

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety-(90-) day period during which an agency shall file its Order of Rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the Proposed Rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 240—Public Service Commission Chapter 18—Safety Standards

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.310 and 394.160, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-18.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 3, 2013 (38 MoReg 1377-1381). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended October 3, 2013, and the commission held a public hearing on the proposed amendment on October 4, 2013. The commission received a timely written comment from the staff of the Missouri Public Service Commission. The commission's staff elaborated upon its comment at the hearing.

COMMENT: The commission's staff offered a written comment pointing out that the proposed amendment makes reference to an Errata issued on February 6, 2012 by the Institute of Electrical and Electronics Engineers, Inc. Subsequently, that Institute issued an updated Errata on April 29, 2013. Staff advises the commission to

modify the amendment to refer to the more recent April 29, 2013 Errata instead of the February 6, 2012 Errata.

RESPONSE AND EXPLANATION OF CHANGE: The commission has modified the amendment as proposed by staff.

4 CSR 240-18.010 Safety Standards for Electrical Corporations, Telecommunications Companies and Rural Electric Cooperatives

(1) The minimum safety standards relating to the operation of electrical corporations, telecommunications companies, and rural electric cooperatives are Parts 1, 2, and 3 and Sections 1, 2, and 9 of the *National Electrical Safety Code* (NESC); 2012 Edition as approved by the American National Standards Institute on August 1, 2011, as modified by Errata thereto issued on April 29, 2013, and published by the Institute of Electrical and Electronics Engineers, Inc., 3 Park Avenue, New York, NY 10016-5997. The NESC is composed of four (4) different parts and four (4) sections, each of which pertain to different aspects of the electric and telecommunications industries. Part 1 specifies rules for the installation and maintenance of equipment normally found in electric generating plants and substations. Part 2 pertains to safety rules for overhead electric and communication lines. Part 3 contains safety rules for underground electric and communication lines. Section 1 is an introduction to the NESC, Section 2 defines special terms, and Section 9 requires certain grounding methods for electric and communications facilities. The full text of this material is available at the Energy Department of the Public Service Commission, Suite 700, 200 Madison, Jefferson City, Missouri. This rule does not incorporate any subsequent amendments or additions.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 240—Public Service Commission Chapter 50—Water Utilities

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.310 and 393.140, RSMo 2000, and section 386.266, RSMo Supp. 2013, the commission adopts a rule as follows:

4 CSR 240-50.050 Environmental Cost Adjustment Mechanism is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 16, 2013 (38 MoReg 1477-1480). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended October 16, 2013, and the commission held a public hearing on the proposed rule on October 24, 2013. The commission received a timely written comment from Missouri American Water Company. The Office of the Public Counsel, Missouri American Water Company, and the commission's staff appeared at the hearing.

COMMENT #1: Missouri American Water Company's written comment indicates the company supports the rule as proposed by the commission. Frank L. Kartmann, President of Missouri American Water Company, appeared at the hearing and again offered Missouri American's support for the rule as proposed.

RESPONSE: The commission thanks Missouri American Water Company for its comment.

COMMENT #2: Public Counsel appeared at the hearing and indicated it has no comments either in support or in opposition to the proposed rule.

RESPONSE: The commission thanks Public Counsel for its comment.

COMMENT #3: The commission's staff appeared at the hearing and indicated its willingness to answer any questions about the proposed rule. Staff had no other comments either in support or in opposition to the proposed rule.

RESPONSE: The commission thanks its staff for its willingness to answer questions.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical Regulations

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.109 and 319.137, RSMo Supp. 2013, the commission hereby amends a rule as follows:

10 CSR 26-2.062 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2013 (38 MoReg 1160-1161). Those sections with changes are reprinted here. Additionally, the incorporated by reference material has been changed as a result of comments. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on August 15, 2013, and the public comment period ended on August 22, 2013. The Missouri Department of Natural Resources' Hazardous Waste Program received thirty-three (33) comments regarding the guidance document proposed for incorporation by reference at subsection (3)(A) of the amended rule. The comments came from five (5) sources, as follows: Brian Porter, Terracon; Carol Eighmey, Petroleum Storage Tank Insurance Fund; Donnie Greenwalt, Wallis Companies; Mark Jordan, Wallis Companies; and Ron Leone, Missouri Petroleum Marketers and Convenience Store Association. The Hazardous Waste Program did not receive any comments regarding the rule language itself. However, department staff have determined that changes made to the January 1, 2013, version of the *Missouri Risk-Based Corrective Action Process for Petroleum Storage Tanks* guidance document as a result of comments received during the public comment period necessitate that the date of the guidance be changed in the rule in order to differentiate the final guidance from the January 1, 2013, version. The department proposes to revise subsection (3)(A) of 10 CSR 26-2.062 to reflect a guidance publication date of October 17, 2013.

COMMENT #1: Brian Porter stated the following: "One of the main reasons for revising the tanks Missouri Risk-Based Corrective Action (MRBCA) guidance was a desire to update its risk-based levels with the most current toxicological data and scientific methodology utilized by the Environmental Protection Agency (EPA) and other federal and state agencies. The result would be consistent target levels for Missouri's tanks and Brownfield Voluntary Cleanup Program (B/VCP) that are in line with the most current information used throughout the country.

The proposed updates to the tanks guidance include revisions to the target levels so that they are consistent with the departmental

[MRBCA] target levels currently in use. However, we understand that a forthcoming update to the departmental guidance will further update its target levels. If the updates to the tanks guidance occur as currently scheduled, Missouri's guidance documents will contain consistent target levels for only a very brief period (a matter of months at most). Thereafter, the guidance documents will conflict with each other once again.

Acknowledging that the tanks guidance process has been delayed several times already, it seems prudent to delay it one more time so that both it and the departmental guidance can benefit from the latest toxicological and scientific methodology."

RESPONSE: Mr. Porter's understanding regarding the department's updating of the Departmental Risk-Based Target Levels (RBTLs) is correct; the department has begun that effort and expects draft updated RBTLs to be developed by the end of 2013. Sometime thereafter, the draft RBTLs will be the subject of a sixty- (60-) day public comment period. Mr. Porter is also correct in his statement that the department's updating of the departmental RBTLs will result in those RBTLs differing from the RBTLs in the Tanks Risk-Based Corrective Action (RBCA) guidance.

The RBTLs in the updated Tanks RBCA guidance are based on methodology and toxicity and other inputs that were current in 2009. While the department is aware that the methodology and inputs have changed since that time, and despite the department's preference that the RBTLs in both RBCA documents be the same, the updated Tanks RBCA guidance associated with this rulemaking is the result of protracted negotiations between the department and tanks stakeholders during 2012 and early 2013. Those negotiations resulted in all parties agreeing to move ahead with the 2009 RBTLs. As the department's efforts to revise the departmental RBTLs have only recently begun, and we cannot ensure that the update will be completed on the anticipated schedule, the department will move ahead with the 2009 RBTLs (that are consistent with the current departmental RBTLs) that are found in the Tanks RBCA guidance associated with this rulemaking.

COMMENT #2: Carol Eighmey stated that much duplicative, inconsistent, or erroneous language in the previous version of the Tanks RBCA guidance has been eliminated or corrected with this update of the guidance, and that this alone makes this rulemaking a worthwhile endeavor.

RESPONSE: The department appreciates Ms. Eighmey's comment in support of this rulemaking.

COMMENT #3: Ms. Eighmey pointed out that the department's proposed rulemaking eliminates the requirement to use standardized forms in various reports, and that this is "a huge improvement." She stated that the requirement to use these standardized forms is now clearly obsolete and that some of the forms are no longer even accurate. Ms. Eighmey indicated that the PSTIF looks forward to the elimination of this requirement.

RESPONSE: The department appreciates Ms. Eighmey's comment in support of this change.

COMMENT #4: Ms. Eighmey stated "the proposed rulemaking *does* impose some new requirements and changes some of the numerical cleanup standards. We have reviewed the proposed changes and – while we're not fans of all of them, and some of them will increase costs – we nevertheless believe they are reasonable and can be implemented without *unduly* increasing costs."

RESPONSE: The department appreciates Ms. Eighmey's understanding and support of the new requirements.

COMMENT #5: Ms. Eighmey stated that what has been accomplished with this rulemaking and guidance update – "while it undoubtedly falls short of perfect – is a *significant and substantial* step forward, and one that is long overdue."

RESPONSE: The department agrees with Ms. Eighmey's comment