

MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY
OFFICIAL MINUTES
APRIL 28, 2016

The regular monthly meeting of the Commission on Environmental Quality was held on Thursday, April 28, 2016, in the Commission Hearing Room, 515 East Amite Street, Jackson, Mississippi, beginning at 9:00 a.m. Commissioners present were:

Dick Flowers
Ted Kendall IV
Brenda Lathan
Chat Phillips
Jack Winstead, Vice-Chairman

Commissioners John Dane III and Billy Van Devender were not present.

Others present were: Gary Rikard, Executive Director; Trey Hess, Richard Harrell, Jackie Evans, Roy Furrh, staff of MDEQ; and other staff members and visitors whose names appear elsewhere in these minutes.

The meeting was called to order by Vice-Chairman Winstead, and after he led the invocation, the following business was transacted:

Approval of Minutes

On motion made by Mr. Phillips and seconded by Ms. Lathan, the minutes of the February 25, 2016, meeting were approved and adopted as the Official Minutes.

Commission Approval of Environmental Covenant – U.S. General Services

Mr. Trey Hess stated that staff recommended the Commission approve the Environmental Covenant between the Commission and the U.S. General Services regarding the remediation of property located adjacent to 3505 25th Avenue, Gulfport, Mississippi, referred to as the "USDA APHIS Laboratory (AI#69227)." The Site was the former Analytical and Natural Products Chemistry Lab (ANPCL), Center for Plant Science Health and Technology (CPHST). Environmental Site Assessments have revealed a release of hazardous substances impacting soils and groundwater, including but not limited to Dieldrin, Helptachlor Epoxide, and Beta-BHC in excess of Target Remediation Goals (TRGs). Therefore, remediation of the site is necessary. The staff of the MCEQ has evaluated the proposed Environmental Covenant and believes that, with the conditions and restrictions contained within, the site will be in compliance with applicable State laws and standards and will be protective of the public health and the environment. Following staff presentation and deliberation, on motion made by Mr. Flowers and seconded by Mr. Kendall, the Commission unanimously voted to approve the Brownfield Agreement between the Commission and U.S. General Services regarding the remediation of property located adjacent to 3505 25th Avenue, Gulfport, Mississippi, referred to as the "USDA APHIS Laboratory (AI#69227)."

FY2017 Title V Fee Recommendation

Mr. Richard Harrell stated a public hearing concerning the FY2017 Title V permit fee to be set by the Commission was held on April 6, 2016, and no comments were received. Copies of the hearing transcript were previously provided to the Commission. Staff recommended the Commission increase the FY2017 Title V permit fee from \$41 to \$47.00 per ton of regulated air pollutants with a minimum fee of \$250.00. Following staff presentation and deliberation, on motion made by Mr. Flowers and seconded by Mr. Phillips, the Commission unanimously voted to increase the FY2017 Title V permit fee from \$41 to \$47.00 per ton of regulated air pollutants with a minimum fee of \$250.00, beginning September 1, 2016.

Adoption of Amendments to 11 Mississippi Administrative Code, Part 2, Chapter 5, Regulations for the Prevention of Significant Deterioration of Air Quality and Associated Revision to the Mississippi State Implementation Plan for the Control of Air Pollution

Mr. Richard Harrell introduced Ms. Jackie Evans to present this item to the Commission. Ms. Evans stated the amendments to 11 Miss. Admin. Code, Pt. 2, Ch. 5, "Regulations for the Prevention of Significant Deterioration of Air Quality" and the associated Revision to the State Implementation Plan for Control of Air Pollution (SIP Revision) involve the adoption, by reference, of recent changes to

federal rules in order to keep state regulations consistent with federal requirements. Specifically, the amendments will remove the portions of the Greenhouse Gas Tailoring Rule removed from the federal Prevention of Significant Deterioration of Air Quality (PSD) regulations on August 19, 2015 and will incorporate other changes to the federal PSD regulations promulgated by the U.S. Environmental Protection Agency (EPA) on July 12, 2012, January 15, 2013, May 7, 2015, and October 26, 2015, through adoption by reference. A public hearing was held on March 18, 2016, and no comments other than from EPA were received. Staff recommended the Commission adopt the proposed regulation amendments and SIP Revision. Following staff presentation and deliberation, on motion made by Mr. Flowers and seconded by Mr. Kendall, the Commission unanimously voted to adopt the proposed regulation amendments to 11 Miss. Admin. Code, Pt. 2, Ch. 5, and associated Revision to the State Implementation Plan for Control of Air Pollution.

Stephanie Howard, Executrix of the Estate of Gerald Donald-Request for an Evidentiary Hearing

Mr. Roy Furrh introduced Special Assistant Attorney General Ricky Luke who is the Hearing Officer previously designated by the Commission in this matter and stated Mr. Luke would present his Findings and Recommendation to the Commission. Mr. Luke then addressed the Commission by stating a Motion to Lift Stay and Motion to Dismiss have been filed by the oil company defendants in the referenced matter. Stephanie Howard, ("Petitioner") owns property in Wayne County which she claims is contaminated with naturally occurring radioactive material related to a previous truck washing operation conducted on the site by Davis Brothers. Petitioner claims that Davis Brothers contracted with the oil company defendants who contaminated the site. Petitioner filed the current administrative action (request for a formal evidentiary hearing before the Commission) seeking a Commission ruling that the oil company defendants were responsible for clean-up of her property because the Circuit Court of Wayne County required Petitioner to exhaust her administrative remedies through the Commission before Petitioner would be allowed to pursue her suit for damages in Circuit Court against the oil company defendants. Petitioner had also filed a lawsuit in federal court for damages related to the alleged contamination. Petitioner failed to disclose her ownership of the property and the federal and state lawsuits as assets as required in a bankruptcy proceeding she previously filed with the U.S. Bankruptcy Court. Because Petitioner failed to disclose the property and the lawsuits as assets of her bankruptcy estate, the Bankruptcy Court ruled Petitioner was judicially estopped from pursuing her claims related to the alleged contamination of her property including the administrative claim now pending before the Commission. The Bankruptcy Court denied Petitioner's request to stay its decision pending her appeal of the Court's decision to the U.S. District Court for the Southern District of Mississippi, Southern Division. The District Court affirmed the Bankruptcy Court's decision and the Petitioner appealed that decision to the U.S. Court of Appeals, Fifth Circuit. Citing the Bankruptcy Court's judicial estoppel finding, the U.S. District Court for the Southern District of Mississippi, Eastern Division, dismissed Petitioner's separate federal lawsuit for damages with prejudice. Before the Bankruptcy Court entered its decision, Petitioner and the oil company defendants entered an Agreed Order with the Commission agreeing to stay this matter. (Agreed Order No. 6304 13, August 27, 2013). Mr. Luke conducted a hearing on the oil company defendants' Motion to Lift Stay and Motion to Dismiss on December 9, 2015, and allowed extensive briefing on this matter. The Commission has previously been provided materials for review which included copies of the Commission Agreed Order to Stay, Motion to Lift, Motion to Dismiss, Response, Reply, the transcript for the hearing held before Hearing Officer Luke on December 9, 2015, other briefing materials and the Hearing Officer's Findings and Recommendation to the Commission. Citing his Findings and Recommendation, Mr. Luke recommended the Commission approve the oil company ("Defendants") Motion to Lift Stay and Motion to Dismiss. Following staff presentation and deliberation, on motion made by Mr. Flowers and seconded by Mr. Phillips, the Commission unanimously voted to approve Hearing Officer Luke's recommendation that the oil company defendants' Motion to Lift Stay and Motion to Dismiss be granted.

Solid Waste Assistance Grants and Waste Tire Grants

On previous authority delegated to the Executive Director, MDEQ, the Commission was provided a listing by staff of the following solid waste assistance grants that have been awarded to local governments:

<u>County/ Municipality</u>	<u>Grant Amount</u>
Alcorn County Board of Supervisors	\$14,765

Calhoun County Board of Supervisors	\$11,471
Clay County Board of Supervisors	\$10,616
Covington County Board of Supervisors	\$14,155
DeSoto County Board of Supervisors	\$75,000
Greene County Board of Supervisors	\$12,691
Grenada County Board of Supervisors	\$10,616
Harrison County Board of Supervisors	\$70,000
Jackson County Board of Supervisors	\$23,185
Jefferson Davis County Board of Supervisors	\$12,935
Jones County Board of Supervisors	\$25,626
Lee County Board of Supervisors	\$19,646
Leflore County Board of Supervisors	\$13,789
Montgomery County Board of Supervisors	\$9,396
Oktibbeha County Board of Supervisors	\$15,375
Prentiss County Board of Supervisors	\$13,301
Rankin County Board of Supervisors	\$75,000
Union County Board of Supervisors	\$14,155
Walthall County Board of Supervisors	\$14,033
Wayne County Board of Supervisors	\$26,287
City of Meridian	\$50,000

On previous authority delegated to the Executive Director, MDEQ, the Commission was provided a listing by staff of the following waste tire grants have that been awarded to local governments:

<u>County/ Municipality</u>	<u>Grant Amount</u>
Bolivar County Board of Supervisors	\$56,025
DeSoto County Board of Supervisors	\$49,360
Golden Triangle Regional Solid Waste Management Authority	\$90,000
Leflore County Board of Supervisors	\$50,000
Sunflower County Board of Supervisors	\$30,000

Asbestos Certifications

On previous authority delegated to the Head, Office of Pollution Control, the staff reported that 226 asbestos certifications had been issued since the last report.

Emergency Clean-Up Expenses

On previous authority delegated to the Executive Director, the staff reported the Emergency Clean-Up Expenses incurred since the Commission's last meeting. A list of these expenses is made a part of these minutes and is filed in the Official Minutes File.

Lead Paint Certifications

On previous authority delegated to the Head, Office of Pollution Control, the staff reported that 100 lead paint certifications had been issued since the last report.

Underground Storage Tank (UST) Certifications

On previous authority delegated to the Head, Office of Pollution Control, the staff reported that 25 certifications to those who install, alter, or remove underground storage tanks had been issued since the last report.

Administrative Orders

On previous authority delegated to the Executive Director, DEQ, the staff reported that 17 Administrative Orders had been issued since the Commission's last meeting. A list of these orders is made a part of these minutes and is filed in the Official Minutes File.

Other Business

Executive Director Gary Rikard thanked the Commission for their help and support during the Legislative session.

Setting of Meeting

It was the decision of the Commission to meet next on Thursday, May 26, 2016, beginning at 9:00 a.m., in the Commission Hearing Room, 515 East Amite Street, Jackson, Mississippi.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned.


ACTING CHAIRMAN

ATTEST:


EXECUTIVE DIRECTOR