

MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY
OFFICIAL MINUTES
NOVEMBER 10, 2016

The regular monthly meeting of the Commission on Environmental Quality was held on Thursday, November 10, 2016, in the Commission Hearing Room, 515 East Amite Street, Jackson, Mississippi, beginning at 9:00 a.m. Commissioners present were:

John Dane III
Ted Kendall IV
Brenda Lathan
Chat Phillips
Jack Winstead, Vice-Chairman

Commissioners Dick Flowers and Billy Van Devender were not present.

Others present were: Gary Rikard, Executive Director; Lynn Chambers, Tabatha Baum, Dallas Baker, 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 Mr. Phillips led the invocation, the following business was transacted:

Approval of Minutes

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

Titan International, Inc. and The City of Natchez-Natchez, Adams County

Ms. Lynn Chambers stated that pursuant to the Commission's delegation regulations (11 Miss. Admin. Code Pt. 1, R.1.1.Y.), the Executive Director of MDEQ approved the Environmental Covenant between the Commission and the City of Natchez regarding the remediation of property located at 89 Kelly Street, Natchez, MS. The accompanying Restricted Use Agreed Order between the Commission, Titan International, Inc. and the City of Natchez was also approved by the Executive Director. Environmental Site Assessments revealed a release of Trichloroethene and petroleum compounds impacting groundwater at concentrations in excess of Target Remediation Goals (TRGs). Therefore, remediation of the site was necessary. The staff of the MDEQ evaluated the Environmental Covenant and Restricted Use Agreed Order and believes that, with the conditions and restrictions contained within, the site will comply with applicable State laws and standards and will be protective of the public health and the environment. This briefing was for informational purposes only, requiring no action by the Commission.

Commission Rescind Brownfield Agreement and Accompanying Environmental Covenant
Wal Mart Real Estate Business Trust-Pascagoula, Jackson County

Ms. Lynn Chambers stated that during the June 23, 2016, Commission Meeting, the Commission approved the Brownfield Agreement between the Commission and Wal-Mart Real Estate Business Trust regarding the remediation of brownfield property located in the southwest quadrant of the Community Avenue and Market Street intersection in Pascagoula, Mississippi. The administrative record for this environmental response project is referred to as Estabrook Toyota and the Brownfield Agreement Order Number 6661 16 was executed on June 23, 2016. Wal-Mart Real Estate Business Trust has now requested that MDEQ rescind Brownfield Agreement Order Number 6661 16 because Wal-Mart Real Estate Business Trust no longer has an interest in the Estabrook Toyota property and does not plan to purchase the property. The staff of the MDEQ evaluated the request to rescind the Brownfield Agreement Order and believes that in accordance with applicable State laws and standards, Wal-Mart Real Estate Business Trust is not responsible for remediation of the petroleum related contaminants in the groundwater and soil. Staff was originally going to recommend that the Commission rescind Brownfield Agreement Order Number 6661 16 between MDEQ and Wal-Mart Real Estate Business Trust and the accompanying Environmental Covenant, however, staff recently met with attorneys for both Walmart Real Estate Business Trust and Estabrook Toyota who asked to address the Commission directly. Mr. John Milner, attorney for Estabrook requested the Commission post pone their ruling until the next Commission meeting so he and his client will have time to thoroughly examine the issues and work out a possible resolution. Mr. Milner committed to use this additional time wisely and has retained

FC&E Engineering to provide an evaluation from an engineering perspective. Mr. Michael Caples, attorney for Wal-Mart Real Estate Business Trust requested the Commission move forward and issue a ruling in this matter today. Mr. Caples stated the Brownfield agreement between the Commission and Wal-Mart Real Estate Business Trust was a voluntary agreement and not in effect until filed in Chancery Court. Walmart's decision not to proceed was made prior to court filing and because Mr. Estabrook has known about the contamination on the aforementioned property and taken no action, Walmart's refusal to proceed has not put Mr. Estabrook in a different position than before the Brownfield Agreement was approved. Following staff presentation and after deliberation, on motion made by Mr. Phillips and seconded by Mr. Dane, the Commission unanimously voted to table consideration of this matter until the next Commission meeting.

Delegation of Commission's Authority to Executive Director

On behalf of MDEQ staff, Ms. Tabatha Baum, requested the Commission delegate its authority, pursuant to Miss. Code Ann. §§ 49-17-17 (n), (o), and 49-2-9 (1)(f), to apply for, receive, and expend any federal or state funds or contributions, gifts, devices, bequests, or funds from any other sources to the Executive Director. Following staff presentation and deliberation, on motion made by Mr. Dane and seconded by Ms. Lathan, the Commission unanimously voted to delegate its authority, pursuant to Miss. Code Ann. §§ 49-17-17 (n), (o), and 49-2-9 (1)(f), to the Executive Director.

Adoption of amendments to 11 Mississippi Administrative Code, Part 2, Chapter 1, "Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants" and a Revision to the Mississippi State Implementation Plan for the Control of Air Pollution

Mr. Dallas Baker stated a public hearing was held on September 16, 2016, following a 30-day public comment period, on the amendments to 11 Miss. Admin. Code, Pt. 2, Ch. 1. Commenters requested additional time to submit comments and the comment period was extended until October 6, 2016. Several comments were received. A copy of the public hearing transcript including all comments submitted was previously provided to the Commission. Staff recommended the Commission adopt the regulation amendments and SIP Revision as follows:

1. Amendments to Rule 1.10 and an associated Revision to the State Implementation Plan for Control of Air Pollution (SIP Revision) regarding startups, shutdowns, and/or malfunctions of air emissions equipment in order to comply with federal requirements of the U.S. Environmental Protection Agency. This action is a response to a USEPA SIP Call to address a Finding of Substantial Inadequacy with the existing SIP provisions for Upsets, Startups, and Shutdowns. The amendments and associated SIP Revision are intended to address state regulation inconsistencies with recent changes to USEPA policies for startup, shutdown, and malfunction events. Following staff presentation and deliberation, on motion made by Ms. Lathan and seconded by Mr. Kendall, the Commission unanimously voted to adopt the proposed amendments to Rule 1.10 and associated Revision to the State Implementation Plan for Control of Air Pollution (SIP Revision).
2. Amendments to Rules 1.6.C. and 1.8.A to update the state adoption, by reference, of recent amendments to Federal New Source Performance Standards (NSPS) in 40 CFR Part 60, Federal National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 CFR Parts 61 and 63, and Federal Consolidated Air Rules (CAR) in 40 CFR Part 65. This action will update the federal delegation to the state. Following staff presentation and deliberation, on motion made by Mr. Dane and seconded by Mr. Phillips, the Commission unanimously voted to adopt the proposed amendments to Rules 1.6.C. and 1.8.A.
3. Deletion of Rule 1.14, "Provisions for the Clean Air Interstate Rule" (CAIR) since the federal provisions referenced in Rule 1.14. have been revoked and are no longer in effect. Following staff presentation and deliberation, on motion made by Mr. Kendall and seconded by Ms. Lathan, the Commission unanimously voted to delete Rule 1.14, "Provisions for the Clean Air Interstate Rule" (CAIR).

FY 2018 Title V Fee Recommendation - Approval to Proceed to Public Notice of Hearing

Mr. Dallas Baker stated that a copy of the draft report containing the Title V Advisory Council's Title V fee recommendation for the upcoming fee year was previously forwarded to the Commission. Staff requested approval to proceed to public notice and to hold a public hearing to receive comments regarding retaining the Title V fee at \$47/ton. After the public comment period ends, the public hearing has been held, and comments have been reviewed, staff will bring the fee recommendation back to the Commission for final action. Following staff presentation and deliberation, on motion made by Mr.

Phillips and seconded by Mr. Dane, the Commission unanimously voted to proceed to public notice for a hearing on the Title V fee recommendation.

Asbestos Certifications

On previous authority delegated to the Head, Office of Pollution Control, the staff reported that 386 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 144 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 38 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 26 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

Mr. Roy Furrh stated the U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement is requiring persons who perform decision making functions related to the state's coal mining and reclamation program to complete Form OSM-23, "State Employee Statement of Employment and Financial Interest", to determine if there are financial interests which would conflict with these duties. Executive Director Gary Rikard stated the form was rather onerous and asked Commission members to complete the form if they are able to do so and to contact him if they had questions. Mr. Rikard further stated that staff of MDEQ is having ongoing discussions with the Office of Surface Mining to see if there are less burdensome alternatives available for compliance and that the Commission would be kept updated on any developments.

Setting of Meeting

It was the decision of the Commission to distribute information on December's meeting date in the near future.

Adjournment

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


CHAIRMAN

ATTEST:


EXECUTIVE DIRECTOR