to
22 highlight a few things Debbie said and give you a
23 division-wide perspective just a couple minutes.

24 First of all, we have four programs out of our
25 five media programs in the Division that are facing

1 these similar funding shortfalls. Our Solid Waste
2 Program, our Hazardous Waste Program and our Air Pollution
3 Program are also -- have similar looking charts to
4 what Debbie was showing you here. All told,
5 division-wide the FY '11 shortfall is approximately
6 \$10 million. So it's very significant indeed
7 division-wide.

8 We have been having these stakeholder meetings
9 in all the different programs. They've kind of been
10 on hold for the past several weeks because one thing
11 we heard across the board in all of these stakeholder
12 meetings, from our stakeholders, was they wanted the
13 Department to look at efficiency measures and
14 streamlining and how we would tighten our belt before
15 they would agree to increase fees on themselves. So
16 we have been going through a process internally in
17 the Department to do that. And we hope to be
18 restarting our stakeholder meetings very soon once we
19 are kind of -- are able to wrap our minds around that
20 and have some information that we can present to our
21 stakeholders regarding that.

22 Some of the special challenges we have in the
23 Water Protection Program; we have a very diverse set
24 of stakeholders in this program that's unique from
25 the other programs. We have everything from

1 municipalities to restaurant owners and mobile home
2 park owners and CAFOs and -- and -- so it's -- you
3 know, we have very different -- industrial sectors,
4 so there's a lot of tension there between the fee
5 payers. And as you can see we have some
6 discrepancies in terms of how much fee -- fee payers
7 contribute to the overall operation of the program
8 versus how much time and -- and money that expend on
9 those activities.

10 So we have had some of our stakeholders say that
11 -- you know, they may be willing to entertain a fee
12 increase but they want to see something -- everyone
13 to kind of have to increase their fees before they're
14 willing to -- to do that themselves.

15 So I won't -- I won't belabor any
16 points here, I think, Debbie's presentation, you
17 know, laid it out for you fairly well, but if you
18 have questions of me about kind of the overall
19 picture I'll be glad to try and answer those.

20 CHAIRMAN HARDECKE: Thank you.

21 MS. LEANNE TIPPETT MOSBY: Thank you.

22 COMMISSIONER LEAKE: (Statement inaudible; speaker
23 not present at microphone.)

24 MS. LEANNE TIPPETT MOSBY: The only one we do have
25 scheduled is January 21st. We have a Hazardous Waste

1 stakeholder meeting. So that's kind of setting the
2 schedule for us because we'll have to -- obviously
3 have to have some -- some information to bring back
4 to stakeholders at that point. So that's -- that's
5 kind of pushing our -- our agenda, if you will.

6 COMMISSIONER LEAKE: Very good.

7 CHAIRMAN HARDECKE: Okay. Next we have a
8 presentation by -- on Castlewood State Park. I'm
9 sorry. I'm sorry.

10 MR. SCOTT TOTTEN: Hold on.

11 CHAIRMAN HARDECKE: We got one card. Kathleen Logan
12 Smith on the fees.

13 MS. KATHLEEN LOGAN SMITH: I know it's late; I won't
14 go on very long. I just wanted to say that in the
15 stakeholder meetings everybody is really clear on the
16 problem. There's a lot of agreement on the problem.
17 The joint legislative task force recommendations that
18 came out last -- you know, in '08, December, was
19 pretty clear on the problem. And we are -- a lot of
20 the stakeholders are not -- surprisingly not too far
21 apart. There is a real sense of fairness though.
22 There's a real sense that certain people are pulling
23 their weight in the fee program, and certain
24 industries and -- in special interest or not and that
25 they need to pick up more of the tab to make that

1 fair and there needs to be seriously a commitment
2 from the state of Missouri to funding the program to
3 make it viable for us to keep here.

4 And we're hearing in the stakeholder group a lot
5 of support for that, but we haven't seen a lot of
6 action out of our friends at the Farm Bureau and HBA,
7 yet, on what they want to see moving forward in that
8 way.

9 So at the stakeholder level we're waiting to
10 hear from those two groups to see where they fall
11 into the conversation and to try to move some sort of
12 proposal ahead.

13 COMMISSIONER LEAKE: (Statement inaudible; speaker
14 not present at microphone.)

15 MS. KATHLEEN LOGAN SMITH: The HBA, homebuilders.
16 Yeah.

17 Because the land disturbance fees are really low
18 and -- and way below their impact and their
19 cost. And so it's something for you guys to think
20 about and for all of us to look at, you know, what --
21 what should those look like in terms of funding our
22 work.

23 So the -- as you know from the Coalition for the
24 Environments' work we're not exactly satisfied with
25 DNR's permitting program, now, much less under a

1 reduced funding scenario. One of the biggest impacts
2 that's clear from those of us who are in the
3 stakeholder group is that, you know, losing the
4 institutional expertise that you have at this level
5 will really have impacts on dischargers and
6 permittees and everyone across the board because, you
7 know, when you lose those people who know what
8 they're doing and people get shifted from other
9 Departments they have to relearn the -- the system
10 that's in place, the standards, you know, the -- the
11 Staff protocol, who's doing what and all that and it
12 takes a long -- it'll take some time.

13 And so if that has to happen we -- it'll hurt
14 our water quality in the state, period. And I think
15 -- and from your perspective that's really one thing
16 for you to be thinking about; is how much pain will
17 that cause to actual water quality in the state of
18 Missouri when we start -- if we have to start
19 bleeding expertise and we have brain drain from
20 having to shift programs because of -- of pretty
21 serious funding cuts? The -- we're looking right now
22 at fee levels that were set in 2000. So it's -- its
23 2010, I mean, we've got fees that are a decade old.
24 They've never been increased for inflation. They're
25 ridiculously low in some cases. And they're not --

1 there's a lot of places where there's definitely room
2 to increase those fees and there's room to help
3 establish a program that -- that really does give
4 citizens what they expect which is clean water in the
5 state of Missouri.

6 Thank you.

7 CHAIRMAN HARDECKE: Thank you. Roger?

8 MR. ROGER WALKER: Commissioners my name is Roger
9 Walker. I'm executive director of REGFORM. I was
10 going to reserve comments for the public session, but
11 I just wanted to echo what Kat Logan Smith said that
12 -- and I'm glad to see her step forward and say that
13 the -- the Coalition supports a viable,
14 professionally run DNR. Our business group REGFORM,
15 statewide business organization we feel the same way.

16 We don't like this idea of -- of the withering
17 of DNR. Either you have a strong, solid State
18 program or you don't. Either we have -- you know, a
19 Commission process like we have and a professionally
20 run DNR or -- or we don't. We don't -- we don't want
21 an in between. We don't want to see some programs
22 disappear or we don't want to know when EPA is coming
23 in and when they're not.

24 We want -- we support the Department and we
25 always have. And we've been on -- we've been on the

1 record for two years now trying -- you know, to
2 resolve some of these fee issues. The two things
3 that we have always pointed out and Leanne mentioned
4 those and I want to say that the Department's been
5 extremely responsive to our request for information,
6 to sitting down and discussing the fee issues.
7 Unfortunately, these issues are going to be -- they
8 are going to be resolved in the Missouri General
9 Assembly not in this forum and not in our stakeholder
10 meetings.

11 But the Department -- well, you know, what the
12 industry representatives have been forthcoming on
13 these -- on the information and, I think, our
14 position is pretty clear that there may be some
15 efficiencies when we look at a particular pie chart
16 that has \$5 million for land disturbance you got to
17 wonder is -- is the program -- does it really require
18 \$5 million to administer land disturbance. And on
19 the other hand when you look at the same chart and
20 you see that some -- some groups -- you know, which -
21 - which have been called out, you know, whether it's
22 the general CAFOs or the land disturbance or -- or
23 401 cert. They're just not paying -- they're paying
24 a fraction of the cost of permitting. And that's
25 just unacceptable.

1 You see the two categories which most of my
2 members represent; they're paying 135 percent and 95
3 percent. You can double our fees of the industrial
4 community and you're still not going to even come
5 near to solving the -- the budget balance for the
6 program. Others have to step forward. We expect
7 that. We expect to have a professionally run
8 Department in which we support.

9 And we will be working with other business
10 communities, other business organizations to see that
11 that message is heard in the General Assembly. And
12 we -- we expect the Governor's Office, we expect the
13 General Assembly, we expect DNR to treat this as a
14 crisis, which it is, and to deal with it
15 appropriately. And play to politics with it, which
16 you see some element of that already is unacceptable
17 to us. And we'll work hard to try to avoid that.

18 Thank you.

19 CHAIRMAN HARDECKE: Okay. Thank you. John?

20 MR. JOHN FORD: Mr. Chairman, Commissioners, good
21 afternoon. My name is John Ford. I work in the
22 monitoring assessment of DNR and I'm the first of a
23 three-part presentation on **Keifer Creek in Castlewood**
24 **State Park**. I'm going to be talking more generally
25 about bacteria levels in some streams around the

1 state. And, I think, the other two speakers will be
2 talking more specifically about Keifer Creek.

3 In your blue packet there's, like, about a three
4 page little handout there. It starts with an aerial
5 photo taken in 2008 of the Keifer Creek watershed and
6 just looking at it quickly it looked to me like maybe
7 it was maybe 40 percent developed and 60 percent
8 woods and pasture. And it's a stream -- Keifer Creek
9 that drains this watershed is a stream that had
10 monitored for several years by the U.S. Geological
11 Survey for St. Louis MSD down in the lower part where
12 it's a permanent flow stream. And plotted in that
13 graph and that below the map are all those data
14 points where they got their E. coli results and I've
15 plotted those against the amount of flow in the
16 stream. And it shows a fairly typical pattern for
17 bacteria in streams and that is that as flow
18 increases the amount of bacteria concentration in the
19 stream increases. That's -- as I said, that's pretty
20 typical for most streams.

21 One thing you do want to look at though is that
22 sometimes it doesn't take a really large flow to make
23 a big increase in bacteria. There was one particular
24 dot there at about 3 CFS a flow in lower Keifer
25 Creek, which produced bacteria concentration of about

1 20,000, so the idea is that during a rainfall it's
2 often that first flash that brings that first bunch
3 of water coming off the surface or coming out of the
4 sewer lines or whatever, bypassing sewer lines into
5 the stream that causes a large part of that problem.

6 The area of -- the -- this area is almost -- is
7 served by sewers through most of it the higher
8 density parts, some of the lower density areas of the
9 southern part of the watershed are not served by MSD
10 sewers, yet. If you look at the second page, what
11 I've done is I've looked at some bacterial levels in
12 different streams in the state. And I plotted the
13 geometric mean for all the data we have for each of
14 those. The first three on the list River Des Peres,
15 Williams Creek and Keifer Creek are basically urban
16 streams. River Des Peres is 100 percent urbanized.
17 If you're familiar with it, it has a lot of combined
18 sewer overflows during wet weather. Also, some
19 sanitary sewer overflows. Williams and Keifer Creek
20 are much less developed more like about 40 percent.
21 Williams Creek is very close to Keifer. It's just
22 across the river on the south side of the Meramec,
23 but otherwise it's very similar in types of land use.

24 What's interesting is that all three of these
25 streams though show about the same general level of

1 bacteria. That was a little surprising to me because
2 I would have thought that River Des Peres with all of
3 its combined sewer overflows would have had an
4 obviously higher level. And what that tells me is
5 that, although combined sewer overflows and sanitary
6 sewer overflows are significant sources of bacteria
7 during rainfall they're not the only significant
8 sources that general non-point source runoff off the
9 surface of the land and some bacteria that may have
10 ex-filtrated from sewer lines and is just kind of
11 lying around waiting to be flushed are another big
12 source of bacteria to streams when it's -- when it's
13 raining and you have runoff.

14 I also looked at some urban streams. No Creek
15 is an agricultural stream in north central Missouri
16 that has a lot of livestock in it and bacteria levels
17 there are almost as high as in urban streams. And
18 then I looked at a rural stream with very low
19 livestock that would be just about anything you'd
20 pick down in Mississippi embankment, which is
21 basically row crop agricultural. And you'll see
22 there's a significant drop in bacterial quality
23 there. So what we're looking at between the
24 difference between No Creek and St. John's Creek is
25 obviously a difference not so much in human density

1 or activity as it is the amount of livestock or
2 animals there.

3 And then just to put the whole thing in
4 perspective I looked at one of our more pristine
5 watersheds in the state. The Black River which is
6 highly forested, has very few people, not a lot of
7 human activity going on and spectacularly low numbers
8 of bacteria there. That kind of puts all the rest of
9 those numbers in some sort of perspective, I hope.
10 And shows us that where you have human activity we've
11 -- we've substantially increased the amount of
12 bacteria that we're carrying in our streams.

13 I also read some storm water reports from Kansas
14 City. Let's see if I got my notes here. Oh, yeah.
15 There's the U.S. Geological Survey has had a fellow
16 over that that's spent most of his professional life
17 monitoring storm water in the Kansas City area and
18 writing reports and trying to understand that. And
19 I've spoken with him on -- on occasions. His most
20 recent study, what they found was that they were
21 studying Brush Creek which rose -- flows right
22 through the middle of Kansas City also has some
23 combined sewer overflow problems, that during normal
24 flows or base flow in that stream apparently the
25 amount of bacteria coming from humans is somewhere

1 only in the neighborhood of maybe around 50 percent.
2 The rest of it seems to be from things like dogs and
3 geese. It's just kind of surprisingly high number to
4 my way of thinking.

5 And then when he looked again during storm water
6 flows the human amounts went up as you would expect
7 with combined sewer overflows and things like that.
8 But still the amount of bacteria that they were
9 seeing from dogs, geese and other wildlife was still
10 a significant percentage. It was still, like, you
11 know, more than -- more than a third of the total.
12 So that's -- I guess is another message is that it's
13 not totally human sewage problem. Where you have
14 large numbers of people living in high densities
15 you're typically going to have other problems like
16 their pets and types of wildlife that are -- that are
17 drawn to urban areas.

18 So, I guess, in conclusion the types of
19 problems, bacteria problems that we see on urban
20 streams, in low flow conditions what we worry about
21 are discharges from wastewater treatment plants. We
22 worry about discharges from septic tanks that aren't
23 performing well. And we worry about animal waste.
24 During high flow storm water events our primary
25 sources are non-point source runoff from the surface

1 of the land. Shallow sub-surface sources like
2 bacteria that have ex-filtrated from sewer systems
3 that are just kind of lying around in shallow areas
4 waiting to be flushed into the system. And then
5 where we have them sanitary overflows. So things are
6 a little different during -- during high flow
7 conditions. We've got different sources. But it's
8 not a -- it's not a simple -- it's not a simple
9 problem and it's almost something that you have to
10 look at on a watershed-by-watershed basis to see what
11 your -- your most significant problems are.

12 That's all I had. If there's any questions you
13 have right now, I'll try and answer them.

14 CHAIRMAN HARDECKE: Next.

15 MR. STEVE SEYER: Hi. My name is Steve Seyer and
16 I've been talking with John Ford and John Hoke and a
17 couple of the folks on the Staff about this problem
18 as well as Bill Bryan and Todd Parnell to get some
19 direction. I'm not an environmental person at all.
20 I'm an IT consultant. So I just happen to use this
21 state park that he was talking about. And I've had
22 some problems with it that I wanted to share with you
23 and make some recommendations on how we can clean
24 this thing up.

25 If you -- we're just going to do a quick -- go

1 ahead to the next slide. If you haven't been to
2 Castlewood State Park the next time you come to St.
3 Louis and it's not 4 degrees I encourage you to go
4 out and take a look at it. It's really a jewel for
5 us here. I happen to live about 2 miles from the
6 park. So I frequent it on weekends with my dog. And
7 we like to run the trails where you'll see all kinds
8 of fall foliage and all kinds of views that will draw
9 people in the autumn to -- to the -- to the -- to the
10 colors that they have out there by the hiking and
11 biking trails and so on and so forth. Go ahead. Go
12 ahead to the next one as well.

13 There's a stream that runs right through the
14 middle of Castlewood State Park it's called Keifer
15 Creek and there's -- this is right over a bridge.
16 I'm looking down from the bridge above it. That
17 particular part of the stream is a very popular spot
18 for our kids and pets to go swimming. And the
19 problem is with that -- this particular area the
20 stream -- or a big part of the stream there's a real
21 high level of fecal matter that John Ford was talking
22 about as well. Go ahead.

23 When I started doing some research, I had some
24 problems with my dog's health and I started doing
25 some research on the stream to find out what was

1 going on it and I uncovered some of the data that
2 John had presented to you in the report as well.

3 I brought this, first of all, to DNR's
4 attention. I said, hey, are you guys aware of this.
5 The fir- -- you know, they came back with a couple of
6 different responses, one, that Keifer Creek is not a
7 designated swimming within the park. Well, go ahead
8 to the next slide.

9 Everyday you'll find people out there if it's
10 warm outside in the park, in the water, dogs, kids,
11 fully submerged. There happens to be in this area
12 about a 4-foot pool where the kids will actually do
13 swimming in that part of the stream. There's another
14 area up north of the bridge where I was where kids
15 are in there -- my daughter and I took a week this
16 past summer to go through the park everyday of the
17 week just to see how much it was used. Everyday of
18 the week we saw people in the water. And so it's
19 very much -- you can say it's not a designated
20 swimming area, people swim in it everyday of the
21 summer. So it's very common. Go ahead.

22 I had problems in the spring of 2007. I'm real
23 big into 13-year-old baseball and unfortunately the
24 spring of 2007 we had a lot of rainouts and so
25 instead of going to the baseball diamonds with my son

1 I would head out to Castlewood Park with my dog. And
2 after our runs my dog would get in this -- in the --
3 the pool area and swim and just have a good ol' time.
4 After about two months of this I got tired of the dog
5 smell so we stopped that fortunately. And my dog
6 started getting three major problems. One, lumps
7 like you see on the back of this dog. This is not my
8 dog. But this is the kind of lumps that he had. He
9 had started getting diarrhea and eye discharge really
10 badly. And this is a very, very healthy dog. Very
11 young, five years old at the time. So he was just
12 real -- one real sick puppy. Go ahead.

13 The lipomas when I started lancing them, they
14 started producing black crud much like what was
15 coming out of his eyes as well. Go ahead to the next
16 one.

17 So anyway I -- I started researching what in the
18 heck is going on with this dog. After about six
19 months I was able to nurse him back to health. And
20 then about six months later I found out, oh, gosh,
21 he's swimming in crud every time I was letting him
22 out in the -- in the stream. So he's really having a
23 lot of problems dealing with the bacteria levels.

24 The next thing that DNR would commonly tell us
25 is that streams tend to cleanse themselves rapidly

1 and bacteria levels usually drop back to normal very
2 quickly. Well, I started researching the data and
3 over the last year, I've been researching this data
4 fairly extensively so I've got a pretty good handle
5 on what happens in the stream, you know, if you look
6 at the indicators that cause concern for whole body
7 contact you want to be less than 126 colonies per 100
8 milliliters for, especially, E. coli. Go ahead to
9 the next one.

10 In spring 2009 Lake of the Ozarks had the
11 problem. You folks are all familiar with that. I
12 did some research on that and tried to find the
13 levels that they were dealing with. They were at 20-
14 -- 2,400 was the -- the highest level that I saw
15 recorded on the report that DNR had submitted. So
16 2,400 stick that number in your head for just a
17 minute 'cause we're going to blow that off the charts
18 when we talk -- start talking about the numbers here.
19 Go to the next one.

20 So that's 2,400 is 19 times the acceptable
21 level. There's some more detailed information of
22 Jennings Branch Cove, Cove 09, Cove 73 hitting up
23 around 2,419.6 as the high. That was a result of
24 2.03 inches of rain in a 48-hour period by the way.
25 Let's go to the next slide.

1 When I was a kid my father would always go to
2 the Mississippi River down in Cape Girardeau,
3 Missouri, after the rains -- after it flooded. He
4 liked to watch the flood waters and keep an eye on
5 them. And he always would caution me, be really
6 careful when the waters flood because the sewer
7 systems backup and it's a real dangerous place to be.
8 Ironically, when this thing floods in Castlewood Park
9 the E. coli levels drop to eight colonies per 100
10 milliliters, pretty safe to swim in there right
11 there. So it's kind of reverse of what we typically
12 think in terms of flooding conditions. Go ahead.

13 Contrary to popular thought there are no
14 sanitary sewer overflows anywhere in the watershed
15 for this particular stream. So the things that
16 causes concern about flooding typically we don't have
17 as concerns here. Here's a record from 2004,
18 February 9th, 8.1 inches of rain causing an E. coli
19 level of four colonies per 100 milliliters. So,
20 again, flooding condition is not really a problem
21 here which is contrary to traditional thought.
22 Here's a map of the -- the san- -- the sewer
23 overflows -- you can see the red dots. In this
24 particular watershed where it's circled there aren't
25 any red dots. There aren't any sewer overflows that

1 we have to deal with here. Next slide.

2 This is what gets scary though is that here's a
3 sample from October 9th, 2003, 7/100 of an inch of
4 rain, 7/100 of an inch of rain produced E. coli
5 levels of 44,000 in this stream. That's 349 times
6 acceptable levels for whole body contact. So that's
7 -- that's just a smidgen of rain that caused this
8 amount of E. coli levels. Next slide.

9 So let's talk about this a little more. Streams
10 tend to cleanse themselves rapidly. Next slide.

11 This is five days after precipitation happened
12 on July 31st, 2000, where the levels that were
13 recorded were at 640, five times the acceptable
14 levels for whole body contact. Notice the discharge
15 levels at the bottom as well because that will become
16 significant. Your average discharge is about 5.2.
17 If you're out -- go out there on any average day
18 you'll see a discharge of about 5.2 that's pretty
19 normal. So it's -- it's a -- keep that in mind. Go
20 to the next slide.

21 Here's some data from August 27th, 1997, one day
22 after the rain we're at 22,000 for the E. coli level,
23 174 times acceptable levels for whole body contact.
24 You can't get in this thing after the rains and feel
25 safe. You just never know when this thing is going

1 to be supercharged with the bacteria levels. And
2 this is what we were experiencing in the spring of
3 2007 with my dog as he was getting through there. So
4 you think well dry then everything is safe. Well,
5 you'd like to think that and a lot of cases it is; 90
6 percent of the time this is probably one of the best
7 streams in St. Louis County, honestly. There's just
8 some really quirky things about the nature of the
9 upper part of this stream that caused this problem.
10 And so let's go look at some dry areas. Next slide.

11 Here's where we're five days after a -- after
12 six days of rain -- no rain, 640 is the level at this
13 point in time. This is from August 2nd of 1999. So
14 you'd like to think, hey, if it hasn't rained in a
15 while and things are in good condition then we can
16 get in the -- into the water safely and that's not
17 always the case. So it's -- it's really playing
18 Russian Roulette in terms of getting in this water
19 and feeling comfortable that you're safe in it. Next
20 slide.

21 What's the worse case? Well, if we look back in
22 April 9, 2001, this was on the day of the rain. We
23 had an average discharge of 19 cubic feet for the
24 day. And we were at 590,000 colonies per 100
25 milliliters of E. coli. That's 4,682 times the

1 acceptable level. So you see were blowing the Lake
2 of the Ozarks problem off the charts here. This is
3 just -- it's not even comparable. It's not even the
4 same area. Next one.

5 What is 19 cubic feet per second look like? Is
6 that flood condition? Well, this is 31 cubic feet
7 per second, right here, and it's just a nice
8 inviting, hey, jump in let's go -- let's go have a
9 swim type of -- of a level, its low flow. So it's
10 really scary to think that, you know, if you were
11 jump into that water you'd be jumping into 590,000
12 colonies of -- of E. coli per 100 milliliters. The
13 data goes on and on for years and years starting back
14 in 1996 up to about 2003 with the U.S. Geological
15 Survey. You'll see the levels on the right-hand side
16 of each side of that starting with the 590,000 and
17 going down and it just continues and continues and
18 continues. Next slide.

19 We've got four pages of -- of data that's well
20 above acceptable levels. Next slide.

21 MSD started taking over a few years back on
22 their testing as well. Some of the data is similar
23 but that they don't do first flush testing like the
24 U.S.G.S. data did. So U.S.G.S. is a little bit worse
25 case, but we swim in worse case unfortunately as this

1 is a problem.

2 How often is it contaminated? If you look at
3 the U.S.G.S. data from July 1996 to August 2004 of
4 the 145 tests that were provided, again, they were
5 looking for worse case in this -- in this scenario;
6 68 percent of them were testing above acceptable safe
7 levels. In the MSD testing when they took over of
8 111 tests they did about 39 percent of those were
9 above safe levels. And they were testing on average
10 about every 60 days. And, again, I'll repeat; 90
11 percent of the time this thing is in great shape. No
12 problems. It's the 10 percent of the time that
13 you've got just right after that little rain that
14 this thing just goes off the charts and it goes
15 crazy.

16 What's the general public response? We've been
17 trying to make people aware of, hey, you know what,
18 be careful. Getting into this thing it's -- it can
19 be problems. Most people are coming back to us and
20 saying, hey, we swim in there all the time we never
21 thought about it. It's a clear stream. It looks
22 beautiful. It looks great. No problems. They've
23 got a church down there, right on the -- on Keifer
24 Creek road that baptizes their people in the creek,
25 full body submersion. I see kids in there, full body

1 submersion all the time. And the people come back
2 and say, well, if it's no swimmable why don't they
3 post signs? They're going -- DNR is going to post
4 signs this spring -- before the spring session starts
5 to make sure people are aware. At least, they have a
6 warning if they want to get in there at their own
7 risk. Next.

8 This is a picture of the watershed relating to
9 Keifer Creek and I'm going to come back to this in
10 just a few minutes, but we want to make some
11 recommendations and I've -- I've spoken with John
12 Ford and hopefully he'll back us on this with what
13 we're going to talk about. Let's go to the next
14 slide.

15 Here's what we'd like for you folks to do for
16 us. Number one, we want to classify Castlewood Park
17 Keifer Creek for Whole Body Contact A and we'd like
18 to do it all the way from the mouth of the Meramec up
19 to where two springs feed this. If you can go back
20 one slide?

21 There are two streams. One of them happens to
22 be (partial statement inaudible; speaker not present
23 at microphone) 24-hours a day, seven days a week.
24 You've got data out there for years and year that
25 justifies this thing is running all the time. And

1 Sonntag Spring which is up here, again, runs all year
2 long feeding this portion. The dark blue actually
3 represents the areas that are perennial, running all
4 the time. We'd like to classify it all the way from
5 the mouth of the Meramec up to those two springs for
6 whole body contact. So that's the first thing we're
7 asking you to do for us.

8 And I was talking with Todd Parnell about how
9 should I approach this. I apologize I don't know
10 process and procedure of how you folks do things so
11 I'll apologize ahead of time, if -- if I'm out of
12 line. What he suggested I do is work with the Staff,
13 make sure they're on board with what you're going to
14 ask so that if the Commission -- the Commission can
15 then look to the folks in the room and say, what do
16 you recommend? Are you okay with this
17 recommendation? So we were hoping to -- to get that
18 recommendation in here, today. And, I think, John is
19 okay with that portion of the recommendation to go up
20 to the spring. Yeah. Let's go back a slide.

21 The next -- so those are the first two items
22 that we'd like to see be taken care of for us. The
23 third thing we'd like to do. We got to get this
24 thing repaired. And part of doing that is we need to
25 start looking at getting 319 grants and things of

1 that nature applied. We need it on the impaired
2 waters list. So we can start addressing some of the
3 concerns associated with it. And get some sort of
4 watershed alliance group configured for it as well.
5 So that's the third item we'd like to see you do.

6 And then the fourth item, let me explain to you
7 one thing real quickly why (partial statement
8 inaudible; speaker not present at microphone). Can
9 you go back one slide?

10 The problem that we're having in this particular
11 stream is that this is all dry. This is a losing
12 stream up above the springs. And the problem we have
13 is that we've had problems with septic systems they
14 know about and problems of that nature and this thing
15 just sits in here with -- with dry conditions and
16 then when you do get a little bit of rain it
17 basically just flushes all this stuff down and that's
18 when we start to get problems in the stream area.
19 We'd like to see some consideration applied for when
20 you're monitoring this particular stream let's forget
21 about the geometric means 'cause my dog wasn't
22 swimming in the geometric mean. He was swimming in a
23 problem that was fully loaded with E. coli. We need
24 to have some single sample maximums applied to
25 streams like this. So we can look at it and say,

1 hey, you know, what this thing can never go over this
2 amount and be acceptable. We got -- we've got to fix
3 those problems.

4 As I said, 90 percent of the time this thing's a
5 wonderful stream less than 50 colonies per 100
6 milliliters most of the time. It's just when the --
7 the upper stream gets washed out that we have a
8 problem in this particular part of it.

9 Do you have any questions for me?

10 VICE-CHAIR HUNTER: Was your dog's skin -- we have to
11 assume you took the dog to a veterinarian?

12 MR. STEVE SEYER: I did not. No, I -- I do a lot of
13 natural healing so I started researching how you get
14 rid lipomas and fortunately the same treatment for
15 lipomas was affective on whatever he had.

16 I had stopped after about two months of
17 swimming. I got tired of the wet dog smell and I
18 stopped putting my dog in the stream, fortunately.
19 And it was about six months later that I finally
20 nursed him back to health. He's perfect- -- been
21 perfectly healthy for the last seven years now. He's
22 in good health.

23 CHAIRMAN HARDECKE: Is that upper part of that
24 watershed forested or what's -- what's there?

25 MR. STEVE SEYER: No. What it is is there are --

1 there are several things to talk about. The first of
2 which is there are about 15 homes that were bungalows
3 from the 1920s. When the folks from St. Louis used
4 to head out west on the train to go to the country
5 that was the country and they'd stay in the bungalows
6 and those homes have just been there on septic
7 systems for the last how many, 109 -- 90 years or so.
8 So that's a big part of the problem. We've had folks
9 who -- who have told us, you know, we kind of know
10 what the problem is and we're it but we need help
11 fixing this thing. So that's -- that's an issue that
12 we have to deal with.

13 Since then there's -- there's a number of new
14 subdivisions that are also in the area up above the
15 ridge there's a brand new subdivision that's been
16 placed up there. A number of new homes in around the
17 area but these particular homes are very old.

18 CHAIRMAN HARDECKE: Any questions?

19 (No response.)

20 CHAIRMAN HARDECKE: Okay. Thank you.

21 We have Tom Siegel.

22 MR. TOM SIEGEL: Good afternoon, Commissioners. I
23 have not reproduced this in sufficient quantities but
24 this is the watershed and this is a map of the MSD
25 sewer and properties. And here's Keifer Creek and

1 here's Spring Branch Creek and down here is the state
2 park.

3 CHAIRMAN HARDECKE: Okay.

4 MR. TOM SIEGEL: Okay.

5 So my name is Tom Siegel. I'm from the St.
6 Louis Regional Office and I went out and
7 surveyed the watershed and we have one
8 wastewater plant with a point discharge permitted in
9 that watershed. It's on the very west side of the
10 watershed and doesn't drain through Keifer Creek main
11 channel. And that's a permitted facility.
12 Everything else is either septic tanks or I dare say
13 maybe even a straight pipe or two to the watershed.

14 And then there's a lot of wildlife in the area
15 'cause as you can see to the west, north and east is
16 all densely populated urban area. So you've got a
17 little packet of, like, an urban rural watershed in
18 west St. Louis County. And I don't know how our
19 office would handle the fecal chloroform since
20 there's only one point discharge which we have under
21 proper control.

22 So I'm here --

23 CHAIRMAN HARDECKE: You mentioned that it was in the
24 watershed but it didn't drain through the park?

25 MR. TOM SIEGEL: Well, I think, its way out here.

1 CHAIRMAN HARDECKE: Okay.

2 MR. TOM SIEGEL: And so it may get there but it's not
3 a big facility. It's a -- it's the ski slope on a
4 golf course.

5 CHAIRMAN HARDECKE: But if it discharges in the
6 watershed it would go through the state park?

7 MR. TOM SIEGEL: It -- it would -- well, yes, it goes
8 through the state park.

9 CHAIRMAN HARDECKE: Right.

10 MR. TOM SIEGEL: But, I mean, it'll come in through
11 Spring Branch Creek --

12 CHAIRMAN HARDECKE: Right.

13 MR. TOM SIEGEL: -- and not the main channel, which
14 takes drainage off of Manchester Road. This is
15 Manchester and Clarkson.

16 MR. JOHN FORD: The bacterial data that I showed you
17 was from a point that would be upstream of where this
18 wastewater discharge comes in. The bacteria from the
19 U.S.G.S. we're measuring does not -- would not have
20 come from that facility.

21 CHAIRMAN HARDECKE: Oh.

22 MR. TOM SIEGEL: I think, John -- John's, I think,
23 point is up in here where Spring Branch comes down
24 just below that.

25 CHAIRMAN HARDECKE: Okay.

1 MR. TOM SIEGEL: And then right before it hits the
2 state park.

3 VICE-CHAIR HUNTER: And U.S.G.S. is sampling up in
4 here somewhere?

5 MR. TOM SIEGEL: Right. The gauging station, I
6 think, is like right in here where the flow gauge is.

7 CHAIRMAN HARDECKE: And what prompted U.S.G.S. to
8 have that much data on this stream?

9 MR. TOM SIEGEL: I have no idea.

10 MR. JOHN FORD: They were under contract with the
11 Metropolitan Sewer District. They were actually
12 monitoring a lot of St. Louis urban streams for
13 several years.

14 MR. TOM SIEGEL: So --

15 VICE-CHAIR HUNTER: So do you think it's possible
16 that half the time that those samples were taken
17 which is over 10 years ago that there was more
18 activity, maybe more septic activity up higher on the
19 creek than there is now?

20 MR. TOM SIEGEL: Certainly 10 years ago it was less
21 sewerred and less developed. So it was a more rural
22 setting, more large parcels, more septic tanks, just
23 more rural living. And -- and, I think, the wildlife
24 is probably more concentrated in that watershed now
25 because of the development. You know, and just --

1 just as pet waste is becoming a problem with our MS4s
2 or with the storm water runoff; we really don't have
3 a handle on how to control wildlife waste.

4 Thank you for your time.

5 CHAIRMAN HARDECKE: Okay. Thank you.

6 COMMISSIONER LEAKE: Here's your map if you want to
7 get this before you forget it.

8 MR. TOM SIEGEL: Well, do -- do you want copies?

9 COMMISSIONER LEAKE: No. I don't.

10 CHAIRMAN HARDECKE: Lorin Crandal?

11 VICE-CHAIR HUNTER: You might want to put that in --
12 put that in the record.

13 MR. LORIN CRANDAL: With regard to the -- the
14 wildlife causing this contamination I would like to
15 point out on Page 2, here, where we've got the -- is
16 that the -- the Black River, 95 percent forested. No
17 -- very low human and livestock density showing a geo
18 mean of four. So if -- if wildlife is causing this
19 then you would expect that you would see a much
20 higher geo mean in a naturalized stream watershed
21 like that.

22 The other thing that I hoped got passed along to
23 you. I don't know if it did or not, but -- you know,
24 we have been collecting comments at the Coalition for
25 the Environment through a website. And these

1 comments are for people to tell us how they use the
2 creek. And so within one month we've collected over
3 44 comments and that's not -- we haven't done big
4 press releases or anything. We've just been reaching
5 out into the community to get people to tell us how
6 they use it. And that's -- that's 44 out of 400,000
7 visitors that go to that creek every year. And
8 Castlewood is one of the premier recreation areas in
9 St. Louis County. It's 2,000 acres almost in
10 southwest St. Louis County. A lot of people go
11 there. A lot of people swim there. If there's a
12 stream in our county that -- that really needs to be
13 protected for recreation it's this stream.

14 With regard to that, I met with a doctor of
15 hydrologic science named Dr. Chris (ph.) at
16 Washington University and he had been compiling
17 U.S.G.S. data for all of St. Louis County. And
18 there's 21 major streams in St. Louis County. And he
19 found that Keifer Creek when you just take the basic
20 mean of all the U.S.G.S. data is the second most
21 contaminated creek in St. Louis County only to River
22 Des Peres in University City which has some of the
23 worst CSO events in our whole metro area.

24 There are no CSOs in Keifer Creek. However,
25 there are septic systems. There are horses. You

1 know, there is some wildlife and there's no doubt
2 about it and there are some pets, but we believe that
3 the septic systems and the wildlife -- or the horses
4 warrant a watershed plan further investigation and
5 assessment and that's why we're seeking the impaired
6 status on it. And that's also why we're seeking
7 classification.

8 The -- the heart of the matter is that people
9 are being exposed to dangerous levels of E. coli. It
10 takes a half inch of rain -- we get a half inch of
11 rain in the summer all the time. And we get a rain
12 in the morning and then it heats up and everybody
13 goes out to the stream and that's the worse time to
14 be there, but nobody knows that.

15 Who knows how many people have gotten sick from
16 this. We don't know. That's why we need to
17 investigate it. On that note we've met with St.
18 Louis County Department of --
19 (Tape Three, Side A Concluded.)

20 MR. LORIN CRANDAL: -- taking on people's property.
21 And we've also been looking into alternatives on how
22 to deal with the horse waste because we believe that
23 that is significant.

24 And one of the things we've been looking into is
25 a biomass generator where horse manure actually

1 happens to be one of the best fuels for it. And
2 that's in the local municipality called Kirkwood.
3 And so we're not just trying to impose penalties
4 here; we're actually trying to come up with a way to
5 clean up the stream. And we're asking for your
6 assistance to help us clean it up. And through this
7 regulatory process we can achieve that. And we
8 really appreciate your support on this matter.

9 Thank you very much.

10 CHAIRMAN HARDECKE: Okay. Thank you.

11 John?

12 MR. JOHN FORD: Just a couple of follow-up comments.
13 Mr. Seyer had four recommendations and, I think, Mr.
14 Crandal was seconding some of those.

15 With regard to those, three of them; the first
16 was that we change it from a Whole Body Contact Class
17 B to Class A stream, that we extend the
18 classification up farther, up the stream and that we
19 consider the development and promulgation of a single
20 sample maximum bacteria standard. Those are all
21 things that we can very readily feed into our
22 standard revision process and to my mind, at least,
23 they're all reasonable requests and things that the
24 Department would look at very seriously.

25 The fourth of his recommendation was that we put

1 this thing on the impaired waters list. Right now,
2 that process is pretty well driven by the data that
3 we have in hand. The data that we have in hand, we
4 have this older data from U.S.G.S. Since then I
5 haven't discussed it, but the MSD has been doing some
6 of their own monitoring there in more recent years,
7 which looks -- looks better. They didn't monitor it
8 exactly the same times that U.S.G.S. U.S.G.S. tried
9 to hit peak rainfall events, MSD has basically been
10 going out the day after so that their -- their data
11 is going to be a little bit bias and a little bit
12 lower.

13 But what they showed now shows compliance with
14 our standards, but I think what I would recommend is
15 because this is apparently such a heavily used stream
16 that what we really need to do whether it's DNR or
17 DNR and conjunction with a watershed group that forms
18 is get a more serious monitoring program on -- on the
19 creek particularly in the high use areas and
20 understand just how serious the problem is.

21 And if that puts it on the impaired waters list
22 than so be it and that gives us the extra leverage to
23 deal with that problem.

24 CHAIRMAN HARDEKCE: If you don't have but one
25 discharge in the watershed then who are these single

1 sample maximums going to apply to?

2 MR. JOHN FORD: Well, the standards themselves are
3 just an indication that there is a problem in the
4 water body and doesn't necessarily point to a source.

5 CHAIRMAN HARDECKE: I mean, apparently, there isn't a
6 single source.

7 MR. JOHN FORD: Right. I think, if -- if -- if what
8 we really need to do is here is have some sort of a
9 watershed overseeing group that oversees mon- --
10 monitoring of the water and also looks at more detail
11 into exactly what the problems are. In other words,
12 trying to locate specific sources; you can -- you can
13 design your monitoring efforts to kind of target
14 certain parts of the creek and find out and localize
15 where the -- the worse parts of the problem tend to
16 be and that -- that kind of tells you what the source
17 is if you locate -- if you look at the location that
18 it is that gives you an idea of -- of probably what
19 the source is then you -- then you -- then you start
20 working with a management plan to solve that. But
21 it's -- it may not be something that's strictly
22 within DNRs authority. It may be something that can
23 be covered in other ways.

24 CHAIRMAN HARDECKE: Okay. Thank you.

25 MR. ROBERT BRUNDAGE: (Statement inaudible; speaker

1 not present at microphone.)

2 CHAIRMAN HARDECKE: Yes. We'll let you go next.

3 MR. ROBERT BRUNDAGE: I see on the agenda is the
4 **permit shield**. Mr. Chairman and members of the
5 Commission you have received my letter dated November
6 17th, setting forth a legislative proposal. I'm
7 seeking the Clean Water Commission's endorsement of
8 this legislative proposal to proceed in this session.

9 This proposal has been endorsed by a number of
10 different groups, the petroleum counsel, the
11 homebuilders, MSD-Independence, my clients that were
12 here today; Pork Association, Dairy and MO-AG, Little
13 Blue Valley Sewer District, Missouri Public Utility
14 Alliance and Associated Industries of Missouri. In a
15 nutshell the federal law provides for a permit
16 shield. And it's in the federal Clean Water Act
17 where it says if you discharge in compliance with
18 your permit you're basically insulated from any
19 liability.

20 And through discussions with the DNR for the
21 last several years on various permit provisions it's
22 very obvious that they do not recognize that Missouri
23 has a permit shield. So -- the -- the constituents
24 and the associations that I've listed before think
25 its high time that we have a permit shield placed in

1 the Missouri Clean Water Law.

2 And since the Clean Water Law is going to be
3 amended this session, hope- -- hopefully, during the
4 Permit Fee Bill this is the prime time to put this in
5 it. All of my clients will not support a water
6 Permit Fee Bill unless there's a permit shield
7 provision in -- in this Bill. It's that simple. We
8 have to have a permit fee shield -- permit shield
9 provision in the Clean Water Act. It's high time.
10 It's a matter of fairness. It's provided under the
11 federal Clean Water Act it needs to be provided under
12 the Missouri Act.

13 I suppose this has been on the back table all
14 day long, but I didn't see it until about 30 minutes
15 ago. I see there was a handout of a letter from EPA
16 to Leanne Tippett Mosby where EPA proffers their
17 opinion on the draft legislation that I put in the
18 letter to you. I just briefly skimmed this. I've
19 never been advised that this letter even exist. In
20 fact, this letter's not even dated. So I don't know
21 when it came in and I don't know anything about it.

22 MS. LEANNE TIPPETT MOSBY: Yesterday.

23 MR. ROBERT BRUNDAGE: So just briefly reading it, it
24 looks like EPA says, oh, states can be more stringent
25 than the federal law if they want to. And it looks

1 like they took a few pot shots at my language. But
2 I'm not really prepared to address whatever they have
3 to say.

4 I had provided this language to the Department
5 of Natural Resources for several months. They have
6 not come back to me with any language whatsoever to
7 say, oh, this would be acceptable if it were written
8 this way. So as far as I know my clients will
9 proceed within the legislative session to support the
10 language that we've written until we've heard
11 something otherwise from the DNR.

12 As we go forward I would enjoy having the
13 endorsement of the Clean Water Commission for this
14 legislative proposal.

15 CHAIRMAN HARDECKE: Okay.

16 We got a couple others to comment. Leanne?

17 MS. LEANNE TIPPETT MOSBY: Thank you, Commissioners.
18 And I did realize when I got the letter yesterday
19 that it's not dated, but we did receive it yesterday.
20 And that's why it didn't make it into the briefing
21 document. It just made it into your blue packets and
22 I know you-all have not had an opportunity to review
23 it closely.

24 I would like to comment that the day that I
25 received this, in fact, I think I called Robert at

1 8:03 in the morning after I received this letter in
2 my inbox and looked at the language and I did tell
3 him at that time that I thought the language was very
4 broad and would actually exceed the federal
5 protection under the federal Clean Water Act.

6 But because I don't work for EPA and I'm not an
7 attorney I thought it would be better to ask EPA that
8 question and so in deed Dave Cozad who's Region 7
9 regional counsel was kind of enough to analyze the
10 language that Robert had provided and he -- this was
11 his analysis of that language.

12 And when you have an opportunity to read through
13 it you will see that he does find that it is broader
14 than what the federal protections are. And if in
15 deed Robert's intent is -- as his letter states to
16 provide the same protections afforded by the Clean
17 Water Act permit shield at the state level then I
18 would assume that he would not opposed to finding
19 language that would be consistent with the federal
20 Clean Water Act protection.

21 So, therefore, I'm not in a position
22 because the Department has to work through the
23 Governor's Office to either oppose or support
24 legislation so I'm not in a position to say we're
25 either in favor or opposed to a permit shield

1 legislation in general. But my purpose here today
2 and the purpose of providing this letter is to point
3 out the fact that EPA Region 7's assessment is
4 consistent with my own, which is that this would be
5 actually broader than the federal exemption. And in
6 my estimation might put us in jeopardy then of being
7 less stringent than the federal government in which
8 case that could be a delegation of authority issue.

9 So unless you have any questions from me that's
10 all I had today.

11 CHAIRMAN HARDECKE: Okay. Are you wanting to speak
12 to this?

13 MR. REFAAT MEFRAKIS: Yeah. Sure.

14 CHAIRMAN HARDECKE: Okay.

15 MR. ROBERT MEFRAKIS: I'll make it quickly here.

16 Hello, again.

17 Robert mentioned earlier that, you know, the
18 Department doesn't recognize the permit shield and as
19 a permit chief I would like to give you my
20 perspective on this issue here.

21 When permit writers draft permits they
22 rely on the best information available and that's
23 usually the permit application. And because the
24 language that -- Robert is offering is broad we don't
25 believe that people who don't reveal information on

1 the permit should be afforded that permit shield.
2 However, we feel that there is room for permit
3 shield. But it's very limited. And under very
4 narrow circumstances. An example of that would be if
5 a permit was drafted and issued and subsequently
6 State regulation had changed, you know, we would --
7 we -- the permittee would be protected and not apply
8 the new standards unless -- until the permit is open
9 or renewed and the new standards appl- -- is applied
10 in -- in the permit.

11 Another situation would be where a permittee can
12 be protected is when the permit writer mistakenly
13 left out a limit where -- and we wouldn't go after a
14 permittee on that, it's a mistake of the Department.
15 So we would, in that situation we would open a permit
16 and -- and revise the -- revise the permit and
17 enforce the permit accordingly.

18 Now, I would like to point out to you in
19 Mr. Brundage's letter -- November 17th letter to the
20 Commission. Down in the third paragraph he mentioned
21 that recently MoDNR issued permits that specifically
22 says, this permit authorizes only activities
23 described in this permit. Compliance with this
24 permit may not be considered a shield from compliance
25 of any local ordinance and State regulation or State

1 law and, I think, recent permits have these language.
2 I think a lot of permits don't. While, I think, this
3 language may need improvement the intent of this
4 language is really -- is to serve as a duty to notify
5 the applicant that this permit doesn't supersede
6 other local permits that are issued. Okay?

7 And -- and not necessarily that prohibits cert-
8 -- prohibits certain permit shield. Now, as Leanne
9 mentioned earlier obviously -- well, the state really
10 hasn't discussed an issue on how we apply permit
11 shield specifically and we need to be consulting with
12 our DNR management and here. But those are the
13 things that I described earlier are afforded by the
14 Clean Water Act.

15 And I think that's how we enforce our permit --
16 permits here. So that just gives you my -- our
17 perspective on this issue. Any questions --

18 CHAIRMAN HARDECKE: Well, -- you had this letter
19 since November 17th; have you not discussed this at
20 all in -- in DNR?

21 MR. REFAAT MEFRAKIS: Yeah.

22 MS. LEANNE TIPPETT MOSBY: Yes. We have discussed
23 it. But we have not formulated a position either
24 opposed to or in favor of permit shield legislation.
25 As I said, we were concerned about the breath of the

1 language as presented by Mr. Brundage, which is --
2 was my concern about being here today was to point
3 that particular point out. But we have not developed
4 a position on permit shield in general.

5 CHAIRMAN HARDECKE: Can you specify where it is too
6 broad?

7 MS. LEANNE TIPPETT MOSBY: (Laughter.) He said I
8 could call him Robert. What did you say? I'm sorry.

9 CHAIRMAN HARDECKE: Can you specify where it is too
10 broad? I mean, there isn't a whole lot to it here.

11 MS. LEANNE TIPPETT MOSBY: Well, that -- I think, may
12 be part of the problem actually that there's not a
13 lot to it. If -- I would refer to Mr. Cozad's letter
14 if you -- you should have that in your blue packet.
15 And I did just receive this yesterday I wanted to
16 point out.

17 CHAIRMAN HARDECKE: Are you talk- --are you referring
18 to the first letter or the second --

19 MS. LEANNE TIPPETT MOSBY: The -- the letter from the
20 EPA.

21 CHAIRMAN HARDECKE: I mean, there's two here.

22 MS. LEANNE TIPPETT MOSBY: Well, there -- well,
23 there's the letter and there's the attachment. What
24 the attachment is --

25 CHAIRMAN HARDECKE: Okay.

1 MS. LEANNE TIPPETT MOSBY: -- is an EPA policy memo
2 that actually further describes and gives guidance on
3 what the regulation actually says.

4 But there's a couple things. Well, the first --
5 the first paragraph there points out that the federal
6 regulation excludes standards posed under the tox- --
7 toxic pollutant regulations. The third paragraph
8 there kind of in the middle of that paragraph it
9 says, it's not the intent of the Clean Water Act
10 permit shield to exempt discharges from compliance
11 but rather establish that if a discharger is in
12 compliance with this permit it may be shielded from
13 enforcement and limited circumstances.

14 And so he -- he suggests that if you were going
15 to include permit shield which section you should
16 include it in.

17 CHAIRMAN HARDECKE: Are you on --

18 MS. LEANNE TIPPETT MOSBY: I'm sorry.

19 CHAIRMAN HARDECKE: -- the third paragraph --

20 MS. LEANNE TIPPETT MOSBY: Yeah.

21 CHAIRMAN HARDECKE: -- on Page 2?

22 MS. LEANNE TIPPETT MOSBY: Yes.

23 CHAIRMAN HARDECKE: Okay. I'm with you.

24 MS. LEANNE TIPPETT MOSBY: And then -- and then Page
25 -- excuse me -- Paragraph 4 talks about that -- the -

1 - the section of the Clean Water Act only provides a
2 shield for the -- well, Robert's language provides a
3 shield for applicable requirements of the Clean Water
4 Law which is undefined and that it goes
5 -- it extends to the federal Water Pollution Control
6 Act which he's saying that shouldn't be in State law
7 that's a matter of federal law.

8 And there was another, I didn't underline it.
9 There was another part where he talks about; by
10 virtue of the fact that it applies -- essentially
11 applies to the -- all of the Clean Water Law,
12 Missouri Clean Water Law and the federal Water
13 Pollution Control Act in contrast EPA's permit shield
14 applies to specific sections and then, again, it's
15 interpreted here by this -- by this guidance
16 document.

17 CHAIRMAN HARDECKE: Okay.

18 MS. LEANNE TIPPETT MOSBY: Now, there -- there may be
19 -- you know, with that said, there may be a way to
20 craft the legislation. I'm sure there's a way to
21 craft the legislation that would be more consistent
22 with -- with federal -- the federal permit shield.

23 CHAIRMAN HARDECKE: I got a question for Robert.

24 The way I understand your -- the bold is your
25 addition, right? So there's basically three

1 sentences that are being added.

2 MR. ROBERT BRUNDAGE: Correct.

3 CHAIRMAN HARDECKE: Do you have response to what's
4 been said about EPA's letter?

5 MR. ROBERT BRUNDAGE: No. Mr. Chairman, I
6 have not had a chance to, you know, --

7 CHAIRMAN HARDECKE: I understand.

8 MR. ROBERT BRUNDAGE: -- I mean, honestly I just read
9 it in the back of the room about 25 minutes ago. And
10 so I just saw it now.

11 One thing that the Commission could do, today, -
12 - if the Commission agrees that there should be a
13 permit shield that is, at least, as broad in scope as
14 the federal permit shield; I would appreciate a
15 motion from the Commission, today, that
16 endorses the legislative proposal of Missouri Clean
17 Water Law being amended to include a permit shield
18 that's, at least, as broad as the federal shield. So
19 instead of the Commission or Leanne or me or anybody
20 else agreeing on exactly what the language is today,
21 that's one way that the Commission could express its
22 support for a permit shield legislative provision
23 without everybody agreeing to what the language is
24 today.

25 But I want to point out to the Commissioners,

1 you know, one big practical aspect of this. Is that
2 when you get a permit there are effluent limits in
3 it. Let's say a BOD limit. We got a 30 milligrams
4 per liter BOD. That's to protect oxygen levels in
5 the stream. Hey, let's say you -- you meet your
6 limit all the time, but for some reason this stream
7 shows up partly into to your -- your discharge of
8 organics in the stream that it violates the Water
9 Quality Standard. Right now, DNR can come and sue
10 you for that 'cause it says you cannot lower Water
11 Quality Standards below its Subsection 2 on here:
12 Cannot discharge any water contaminants into waters
13 of the state which reduce the quality of water below
14 the Water Quality Standards.

15 So there's a prime example under the federal law
16 you'd be protected because you were in compliance
17 with your BOD limit, but there was an exceedance of a
18 standard. Under the federal law if the EPA issued
19 the permits, you know, they don't have a provision
20 like that in the federal Clean Water Act that's why
21 our Missouri law is different, it needs its own
22 crafted solutions and we need a permit shield in our
23 own -- in our law here in the state of Missouri.

24 Another thing that DNR does that universally
25 about everybody I talked to on the industry-side

1 objects to is where DNR copies the general Water
2 Quality Standards, you know, we -- you have effluent
3 limit -- regulations and you have Water Quality
4 Standards. The effluent limit regs tell you what to
5 put in the permit. Those permit limits are designed
6 to protect the Water Quality Standards. Well, DNR just goes over
7 and copies part of the Water Quality Standards and sticks it in
8 your permit and says, oh, you have to meet these limits but also
9 just in case that BOD limit doesn't protect the
10 stream quality it's going to be a violation anyway.

11 See that, that's the matter of unfair- -- where
12 it's unfair to permittees in the state of Missouri
13 where this permit shield provision is going to
14 correct that fairness.

15 Now, is -- am I trying to advocate that
16 permittees should be able to pollute and cause
17 exceedances of the WQS? Absolutely not. But the
18 solution to this whole thing is if there's a problem
19 with the permit the permit then is revised. If BOD
20 of 30 didn't quite do it maybe it should be 20 to
21 protect that stream. The solution is not to go out
22 and find or issue NOV's or vilify a permittee who
23 complied with their 30 BOD limit.

24 That's the concept that I'm hoping for and I
25 would appreciate your general support that Missouri

1 Clean Water Law be amended to include a permit shield
2 that's, at least, as broad as the federal law.

3 CHAIRMAN HARDECKE: Leanne?

4 MS. LEANNE TIPPETT MOSBY: I feel like this is point,
5 counter-point. I apologize. But I did want to
6 comment on a couple things Robert said. First of
7 all, I think, Refaat indicated we are certainly
8 willing to look at the language of the permits and
9 see if there needs to be adjustments made to that
10 outside of the -- whether or not this legislation
11 would move forward and be successful.

12 But, also, I did consult with
13 Kevin Mohammadi about this when we first received
14 Robert's letter and ask if there were an instance
15 where we had taken enforcement action on a permittee
16 for something when they had a limit in their -- when
17 they were meeting the -- the limitations in their
18 permit. And he said, he's been there for 25 years
19 and he does not recall ever having taken such an
20 action. And so I bet Mr. Brundage may be able to
21 enlighten us with some stories of -- that -- I'm
22 sorry -- Robert may be able to enlighten us with some
23 stories in that regard, but we're not aware of any.

24 COMMISSIONER LEAKE: Robert, are you aware of any
25 such action?

1 MR. ROBERT BRUNDAGE: I'm aware of several. I'm
2 aware of a couple.

3 COMMISSIONER LEAKE: That were -- had a permit but
4 they came back in a court action over and above the
5 permit?

6 MR. ROBERT BRUNDAGE: (Statement inaudible; speaker
7 not present at microphone.)

8 COMMISSIONER LEAKE: There's not -- there's not been
9 something that's happened repeatedly?

10 MR. ROBERT BRUNDAGE: No. It's not widespread.

11 COMMISSIONER LEAKE: Okay.

12 MR. ROBERT BRUNDAGE: (Statement inaudible; speaker
13 not present at microphone.)

14 CHAIRMAN HARDECKE: Okay.

15 Caroline?

16 MS. CAROLINE ISHIDA: I'll make this quick. I know
17 everyone's probably getting ready to go. But I'm the
18 staff attorney for Missouri Coalition for the
19 Environment. My name's Caroline Ishida. I had a
20 couple comments on permit shield law and I'm still
21 familiarizing myself with the issue as well, but just
22 from what I've looked at the Coalition has a couple
23 issues with the concept of a state permit shield. The
24 first one would be that -- our concern is that if a
25 local municipality or county issued a regulation or

1 created an ordinance that was stricter than the State
2 issued permit language that State permit shield would trump. The
3 permit would trump the local ordinance or the local legislation.
4 It would take away the ability of individual
5 communities to be protective of their own water
6 quality, if they chose to be, than the state's
7 permitting system allowed.

8 The second problem, that I see is, you know, we
9 all just heard the Clean Water fees presentation that
10 demonstrated that permit expenditures for a variety
11 of different State permits far out weigh the permit
12 fees be collected currently. And the problem with
13 having a system where DNR can go back and revise
14 permits if there are limits in there that are -- you
15 know, violating certain standards or rather than fine
16 or enforce or do whatever they need to do against the
17 person who is discharging is that they're under
18 funded and under staffed so you can't -- I mean, you
19 know, there's problems with permits being renewed
20 currently. There's problems with permits being
21 looked at that have been in place for several years.

22 So having a system in which DNR is having to go
23 back and amend and revise currently existing permits
24 just seems fairly illogical and like it's creating a
25 lot more work for DNR than just not having such a

1 permit shield where they're not having to go back and
2 review and revise to try and make sure every permit
3 is perfect before it gets issued.

4 And so, I mean, I would -- I would say that this
5 issue clearly deserves more consideration and more
6 discussion but I don't think that right now, today, a
7 decision should be made one way or the other about
8 what to endorse without further input from the
9 public, further discussion of the matter, more
10 research.

11 Those are all my comments. Thank you. Any
12 questions?

13 CHAIRMAN HARDECKE: You referred to DNR going back
14 and revising a permit from what I understood Robert
15 to be saying there wasn't that they would be revising
16 the permit to make it more lenient, but to make it
17 more stringent?

18 MS. CAROLINE ISHIDA: Right. That's what I
19 understood him to mean, too, but I'm just saying the
20 very act of having to go back and revise is creating
21 a lot -- I mean, you have to -- first of all,
22 identify that there's a permit that needs revision.
23 Identify what the problem is and then -- I mean, it's
24 just a lot of work to be keeping track of all of --
25 you know, when you have to go back and revise or

1 amend something because this -- and in the meantime
2 until that problem is identified and the permit is
3 actually is amended you have the issue of someone
4 discharging something possibly --

5 CHAIRMAN HARDECKE: But he wasn't asking for someone
6 to be able to discharge above their permit.

7 MS. CAROLINE ISHIDA: Right. I'm just saying that
8 something that wasn't contemplated in the original
9 permit that was issued. Perhaps, something that
10 either --

11 CHAIRMAN HARDECKE: Outside of the --

12 MS. CAROLINE ISHIDA: -- outside of what -- what is
13 included in the permit just because they didn't
14 realize it was going to be a problem or there's more
15 of a discharge than they thought there was going to
16 be.

17 CHAIRMAN HARDECKE: Any questions?

18 (No response.)

19 CHAIRMAN HARDECKE: Thank you. Okay.

20 (Off record discussion was held.)

21 CHAIRMAN HARDECKE: **Dave Casaletto has a**
22 **presentation.**

23 MR. DAVE CASALETTO: My presentation should be real
24 brief. You may be wondering why I would choose to come
25 to St. Louis with a blizzard on -- potentially on the

1 way and -- and what issue could be this important.

2 I may be asking myself that here a couple hours
3 on I-44, but while I'm here right now what prompted
4 my visit, today, started out with the Governor's
5 legislative proposal I read last week and that
6 prompted me to attend the Missouri State Committee on
7 Commerce, Consumer Protection, Energy and the
8 Environment yesterday and I was able to give written
9 comments not verbal comments.

10 And I really felt that there's some issues
11 that's going to affect the Commission. And I felt
12 that it -- while I was in Jeff City I could come to
13 St. Louis and maybe just really give information and
14 address some issues that I feel Table Rock Lake water
15 quality is concerned about and will be giving
16 legislative input when that happens.

17 In the hearing I attended yesterday it was made
18 very clear that that Committee intends to look at
19 funding for DNR. They intend to look at the
20 Governor's proposal. And it was very clear that the
21 director Templeton of DNR supports the Governor's
22 proposal, at least, that's what I would -- I think,
23 it was very evident to me that he supported it. And
24 he gave that information to the Committee.

25 Under that proposal there is a new

1 classification of waters called distressed waters.
2 There is septic tank inspections by DNR, mandatory
3 septic tank inspections. No new permits in those
4 distressed areas and, of course, some other issues.
5 You do have my written testimony. You do have
6 Missouri Small Flows. I always work -- I also work
7 with them. And you do have our project book from our
8 five-year demonstration project.

9 If you'll just give me a couple minutes, I'd
10 like to, at least, read some of the important parts
11 of my testimony that I did leave yesterday at the --
12 at the Senate hearing.

13 Not all of you know that Table Rock Lake water
14 quality was formed in 1998 by the Table Rock Lake
15 Area Chamber of Commerce with the mission to improve
16 and maintain water quality in Table Rock Lake.

17 In 2001 DNR awarded us a water quality grant to
18 gauge the impact of septic systems on the water
19 quality around the lake. This study confirmed that
20 untreated sewage, septic effluent was entering Table
21 Rock Lake below the waterline through our fract- --
22 fractured limestone and thin soils.

23 In 2002 we received a \$2 million cooperative --
24 cooperative agreement from EPA for a five-year study
25 and demonstration project to replace failing septic

1 systems with new advanced onsite wastewater treatment
2 systems and to address their effectiveness by
3 monitoring their performance. This demonstration
4 project changed the status and acceptance of advanced
5 onsite treatment systems in Missouri. I have copies
6 of that project, which you do have.

7 Currently, we're administering a three-year DNR
8 319 Grant replacing 22 failing septic systems among
9 some other things with new advanced treatment
10 systems. And through these and many projects we have
11 acquired extensive experience in the field of onsite
12 and advanced wastewater treatment systems.

13 Lake of the Ozarks has some pollution issues.
14 They need attention. Years of crowded development,
15 building to the waters edge may be more than the lake
16 can overcome through nature's ability to cleanse
17 itself. In contrast Table Rock Lake still have miles
18 of undeveloped shoreline and a U.S. Army Corps of
19 Engineer buffer zone that does not allow building to
20 the waters edge. Water testing reveals Table Rock
21 Lake does not have an E. coli problem at this time.

22 But Table Rock Lake does have issues. EPA
23 requires Missouri to develop the 303(d) List and
24 Table Rock is on that list due to excessive nutrients
25 mainly phosphorous. Of course, phosphorous enters

1 the lake from many sources, treatment plants and
2 septic systems. And around Table Rock Lake there are
3 thousands of old, failing, rusted, metal septic tanks
4 with failing lateral fields and also hundreds of DNR
5 permitted treatment systems.

6 Last week Governor Nixon presented his
7 legislative proposal to improve water quality at the
8 Lake of the Ozarks. I agree with Governor Nixon that
9 reform is needed to protect water quality everywhere
10 in our state. And I would, again, like to share some
11 of those opinions.

12 The Governor proposes a new classification of
13 waters called distressed. The Clean Water Commission
14 would identify these distressed waters and again this
15 is according to the Governor's proposal and -- and
16 based on the best available scientific information
17 the Governor states he would designate the Lake of
18 the Ozarks as distressed based on a decades long
19 record of historical data.

20 But the Lake of the Ozarks has not even appeared
21 on the 303(d) List or the list for these water
22 quality problems we're now addressing. The Governor
23 states he would cease issuance of new permits to
24 applicants in the affected area. If a new treatment
25 system is properly designed, installed, maintained

1 according to our regulations it should not pollute
2 our waters. If perl- -- permit limits are not
3 stringent enough to protect the waters, they should
4 be adjusted.

5 It is important we address the issue of
6 statewide enforcement so as to guarantee that all
7 treatment plants meet DNR limits. Treatment plants
8 are now inspected on the five-year rotation. If all
9 treatment plants across the state were inspected
10 today, I think, we might find the same 35 to 40
11 percent failure as was just found at Lake of the
12 Ozarks.

13 The Governor is also asking for inspection and
14 enforcement of all and any onsite wastewater
15 treatment facilities commonly referred to as septic
16 systems. I'm in favor of statewide mandatory
17 inspections and required repair or replacement as
18 needed, but this is a very expensive process. To
19 replace failing septic systems with new advanced
20 treatment systems or to connect homes to a new sewer
21 system normally costs between 15 to \$20,000 per
22 household. Mandatory inspections without the needed
23 funding will not solve the problem.

24 There's another issue in the Governor's proposal
25 to inspect exec- -- existing septic systems. Under

1 current laws and rules the state and local health
2 departments are responsible for most septic systems;
3 yet, it's proposed that DNR would do these septic
4 inspections. We seem to have this jurisdictional
5 problem. But no matter who is responsible for septic
6 systems, I think, it is clear than we either do not
7 have sufficient laws for septic regulation or we are
8 not enforcing the laws we now have or a combination
9 of both. And we need a statewide solution.

10 In conclusion, I believe, we need reform of the
11 system. We need a proactive wastewater and water
12 quality plan that addresses a problem before we have
13 distressed waters. We need to use our current 303(d)
14 List as EPA intended to identify waters in needed
15 att- -- in need of attention and then give them that
16 attention. We need to decide which regulatory agency
17 is responsible for septic and wastewater treatment
18 systems and give that agency the support, the laws
19 and the funding needed to do the job.

20 I might add that Chairman Lager of the Committee
21 ask every person testifying if they would get in Lake
22 of the Ozarks if the -- if they knew that the E. coli
23 was 10 times the swimmable limit. He asked every
24 person. And most every person said, no. Although
25 some said they've -- they've probably been in waters

1 that high they didn't know it.

2 A Lake of the Ozarks regulator was just quoted
3 in a news article saying that she does swim in Lake
4 of the Ozarks and has not done so for years. I am
5 proud to say that I swim in Table Rock Lake with my
6 two granddaughters all summer long. And I do not
7 worry about E. coli or other health risks.

8 We need statewide reform that will protect Table
9 Rock Lake, Lake of the Ozarks and all the waters of
10 Missouri so no waters are distressed. And, again, I
11 just want to say that our organization is committed
12 to working in the legislative arena to try to make
13 sure that -- that the Legislature, again this is my
14 personal opinion, overcome some of the political
15 situations that are going on and -- and really
16 concentrates on the environmental issues that we can
17 protect our waters.

18 And we do have some problems. We have -- you
19 know, as I stated jurisdictional issues. We have
20 financial issues. We've got a lot of big problems we
21 need to overcome, but we need to all work together.
22 I just wanted to give you this information. My board
23 of directors felt it was important for me to go to
24 the Senate Committee and then to come today to give
25 you this information. There's no action to take

1 today, but there may be in the future. So thank you.

2 COMMISSIONER LEAKE: Thank you.

3 MR. DAVID CASALETTO: Any questions?

4 (No response.)

5 MR. DAVID CASALETTO: Thank you.

6 CHAIRMAN HARDECKE: I probably forgot to see if
7 there's anymore discussion on the permit shield
8 issue.

9 (No response.)

10 CHAIRMAN HARDECKE: I guess I would like for you-all
11 to work with Robert and see if you can come up with
12 some agreeable language and bring it back to us.

13 MS. LEANNE TIPPETT MOSBY: We -- we'd be glad to work
14 with Robert. As I said, in terms of whether or not
15 we can support or oppose legislation we would have --
16 have to work through the Department and the
17 Governor's Office. But in terms of -- of technical,
18 working on technical language with Robert we could do
19 that.

20 CHAIRMAN HARDECKE: Okay.

21 Okay. What else do we have? Phil?

22 MR. PHIL WALSAK: Good afternoon, Phil Walsack with
23 Missouri Public Utility Alliance. I have two
24 comments for you today.

25 That earlier discussion on CAFOs and AFOs they

1 are feeling municipal pain. We understand exactly
2 what it's like to get a new table, a new form, a new
3 piece of -- of language in a permit. We -- that
4 happens to us all the time. So we're very astute
5 about how it is to deal with new forms, new regs, new
6 pieces of paper and we have the lion's share of the
7 paperwork.

8 My second comment is related to a ten page
9 letter that was just handed to you. It is about the
10 voluntary compliance agreement program. I also have
11 some extra copies up here on the front desk. I think
12 its high time that we star- -- we as stakeholders
13 start informing this Commission of the kinds of
14 things we're working in the stakeholder process.

15 The bolded text you'll see there is language
16 provided by DNR and all the rest of the comments are
17 language provided by municipal governments. As we
18 work through this wet weather and wet weather related
19 issues we have some stuff that's coming before you
20 that is monumental in proportion. Billions of
21 dollars; as we heard last Commission meeting the
22 tunnel in St. Louis alone is \$1.4 billion. The
23 amount of money that the federal government is
24 willing to spend on this could be spent in St. Louis
25 alone. Six billion dollars in new money coming in

1 the form of SRF loans across the country, it all
2 could be spent in this community for the entire
3 nation.

4 So we have a lot of challenges coming. And this
5 document hopes to create a pace for which municipal
6 governments can make improvements to their wastewater
7 systems over as -- long -- longer stretch of time
8 than a one-year, three-year program.

9 So I wanted to keep you informed as to the
10 process that the stakeholder group and DNR are
11 working forward through. In light of the snow
12 flurries I will end my comments there unless there
13 are any questions.

14 (No response.)

15 MR. PHIL WALSACK: Thank you very much and safe
16 driving.

17 CHAIRMAN HARDECKE: Thank you.

18 MR. SCOTT TOTTEN: We had one other item on the
19 agenda the request for a variance from subdivision
20 requirements by Sonya Wells.

21 Ms. Wells and her husband recently purchased a
22 piece of property in Christian County, Missouri. And
23 the property was not developable as advertised. They
24 had problems with the size of the tracts and onsite
25 wastewater systems will not work. The county will

1 not allow that per- -- that development as per their
2 ordinances and they also fall afoul of our onsite
3 wastewater system requirements for subdivisions.

4 She was wanting to come here today to ask this
5 Commission for a variance and I will provide that
6 information to you. We will go ahead and start the
7 process of evaluating a request for variance for this
8 and bring that to you at your March Commission
9 meeting; if that's okay?

10 CHAIRMAN HARDECKE: That's fine.

11 MR. SCOTT TOTTEN: I told them I would provide you
12 the basic information and I will do that via e-mail
13 rather than here today.

14 CHAIRMAN HARDECKE: Okay.

15 That's all the cards you have.

16 MR. SCOTT TOTTEN: That's all the cards we have.

17 CHAIRMAN HARDECKE: Motion to adjourn?

18 COMMISSIONER EASLEY: So moving.

19 MR. SCOTT TOTTEN: Wait. We -- we got other --

20 (Off record discussion was held.)

21 CHAIRMAN HARDECKE: In your packet we did get a
22 response from EPA just a little over a week ago. And
23 that's in the back of your blue packet. In regard to
24 our November letter and so I -- sorry we didn't get
25 it to you any sooner.

1 What she's handing out now is a summary of an
2 attachment which is an EPA document on water -- a
3 summary of this, is those last two pages. So I
4 figured you didn't want that. But if you want to
5 take this letter from EPA and read it and then we'll
6 consider responding to it and get back with them. So
7 however you want to handle that. We can draft a
8 response and get it to you.

9 COMMISSIONER EASLEY: How soon do you think we need
10 to respond?

11 CHAIRMAN HARDECKE: Probably sooner the better.

12 COMMISSIONER EASLEY: A conference call?

13 CHAIRMAN HARDECKE: We could do that.

14 COMMISSIONER EASLEY: Set a conference call scheduled
15 for the 1st of February or --

16 CHAIRMAN HARDECKE: Is there going to be anymore
17 conference calls?

18 MS. MALINDA OVERHOFF: It will depend on what -- Joe
19 Boland's group if they need to have a conference call
20 on the ARRA, but we do not have one scheduled yet.

21 (Off record discussion was held.)

22 CHAIRMAN HARDECKE: That'd be fine.

23 COMMISSIONER EASLEY: You could e-mail it, too.

24 CHAIRMAN HARDECKE: We'll get something together and
25 e-mail it to you before that. Okay?

1 MS. JENNIFER FRAZIER: Mr. Chairman?

2 CHAIRMAN HARDECKE: Yes.

3 MS. KAT LOGAN SMITH: I just wanted to know if you
4 had -- if you were -- if you had any ideas about what
5 you will do or want to do next on -- on Keifer Creek.
6 I have to report back to the Keifer Creek folks and -
7 - is there something you'd like me to tell --

8 CHAIRMAN HARDECKE: Well, --

9 VICE-CHAIR HUNTER: Keifer Creek?

10 MS. KAT LOGAN SMITH: St. Louis County.

11 VICE-CHAIR HUNTER: John? Where's John? He had some
12 ideas about what to do.

13 MR. JOHN FORD: Well, what we can do for sure is
14 carry the recommendations for those three changes to
15 the standards. You know, their -- the standards
16 revision process now in Missouri is kind of an
17 ongoing continuous process. And so we'll -- we'll
18 give Mr. Seyer's name and -- and contact information
19 to our standards folks and I'll -- I'll pass along
20 those requests and we'll get those in -- in the
21 train.

22 With regard to the placement on the 303(d) List
23 as I said that's actually driven by monitoring data.
24 Right now, the data that we have and the rules that
25 we have that we use that are approved the Commission

1 for evaluating data don't show it to be an impaired
2 water.

3 In other words we have -- in addition to the
4 U.S.G.S. data that we put up on the -- or that we had
5 in our handout which is older data, I think, that was
6 like from 2000-2003- -- 4. We have more recent data
7 from MSD that shows improvement and lower levels.
8 And so at this point for it to be on the impaired
9 waters list we're going to have to do more
10 monitoring. And that monitoring would have to show
11 that it exceeds our standards.

12 MR. LORIN CRAUDAL: I have two questions, one, is can
13 it -- is there time to get it on the 2010 303(d)
14 List?

15 MR. JOHN FORD: Well, that -- that list is in
16 development right now. If -- if new data was to come
17 to light that was of acceptable quality, yes, there's
18 still going to be a public participation process
19 that's going to be part of that list. So, yeah,
20 there's an opportunity for new data to put it on the
21 list.

22 MR. LORIN CRAUDAL: And with regard to the U.S.G.S.
23 data is that -- is that data implicitly invalid
24 because it's not on the classified segment?

25 MR. JOHN FORD: No. Our listing rules that we use

1 now for bacteria state that you use the most recent
2 three years of data to make your evaluation.

3 MR. LORIN CRAUDAL: But -- but can you use historic
4 data preceding even 7 years on the basis that nothing
5 in the watershed has changed significantly?

6 MR. JOHN FORD: The rules state that you look at the
7 last -- the most recent three years of data only when
8 you're looking at bacteria. That's the rules that we
9 have now in our listing methodology.

10 MR. LORIN CRAUDAL: And that's specific to bacteria?

11 MR. JOHN FORD: Yes.

12 MR. LORIN CRAUDAL: But for other criterion?

13 MR. JOHN FORD: There's no -- there's no limit on
14 most criterion as to how far back you can go as long
15 as the data is considered representative.

16 MR. LORIN CRAUDAL: Hum.

17 MR. JOHN FORD: It's on our website.

18 CHAIRMAN HARDECKE: Okay.

19 MR. SCOTT TOTTEN: So we will take those
20 recommendations, John, and put them into process.
21 Okay.

22 CHAIRMAN HARDECKE: Okay.

23 **COMMISSIONER EASLEY: Motion to adjourn.**

24 **COMMISSIONER LEAKE: You got a second.**

25 **CHAIRMAN HARDECKE: Malinda, take the vote to**

1 adjourn.

2 MS. MALINDA OVERHOFF: Who made the motion?

3 CHAIRMAN HARDECKE: Bill and Sam.

4 MS. MALINDA OVERHOFF: Commissioner Easley?

5 COMMISSIONER EASLEY: Yes.

6 MS. MALINDA OVERHOFF: Commissioner Hunter?

7 VICE-CHAIR HUNTER: Yes.

8 MS. MALINDA OVERHOFF: Commissioner Leake?

9 COMMISSIONER LEAKE: Yes.

10 MS. MALINDA OVERHOFF: Chair Hardecke?

11 CHAIRMAN HARDECKE: Yes.

12 Thanks to everyone and have a safe trip home.

13 (Tape Three, Side B Concluded.)

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Respectfully Submitted,

Scott B. Totten
Acting Director of Staff