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SALUS POPULI SUPREMA LEX ESTO

"The welfare of the people shall be the supreme law."

ROBIN CARNAHAN

SECRETARY OF STATE

MISSOURI REGISTER

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at http://www.sos.mo.gov/adrules/pubsched.asp

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HOW TO CITE RULES AND RSMo

RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

Title	*Code of State Regulations*	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation , i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—The most recent version of the statute containing the section number and the date.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety, or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons, and findings which support its conclusion that there is an immediate danger to the public health, safety, or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 10—Nursing Home Program

EMERGENCY AMENDMENT

13 CSR 70-10.110 Nursing Facility Reimbursement Allowance. The division is adding subsection (2)(M).

PURPOSE: This amendment provides for a change in the Nursing Facility Reimbursement Allowance rate to nine dollars and twenty-seven cents ($9.27) effective beginning January 1, 2010.

*EMERGENCY STATEMENT: The Department of Social Services, MO HealthNet Division finds that this emergency amendment is necessary to preserve a compelling governmental interest of collecting state revenue in order to provide nursing facility services to individuals eligible for the MO HealthNet nursing facility program. This emergency amendment changes the NFRA rate from nine dollars and seven cents ($9.07) to nine dollars and twenty-seven cents ($9.27) effective January 1, 2010. This emergency amendment is necessary to generate additional state matching funds to sustain the current reimbursement to MO HealthNet nursing facilities. The MO HealthNet Division also finds an immediate danger to public health, safety, and/or welfare which require emergency actions. If this emergency amendment is not enacted, there would be significant cash flow shortages causing a financial strain on Missouri nursing facilities which service approximately twenty-four thousand (24,000) individuals eligible for the MO HealthNet nursing facility program. This financial strain, in turn, will result in an adverse impact on the health and welfare of MO HealthNet participants in need of nursing facility services. A proposed amendment, which covers the same material, is published in this issue of the **Missouri Register**. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protections extended by the **Missouri** and **United States Constitutions**. The MO HealthNet Division believes this emergency amendment to be fair to all interested parties under the circumstances. This emergency amendment was filed December 1, 2009, becomes effective January 1, 2010, and expires June 29, 2010.*

(2) NFRA Rates. The NFRA rates determined by the division, as set forth in (1)(B) above, are as follows:

(M) Effective January 1, 2010, the NFRA will be nine dollars and twenty-seven cents ($9.27) per patient occupancy day. The applicable quarterly survey shall be as defined in subsection (2)(K).

*AUTHORITY: sections 198.401, 198.403, 198.406, 198.409, 198.412, 198.416, 198.418, 198.421, 198.424, 198.427, 198.431, 198.433, 198.436, and 208.159, RSMo 2000 and sections 198.439, 208.153, and 208.201, RSMo Supp. 2008. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 21, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 15, 1994, effective July 30, 1995. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Dec. 1, 2009, effective Jan. 1, 2010, expires June 29, 2010. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 15—Hospital Program

EMERGENCY AMENDMENT

13 CSR 70-15.110 Federal Reimbursement Allowance (FRA). The division is adding section (18).

PURPOSE: This amendment will establish the Federal Reimbursement Allowance assessment effective for dates of service beginning January 1, 2010, at five and forty-five hundredths percent (5.45%) of each hospital's inpatient and outpatient adjusted net revenues as determined from its base year cost report.

EMERGENCY STATEMENT: The Department of Social Services, MO HealthNet Division finds that this emergency amendment is necessary to preserve a compelling governmental interest of collecting state revenue in order to provide health care to individuals eligible for the MO HealthNet program and for the uninsured. An early effective date is required because the emergency amendment is necessary to establish the Federal Reimbursement Allowance (FRA) assessment rate effective for dates of service beginning January 1, 2010, in regulation in order to collect the state revenue to ensure access to hospital services for MO HealthNet participants and indigent patients at hospitals that have relied on MO HealthNet payments to meet those patients' needs. The FRA funds the state's share of Direct Medicaid add-on payments for unreimbursed Medicaid costs and Uninsured add-on payments for disproportionate share hospitals. The MO HealthNet Division also finds an immediate danger to public health and welfare which requires emergency actions. If this emergency amendment is not enacted, there would be significant cash flow shortages causing a financial strain on Missouri hospitals which

*serve over eight hundred sixty thousand (860,000) MO HealthNet participants plus the uninsured. This financial strain, in turn, will result in an adverse impact on the health and welfare of MO HealthNet participants and uninsured individuals in need of medical treatment. The FRA will raise approximately $440,625,815 for the remainder of SFY 2010 (January 1, 2010–June 30, 2010). A proposed amendment, which covers the same material, is published in this issue of the **Missouri Register**. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protections extended by the **Missouri** and **United States Constitutions**. The MO HealthNet Division believes this emergency amendment to be fair to all interested parties under the circumstances. This emergency amendment was filed December 1, 2009, becomes effective January 1, 2010, and expires June 29, 2010.*

(18) Beginning January 1, 2010, the Federal Reimbursement Allowance (FRA) assessment shall be determined at the rate of five and forty-five hundredths percent (5.45%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues from the hospital's 2007 Medicare/Medicaid cost report. The FRA assessment rate of five and forty-five hundredths percent (5.45%) will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment beginning January 1, 2010, is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.

*AUTHORITY: section 208.201, RSMo Supp. 2008 and sections 208.453 and 208.455, RSMo 2000. Emergency rule filed Sept. 21, 1992, effective Oct. 1, 1992, expired Jan. 28, 1993. Emergency rule filed Jan. 15, 1993, effective Jan. 25, 1993, expired May 24, 1993. Original rule filed Sept. 21, 1992, effective June 7, 1993. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Dec. 1, 2009, effective Jan. 1, 2010, expires June 29, 2010. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 20—Pharmacy Program

EMERGENCY AMENDMENT

13 CSR 70-20.320 Pharmacy Reimbursement Allowance. The division is amending section (2).

PURPOSE: This amendment establishes the Pharmacy Reimbursement Allowance beginning January 1, 2010, at one and eighty-two hundredths percent (1.82%) of gross retail prescription receipts.

*EMERGENCY STATEMENT: The Department of Social Services, MO HealthNet Division finds that this emergency amendment is necessary to preserve a compelling governmental interest of collecting state revenue in order to provide health care to individuals eligible for the MO HealthNet program and for the uninsured. An early effective date is required because the emergency amendment is necessary to establish the Pharmacy Reimbursement Allowance (PRA) rate effective for dates of service beginning January 1, 2010, in regulation in order to collect the state revenue to ensure access to pharmacy services for MO HealthNet participants. The MO HealthNet Division also finds an immediate danger to public health and welfare which requires emergency actions. If this emergency amendment is not enacted, there would be significant cash flow shortages causing a financial strain on Missouri pharmacies which serve over eight hundred sixty thousand (860,000) MO HealthNet participants. This financial strain, in turn, will result in an adverse impact on the health and welfare of MO HealthNet participants. The PRA will raise approximately $42.75 million for the remainder of SFY 2010 (January 1, 2010–June 30, 2010). The PRA will raise approximately $85.5 million annually. A proposed amendment, which covers the same material, is published in this issue of the **Missouri Register**. This emergency amendment limits its scope to the circumstance creating the emergency and complies with the protections extended by the **Missouri** and **United States Constitutions**. The MO HealthNet Division believes this emergency amendment to be fair to all interested parties under the circumstances. This emergency amendment was filed December 1, 2009, becomes effective January 1, 2010, and expires June 29, 2010.*

(2) Payment of the PRA.

(E) PRA Rates.

1. The PRA tax rate will be a uniform effective rate of one and twenty hundredths percent (1.20%) with an aggregate annual adjustment, by the MO HealthNet Division, not to exceed five hundredths percent (.05%) based on the pharmacy's total prescription volume.

2. Beginning January 1, 2010, the PRA tax rate will be a uniform effective rate of one and eighty-two hundredths percent (1.82%) with an aggregate quarterly adjustment, by the MO HealthNet Division, not to exceed five tenths percent (0.5%) based on the pharmacy's total prescription volume.

*[2.]***3.** The maximum rate shall be five percent (5%).

*AUTHORITY: sections 208.201 and 338.505, RSMo Supp. 2008. Emergency rule filed June 20, 2002, effective July 1, 2002, expired Feb. 27, 2003. Original rule filed July 15, 2002, effective Feb. 28, 2003. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Dec. 1, 2009, effective Jan. 1, 2010, expires June 29, 2010. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*

Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment, or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register.* If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety (90)-day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:
Boldface text indicates new matter.
[Bracketed text indicates matter being deleted.]

Title 2—DEPARTMENT OF AGRICULTURE
Division 100—Missouri Agricultural and Small Business Development Authority
Chapter 6—Single-Purpose Animal Facilities Loan Guarantee Program

PROPOSED AMENDMENT

2 CSR 100-6.010 Description of Operation, Definitions, Fee Structures, Applicant Requirements, and Procedures for Making and Collecting Loans and Amending the Rules for the Single-Purpose Animal Facilities Loan Guarantee Program. The authority is amending subsections (2)(H) and (3)(C), deleting subsection (3)(E) and renumbering thereafter, and amending subsection (4)(E).

PURPOSE: This amendment is to expand the program in order to offer guarantees on operating loans, as well as refinancing and restructuring of agricultural debt, for qualifying operations.

(2) Definitions. As used in this rule, the following terms shall mean:

(H) Single-purpose animal facilities loan means a **collateralized** loan to finance the acquisition, construction, improvement**,** *[or]* rehabilitation**, or operation** of land, buildings, facilities, equipment, machinery, and animal waste facilities used to produce poultry, hogs, beef or dairy cattle**,** or other animals.

(3) Criteria Relating to Participating Borrowers and Single-Purpose Animal Facilities Loan Guarantee Program.

(C) **Initial** *[C]*certificates of guaranty cannot be issued for a period exceeding ten (10) years. **Refinancing of loans previously guaranteed by the Single-Purpose Animal Facilities Loan Guarantee Program may extend the guaranty as approved by the Missouri Agricultural and Small Business Development Authority.**

[(E) Loan guarantees made under the program may not apply to refinancing of loans.]

*[(F)]***(E)** Loans made under the program may not be assigned by the lender without approval of the authority.

*[(G)]***(F)** Loans made under the program may not be extended beyond the original time established for the loan without prior approval of the authority.

*[(H)]***(G)** The authority will receive a loan participation fee of one percent (1%), with the fee being collected from the borrower by the lender and submitted to the authority at the time the loan is closed.

*[(I)]***(H)** The authority will receive a special loan guarantee fee of up to one percent (1%) per annum of the outstanding principal which shall be collected from the borrower by the lender and paid to the authority.

*[(J)]***(I)** The rate of interest to be charged to a borrower will be negotiated between the lender and the borrower, but cannot exceed the rate normally charged by the lender for similar loans.

*[(K)]***(J)** The loan amortization schedule will be negotiated between the lender and the borrower. Payments may be repaid monthly, quarterly, semi-annually, annually**,** or in installments that coincide with payments as they are normally received for the products being sold or delivered.

*[(L)]***(K)** Borrowers may accelerate payments, including early payoff of the loan without incurring a prepayment penalty.

(4) Procedure for Making Eligible Loans.

(E) Upon determining that all requirements for the loan guarantee are met, the authority will issue to the lender a certificate of guaranty for up to fifty percent (50%) of any loss of the loan amount on a declining principal basis, and for a period not exceeding ten (10) years**, except in the case of refinances as approved by the authority**.

*AUTHORITY: sections 348.195 and 348.210, RSMo Supp. [2003] **2008**. Original rule filed Feb. 15, 1995, effective July 30, 1995. Amended: Filed Sept. 15, 2003, effective March 30, 2004. Emergency amendment filed Oct. 22, 2009, effective Nov. 2, 2009, expires April 30, 2010. Amended: Filed Nov. 23, 2009.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500).

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500).

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Agricultural and Small Business Development Authority, PO Box 630, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 9—DEPARTMENT OF MENTAL HEALTH
Division 10—Director, Department of Mental Health
Chapter 31—Reimbursement for Services

PROPOSED AMENDMENT

9 CSR 10-31.011 Standard Means Test. The department is proposing to add new subsections (1)(B) and (1)(C), to re-letter subsequent subsections (1)(D) through (1)(M), to amend subsections (1)(D) and (3)(B), to amend sections (7), (8), and (10), to add a new section (9), to renumber subsequent sections, to add a new section (18), and to delete the sliding scale fee table that currently follows the rule.

PURPOSE: The purpose of this proposed amendment is to define an already-existing service and add community services to the rule's list of definitions; to clarify that the adjusted gross income for reimbursement of case management services will be adjusted for inflation; to update the rule to reflect a change in the way the sliding fee scale is developed; to clarify how charges for long-term care are determined; to explain how charges for community services are determined and to detail documentation requirements for such services; and to explain the director's waiver authority.

(1) Definitions. The terms defined in section 630.005, RSMo**,** are incorporated by reference as though set out in this rule. The following other terms used in this rule, unless the text clearly requires otherwise, shall mean:

(B) Community psychiatric rehabilitation center (CPR provider or CPR program)—an organization which provides or arranges for, at the minimum, the following core services: intake and annual evaluations, crisis intervention and resolution, medication services, consultation services, medication administration, community support, and psychosocial rehabilitation in a nonresidential setting for individuals with serious mental illness in conjunction with standards set forth in 9 CSR 30-4.031–9 CSR 30-4.047;

(C) Community services—any services purchased or provided by the department that are not included in the definition of "long-term care";

*[(B)]***(D)** Community support services**—**for the Division of *[Mental Retardation and]* Developmental Disabilities *[(MRDD)]* **(DD)**, this means all Purchase of Service (POS) services, case management services for clients residing in Community Placement Program (CPP) facilities and in their natural homes, Choices for Families services**,** and all voucher services; for the Division of Comprehensive Psychiatric Services (CPS), this means Family Preservation services, Intensive Case Management services for children and adults, *[POS Community Psychiatric Rehabilitation Program (CPRP) services,]* Supported Housing Voucher Program or Housing and Urban Development (HUD) Housing Voucher Program services, and Intergrated Employment Support services; for the Division of Alcohol and Drug Abuse (ADA), this applies to drug-free counseling services provided to clients participating in a methadone maintenance program who have become drug-free;

*[(C)]***(E)** Early intervention services—developmental services provided by qualified personnel to meet infant's or toddler's developmental needs in one (1) or more of the following areas: physical development, cognitive development, language and speech development, psychosocial development**,** or self-help skills. Early intervention services must be provided in conformity with an individualized family service plan. Early intervention services may include, but are not limited to:

1. Family training, counseling**,** and home visits;
2. Special instructions;
3. Speech pathology and audiology;
4. Occupational therapy;
5. Physical therapy;
6. Transportation;
7. Psychological services;
8. Social work;
9. Case management services;
10. Nursing services;
11. Nutrition services;
12. Medical services for diagnostic or evaluation purposes;
13. Early identification, screening**,** and assessment services; and
14. Health services which enable infants or toddlers to benefit from other early intervention services;

*[(D)]***(F)** Financially responsible person—the individual who is obligated by law or this rule to pay charges for services;

*[(E)]***(G)** Gross monthly income (earned and unearned)—the total monthly income from all sources before payroll deductions, other withholdings**,** and expenses incurred in earning the income. Examples would include salaries and wages, dividends, annuities, interest, rents, pensions, disability and survivor benefits, Workers' Compensation, unemployment compensation, maintenance and child support payments, bonuses, tips and gratuities, income from business or profession**,** and any other taxable and nontaxable income;

*[(F)]***(H)** Household size—the number of persons dependent upon the income of the financially responsible person including the person (recipient) receiving services, except for a blended family situation. Dependency for family members, other than the recipient, must meet the dependency test in the federal *Internal Revenue Code*;

*[(G)]***(I)** Long-term care—continuous residential care (excluding supportive housing) which meets any of the following conditions:

1. Admission to a habilitation center;
2. Admission to a community placement facility;
3. A statement signed by a physician or a qualified mental health professional that the care is for an indeterminate period; or
4. The care has been provided for at least twenty-four (24) months without any documentation in the recipient's individualized treatment, habilitation**,** or rehabilitation plan indicating discharge is imminent (within ninety (90) days);

*[(H)]***(J)** Monthly rate—the amount determined by application of the sliding fee scale to be charged for services provided in a month;

*[(I)]***(K)** Provider—a public or private agency offering services to individuals approved for Department of Mental Health (DMH)-funded services;

*[(J)]***(L)** Recipient-client, patient**,** or resident—the person receiving services;

*[(K)]***(M)** Representative payee—guardian, trustee, conservator**,** or other fiduciary appointed to receive a beneficiary's benefits (for example, Social Security, Railroad Retirement);

*[(L)]***(N)** Sliding fee scale—a table for determining the monthly rate to be charged to a financially responsible person for services; and

*[(M)]***(O)** Unearned income—income that is not derived from employment. Examples would include maintenance and child support monies, interests, pensions, unemployment benefits, Workers' Compensation and benefits from the Social Security Administration, Railroad Retirement Board, Civil Service Commission, Veterans Administration**,** and other similar types of income.

(3) Community Support Incentives (POS). The following financial incentives shall be provided to clients and families receiving less costly community support services:

(B) For case management services reimbursed by the Division of *[Mental Retardation and]* Developmental Disabilities and intensive case management services reimbursed by the Division of Comprehensive Psychiatric Services, only clients or their financially responsible parties with annual adjusted gross incomes exceeding one hundred thousand dollars ($100,000) **in 1991 dollars, adjusted annually for inflation using the Consumer Price Index (CPI),** shall be assessed a charge, and the charge shall be the lesser of actual cost or one-fourth (1/4) their monthly ability to pay.

(7) Sliding Fee Scale. The scale determines the monthly rate to be charged to a financially responsible person for services. The scale was developed using *[one hundred fifty percent (150%)]* **three hundred percent (300%)** of the federal poverty guidelines for the year *[1996]* **2009** and income withholding tables for federal and state taxes. The scale shall be updated annually when changes have occurred in the federal poverty guidelines or the tax withholding tables. The adjusted gross monthly income on the sliding fee scale is determined by deducting the following expenses from gross income:

(8) Charges for Long-Term Care. The charges shall be determined under this section**, and only under this section,** when the recipient requires long-term care.

(9) Charges for Community Services. Only financially responsible persons whose income is equal to, or greater than, three hundred percent (300%) of the federal poverty guidelines shall be assessed a monthly rate using the sliding fee scale, except that no financially responsible person shall be assessed a monthly rate for services received through a Community Psychiatric Rehabilitation Center or Compulsive Gambling services as defined in 9 CSR 30-3.134(1).

*[(9)]***(10)** Working Clients. If the recipient is a working client and is without a spouse, dependents, or both, the provider shall apply to costs of services forty percent (40%) of all net earned income exceeding one hundred dollars ($100) per month, except in cases where DMH is not paying room and board costs. In these cases, the sliding fee scale shall be applied.

*[(10)]***(11)** Documentation Requirements. **For community services, the financially responsible persons shall certify their income to the provider. If the provider has reasons to believe that the income certified by the financially responsible persons is inaccurate, then the provider shall request the documentation required below for individuals receiving long-term care. For long-term care, the** *[F]***f**inancially responsible persons shall furnish the provider written statements of their income (for example, most recent year's filed complete federal tax return) or other supporting documentation requested by the provider for income verification. If the provider applies the long-term care provisions under this rule, then the provider shall obtain a statement of the recipient's personal and real assets and other supporting documentation. Documentation must be provided for any deductions to gross income.

*[(11)]***(12)** Failure to Comply. The provider shall have the recipient or financially responsible person apply for benefits and entitlements described in this rule if it appears the recipient is eligible. The provider may charge the financially responsible person all costs of providing or procuring the services when the recipient or financially responsible person—

(A) Deliberately fails to divulge financial resources upon request of the provider;

(B) Fails to apply or permit the provider to apply for benefits; or

(C) Fails to assign benefits.

*[(12)]***(13)** Failure to Pay. The provider may take action to collect any unpaid amounts charged based on the sliding fee scale or the full cost based on the failure to comply. These actions may include, but are not limited to, Missouri State Income Tax Intercept and any further action allowable under state and federal law.

*[(13)]***(14)** Voluntary Payments. The provider may accept voluntary payments from individuals not legally obligated to pay and payments made in addition to the amounts determined by application of this rule. Providers operated by the department shall receive gifts, donations, devises**,** or bequests as set out in section 630.330, RSMo. For services to clients, vendors or department-operated providers may set a minimal charge for services to clients which may exceed the monthly charge applicable under this rule. The charge shall not exceed five dollars ($5) per visit and shall be an offset against any charges determined as otherwise applicable under this rule, per program, per provider. If one (1) client is assessed a minimal charge, all clients in that program must be assessed the same minimal charge. The provider can determine that an urgent need for immediate services overrides any inability or refusal to pay.

*[(14)]***(15)** Test Application Procedures. The director delegates his/her authority to complete the SMT to any provider operated by the department. Other providers (for example, nonstate community mental health centers or substance abuse programs) which serve recipients directly without having them go through department case management shall apply the test if the providers agree to do so under the terms of contracts with the department.

(A) The provider shall apply the SMT contained in this rule at admission, annually after admission if the recipient is still receiving services, upon request from the recipient or responsible party, or by the initiative of the provider or the department director due to any significant change in financial status.

(B) The provider shall apply the test in this rule on all recipients as of February 26, 1993.

(C) Upon request for review, the provider shall change the monthly rate, if warranted, effective to the first day of the month of the date of request.

(D) As other substantial changes occur in income or asset status, the provider shall reapply the test and the changes shall be effective as of the first day of the month following the date of the reapplication of the test. If inaccurate or fraudulent information was provided for determining charges, or if the recipient is entitled to retroactive benefits, the provider shall retroactively change the amount charged.

*[(15)]***(16)** Appeal Procedures. The application of the SMT may be appealed by the financially responsible person to the chief administrative officer of the provider and then the department director as follows:

(A) The chief administrative officer of the provider shall review upon appeal the application of the test as to the verification of financial resources, the determination of charges**,** and issue a decision to the financially responsible person;

(B) The decision of the chief administrative officer of the provider may be appealed to the department director within fifteen (15) days of the receipt of the decision. The director will review appeals only if the recipient or responsible party alleges the incorrect application of the test. Upon completion of the review, the director shall issue a decision which may alter application of the test;

(C) As set out in section 630.210, RSMo, the decision of the director may be reviewed in the circuit court of Cole County or the circuit court in the county where the financially responsible person legally obligated to pay resides according to the procedure set out in Chapter 536, RSMo; and

(D) Pending the decision upon appeal by the provider's chief administrative officer, the decision of the department director, if appealed, or decision of a court of competent jurisdiction, if judicially reviewed, whichever is later, the department shall hold the provider harmless and shall pay disputed amounts to the provider, if necessary, to continue services to the recipient. If the financially responsible person is deemed obligated to pay any of the disputed amounts after the appeal is completed, then the financially responsible person shall pay the amounts to the provider as an offset to the department's future support or to the department if no future department support is to be provided.

*[(16)]***(17)** Probation and Parole Clients. For services provided under terms and conditions of probation and parole, the provider may determine charges related to income and consistent with the treatment and rehabilitation goals of the terms and conditions of probation and

parole as approved in writing by the department and the supervising court.

(18) Waiver Authority. The director may waive the application of the SMT to specific services, programs, or populations, or for specific purposes, or in specific situations, when the director determines that it is in the best interests of the state, the department, and the individuals served by the department to do so. Examples of situations in which waivers may be deemed appropriate include natural or man-made disasters, temporary services or programs which are not suited to the current SMT process, specific situations in which collections do not justify the administrative burden of applying the SMT, and situations in which the cost of providing services is fully covered by another funding source.

*AUTHORITY: sections 630.050 and 630.210, RSMo [1994] **Supp. 2008**. Original rule filed May 12, 1981, effective Jan. 1, 1982. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Dec. 1, 2009.*

PUBLIC COST: This proposed amendment cannot be reasonably estimated at this time but is assumed to cost public entities more than five hundred dollars ($500) and less than four hundred ninety thousand dollars ($490,000).

PRIVATE COST: This proposed amendment is not expected to cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment to Melissa Manda, Deputy General Counsel, for the Division of Administration, Department of Mental Health, PO Box 687, 1706 East Elm Street, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. If hand delivered, comments must be brought to the Department of Mental Health, 1706 East Elm Street, Jefferson City, Missouri 65101. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. Department Title: Department of Mental Health
Division Title: Director, Department of Mental Health
Chapter Title: Reimbursement for Services

Rule Number and Name:	9 CSR 10-31.011 Standard Means Test
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Mental Health	Unknown fiscal impact. The dollar amount of the fiscal impact cannot be reasonably estimated at this time, but it is assumed that it will be more than $500 and less than $490,000.

III. WORKSHEET

The Department of Mental Health (DMH) revenues from private pay sources have averaged $6.8 million in the last three fiscal years. Approximately 82% of these revenues come from Medicaid-eligible clients and include client beneficiary payments such as Social Security Income (SSI) and Social Security Disability Income (SSDI). DMH does not expect these rule changes to impact the revenues collected from Medicaid-eligible clients. Also, no changes are proposed for fees assessed for the Substance Abuse Traffic Offenders Program (SATOP) and Compulsive Gambling program.

The fiscal impact on the remaining 18% of private pay revenues cannot be determined as the detailed SMT information for current clients is documented on a paper form and stored in the individual client record file. DMH has very limited SMT information available in its automated client information system and therefore cannot accurately project the fiscal impact of the proposed rule changes. Also, the clients' ability to pay and the collection rate (amount assessed vs. amount collected) can fluctuate significantly. Social Security cost of living increases and expected administrative savings from a more streamlined Standard Means Test (SMT) process could potentially offset some of the loss of revenues. Therefore, the dollar amount of the fiscal impact cannot be reasonably estimated at this time, but it is assumed that it will be more than $500 and less than $490,000.

IV. ASSUMPTIONS

DMH will collect less private pay revenues due to increasing the ability to pay threshold from 150% to 300% of the Federal Poverty Level and exempting certain services from the SMT.

Social Security cost of living increases could minimize the loss of revenue from these proposed rule changes.

Expected administrative savings from a more streamlined process and fewer SMT assessments will allow reimbursement staff to focus on other revenue maximization activities which minimizes the loss of revenue. When clients are admitted to DMH services and annually thereafter, the SMT is applied. This involves approximately 50 DMH staff in regional offices, habilitation centers and psychiatric facilities around the state.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 2—Income Tax

PROPOSED AMENDMENT

12 CSR 10-2.045 Missouri Consolidated Income Tax Returns. The director proposes to amend subsection (18)(D).

PURPOSE: This amendment clarifies the director's statutory authority to approve methods for filing consolidated income tax returns by affiliated groups or corporations.

(18) Interstate Division of Income Rules for First Missouri Consolidated Return Year. In the determination of that portion of the Missouri consolidated taxable income (all sources) as is derived from sources within Missouri, the affiliated group shall select**,** in its first Missouri consolidated return year, one (1) of the applicable interstate division of income methods set forth in the following subsection:

(D) Members to Which Different Interstate Division of Income Methods Apply—General Rule. If the affiliated group is composed of a membership such that**,** if separate Missouri returns were filed by each member, the same interstate division of income method under section 143.451.2., RSMo (relating to general business corporations), 143.451.3., RSMo (relating to transportation), 143.451.4., RSMo (relating to railroads, and the like), 143.451.5., RSMo (relating to interstate bridges), 143.451.6., RSMo (relating to telephone or telegraph companies) or 143.461, RSMo (other approved methods)**,** would not apply to each member, then the affiliated group, as a whole, shall determine that portion of its Missouri consolidated taxable income (all sources) as is derived from sources within Missouri by application of —

1. The uniform method for division of income provided in the Multistate Tax Compact and the corresponding rules of the Missouri Department of Revenue; *[or]*

2. The method the director of revenue may approve after a finding of special circumstances; or

*[2.]***3.** The percentage obtained by the method set forth in subsection (18)(E) of this rule; and

*AUTHORITY: section 143.431.3(5), RSMo [2000] **Supp. 2008**. Regulation 1.431-3 was first filed July 21, 1975, effective July 31, 1975. Amended: Filed Oct. 16, 2002, effective June 30, 2003. Amended: Filed Dec. 1, 2009.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 10—Nursing Home Program

PROPOSED AMENDMENT

13 CSR 70-10.110 Nursing Facility Reimbursement Allowance. The division is adding subsection (2)(M).

PURPOSE: This amendment provides for a change in the Nursing Facility Reimbursement Allowance rate to nine dollars and twenty-seven cents ($9.27) effective beginning January 1, 2010.

(2) NFRA Rates. The NFRA rates determined by the division, as set forth in (1)(B) above, are as follows:

(K) Effective July 1, 2005, the applicable quarterly survey shall be updated at the beginning of each state fiscal year using the previous December's quarterly survey; *[and]*

(L) Effective July 1, 2009, the NFRA will be nine dollars and seven cents ($9.07) per patient occupancy day. The applicable quarterly survey shall be as defined in subsection (2)(K)*[.]***; and**

(M) Effective January 1, 2010, the NFRA will be nine dollars and twenty-seven cents ($9.27) per patient occupancy day. The applicable quarterly survey shall be as defined in subsection (2)(K).

*AUTHORITY: sections 198.401, 198.403, 198.406, 198.409, 198.412, 198.416, 198.418, 198.421, 198.424, 198.427, 198.431, 198.433, 198.436, and 208.159, RSMo 2000 and sections 198.439, 208.153, and 208.201, RSMo Supp. 2008. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 21, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 15, 1994, effective July 30, 1995. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Dec. 1, 2009, effective Jan. 1, 2010, expires June 29, 2010. Amended: Filed Dec. 1, 2009.*

PUBLIC COST: This proposed amendment will cost state entities or political subdivisions approximately nine hundred eight thousand three hundred thirty-nine dollars ($908,339) for SFY 2010.

PRIVATE COST: This proposed amendment will cost private entities approximately $1,497,336 for SFY 2010.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the **Missouri Register**. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. Department Title: Department of Social Services
Division Title: MO HealthNet Division
Chapter Title: Nursing Home Program

Rule Number and Name:	13 CSR 70-10.110 Nursing Facility Reimbursement Allowance
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services MO HealthNet Division	Estimated cost for SFY 2010: $908,339

III. WORKSHEET

Description	NFRA Add-On Increase	Effect on Hospice in NF	Total Impact
Estimated Paid Days Impacted: SFY 2010	8,500,610	613,447	
x Per Diem Rate Increase	$0.20	$0.19	
Total Annual Impact:	$1,700,122	$116,555	$1,816,677
Total Estimated Impact: SFY 2010	$ 850,061	$58,278	$908,339
State Share (NFRA fund)	$304,492	$20,875	$325,367
Federal Share (64.18%)	$545,569	$37,403	$582,972

IV. ASSUMPTIONS

This proposed NFRA rate change will change the reimbursement per diem rates for nursing facilities since the NFRA rate is an allowable cost for reimbursement under 13 CSR 70-10.016.

Estimated Paid Days:

Nursing Facility -- The estimated paid days for SFY 2010 are based on the actual Medicaid days paid for nursing facility services during SFY 2008, increased by 1.0% for 2009 and by an additional 0.5% for 2010.

Hospice -- The estimated paid days for SFY 2010 for hospice are based on the actual hospice days provided in nursing facilities from February 2008 through January 2009.

NFRA Add-On Increase:

An increase in the NFRA assessment of $0.20 from $9.07 to $9.27 effective January 1, 2010 has an impact to nursing facilities under 13 CSR 70-10.016. The NFRA assessment is an allowable cost for reimbursement and is accounted for as an add-on to the per diem rate under 13 CSR 70-10.016; therefore, the cost has been included in this fiscal note.

Effect on Hospice:

Hospice providers are reimbursed 95% of the nursing facility per diem for hospice participants residing in a nursing facility. The total increase to the nursing facility per diem is $0.20. The increase to hospice reimbursement rates resulting from this amendment is $0.19 ($0.20 x 95%).

FISCAL NOTE
PRIVATE COST

I. **Department Title:** Department of Social Services
Division Title: MO HealthNet Division
Chapter Title: Nursing Facility Program

Rule Number and Title:	13 CSR 70-10.110 Nursing Facility Reimbursement Allowance (NFRA)
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
520	Nursing Facilities	Annual estimated cost for SFY 2010: $1,497,336

III. WORKSHEET

SFY 2010:	
Estimated Assessment Days: SFY 2010	14,973,357
Effective January 1, 2010 one-half of year	1/2
Estimated Assessment Days for proposed	7,486,679
$9.07 NFRA Rate	
Estimated Assessment Days:	7,486,679
x NFRA Rate	$ 9.07
Total Estimated Impact	$67,904,179
$9.27 NFRA Rate	
Estimated Assessment Days:	7,486,679
x NFRA Rate	$9.27
Total Estimated Impact	$ 69,401,514
Impact SFY 2010 (One-half of Year)	$ 1,497,336

IV. ASSUMPTIONS

Effective January 1, 2010 the Nursing Facility Reimbursement Allowance (NFRA) rate changes from nine dollars and seven cents ($9.07) to nine dollars and twenty-seven cents ($9.27). The determination of the number of assessment days for SFY 2010 is in the current regulation. One-half of the annual number of assessment days is used since the effective date is January 1, 2010 which is one-half of the fiscal year. These days were multiplied by the NFRA rate in effect of $9.07 which would occur if the proposed amendment was not implemented. The same number of days was multiplied by the proposed NFRA rate of $9.27. The difference between the total impact for the $9.07 and $9.27 NFRA rates is the fiscal impact.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 15—Hospital Program

PROPOSED AMENDMENT

13 CSR 70-15.110 Federal Reimbursement Allowance (FRA). The division is adding section (18).

PURPOSE: This amendment will establish the Federal Reimbursement Allowance assessment effective for dates of service beginning January 1, 2010, of five and forty-five hundredths percent (5.45%) of each hospital's inpatient and outpatient adjusted net revenues as determined from its base year cost report.

(18) Beginning January 1, 2010, the Federal Reimbursement Allowance (FRA) assessment shall be determined at the rate of five and forty-five hundredths percent (5.45%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues from the hospital's 2007 Medicare/Medicaid cost report. The FRA assessment rate of five and forty-five hundredths percent (5.45%) will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment beginning January 1, 2010, is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.

AUTHORITY: sections 208.201, RSMo Supp. 2008 and sections 208.453 and 208.455, RSMo 2000. Emergency rule filed Sept. 21, 1992, effective Oct. 1, 1992, expired Jan. 28, 1993. Emergency rule filed Jan. 15, 1993, effective Jan. 25, 1993, expired May 24, 1993. Original rule filed Sept. 21, 1992, effective June 7, 1993. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed Dec. 1, 2009, effective Jan. 1, 2010, expires June 29, 2010. Amended: Filed Dec. 1, 2009.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in SFY 2010.

PRIVATE COST: This proposed amendment is expected to cost private entities $440,625,815 for the remainder of SFY 2010 (January 1, 2010–June 30, 2010).

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the ***Missouri Register****. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

FISCAL NOTE
PRIVATE COST

I. Department Title: Department of Social Services
Division Title: MO HealthNet Division
Chapter Title: Hospital Program

Rule Number and Title:	13 CSR 70-15.110 Federal Reimbursement Allowance (FRA)
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
139	Hospitals	Estimated cost for SFY 2010 (Jan. 1, 2010 – June 30, 2010) $440,625,815

III. WORKSHEET

The fiscal note is based on establishing the FRA assessment rate at 5.45% effective for dates of service beginning January 1, 2010. By increasing the assessment from 5.40% to 5.45%, the agency is projected to collect $4,042,448 in additional assessment.

IV. ASSUMPTIONS

The FRA assessment rate of 5.45% is levied upon Missouri hospitals' inpatient net adjusted revenue of approximately $7,709,440,188 and outpatient net adjusted revenue of approximately $5,667,603,229 for the remainder of SFY 2010 (January 1, 2010 through June 30, 2010).

The 139 hospitals reported above include 38 hospitals that are owned or controlled by the state, counties, cities, or hospital districts. The impact on these hospitals for the establishment of the FRA assessment rate of 5.45% for the remainder of SFY 2010 (January 1, 2010 through June 30, 2010) is $61,093,052.

The FRA funds the state's share of Direct Medicaid add-on payments for unreimbursed Medicaid costs and Uninsured add-on payments for unreimbursed Medicaid costs and Uninsured add-on payments for disproportionate share hospitals (DSH).

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 20—Pharmacy Program

PROPOSED AMENDMENT

13 CSR 70-20.320 Pharmacy Reimbursement Allowance. The division is amending section (2).

PURPOSE: This amendment establishes the Pharmacy Reimbursement Allowance beginning January 1, 2010, at one and eighty-two hundredths percent (1.82%) of gross retail prescription receipts.

(2) Payment of the PRA.

(E) PRA Rates.

1. The PRA tax rate will be a uniform effective rate of one and twenty hundredths percent (1.20%) with an aggregate annual adjustment, by the MO HealthNet Division, not to exceed five hundredths percent (.05%) based on the pharmacy's total prescription volume.

2. Beginning January 1, 2010, the PRA tax rate will be a uniform effective rate of one and eighty-two hundredths percent (1.82%) with an aggregate quarterly adjustment, by the MO HealthNet Division, not to exceed five tenths percent (0.5%) based on the pharmacy's total prescription volume.

*[2.]***3.** The maximum rate shall be five percent (5%).

AUTHORITY: sections 208.201 and 338.505, RSMo Supp. 2008. Emergency rule filed June 20, 2002, effective July 1, 2002, expired Feb. 27, 2003. Original rule filed July 15, 2002, effective Feb. 28, 2003. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed Dec. 1, 2009, effective Jan. 1, 2010, expires June 29, 2010. Amended: Filed Dec. 1, 2009.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities $85.5 million annually.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the ***Missouri Register****. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

FISCAL NOTE
PRIVATE COST

I. **Department Title:** Department of Social Services
Division Title: MO HealthNet Division
Chapter Title: Pharmacy Program

Rule Number and Title:	13 CSR 70-20.320 Pharmacy Reimbursement Allowance
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
1,200	Retail Pharmacies	$85.5 million

III. WORKSHEET

IV. ASSUMPTIONS

The tax is based on gross retail prescription receipts reported via an affidavit by the pharmacies. Total gross retail prescription receipts for calendar year 2008 were approximately $4.7 billion. The tax rate for the year is estimated at 1.82%, therefore, the fiscal impact is estimated at $85.5 million.

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 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 10—Division of Employment Security
Chapter 2—Administration

ORDER OF RULEMAKING

By the authority vested in the Division of Employment Security under sections 288.220 and 288.360, RSMo 2000, the division adopts a rule as follows:

8 CSR 10-2.010 Maintenance and Disposal of Records **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2009 (34 MoReg 1985). 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: No comments were received.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission amends a rule as follows:

10 CSR 10-6.362 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1541–1548). 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 Missouri Department of Natural Resources' Air Pollution Control Program received one (1) comment from one (1) source: the U.S. Environmental Protection Agency (EPA).

COMMENT #1: EPA commented that the department should consider retaining the existing language relating to the cogeneration unit exemption in the applicability section because the revised cogeneration unit definition in the federal rule does not exclude combustion turbines from the cogeneration unit exemption if they otherwise qualify for the exemption.
RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, rule language in subparagraph (1)(B)1.A. has been restored to the language that currently exists in the *Code of State Regulations*.

10 CSR 10-6.362 Clean Air Interstate Rule Annual NO_x Trading Program

(1) Applicability.

(B) The units in the state that meet the requirements set forth in subparagraph (1)(B)1.A., (1)(B)2.A., or (1)(B)2.B. of this rule shall not be CAIR NO_x units—

1. Cogenerator exemption.

A. Any unit that is a CAIR NO_x unit under paragraph (1)(A)1. or 2. of this rule—

(I) Qualifying as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(II) Not serving at any time, since the later of November 15, 1990, or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or two hundred nineteen thousand (219,000) megawatt hours (MWh), whichever is greater, to any utility power distribution system for sale.

B. If a unit qualifies as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and meets the requirements of subparagraph (1)(B)1.A. of this rule for at least one (1) calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of part (1)(B)1.A.(II) of this rule.

2. Solid waste incinerator exemption.

A. Any unit that is a CAIR NO_x unit under paragraph (1)(A)1. or 2. of this rule commencing operation before January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding eighty percent (80%) (on a British thermal unit (Btu) basis) and an average annual fuel consumption of

non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%) (on a Btu basis).

B. Any unit that is a CAIR NO_x unit under paragraph (1)(A)1. or 2. of this rule commencing operation on or after January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for the first three (3) calendar years of operation exceeding eighty percent (80%) (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%) (on a Btu basis).

C. If a unit qualifies as a solid waste incineration unit and meets the requirements of subparagraph (1)(B)2.A. or B. of this rule for at least three (3) consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first three (3) consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of twenty percent (20%) or more.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission amends a rule as follows:

10 CSR 10-6.364 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1548–1552). 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 Missouri Department of Natural Resources' Air Pollution Control Program received one (1) comment from one (1) source: the U.S. Environmental Protection Agency (EPA).

COMMENT #1: EPA commented that the department should consider retaining the existing language relating to the cogeneration unit exemption in the applicability section because the revised cogeneration unit definition in the federal rule does not exclude combustion turbines from the cogeneration unit exemption if they otherwise qualify for the exemption.

RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, rule language in subparagraph (1)(B)1.A. has been restored to the language that currently exists in the *Code of State Regulations*.

10 CSR 10-6.364 Clean Air Interstate Rule Seasonal NO_x Trading Program

(1) Applicability.

(B) The units in the state that meet the requirements set forth in subparagraph (1)(B)1.A., (1)(B)2.A., or (1)(B)2.B. of this rule shall not be CAIR NO_x Ozone Season units—

1. Cogenerator exemption.

A. Any unit that is a CAIR Ozone Season NO_x unit under paragraph (1)(A)1. or 2. of this rule—

(I) Qualifying as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(II) Not serving at any time, since the later of November 15, 1990, or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or two hundred nineteen thousand (219,000) megawatt hours (MWh), whichever is greater, to any utility power distribution system for sale.

B. If a unit qualifies as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and meets the requirements of subparagraph (1)(B)1.A. of this rule for at least one (1) calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR Ozone Season NO_x unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of part (1)(B)1.A.(I) of this rule.

2. Solid waste incinerator exemption.

A. Any unit that is a CAIR NO_x Ozone Season unit under paragraph (1)(A)1. or 2. of this rule commencing operation before January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding eighty percent (80%)(on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%)(on a Btu basis).

B. Any unit that is a CAIR NO_x Ozone Season unit under paragraph (1)(A)1. or 2. of this rule commencing operation on or after January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for the first three (3) calendar years of operation exceeding eighty percent (80%)(on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%)(on a Btu basis).

C. If a unit qualifies as a solid waste incineration unit and meets the requirements of subparagraph (1)(B)2.A. or B. of this rule for at least three (3) consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first three (3) consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of twenty percent (20%) or more.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission amends a rule as follows:

10 CSR 10-6.366 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1552–1553). 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 Missouri Department of Natural Resources' Air Pollution Control Program received one (1) comment from one (1) source: the U.S. Environmental Protection Agency (EPA).

COMMENT #1: EPA commented that the department should consider retaining the existing language relating to the cogeneration unit exemption in the applicability section because the revised cogeneration unit definition in the federal rule does not exclude combustion turbines from the cogeneration unit exemption if they otherwise qualify for the exemption.
RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, rule language in subparagraph (1)(B)1.A. has been restored to the language that currently exists in the *Code of State Regulations*.

10 CSR 10-6.366 Clean Air Interstate Rule SO_2 Trading Program

(1) Applicability.

(B) The units in the state that meet the requirements set forth in subparagraph (1)(B)1.A., (1)(B)2.A., or (1)(B)2.B. of this rule shall not be CAIR SO_2 units:

1. Cogenerator exemption.

A. Any unit that is a CAIR SO_2 unit under paragraph (1)(A)1. or 2. of this rule—

(I) Qualifying as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(II) Not serving at any time, since the later of November 15, 1990, or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or two hundred nineteen thousand (219,000) megawatt hours (MWh), whichever is greater, to any utility power distribution system for sale.

B. If a unit qualifies as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and meets the requirements of subparagraph (1)(B)1.A. of this rule for at least one (1) calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO_2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of part (1)(B)1.A.(II) of this rule.

2. Solid waste incinerator exemption.

A. Any unit that is a CAIR SO_2 unit under paragraph (1)(A)1. or 2. of this rule commencing operation before January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding eighty percent (80%) (on a British thermal unit (Btu) basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%) (on a Btu basis).

B. Any unit that is a CAIR SO_2 unit under paragraph (1)(A)1. or 2. of this rule commencing operation on or after January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for the first three (3) calendar years of operation exceeding eighty percent (80%) (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%) (on a Btu basis).

C. If a unit qualifies as a solid waste incineration unit and meets the requirements of subparagraph (1)(B)2.A. or B. of this rule for at least three (3) consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO_2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first three (3) consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of twenty percent (20%) or more.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 10—Underground Storage Tanks—Technical Regulations

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.100, 319.105, 319.107, 319.111, and 319.114, RSMo 2000, and sections 260.370, 319.109, and 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.010 Applicability **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 843–844). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Hazardous Waste Program received six (6) comments regarding the proposed rule from two (2) sources: Carol Eighmey, Petroleum Storage Tank Insurance Fund, and Jessica Christiansen, Wallis Companies, as well as staff comment.

COMMENT #1: Ms. Eighmey stated that, in subsection (5)(A), it is not clear what is meant by "a work plan pertaining to the UST system release." She suggested new language.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #2: Ms. Eighmey stated that it is not clear what is meant in paragraph (5)(C)1. by "any of the basic elements." This vague statement leaves it to the Department of Natural Resources (DNR) to decide whether to make owners/operators who have initiated cleanup under the old rules comply with these new rules instead. The lack of clarity makes it difficult or impossible for the Petroleum Storage Tank Insurance Fund (PSTIF) to accurately project their liabilities, as they do not know what rules will apply to which cleanups. They suggested deleting this phrase or replacing it with a date—say, three to five (3–5) years hence—by which time the owner/operator must complete corrective action or else will have to switch to the new rules.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #3: Ms. Eighmey stated that it is not clear in section (6) whether "completes closure" means the underground storage tank (UST) system is removed or all corrective action is complete.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #4: Ms. Eighmey stated that the same problem described above occurs in section (6) with the phrase, "any of the basic elements."
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #5: Ms. Eighmey recommended that language be added to the rule to specify that persons who voluntarily clean up tank sites can use the rules; see PSTIF proposed rule at 10 CSR 26-2.010(5).

This is how the department currently operates; the rules should reflect actual practices.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #6: In her comments pertaining to the department's other proposed amended and new rules, Ms. Eighmey stated that the three (3) sets of soil type dependent risk-based target levels should be removed from rule and replaced by a single set of Tier 1 risk-based target levels.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #7: Jessica Christiansen stated that she does not believe the department's proposed rules would adequately define how projects underway would be managed when the new rules become effective.
RESPONSE: The commission is withdrawing this proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 10—Underground Storage Tanks—Technical Regulations

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.105, RSMo 2000, and section 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.011 Interim Prohibition for Deferred Underground Storage Tank Systems **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 845). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 10—Underground Storage Tanks—Technical Regulations

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.105, RSMo 2000, and section 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.012 Definitions **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 845–847). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Hazardous Waste Program received eighteen (18) comments from six (6) sources: Carol Eighmey, Petroleum Storage Tank Insurance Fund; Caroline Ishida, Missouri Coalition for the Environment; Roger Levin, MRP Properties Company, LLC; Mark Burton and Ed Creadon, ATC Associates, Inc.; Keith Piontek, TRC; and Ron Leone, Missouri Petroleum Marketers and Convenience Store Association.

COMMENT #1: Caroline Ishida's comment discussed why she believed the department's definition of "Light non-aqueous phase liquid" at 10 CSR 26-2.012(1)(L) was preferable to the Petroleum Storage Tank Insurance Fund's (PSTIF's) proposal to replace "light non-aqueous phase liquid" with "free product." Ms. Ishida indicated that PSTIF's definition does not adequately encompass both mobile and immobile liquid, both of which can pose significant environmental and public health concerns, and is therefore incomplete and inadequate for protecting public safety and the environment. She urged the Hazardous Waste Management Commission to reject PSTIF's definition and approve a definition that includes all possible forms of petroleum hydrocarbons and other chemicals included in petroleum storage.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #2: Ms. Ishida stated that the Missouri Coalition for the Environment does not believe that PSTIF's definition of "site" is adequate to protect human health or the environment. She stated that the Department of Natural Resources' (DNR's) definition includes both the area of origin of contamination, and any surrounding affected property, and is the definition that would be more appropriate in terms of protecting human health and the environment.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #3: Roger Levin of MRP Properties Company, LLC stated that he believes the definition of "site" should be constrained to the source property and that, by expanding the definition of "site" to include the areal extent of all current and future contamination resulting from the release (including contamination both on the source property and on adjacent properties currently impacted or likely to be impacted in the future), the designation of "on-site" and "off-site" receptors is effectively eliminated during the Risk-Based Corrective Action (RBCA) process. Mr. Levin stated that the result could be an overly conservative assessment of risks to adjacent properties instead of protecting specific receptors to the appropriate levels.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #4: Carol Eighmey of PSTIF stated that the definition of "Activity and Use Limitation" should be the one agreed upon by DNR Stakeholders' Group, rather than as published. See PSTIF proposed rule.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #5: Ms. Eighmey stated that the definition of "Applicable target level" should reflect land use, as required by section 319.109, RSMo.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #6: Ms. Eighmey stated that PSTIF objects to the definition of "Default Target Level" referring to another document, a January 2009 guidance document, that went through no public comment process and which, as of this date, PSTIF does not have a copy of and is unable to locate on the department's web site. She further stated that corrective action standards are a fundamental part of the requirements and should appear in the rules themselves and for the department to see the PSTIF proposed rule.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #7: Ms. Eighmey recommended adding a definition of

"free product" and for the department to see PSTIF proposed rule.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #8: Ms. Eighmey recommended changing the definition of "Light non-aqueous phase liquids" to the PSTIF proposed definition, which she indicates is consistent with the United States Environmental Protection Agency (US EPA) guidance.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #9: Ms. Eighmey recommended that the department delete the definition of "Long-term stewardship measure" because she feels it is unnecessary and because use of the term was specifically rejected by DNR Stakeholders' Group.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #10: Ms. Eighmey recommended the department delete the definition of "Restrictive covenant" because she believes it is unnecessary as the term is widely used in real estate law and practice.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #11: Ms. Eighmey stated that the definition proposed for "Risk-based target level" is vague and references a document that PSTIF does not have and cannot find on the department's web site. She recommended that the department use the PSTIF proposed definition for "Risk-based target level," including reference to statute.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #12: Ms. Eighmey recommended that the definition of "Site" be consistent with existing definitions in DNR rules, 1996 DNR Closure Guidance, PSTIF regulations, and with long-term DNR Tanks Section practices. She stated that this would eliminate the need for new definitions of "Source Property" and "UST facility."
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #13: Ms. Eighmey recommended that the department add a definition for "Underground Storage Tank System," since the term is used in the rules and that the department refer to the PSTIF proposed rule for suggested definition.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #14: Ms. Eighmey stated that the definition of "UST facility" is unclear, since it uses the word "facility" to define itself.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #15: Mark Burton and Ed Creadon of ATC stated that they believe that the definition of "site" should be constrained to the source property and that, by expanding the definition of "site" to include the areal extent of all current and future contamination resulting from the release (including contamination both on the source property and on adjacent properties currently impacted or likely to be impacted in the future), the designation of "on-site" and "off-site" receptors is effectively eliminated during the RBCA process. Mr. Burton and Mr. Creadon stated that the result could be an overly conservative assessment of risks to adjacent properties instead of protecting specific receptors to the appropriate levels.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #16: Keith Piontek of TRC stated that the department's rules pertaining to the recovery of light non-aqueous phase liquid (LNAPL) were not clear and that the rules should focus on "free product" rather than both mobile and immobile LNAPL.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #17: Ron Leone of the Missouri Petroleum Marketers and Convenience Store Association stated that the department did not need to change the definition of the word "site" as the previous definition worked well. In his other comments, Mr. Leone indicated the process provided for under the department's *UST Closure Guidance Document* was preferable to the department's proposed rules.
RESPONSE: The commission is withdrawing this proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 10—Underground Storage Tanks—Technical Regulations

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.020 Performance Standards for New Underground Storage Tank Systems **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 847–849). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 10—Underground Storage Tanks—Technical Regulations

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.021 Upgrading of Existing Underground Storage Tank Systems **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 849). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received one (1) comment regarding the amendment from one (1) source: Carol Eighmey, Petroleum Storage Tank Insurance Fund.

COMMENT #1: Carol Eighmey stated that the rule as proposed is obsolete, as it purports to impose requirements that must be met by

December 22, 1998, a date which has already passed. She recommended that the department refer to the Petroleum Storage Tank Insurance Fund (PSTIF) proposed rule for alternative language.
RESPONSE: The commission is withdrawing this proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 10—Underground Storage Tanks—Technical Regulations

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.103, 319.105, 319.107, 319.111, 319.114, and 319.123, RSMo 2000, and section 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.022 Notification Requirements **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 849–850). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received one (1) comment regarding the proposed amendment from one (1) source: Carol Eighmey, Petroleum Storage Tank Insurance Fund.

COMMENT #1: Carol Eighmey stated that the rule as proposed contains obsolete language, as it purports to impose requirements that must be met by December 22, 1998, a date which has already passed, and it refers to a "notification form," which is not defined and is not a form currently in use. Ms. Eighmey recommended that the department refer to the Petroleum Storage Tank Insurance Fund (PSTIF) proposed rule for alternative language.
RESPONSE: The commission is withdrawing this proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 10—Underground Storage Tanks—Technical Regulations

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.107, RSMo 2000, and section 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.030 Spill and Overfill Control **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 850). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 10—Underground Storage Tanks—Technical Regulations

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.031 Operation and Maintenance of Corrosion Protection **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 850–851). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 10—Underground Storage Tanks—Technical Regulations

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.105, RSMo 2000, and section 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.032 Compatibility **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 851). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 10—Underground Storage Tanks—Technical Regulations

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.033 Repairs Allowed **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 851–852). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 10—Underground Storage Tanks—Technical Regulations

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.107 and 319.111, RSMo 2000, and section 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.034 Reporting and Recordkeeping **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 852–853). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received one (1) comment regarding the proposed amendment from one (1) source: Carol Eighmey, Petroleum Storage Tank Insurance Fund. Department staff also commented on the amendment.

COMMENT #1: Carol Eighmey stated that she concurred with the department's proposal to delete the form from the rule as she believes it is obsolete. She also suggested that the department refer to the Petroleum Storage Tank Insurance Fund (PSTIF) proposed rule for additional suggested changes to reflect current practices.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #2: Department staff note an error in paragraph (1)(B)5. of the rule published in the May 1, 2009, *Missouri Register*. Specifically, the subsection refers to 10 CSR 26-2.064 when it should have referenced 10 CSR 26-2.062.
RESPONSE: The commission is withdrawing this proposed amendment.

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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.105, 319.107, and 319.111, RSMo 2000, and section 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.040 General Requirements for Release Detection for All Underground Storage Tank Systems **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 853–854). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received one (1) comment regarding the proposed amendment from one (1) source: Carol Eighmey, Petroleum Storage Tank Insurance Fund.

COMMENT #1: Carol Eighmey stated that the rule as proposed is obsolete, as it purports to impose requirements that must be met by dates which have already passed. She recommended that the department refer to the Petroleum Storage Tank Insurance Fund (PSTIF) proposed rule for suggested language.
RESPONSE: The commission is withdrawing this proposed amendment.

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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.041 Requirements for Petroleum Underground Storage Tank Systems **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 854). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.042 Requirements for Hazardous Substance Underground Storage Tank Systems **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 854–855). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.043 Methods of Release Detection for Tanks
is withdrawn.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 855–857). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.044 Methods of Release Detection for Piping
is withdrawn.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 857). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.045 Release Detection Recordkeeping
is withdrawn.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 857–858). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.109, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.050 Reporting of Suspected Releases
is withdrawn.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 858–861). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received three (3) comments regarding the proposed amendment from one (1) source: Carol Eighmey, Petroleum Storage Tank Insurance Fund.

COMMENT #1: Carol Eighmey stated that, since the rule is about "Reporting" incidents involving releases of regulated substances, Petroleum Storage Tank Insurance Fund (PSTIF) recommends combining it with 10 CSR 26-2.053, which relates to the same subject.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #2: Ms. Eighmey stated that new language is proposed to describe the "triggers" for reporting releases and that she is unaware of any evidence demonstrating that the language in the existing rule needs to be changed.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #3: Ms. Eighmey stated that the language in subsection (2)(C) is poorly worded and difficult to understand.
RESPONSE: The commission is withdrawing this proposed amendment.

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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.107, RSMo 2000, and sections 319.109 and 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.051 Investigation Due to Off-Site Impacts **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 862). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received one (1) comment on the rule from one (1) source: Carol Eighmey, Petroleum Storage Tank Insurance Fund.

COMMENT #1: Carol Eighmey stated section (1) refers to "the property on which the underground storage tank (UST) system is found." In many cases, there is no longer any UST system on the property. It is also noted that this change to the rule language will not be necessary if the definition of "site" remains unchanged. She suggested new language.
RESPONSE: The commission is withdrawing this proposed amendment.

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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.105 and 319.107, RSMo 2000, and sections 319.109 and 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.052 Release Investigation and Confirmation Steps **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 862–863). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received two (2) comments on the rule from one (1) source: Carol Eighmey, Petroleum Storage Tank Insurance Fund.

COMMENT #1: Carol Eighmey stated the current rule requires owners/operators to check for the presence of a release on their own property. The proposed language expands this requirement to a broader area and could be interpreted to include collecting soil and water samples on others' properties. If this is the intent, the Petroleum Storage Tank Insurance Fund suggested there is no demonstrated need for this more expansive requirement. If this is not the intent, they suggested the language remain as is.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #2: The Petroleum Storage Tank Insurance Fund opposed referencing a document in section (2) that may be changed over time without public comment or the rigors of rulemaking. Since other rules specify what is required for site characterization, they suggested referencing those rules instead of a guidance document.
RESPONSE: The commission is withdrawing this proposed amendment.

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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.109, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.053 Reporting and Cleanup of Spills and Overfills **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 863–865). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received two (2) comments regarding the proposed rule from one (1) source: Carol Eighmey, Petroleum Storage Tank Insurance Fund.

COMMENT #1: Carol Eighmey stated since the amendment relates to what must be done when there is a spill or overfill, the Petroleum Storage Tank Insurance Fund suggested combining it with 10 CSR 26-2.050 and/or 10 CSR 26-2.071.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #2: Ms. Eighmey stated the proposed amendment requires corrective action whenever a spill or overfill results in concentrations of petroleum that exceed default target levels; this is not consistent with current practices or other aspects of the proposed rules, nor with state law, which requires corrective action to be risk-based. Perhaps "corrective action" here is intended to mean "site characterization, risk assessment, and corrective action?"
RESPONSE: The commission is withdrawing this proposed amendment.

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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.109 and 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.060 Release Response and Corrective Action **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 866). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received one (1) comment regarding the rule from

one (1) source: Carol Eighmey, Petroleum Storage Tank Insurance Fund.

COMMENT #1: Carol Eighmey stated since the rule is only one (1) sentence and relates to what must be done when there is a release, the Petroleum Storage Tank Insurance Fund suggested combining it with 10 CSR 26-2.071.
RESPONSE: The commission is withdrawing this proposed amendment.

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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.109, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.061 Initial Release Response **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 866–870). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received three (3) comments on the rule from one (1) source: Carol Eighmey, Petroleum Storage Tank Insurance Fund.

COMMENT #1: Carol Eighmey stated language in section (2) is unclear, in that it requires actions within twenty-four (24) hours of "confirmation of a release" and also requires such actions within twenty-four (24) hours "of a release." Since the occurrence of the release and the confirmation that a release has occurred may be two (2) different points in time, these two (2) requirements will often conflict. She suggested deletion of the phrase "of a release" at the end of the first part of section (2).
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #2: The Petroleum Storage Tank Insurance Fund (PSTIF) opposed the additional language added to subsection (1)(C) and knows of no evidence demonstrating that the rule has not "worked" as is. Local emergency responders typically measure vapors in enclosed spaces when there is a new release, and they know of no instances where this was needed and not done. Vapor monitoring for light non-aqueous phase liquid (LNAPL) in the subsurface is not typically done nor is it typically necessary within the first twenty-four (24) hours of confirmation of a release; rather, it is typically done as part of subsequent risk assessment activities.

The proposed amendment confuses the original purpose of the rule, i.e., specifying what "initial release response" is required when an owner/operator of an active, operating underground storage tank (UST) discovers he has had a release, with situations where old, legacy pollution is found.

There is no need to amend the rule in a way that creates this confusion.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #3: PSTIF stated that there are not two hundred fifty (250) operating UST sites that have releases annually; rather, there are typically five to ten (5–10) such incidents. The cost assumed for "vapor monitoring equipment" is substantially understated; as an example, use of an lower explosive level (LEL) meter to monitor sewer manholes at a recent site where there had been a UST release was one hundred dollars ($100) per day, not one hundred fifty dollars ($150) per week, as estimated in the fiscal note. They believe that if the rule is clarified as they suggest, and only relates to "initial release response" when a new release is discovered, there will be zero fiscal impact, since there has been such a rule "on the books" for nineteen (19) years already.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #4: Ms. Eighmey stated the following: "We oppose the additional language added to paragraph (2)(C)1. and know of no evidence demonstrating that the rule has not "worked" as is. Local emergency responders typically measure vapors in enclosed spaces when there is a new release, and we know of no instances where this was needed and not done. Vapor monitoring for LNAPL in the subsurface is not typically done nor is it typically necessary within the first twenty-four (24) hours of confirmation of a release; rather, it is typically done as part of subsequent risk assessment activities.

The proposed amendments confuse the original purpose of the rule—i.e., specifying what "initial release response" is required when an owner/operator of an active, operating underground storage tank (UST) discovers he has had a release—with situations where old, legacy pollution is found.

There is no need to amend the rule in a way that creates this confusion.
RESPONSE: The commission is withdrawing the proposed amendment.

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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.109 and 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.062 Initial Abatement Measures and Site Check **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 871–876). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received seven (7) comments on the rule from one (1) source: Carol Eighmey, Petroleum Storage Tank Insurance Fund.

COMMENT #1: Carol Eighmey stated that the department proposed numerous changes to the current rule. The Petroleum Storage Tank Insurance Fund (PSTIF) is unaware of any evidence demonstrating the current rule is not working and therefore opposes the published amendment. The rule is intended to specify what owners/operators must do upon discovering there is or has been a release from their operating underground storage tank (UST) system. However, the proposed amendment confuses that situation with one where old, "legacy pollution" is being addressed.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #2: Ms. Eighmey stated there is no need to change the wording in subsection (1)(F) from "free product" to "LNAPL."
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #3: Ms. Eighmey stated section (2) refers to standards "established by the department," but those standards do not appear anywhere in the proposed rules; this leaves the rule vague and unspecific. The standards should be in the rules themselves.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #4: Ms. Eighmey stated if the new language in subsection (2)(A) is retained, the Petroleum Storage Tank Insurance Fund (PSTIF) suggested new language.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #5: Ms. Eighmey stated that, as written, subsection (2)(B) is not risk-based and therefore does not comport with the governing statute.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #6: PSTIF agreed that initial abatement measures should be taken within the first twenty (20) days after confirmation that a release has occurred or is occurring, but it is unreasonable to require the results of soil/water samples and analysis of risk be completed in that timeframe, as the proposed amendment requires in section (3). See PSTIF proposed rule 10 CSR 26-2.072 for suggestion.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #7: PSTIF agreed that the owner/operator must take certain immediate actions and must provide a report to the department promptly when a release occurs. They suggested that the department should also be timely in its response so the owner/operator can proceed with site characterization, risk assessment, and corrective action. See PSTIF proposed rule at 10 CSR 26-2.072(4).
RESPONSE: The commission is withdrawing this proposed amendment.

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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.109 and 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.063 Initial Site Characterization **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 877). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received three (3) comments regarding the amendment from one (1) source: Carol Eighmey, Petroleum Storage Tank Insurance Fund. In addition, department staff commented on the amendment.

COMMENT #1: The department found that a reference to 10 CSR 26-2.072 was not included in section (1) of the amendment.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #2: Carol Eighmey stated the following: "As proposed, 10 CSR 26-2.073—in combination with 10 CSR 26-2.071—requires two (2) reports be submitted within the first forty-five (45) days after a release is confirmed. This is excessive particularly given that the department typically does not respond to reports in less than ninety (90) days. We suggest combining these two (2) reports to streamline the process and reduce costs for both the department and the owner/operator."
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #3: Ms. Eighmey stated the following: "It is not clear whether the rules apply to new discoveries of old, legacy pollution at sites where there are no longer any operational tanks. The current rules, 10 CSR 20-10.062 through 10 CSR 20-10.064, apply to situations where a release from a regulated, active UST facility is confirmed; we suggest that the amended rules should likewise only apply to such situations."
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #4: Ms. Eighmey stated the following: "In light of this, the proposed amendment to 10 CSR 26-2.073(1)(D) is unnecessary and creates confusion, as do many of the changes proposed in 10 CSR 26-2.074."
RESPONSE: The commission is withdrawing this proposed amendment.

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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.109 and 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.064 Free-Product Removal **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 877–883). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received two (2) comments on the rule from one (1) source: Carol Eighmey, Petroleum Storage Tank Insurance Fund.

COMMENT #1: Carol Eighmey stated that 10 CSR 26-2.074 requires "initial light non-aqueous phase liquid (LNAPL) removal" to continue until Department of Natural Resources (DNR) approves "a work plan for LNAPL removal." This makes no sense. If the idea is to require the owner/operator to continue doing something until DNR says he can stop, then the rule must provide an "out" for owners/operators who do not wish to waste money doing something that is pointless while waiting ninety to one hundred eighty (90–180) days for DNR to review and respond to their report and conclusions.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #2: Ms. Eighmey stated that it is not clear why the department believes a "LNAPL recovery work plan" is necessary; the intent of the current rules is to compel owners/operators to take actions promptly when free product is discovered in the environment. The Petroleum Storage Tank Insurance Fund urged the commission to retain this requirement rather than slowing responses by requiring the owner/operator to submit a work plan and "get the department's permission" to do what your rules require him/her to do.
RESPONSE: The commission is withdrawing this proposed amendment.

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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.109, RSMo Supp. 2008, and section 644.026, RSMo 2000, the commission hereby withdraws a proposed rescission as follows:

10 CSR 20-10.065 Investigations for Soil and Groundwater Cleanup **is withdrawn**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 1, 2009 (34 MoReg 884). This proposed rescission is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed rescission.

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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.109, RSMo Supp. 2008, and section 644.026, RSMo 2000, the commission hereby withdraws a proposed rescission as follows:

10 CSR 20-10.066 Corrective Action Plan **is withdrawn**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 1, 2009 (34 MoReg 884). This proposed rescission is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed rescission.

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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.109, RSMo Supp. 2008, and section 644.026, RSMo 2000, the commission hereby withdraws a proposed rescission as follows:

10 CSR 20-10.067 Public Participation **is withdrawn**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 1, 2009 (34 MoReg 884). This proposed rescission is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed rescission.

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By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.111, RSMo 2000, and sections 319.109 and 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed rescission as follows:

10 CSR 20-10.068 Risk-Based Clean-Up Levels **is withdrawn**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 1, 2009 (34 MoReg 885). This proposed rescission is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed rescission.

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By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.107 and 319.111, RSMo 2000, and sections 319.015 and 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.070 Temporary Closure **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 885). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.105, 319.107, and 319.111, RSMo 2000, and section 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.071 Permanent Closure and Changes in Service **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 885–886). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received two (2) comments regarding the amendment from one (1) source: Carol Eighmey, Petroleum Storage Tank Insurance Fund.

COMMENT #1: Carol Eighmey asked the department to please refer to Petroleum Storage Tank Insurance Fund (PSTIF) proposed rule 10 CSR 26-2.051 for their suggestions, including clarifying language in the "Purpose" statement.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #2: Carol Eighmey stated the rule as proposed refers to "the department's Tanks Closure Guidance Document." The only such document the PSTIF is aware of was published in 1996—if this is what the rule refers to, we suggest it is an obsolete reference.
RESPONSE: The commission is withdrawing this proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 10—Underground Storage Tanks—Technical Regulations

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.111, RSMo 2000, and section 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.072 Assessing the Site at Closure or Change in Service **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 886–889). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received five (5) comments regarding the rule from one (1) source: Carol Eighmey, Petroleum Storage Tank Insurance Fund.

COMMENT #1: Carol Eighmey asked the department to please refer to Petroleum Storage Tank Insurance Fund (PSTIF) proposed rule 10 CSR 26-2.062 for their suggestions, including addition of certain requirements the department is currently imposing but which do not appear in the current rules.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #2: Carol Eighmey stated section (4) of the proposed rule refers to "the department's Tanks Closure Guidance Document." The only such document PSTIF is aware of was published in 1996—if this is what the rule refers to, we suggest it is an obsolete reference. In addition, this reference appears to be redundant, as the same requirement appears in 10 CSR 26-2.061.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #3: Ms. Eighmey stated that state law requires the department's standards to be based on land use. The proposed rule does not do this, as it requires the owner/operator to use default target levels (DTLs), or other residential standards, if the exposure pathway for domestic use of groundwater is not complete.
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #4: Ms. Eighmey asked the department to please see the PSTIF proposed rule for a suggestion on how the proposed rule can be amended to comport with the statutory requirements. We recommend elimination of references to "soil types."
RESPONSE: The commission is withdrawing this proposed amendment.

COMMENT #5: Ms. Eighmey stated the rule does not address whether/when soil can be returned to the tank pit; we recommend this be included.
RESPONSE: The commission is withdrawing this proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 10—Underground Storage Tanks—Technical Regulations

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.111, RSMo 2000, and section 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.073 Applicability to Previously Closed Underground Storage Tank Systems **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 890). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received one (1) comment regarding the amendment from one (1) source: Carol Eighmey, Petroleum Storage Tank Insurance Fund.

COMMENT #1: Carol Eighmey stated that since the entire rule consists of one (1) sentence, she suggested combining this rule with 10

CSR 26-2.061. Please refer to Petroleum Storage Tank Insurance Fund (PSTIF) proposed rules.
RESPONSE: The commission is withdrawing this proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 10—Underground Storage Tanks—Technical Regulations

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.107 and 319.111, RSMo 2000, and section 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-10.074 Closure Records **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 890). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received one (1) comment regarding the amendment from one (1) source: Carol Eighmey, Petroleum Storage Tank Insurance Fund.

COMMENT #1: Carol Eighmey stated that since the entire rule consists of one (1) sentence, she suggested combining this rule with 10 CSR 26-2.061. Please refer to Petroleum Storage Tank Insurance Fund (PSTIF) proposed rules.
RESPONSE: The commission is withdrawing this proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.090 Applicability **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 890–891). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.091 Compliance Dates **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 891). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.092 Definitions of Financial Responsibility Terms **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 891–892). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.093 Amount and Scope of Required Financial Responsibility **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 892). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.094 Allowable Mechanisms and Combinations of Mechanisms **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 892–896). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.095 Financial Test or Self-Insurance **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 896–897). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.096 Guarantee **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 897–900). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any public comments regarding the proposed amendment. However, department staff discovered an error in Form 2—Guarantee of the rule.

COMMENT #1: Department staff noted that in the third paragraph of section (C) of Form 2 of the rule, the reference to 10 CSR 26-2.075 is incorrect. The reference should be to 10 CSR 26-2.070.
RESPONSE: The commission is withdrawing the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.097 Insurance and Risk Retention Group Coverage **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 900–903). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.098 Surety Bond **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 903–906). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any public comments regarding the proposed amendment. However, department staff discovered an error in Form 5—Performance Bond of the rule.

COMMENT #1: Department staff noted that in the third paragraph of section (E) of Form 5— Performance Bond of the rule, the references to 10 CSR 26-2.075 are incorrect. The correct references are to 10 CSR 26-2.070.
RESPONSE: The commission is withdrawing the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.099 Letter of Credit **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 906–908). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, and section 319.129, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.101 Petroleum Storage Tank Insurance Fund **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 908). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.102 Trust Fund **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 908–909). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.103 Standby Trust Fund **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 909–914). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.104 Substitution of Financial Assurance Mechanisms by Owner or Operator **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 914). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.105 Cancellation or Nonrenewal by a Provider of Financial Assurance **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 914–915). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.106 Reporting by Owner or Operator **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 915). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, and section 319.129, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.107 Recordkeeping **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 915–918). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.108 Drawing on Financial Assurance Mechanisms **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 918–920). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any public comments regarding the proposed amendment. However, department staff discovered an error in subsection (2)(A) of the rule.

COMMENT #1: Department staff noted the reference to 10 CSR 26-2.075 in subsection (2)(A) is incorrect. The correct reference is to 10 CSR 26-2.070.
RESPONSE: The commission is withdrawing the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.109 Release From the Requirements **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 920). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, and section 319.129, RSMo Supp. 2008, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.110 Bankruptcy or Other Incapacity of Owner or Operator, or Provider of Financial Assurance **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 920–921). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.111 Replenishment of Guarantees, Letters of Credit or Surety Bonds **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 921). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.112 Local Government Bond Rating Test **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 921–925). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.113 Local Government Financial Test **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 925–928). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.114 Local Government Guarantee **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 928–935). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any public comments regarding the proposed amendment. However, department staff discovered an error in Forms 14, 15, 16, and 17 of the rule.

COMMENT #1: Department staff noted that the references to 10 CSR 26-2.075 in the second paragraph of section 3 of Form 14 of the rule, in the second paragraph of section 3 of Form 15 of the rule, in the second paragraph of section 3 of Form 16 of the rule, and in the second paragraph of section 3 of Form 17 of the rule are incorrect. The correct references are to 10 CSR 26-2.070.
RESPONSE: The commission is withdrawing the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 11—Underground Storage Tanks—Financial Responsibility

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 319.114, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-11.115 Local Government Fund **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 935–937). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27,

2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 13—Underground Storage Tanks—Administrative Penalties

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.137 and 319.139, RSMo Supp. 2008, and section 644.026, RSMo 2000, the commission hereby withdraws a proposed amendment as follows:

10 CSR 20-13.080 Administrative Penalty Assessment **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2009 (34 MoReg 937). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program did not receive any comments regarding the proposed amendment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance Storage Tanks
Chapter 1—Underground Storage Tanks—Organization

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under section 536.023.3, RSMo Supp. 2008, the commission hereby withdraws a proposed rule as follows:

10 CSR 26-1.010 Organization **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 1, 2009 (34 MoReg 939). This proposed rule is withdrawn.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Hazardous Waste Program received one (1) comment regarding the proposed rule from one (1) source: Carol Eighmey, Petroleum Storage Tank Insurance Fund.

COMMENT #1: Ms. Eighmey referred the department to an alternative rule authored by Petroleum Storage Tank Insurance Fund (PSTIF) for suggested language.
RESPONSE: The commission is withdrawing this proposed rule.

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. 2008, the commission hereby withdraws a proposed rule as follows:

10 CSR 26-2.075 Risk-Based Corrective Action Process **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 1, 2009 (34 MoReg 939–955). This proposed rule is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received thirty-three (33) comments from twelve (12) sources: David Pate, Midwest Environmental Consultants; Angie Dunn, Delta Consultants; Thomas Gredell, Gredell Engineering Resources, Inc.; Caroline Ishida, Missouri Coalition for the Environment; Roger Levin, MRP Properties Company, LLC; Carol Eighmey, Petroleum Storage Tank Insurance Fund; Jessica Christiansen, Wallis Companies; Mark Burton and Ed Creadon, ATC Associates, Inc.; Atul Salhotra, Risk Assessment and Management Group; Keith Piontek, TRC; Mike Tripp; and Ron Leone, Missouri Petroleum Marketers and Convenience Store Association.

COMMENT #1: David Pate, Jessica Christiansen, Mark Burton, Ed Creadon, Mike Tripp, and Ron Leone all stated that the department's rules should include an appeals process similar to that found in the Petroleum Storage Tank Insurance Fund (PSTIF) proposed rules.
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #2: Angela Dunn stated that, with respect to the utility line evaluation requirements in section (12) of the proposed rule, the department has not demonstrated that the existing guidance is not protective of the utility corridor nor that there is a risk to water lines that are not addressed in the current risk-based corrective action (RBCA) document. Ms. Dunn further stated that, given the majority of the responsible parties for leaking underground storage tank (LUST) sites are not owners and operators along with the fact the these properties have been sold and resold several times, it will be extremely difficult and costly to determine the construction material of private water lines and gaskets. In addition, she stated that to be required to determine the construction materials of water lines and gaskets at all sites regardless of risk, regardless of their location with respect to the plume, regardless of the depth to groundwater vs. the depth of the utility, and regardless of the degree of impact, places an unnecessary cost burden on the responsible parties and the Petroleum Storage Tank Insurance Fund. She feels that, at most, this exercise should be undertaken on a case-by-case basis, when a risk is clearly documented and at a degree to warrant the cost to complete the investigation.
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #3: Thomas Gredell stated that the concept of assuming all offsite land should be considered residential without regard to historical use, current use, zoning, or planned developments is contrary to one of the basic principles that Missouri Risk-Based Corrective Action (MRBCA) was founded on. He further stated that one of the basic concepts of MRBCA, and all other risk-based corrective action programs across the country, is the idea of treating each project on a site-specific basis and using the best available information, science, engineering, technology, and cultural parameters to determine an appropriate corrective action for each specific site without the use of activity use limitations and deed restrictions. In addition, Mr. Gredell stated that if neighboring properties that are not impacted above non-residential use concentrations for all appropriate exposure pathways (both current and foreseeable future) and the "reasonably anticipated future use" of the property has been found to be non-residential, then to require the offsite property owner to accept a deed restriction

would be an injustice to both the site (owner/operator) and the off-site landowner. Finally, Mr. Gredell stated that, more than likely, the offsite landowner would not accept such a limitation to their land without reasonable compensation, a cost to Missouri businesses that is not justified and could drastically affect the potential for continued success of the MRBCA program, sites achieving no further action (NFA) status, and business/redevelopment of the potentially clean site.
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #4: Caroline Ishida stated the following: "PSTIF's proposed rule contains an appeals provision that does not exist in Department of Natural Resources' (DNR's) version of the proposed rule. The coalition does not believe that an owner/operator or any adversely affected party should be able to contest a decision of the department if it means that clean-up of the site and remediation of any of the hazardous substances will be delayed pending the appeal. There is a time-sensitive component to notifying adjacent and surrounding landowners of a hazardous chemical release and the sooner clean-up actions at a site begin, the better chance the owner/operator has of containing the flow of hazardous substances and reducing the effects to humans and the environment. It would be unacceptable for a clean-up to be delayed because an owner/operator was disputing DNR's determination of the nature of the hazardous substance release."
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #5: Roger Levin stated that, due to an apparent lack of registered geologist staff within the Storage Tank Section, it appears that many report reviews and data evaluations are being made by Missouri Department of Natural Resources (MDNR) staff that may not be technically qualified to make these evaluations.
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #6: Carol Eighmey suggested that the language contained in PSTIF proposed rule 10 CSR 26-2.075(2) be used in lieu of section (2) as proposed, as she believes it is more explicit and simpler.
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #7: Ms. Eighmey stated that section (8) of the rule only refers to petroleum chemicals of concern and asks whether the rule is intended to apply only to petroleum underground storage tanks (USTs).
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #8: Ms. Eighmey suggested deleting the following from the list of chemicals in Table I, as she believes there is no evidence these chemicals ever exist at levels such that corrective action is required: tertiary amyl methyl ether (TAME), tertiary butyl alcohol (TBA), ethyl tert butyl ether (ETBE), diisopropyl ether (DIPE), arsenic, barium, and selenium.
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #9: Ms. Eighmey indicated that PSTIF concurs with the first paragraph of section (9), but that the following paragraphs in subsection (9)(A) seem to contradict the first paragraph. Specifically, she believes the system outlined in the current rules/guidance—whereby the owner/operator is required to evaluate the current and future use of all properties impacted by or reasonably assumed to be impacted by the release, and whereby DNR is then obligated to concur with or disapprove that conclusion—works and should be retained. She recommends the department refer to PSTIF proposed rule 10 CSR 26-2.076(6), which she believes reflected the approach previously agreed to by all stakeholders, including the department.
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #10: Ms. Eighmey stated that the last word of subsection (10)(A) should be "release" not "site" because section 319.109, RSMo, requires these rules to govern the UST release, and there is no statutory authority in Chapter 319, RSMo, to impose requirements on other chemicals or pollutants which may exist at the site as a result of other activities.
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #11: Ms. Eighmey referred the department to PSTIF proposed rules for suggested alternate wording to paragraph (10)(B)1. She states that the rule does not reflect the consensus of the Stakeholder Group that one of the most reliable and effective tools for assuring that no future well will intersect an impacted groundwater zone is the DNR's own Well Construction Code. She indicates that the stakeholders, including DNR representatives who were involved in that dialogue, concluded that the existing state regulations governing well construction are one of the most effective "activity and use limitations" available; PSTIF concurs and urges the department to retain this agreed upon concept in the rules.
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #12: Ms. Eighmey stated that the rule should require the owner/operator to investigate the extent of the release, characterize the tank site and nearby properties, assess risks—including making determinations on current and reasonably anticipated future land use—and submit his/her conclusions to the department at various specified points in the process, with the department clearly authorized to concur or disagree with the owner/operator's conclusions and plans. Instead, Ms. Eighmey maintains, the proposed rules blur the lines of responsibility by repeatedly setting forth requirements then saying it is the department who makes various "determinations." She believes this will result in unnecessary delays, slowing cleanups, and will needlessly burden the DNR staff by requiring them to act as both consultant (to the owner/operator) and regulator. She concludes by strongly urging the department to focus on this issue and address it throughout the proposed rules.
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #13: Ms. Eighmey stated that the rule imposes a requirement at the end of section (12) for which there is no scientific basis and which the department previously told stakeholders would not be in the rules. She urges the department to delete the requirement.
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #14: Ms. Eighmey stated that section (15) should require identification of receptors for the "release," not the site, for the same reason cited above.
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #15: Regarding section (16), Ms. Eighmey asks the department to refer to PSTIF provided rule 10 CSR 26-2.076 as she believes it specifically sets out which exposure pathways must be assessed, whereas the proposed rule does not.
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #16: Ms. Eighmey states that some references to light non-aqueous phase liquid (LNAPL) in this section may need to be changed to "free product."
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #17: Ms. Eighmey maintains that paragraph (16)(B)5. should be deleted, as it does not reflect decisions agreed upon by all stakeholders, including DNR.
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #18: Ms. Eighmey states that subparagraph (16)(C)2.A. does not reflect decisions agreed upon by all stakeholders, including DNR, and no evidence has been presented to demonstrate that an "MOA" with the department makes a local ordinance any more reliable than when no such "MOA" exists.

RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #19: Ms. Eighmey directs the department to refer to PSTIF proposed rule 10 CSR 26-2.075(6) for alternate language in lieu of section (17).
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #20: Regarding section (18), Ms. Eighmey points out that DNR is statutorily obligated to establish corrective action standards; it is not the owner/operator's job to do that. She states that the language here is needlessly confusing, where it requires the owner/operator to "determine applicable target levels," and that, rather, the owner/operator should be required to reach conclusions on which exposure pathways are complete, then apply the standards already established by the department.
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #21: Regarding subsection (18)(B), Ms. Eighmey refers the department to PSTIF proposed rule 10 CSR 26-2.078(4)(C) for their suggestion.
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #22: Ms. Eighmey states that there is no statutory authority for the department to require or act on information about "nuisance conditions," nor is the term defined, and that section (21) should be deleted.
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #23: Ms. Eighmey states that the department should "keep the old system we have had where the consultant presents information and conclusions about the land use, about the groundwater use, and then those decisions drive the site characterization and the cleanup. That worked well in the past. We think there is no reason to get rid of it."
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #24: Jessica Christiansen stated that, with respect to reasonably anticipated future use determinations, documentation submitted by the professional consultant is no longer adequate in the proposed rules. She states that adjacent property owners must verify their properties will remain the current status for an unknown time in the future, submitting a prediction which may contradict zoning ordinances or other municipal codes (i.e., zoning does not allow for residential properties; however, an adjacent property owner is concerned over property value and states their property may indeed become condominiums).
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #25: Mark Burton and Ed Creadon stated that there currently appears to be confusion between the PSTIF and MDNR regarding the appropriate time and means to establish reasonably anticipated future land use. They state that the PSTIF proposal indicates that land use should be determined at the beginning of the RBCA process during the preparation of the site conceptual model. Mr. Burton and Mr. Creadon feel that any decisions regarding the pathway to closure for a given site should take future land use into consideration and, as such, ATC Associates support the PSTIF proposal for land use determinations.
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #26: Mr. Burton and Mr. Creadon state that many of the department's personnel are not Missouri registered geologists and are therefore not technically qualified to make certain decisions regarding tank sites.
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #27: Atul Salhotra states that, based on his conversations with regulators and responsible parties across the nation, there are no petroleum hydrocarbon sites where the risk drivers are metals. He, therefore, believes it is not necessary to analyze for metals either in soil or groundwater and that collection of such data merely adds cost without any benefit.
RESPONSE: The commission is withdrawing this proposed rule.

COMMENT #28: Keith Piontek explained that he felt that there is one loose end in the scientific underpinning of the MRBCA process—that being the failure of the process to consider advective transport of vapors from the subsurface into structures. He indicated he felt taking care of this one remaining topic prior to finalization of rules makes sense.
RESPONSE: The commission is withdrawing this proposed rule.

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. 2008, the commission hereby withdraws a proposed rule as follows:

10 CSR 26-2.076 Site Characterization and Data Requirements **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 1, 2009 (34 MoReg 956–967). This proposed rule is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received forty-seven (47) comments regarding the proposed rule from twelve (12) sources: Dave Murphy, Conservation Federation of Missouri; David Pate, Midwest Environmental Consultants; Angela Dunn, Delta Consultants; Caroline Ishida, Missouri Coalition for the Environment; Cherri Baysinger, Department of Health and Senior Services; Roger Levin, MRP Properties Company, LLC; Carol Eighmey, Petroleum Storage Tank Insurance Fund; Jessica Christiansen, Wallis Companies; Mark Burton and Ed Creadon, ATC Associates, Inc.; Atul Salhotra, Risk Assessment and Management Group; Keith Piontek, TRC; and Trent Summers, Missouri Chamber of Commerce.

COMMENT #1: David Pate, Roger Levin, Carol Eighmey, Jessica Christiansen, Mark Burton, Ed Creadon, Atul Salhotra, Keith Piontek, and Trent Summers all expressed opposition and concern regarding the requirement that delineation be to residential target levels at all sites. Several indicated that delineation to non-residential standards should be allowed when the land use of the source and adjacent properties is non-residential.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #2: Dave Murphy stated that he agrees with the department's proposal to identify the extent of contamination based on residential standards.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #3: Dave Pate indicated that the rule states that Missouri Department of Natural Resources (MDNR) will require two (2) years of monitoring for light non-aqueous phase liquid (LNAPL).

He believes that to be much more onerous than current requirements and asks how much latitude the department envisions in this regard.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #4: Angela Dunn stated that, with respect to the requirement in subsection (8)(C) regarding utility line evaluations, the department has not demonstrated that the existing guidance is not protective of the utility corridor nor that there is a risk to water lines that is not addressed in the current risk-based corrective action (RBCA) document. Ms. Dunn indicates that it will be extremely difficult and costly to determine the construction material of private water lines and gaskets and that most property owners will simply not know the construction materials of their private water lines. Further, Ms. Dunn states that, to be required to determine the construction materials of water lines and gaskets at all sites, regardless of risk, regardless of their location with respect to the plume, regardless of the depth to groundwater vs. the depth of the utility, and regardless of the degree of impact, places an unnecessary cost burden on the responsible parties and the Petroleum Storage Tank Insurance Fund (PSTIF). Ms. Dunn concludes that, at most, this exercise should be undertaken on a case-by-case basis, when a risk is clearly documented and at a degree to warrant the cost to complete the investigation.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #5: Cherri Baysinger stated that the Missouri Department of Health and Senior Services, Bureau of Environmental Epidemiology expresses strong conviction that thorough site characterization is a necessary part of any risk-based cleanup program such as proposed in these rules.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #6: Caroline Ishida stated that groundwater monitoring of an affected site and any affected adjacent and surrounding areas should be conducted to the greatest extent possible by the owner/operators, and the thoroughness of that monitoring should be enforced by the Department of Natural Resources (DNR). She indicated that the groundwater monitoring should ensure not only that the "areal extent of and concentrations for chemicals of concern are not increasing" but that the levels of contaminants are not causing health or environmental problems at the site and adjacent and surrounding areas. She points out that DNR suggests that groundwater monitoring pursuant to this section should go on for a maximum of two (2) years, but because of the longevity of the hazardous substances involved, the coalition suggests that groundwater monitoring at the expense of the owner/operator should continue until there are no detectable levels of contaminants at a concentration that would be detrimental or affect any humans or other species; that period could easily be much longer than two (2) years.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #7: Roger Levin stated that, when a reasonable projection of future land use, included as part of the site conceptual model submitted by the responsible party and approved by the MDNR, demonstrates that a site will remain nonresidential, non-residential screening levels should be applied as delineation criteria. He further stated that two (2) sets of screening and delineation values, based on established land use, should be available for use to determine whether or not a site should undergo the full RBCA process.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #8: Mr. Levin believes that, with respect to plume stability monitoring, the appropriate number of groundwater monitoring events should be determined by a review of existing data and not an arbitrary time frame. He explains that many of his sites have groundwater monitoring data going back several years and that plume stability can be established at these sites without two (2) years of additional quarterly groundwater monitoring data.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #9: Carol Eighmey stated the following: "There is no reason to depart from this tried and true approach. The PSTIF proposed rules retain the critical determinations concerning land and water use "up front," so that site characterization, risk assessment, and corrective action can be purposeful and tailored to the situation. The rules package proposed in the *Missouri Register* postpones these critical decisions to a much later point in the process, thereby wasting time and resources."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #10: Ms. Eighmey asks the department to please refer to PSTIF proposed rules 10 CSR 26-2.072 and 10 CSR 26-2.074 for her suggestions.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #11: Ms. Eighmey stated the following: "The rule should require the owner/operator to investigate the extent of the release, characterize the tank site and nearby properties, assess risks—including making determinations on current and reasonably anticipated future land use—and submit his/her conclusions to the department at various specified points in the process, with the department clearly authorized to concur or disagree with the owner/operator's conclusions and plans. Instead, the proposed rules blur the lines of responsibility by repeatedly setting forth requirements, then saying it is the department who makes various "determinations." This will result in unnecessary delays, slowing cleanups, and will needlessly burden the DNR staff by requiring them to act as both consultant (to the owner/operator) and regulator. We strongly urge you to focus on this issue and address it throughout the proposed rules."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #12: Ms. Eighmey indicated that the rule as proposed appears to apply only to petroleum USTs and recommends that the department refer to PSTIF proposed rule 10 CSR 20-2.077 for her suggestions on how this new rule should be written.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #13: Ms. Eighmey stated the following: "No evidence has been provided to demonstrate that the new requirement proposed in section (1) is necessary. In fact, there is ample evidence to demonstrate that requiring owners/operators to submit work plans for site characterization is inefficient, is burdensome on DNR staff, accomplishes little, slows cleanups, and is unnecessary."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #14: Ms. Eighmey stated that section (4) is vague and unnecessary.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #15: Ms. Eighmey stated that parts of sections (5) and (6) appear to relate only to old, legacy pollution, and would not apply to new releases. She suggests that the rule should distinguish which requirements apply to old releases and which apply to new releases.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #16: Ms. Eighmey stated that section (7) requires owners/operators to use "analytical methods specified by the department." She suggests including those methods in the rule itself so the requirements will be clear and will not be subject to change without adequate public notice and opportunity for comment.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #17: Ms. Eighmey suggested that, in subsection (8)(A), the scale on seven and one-half (7.5)-minute United States

Geological Survey (USGS) maps is insufficient to provide the detail required in this section.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #18: Ms. Eighmey suggested eliminating or revising subsection (8)(B), as she believes much of the data required is not used in the risk assessment process and is therefore unnecessary; at a minimum, the last sentence should be deleted.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #19: Ms. Eighmey stated that subsection (8)(C) imposes a new requirement for which no scientific need has been demonstrated and which the department previously told stakeholders would not be in the rules; she urges the department to delete the last sentence of this subsection.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #20: Ms. Eighmey stated that subsections (10)(C) and (F) are vague; they require the owner/operator to collect whatever number of samples DNR might require. She refers the department to comment #5 in her cover letter.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #21: Ms. Eighmey stated the following: "Regarding section (11), we recommend elimination of "soil types" from Tier 1, since soil type is a site-specific feature more appropriately used as part of a Tier 2 assessment. We appreciate the department's efforts to allow for more realistic standards in Tier 1, but it has not worked well and creates a need to gather site-specific data for Tier 1, thereby negating the advantages of Tier 1 as "look-up numbers" that do not require field work."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #22: Ms. Eighmey stated that she believes the governing statute requires the delineation requirements in section (14) to be based on land use and that this was agreed to by all stakeholders, including DNR.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #23: Ms. Eighmey stated the following: "Sections (15), (16), and (17) are vague and unspecific; they require the owner/operator to collect whatever number of samples DNR might require. This is an example of the problem listed in item #5 of our cover letter. A better approach is to write the rule so that the owner/operator (and his consultant) is obligated to collect a sufficient number of samples to support and justify the conclusions reached then specify that the DNR has authority to agree or disagree with those conclusions. DNR should not try to be the owner/operator's consultant."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #24: Ms. Eighmey stated that only the "free product" part of LNAPL presents acute risks and that section (18) seems to confuse free product and LNAPL.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #25: Ms. Eighmey indicated that subsection (l8)(D) contains a "one-size-fits-all" requirement for two (2) years of LNAPL monitoring which she believes is unnecessary in some circumstances and insufficient in others. Instead, she believes the rules should spell out a standard and require the owner/operator (and his consultant) to demonstrate they have met it.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #26: Ms. Eighmey asked the department to refer to PSTIF proposed rule 10 CSR 26-2.077(14) for suggested language in lieu of section (19).
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #27: Ms. Eighmey stated that section (20) should refer to soil gas sampling, "if performed. . .
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #28: Ms. Eighmey stated the following: "Subsection (20)(B) leaves the door open for the department to require something without any evidence it is necessary; no evidence has been presented that owner/operators have refused to conduct vapor sampling where the circumstances called for it, and other rules adequately govern such emergency actions. This subsection does not belong in this rule."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #29: Ms. Eighmey comments: "Paragraph (22)(A)1. requires owners/operators to "adequately document . . . in a manner acceptable to the department . . ." without defining what the department deems adequate or acceptable. This makes the rule vague and creates uncertainty on how to meet it. We suggest the rule simply require the owner/operator to "document" efforts to obtain access and provide that documentation to the department. That has worked fine in the past. The department can always require the owner/operator to do more, if it believes efforts to obtain access have not been sufficient."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #30: Ms. Eighmey testified as follows: "Keep the old system we have had where the consultant presents information and conclusions about the land use and the groundwater use, then those decisions drive the site characterization and the cleanup. That worked well in the past. We think there is no reason to get rid of it."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #31: Jessica Christiansen stated the following: "Documentation submitted by the professional consultant is no longer adequate in the proposed rules. Adjacent property owners must verify their properties will remain the current status for an unknown time in the future, submitting a prediction which may contradict zoning ordinances or other municipal codes (i.e., zoning does not allow for residential properties; however, an adjacent property owner is concerned over property value and states their property may indeed become condominiums)."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #32: Ms. Christiansen stated that the proposed process to quantify plume stability is already creating confusion, as fluctuating chemical concentrations are perceived by DNR staff to be an unstable plume, even if the levels observed are well below the target levels and that defaulting to conservative assumptions is not risk-based corrective action.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #33: Ms. Christiansen testified as follows: "We have one (1) location in the city of St. Louis—release date of 1998—that is currently stuck on delineation criteria. This is because—again, this is an old site, so it has been through several life cycles of cleanup standards and RBCA guidance documents—after many years of working on this project, the DNR staff is requesting facets of their proposed rule, the main thing being delineation. They would like the groundwater delineated to residential standards offsite whenever Reasonable Anticipated Future Use (RAFU) of the property as long ago and has since been determined to be nonresidential. It is very commercial. In fact, there is a four (4)-lane highway on one (1) side and all commercial all the way around. So, the moral of that story is the location is going to require more groundwater monitoring. We already know that. It is contaminated. It does need more work, but we cannot get past the delineation default to residential. That does not make sense."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #34: Mark Burton and Ed Creadon stated the following: "In some cases, the Missouri Department of Natural Resources (MDNR) has indicated that the domestic use of groundwater pathway should be open at sites where, based on the weight of evidence, groundwater will likely never be used as a source of drinking water at the site. For example, ATC is currently performing delineation in an industrial portion of North Kansas City, Missouri. A public water supply provides water for the entire area, and no drinking water wells are located in the vicinity. Numerous sources of groundwater contamination can be found near the site, including a free product mineral spirits plume adjacent to the site. Based on aquifer yield alone, the MDNR requires the domestic use pathway to remain open. The use of residential standards in this setting is overly conservative."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #35: Mr. Burton and Mr. Creadon stated the following: "Although plume stability evaluations can only be made with a sufficient amount of data, the appropriate number of groundwater monitoring events should be determined by a review of existing data. Many of our sites have groundwater monitoring data going back several years. In some cases, plume stability can be established at these sites without two (2) years of additional quarterly groundwater monitoring data. We have successfully established plume stability in accordance with the Missouri Risk-Based Corrective Action (MRBCA) Process for Petroleum Storage Tanks Determining Plume Stability Guidance at sites with less than eight (8) consecutive quarters of groundwater monitoring."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #36: Atul Salhotra stated the following: "Plume stability can be evaluated using a variety of approaches, including simply plotting concentration vs. time plots, plotting plume maps, or performing statistical analysis. All these methods require multiple years of groundwater concentration data; however, it is not necessary to have quarterly data. In fact, in many cases groundwater velocity is so low that quarterly concentrations may not be independent. Therefore, at most sites quarterly sampling is not necessary. This is also consistent with the discussions during the stakeholders' group meetings. Thus MDNR's minimum requirement of two (2) years of quarterly data is not necessary at every site."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #37: Keith Piontek testified about his concerns regarding the rule provisions related to LNAPL characterization and recovery. He indicated that the rules could be interpreted to mean that owners and operators must recover both mobile and immobile LNAPL. He recommended that the department stick with the Environmental Protection Agency's (EPA's) definition of free product.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #38: Mr. Piontek testified as follows: "Let me just elaborate a little bit on the way that PSTIF rule is written. It would require that reasonably anticipated future use to be determined for all properties affected or potentially affected by the chemicals associated with the release. And so what that means, if you have got a gas station site, that is obviously commercial. If an adjacent property was residential, you would delineate to residential. If the adjacent land use was commercial or nonresidential, you would delineate to the nonresidential, so it is a site-specific determination."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #39: Mr. Piontek testified that the delineation criteria in the subject rule should be the same as provided for in subsection (9)(C) of department rule 10 CSR 25-18.010, believing that language clearly ties delineation requirements to risk in the exposure pathway analysis.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #40: Mr. Piontek testified that, in the Tier 1 process that is proposed by PSTIF, the land use and groundwater use determinations are moved up front in the process, and he thinks that largely reflects the objective of keeping what was working in the 1996 guidance, the old matrix approach.
RESPONSE: The commission is withdrawing the proposed rule.

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 section 319.111, RSMo 2000, and sections 319.109 and 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed rule as follows:

10 CSR 26-2.077 Risk-Based Target Levels **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 1, 2009 (34 MoReg 968–977). This proposed rule is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received seven (7) comments regarding the proposed rule from three (3) sources: Caroline Ishida, Missouri Coalition for the Environment; Carol Eighmey, Petroleum Storage Tank Insurance Fund; and Keith Piontek, TRC.

COMMENT #1: Caroline Ishida stated the following: "A provision regarding long-term stewardship is essential to the Risk-Based Corrective Action Rules for Tank Sites. It maintains the responsibility of an owner/operator over time and recognizes that just because an owner/operator may no longer be on-site or the release of hazardous substances may have occurred a significant length of time ago does not mean that a site is cleaned to a level that is protective of human health and the environment. Because most hazardous chemicals that leak into soil, surrounding bodies of water, and groundwater can linger for decades, owner/operators must be held responsible for the condition of the site as long as those hazardous substances remain. A rule adopted without this provision would be incomplete and inadequate to protect surrounding communities, landowners, and the environment. Additionally, the coalition believes that any long-term stewardship provision in the rule should be even stricter than the one proposed by DNR, because terms like "elevated risk" and "acceptable risk" indicate that there is a level of contamination that is acceptable, which should not be the case."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #2: Carol Eighmey objected to the department's definition of "Default Target Level" because it refers to another document "that went through no public comment process and which, as of this date, we do not have a copy of and are unable to locate on your web site." Ms. Eighmey stated that corrective action standards are a fundamental part of the requirements and should appear in the rules themselves and that the department should refer to the Petroleum Storage Tank Insurance Fund (PSTIF) proposed rule for suggested language.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #3: Ms. Eighmey stated that the definition proposed for "risk-based target level" is vague and "references a document that we

do not have and cannot find on the department's web site." She recommends that the department use the PSTIF proposed definition for "risk-based target level," including reference to statute.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #4: Ms. Eighmey stated that section (2) of 10 CSR 26-2.072 refers to standards "established by the department," but those standards do not appear anywhere in the proposed rules. She believes this leaves the rule vague and unspecific and recommends that the standards should be in the rules themselves.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #5: Ms. Eighmey asked the department to refer to PSTIF proposed rule 10 CSR 26-2.078 for suggestions. Also, she stated that section (9) requires the owner/operator to comply with Tier 1 standards that are not specified. She believes a better approach, since Tier 1 standards are conservative and intended to apply to any property, is to put the Tier 1 standards into the rule.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #6: Ms. Eighmey testified that the department should keep the old approach of conservative action levels—conservative, easy walk-away numbers that fit the site and fit the circumstances.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #7: Keith Piontek testified as follows: "Another key difference between the two (2) processes is how the Tier 1 risk assessment is performed. Under the proposed DNR rule, there is this whole set of lookup values, the risk-based target levels that are dependent on soil type. In the proposed PSTIF rule, that is eliminated from Tier 1. It is deferred to Tier 2. It results in greater simplicity. There is more consistency with the American Society for Testing and Materials (ASTM) risk-based corrective action (RBCA) standard, and I believe it also reflects some of the experience we have gained through implementation of the current guidance. That is an element of the Tier 1 process that tends to gum up the works."
RESPONSE: The commission is withdrawing the proposed rule.

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. 2008, the commission hereby withdraws a proposed rule as follows:

10 CSR 26-2.078 Tiered Risk Assessment Process **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 1, 2009 (34 MoReg 978-990). This proposed rule is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received five (5) comments regarding the proposed rule from two (2) sources: Carol Eighmey, Petroleum Storage Tank Insurance Fund, and Atul Salhotra, Risk Assessment and Management Group. The department also provided comments regarding proposed revisions of this rule based on comments made regarding other rules.

COMMENT #1: Carol Eighmey referred the department to Petroleum Storage Tank Insurance Fund (PSTIF) proposed rule 10 CSR 26-2.075(6) for alternate language in lieu of section (17).
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #2: Ms. Eighmey stated that much of the rule is redundant with other rules; e.g., subsections (2)(A)–(C) and initial language of section (3).
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #3: Ms. Eighmey stated that paragraph (2)(G)1. seems to usurp the owner/operator's right and proper role to decide how best to meet the department's standards and requirements. She stated that Tier 1 and Tier 2 standards are equally protective of human health and environment and there is, therefore, no basis for the department to be the party who decides whether to do a Tier 2 risk assessment; rather, the decision is properly made by the owner/operator, based on his/her business and financial considerations.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #4: Ms. Eighmey raised the same objection to section (3) relative to who decides whether a Tier 2 assessment is done.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #5: Atul Salhotra stated the following: "It is not necessary to perform the risk-based corrective action (RBCA) tiered evaluation at all sites in a sequential manner. For example, if, in the professional judgment of the owner/operator and/or their consultant, a site requires a Tier 2 evaluation because i) the site concentrations exceed Tier 1 levels or ii) the site conditions vary significantly from Tier 1 assumptions, then the owner/operator may choose to proceed directly to Tier 2 evaluations. It is not necessary to require that Tier 1 be conducted at every site because all tiers are equally protective."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #6: In response to comments addressed in other Orders of Rulemaking, the department proposes to include the default target levels and the Tier 1 risk-based target levels in rule. References to the target levels are warranted in proposed rule 10 CSR 26-2.078.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #7: In comments pertaining to proposed rule 10 CSR 26-2.079, Carol Eighmey states that the term "no further remedial action" is not defined and recommends that the department use the phrase "no further corrective action" instead.
RESPONSE: The commission is withdrawing the proposed rule.

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 319.019 and 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed rule as follows:

10 CSR 26-2.079 Corrective Action Plan **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 1, 2009 (34 MoReg 991–1003). This proposed rule is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received twenty-six (26) comments regarding the proposed rule from nine (9) sources: David Pate, Midwest Environmental Consultants; Angela Dunn, Delta Consultants; Caroline Ishida, Missouri Coalition for the Environment; Carol Eighmey, Petroleum Storage Tank Insurance Fund; Jessica Christiansen, Wallis Companies; Mark Jordan, Wallis Companies; Keith Piontek, TRC; Mike Tripp; and Tracy Barth, MFA Oil Company.

COMMENT #1: David Pate stated that he believed the requirement for an activity and use limitation on a property after free product has been addressed but concentrations are above residential-type cleanup levels to be excessive and that more latitude is needed.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #2: Angela Dunn cited the requirements of subsection 10 CSR 26-2.079(2)(D) and paragraph 10 CSR 26-2.079(3)(B)1. and the following: "The risk-based corrective action (RBCA) process is a function of current and future land use, site-specific conditions, and risk. The [cited rule requirements] do not utilize the RBCA process and, instead, require more stringent and conservative requirements. It has not been demonstrated why the RBCA process is not effective at mitigating risk at non-residential properties with a preponderance of evidence (such as location, zoning, historical usage, surrounding property usage) indicating the property will remain non-residential. Essentially, the proposed rule does not allow for cleanup of non-residential properties to non-residential target levels unless the property is a retail gasoline station."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #3: Ms. Dunn stated the following: "Furthermore, the proposed rule states that adjacent non-residential properties must be remediated to residential cleanup levels regardless of the preponderance of evidence of future use unless long-term stewardship measures are undertaken. Again, the RBCA process of cleanup based on land use, site-specific conditions, and risk is not utilized. Long-term stewardship measures as described in the proposed rule may devalue properties, impede redevelopment (especially in blighted areas), and may increase the potential for third party legal claims. It has not been demonstrated how the current RBCA guidance which allows for cleanup of non-residential properties to non-residential target levels has not been protective of human health or the environment."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #4: Caroline Ishida, with respect to 10 CSR 26-2.079, stated the following: "This section of the rule addresses Corrective Action as it pertains to the owner/operator. The Petroleum Storage Tank Insurance Fund (PSTIF) suggests that contamination notice requirements at a site depend on whether adjacent property owners are residential or not. PSTIF blatantly states that if the levels of contaminants migrating off a site do not exceed 'non-residential standards,' which are less stringent than residential standards, notice to surrounding parties and corrective action are not necessarily required. This incorrectly assumes that an area that is currently assessed by the owner/operator to be nonresidential (which in itself is a faulted system because it allows the owner/operator, with an incentive to classify as many surrounding areas as 'non-residential' due to the less-stringent nature of the requirements, the ability to do so) will never be residential. An area that may not have residents in it at the moment of contamination may have residents in the future, or the area may have parties that are affected by the contaminants even if the area is not residential. The final rule should contain notice and corrective action requirements that are as stringent as possible and include all adjacent property owners (residential or not) that could be at risk from the release."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #5: Carol Eighmey stated the following: "10 CSR 26-2.074 requires 'initial light non-aqueous phase liquid (LNAPL) removal' to continue until DNR approves 'a work plan for LNAPL removal.' This makes no sense. If the idea is to require the owner/operator to continue doing something until Department of Natural Resources (DNR) says he can stop, then the rule must provide an 'out' for owners/operators who do not wish to waste money doing something that is pointless while waiting ninety to one hundred eighty (90–180) days for DNR to review and respond to their report and conclusions."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #6: Ms. Eighmey stated the following: "We note and appreciate that you propose to retain the terminology 'corrective action' and 'corrective action plan' in this rule. That said, we suggest in sections (1) and (4) corrective action be required to 'address' or 'mitigate' 'unacceptable risks. . .' rather than 'manage risks. . .'"
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #7: Ms. Eighmey referred the department to PSTIF proposed rule 10 CSR 26-2.079 for her suggestions. She further stated that the rule as proposed in the May 1 *Missouri Register* is wholly unacceptable and unjustified; the comments listed below only touch on some of the major concerns. She stated that section (2) requires corrective action at all properties to meet a residential standard and that she feels this does not comport with the authorizing statute at 319.109, RSMo.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #8: Ms. Eighmey stated that section (3) essentially treats all properties adjacent to tank sites as residential properties and that this does not meet the requirements of the authorizing statute.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #9: Ms. Eighmey stated that section (3) also requires the owner/operator to obtain "approval of the owner of the adjacent or nearby property. . ." for "implementation of long-term stewardship measures. . .". She believes this is unrealistic and needlessly expensive and no evidence has been presented demonstrating it is necessary. She directed the department to her comments on rule 10 CSR 26-2.081.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #10: Ms. Eighmey stated that section (4) refers to the "estimation of risk" and that she is uncertain what that means in the context of these rules. She suggests that "assessment of risk" is a better phrase.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #11: Ms. Eighmey stated that subparagraph (4)(A)1.C. refers to chemicals of concern (COC) concentrations being above applicable target levels; however, target levels are designed to be compared to representative concentrations of COCs. She suggests the language needs to be clearer on this point.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #12: Ms. Eighmey stated the following: "We concur that monitored natural attenuation can be, in some cases, an effective action, but question whether it 'reduces concentrations' or 'contains the groundwater solute plume,' as indicated in paragraph (4)(B)2. She suggested alternate wording.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #13: Ms. Eighmey stated the following: "In section (4), we urge you to incorporate the definition and use of the term 'activity and use limitations,' as agreed by the stakeholders, including DNR, in lieu of the term, 'Long-term stewardship.'"
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #14: Ms. Eighmey stated the following: "Section (5), as written, will result in owners/operators—and, therefore, the PSTIF incurring unnecessary costs; further, no evidence has been presented to demonstrate that owners/operators 'stop' free product recovery too soon and thereby endanger public health or the environment. Without such evidence, there is no basis for requiring such actions to continue until the department says the owner/operator can stop them. In addition, when it often takes six (6) months or more for the department to respond to incoming mail, costs incurred while waiting for the department's response can be significant."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #15: Ms. Eighmey stated the following: "In addition, the rule as written is aimed at 'recovery' of LNAPL; a more sound scientific approach is to retain the current 'free product recovery rule' to address the initial, immediate, and urgent actions that must be taken when a new release occurs, then address the immobile portion of LNAPL as part of the overall risk assessment and corrective action process."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #16: Ms. Eighmey stated that subsection (5)(C) is redundant with other rules and does not comport with the authorizing statute. She stated, in addition, LNAPL that poses a risk must be addressed in the corrective action plan submitted by the owner/operator.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #17: Ms. Eighmey stated that there is no statutory basis for requiring LNAPL removal beyond that necessary to address risks.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #18: Ms. Eighmey stated that section (7) refers to requests for a determination of "no further remedial action. . ." and that the phrase is not defined in the rules and does not appear in statute. She refers the department to her comments on 10 CSR 26-2.082.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #19: Ms. Eighmey stated the following: "Subsection (7)(B), as proposed, is absurd and must surely not be what is intended. If an owner/operator prepares and submits a corrective action plan, DNR approves it, the owner/operator implements it, and it achieves the objectives it was designed to achieve, why would the owner/operator be required to continue doing anything while he waits for DNR to review and concur with the conclusions contained in his final report?"
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #20: Jessica Christiansen stated the following: "Closely linked to the reasonable anticipated future use (RAFU) determination, adjacent property owners should absolutely be made aware of any potential contamination; however, approving what levels of chemicals are acceptable to remain should not be their ultimate decision. Rather, the DNR should make the determination based upon information provided by the consultant and the risk to human health and the environment posed. There is already a public participation method that works, with the degree of public involvement varying with the intensity of contamination."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #21: Mark Jordan stated the following: "Within the proposed rule are several provisions related to public notification as well as involvement by affected property owners that were not the source of the contamination. As I read it, the rule provides for a choice by an affected property owner to either agree to Activity and Use Limitations (AULs) and Long-Term Stewardship (LTS), or request their property be remediated to a Residential Target level. The only way that I believe an affected owner would agree to any AUL or LTS provisions is if they are compensated for it. Without compensation, they would simply request that their property be remediated to a higher standard. Who pays for this, and is this really risk-based corrective action? While there may be legitimate issues regarding property damage claims from affected property owners, I do not believe that it is within the scope of the proposed rule. In other words, I do not think the DNR has the authority to state to Party B that Party A 'contaminated your property; do you want to accept durable AULs and LTS provisions, or do you want Party A to remediate it to a higher standard?' I do think the DNR has the obligation to make a determination as to what is a safe level of contamination given reasonable and probable uses for affected properties."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #22: Keith Piontek stated the following with regard to the department's proposed requirements regarding light non-aqueous phase liquid recovery: "I will just briefly point out that that requirement flows down from federal regulations that require owners and operators to remove free product to the maximum extent practical, and there is associated Environmental Protection Agency (EPA) guidance that makes it clear that this free product is in reference to a separate phase—hydrocarbons—that is comprised of two (2) components. There is a component that can flow through the subsurface and there is a component that can get trapped in the soil and cannot migrate. The EPA rule is in reference to that part that can flow through the soil. DNR went with that alternate definition that includes both components, the immobile and the mobile, and the wording in the rule could be construed by applying the removal requirements to both phases. That would be something that would dramatically increase the scope and cost of the corrective action required. Now, from listening to Tim today, I do not think that was the intent and it is something that is not really clear. I guess the point I would make is that I believe in the alternate rule. We have stuck with the definition that is consistent with the EPA regulation. I think the intent of that removal requirement is clear. I also think it achieves the objectives Tim had where you have to consider both components in site characterization."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #23: Mr. Piontek stated that there are differences between the department's proposed rules and the PSTIF proposed rules with respect to the corrective action plan. Mr. Piontek stated that he thinks the proposed PSTIF rule simplifies language on conditions triggering a corrective action plan.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #24: Mr. Piontek stated the following: "There is also an attempt to correct what I perceive as a misapplication of something that came out of the stakeholder process. In the proposed DNR rule, there is a condition for NFA which consisted . . . you cannot have any locations on the site where the concentrations of chemicals are ten (10) times a representative concentration. It is not important that you understand the details of that, but I think it is important to recognize that during the stakeholder process the discussion surrounding that ten (10) times representative concentration topic, that was intended to be a test. You had to examine your data to find these conditions where the concentrations were ten (10) times the standard, and that would be a trigger for looking at the appropriateness of hotspot removal. I think in practice that is how it is used by DNR, but it would be much clearer, it would be more transparent to use this condition as a trigger for looking at the appropriateness of hotspot removal than as describing it as a black-and-white standard that must be met for no further action."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #25: Mike Tripp stated, with respect to requirements in proposed rule 10 CSR 26-2.079, the following: "This kind of goes back to the comments you have heard already, and that is: instead of

moving to a site-specific approach . . . and I think the comment that I heard during the remarks this morning was the question, How much contamination can we safely leave? That is the paradigm that DNR has adopted. I think their answer to that is the residential standard, and I think that is a theme that you are going to see through the three (3) areas that I address today."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #26: Tracy Barth stated the following: "According to DNR's proposed rules, they have selectively disregarded some of our weight of evidence arguments, for example, zoning and local ordinances, with regard to establishing current and reasonably anticipated future use of offsite and on-site property. Ideally, this information is necessary to establish a site's cleanup objectives whereby residential property would be cleaned up to a stricter standard than a nonresidential property. You would expect to clean up a residential property to stricter standards than you would, possibly, a cornfield. Instead, DNR's proposed rules will require us to default to residential standards for all affected properties regardless of their current and reasonably anticipated future use."
RESPONSE: The commission is withdrawing the proposed rule.

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Division 26—Petroleum and Hazardous Substance Storage Tanks
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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.109 and 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed rule as follows:

10 CSR 26-2.080 Public Participation and Notice **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 1, 2009 (34 MoReg 1004–1008). This proposed rule is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received fourteen (14) comments regarding the proposed rule from eight (8) sources: Dave Murphy, Conservation Federation of Missouri; Caroline Ishida, Missouri Coalition for the Environment; Roger Levin, MRP Properties Company, LLC; Carol Eighmey, Petroleum Storage Tank Insurance Fund; Jessica Christiansen, Wallis Companies; Mark Burton and Ed Creadon, ATC Associates, Inc.; Atul Salhotra, Risk Assessment and Management Group; and Mike Tripp.

COMMENT #1: Dave Murphy stated that neighbors with property affected by contamination from the tank site should be notified of the contamination and proposed cleanup solutions.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #2: Caroline Ishida, in reference to that portion of the rule addressing Corrective Action, stated the following: "Petroleum Storage Tank Insurance Fund (PSTIF) suggests that contamination notice requirements at a site depend on whether adjacent property owners are residential or not. PSTIF blatantly states that if the levels of contaminants migrating off a site do not exceed 'non-residential standards,' which are less stringent than residential standards, notice to surrounding parties and corrective action are not necessarily required. This incorrectly assumes that an area that is currently assessed by the owner/operator to be nonresidential (which in itself is a faulted system because it allows the owner/operator, with an incentive to classify as many surrounding areas as 'non-residential' due to the less-stringent nature of the requirements, the ability to do so) will never be residential. An area that may not have residents in it at the moment of contamination may have residents in the future, or the area may have parties that are affected by the contaminants even if the area is not residential. The final rule should contain notice and corrective action requirements that are as stringent as possible and include all adjacent property owners (residential or not) that could be at risk from the release."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #3: Ms. Ishida stated the following: "Department of Natural Resources' (DNR's) proposed rule expands on the current version by allowing owner/operators to accept public participation responsibilities instead of DNR. PSTIF's proposed version of the rule fails to include the specific procedures and reporting requirements that make the owner/operators accountable to DNR for providing adequate public notice. The coalition is wary of any owner/operator being given the opportunity for engaging public participation in lieu of DNR because the owner/operators do not have an incentive to foster the most inclusive public participation, and, therefore, the coalition believes that DNR should remain responsible for public participation or that there be extremely strict procedures and reporting requirements in place that document how notice was given to the public and clearly show that the owner/operator made attempts to generate as much public participation as possible."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #4: Roger Levin stated the following: "The adjacent property owners potentially impacted by a release are currently notified when plume delineation requires access to these adjacent properties. Regardless of the delineation criteria, adequate notification is achieved while obtaining this access. Any property not impacted by the release at levels exceeding the standards applicable to that property should not be involved in the notification process. Notification to unaffected parties will almost certainly generate confusion with respect to potential property damages and the technical nature of petroleum hydrocarbons release and cleanup activities. As such, the potential for confusion and undue concern would be minimized by notifying only the affected adjacent property owners."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #5: Carol Eighmey stated the following: "We object to this entire rule and request that, instead of a brand-new rule, the commission retain the current public participation rule. No evidence has been presented to demonstrate that the current rule does not work and needs dramatic overhaul. See PSTIF proposed rule 10 CSR 26-2.080 for one (1) minor suggested amendment to make the current rule reflect current practices."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #6: Ms. Eighmey stated that the department should keep the old public participation rule.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #7: Jessica Christiansen stated the following: "Closely linked to the reasonable anticipated future use (RAFU) determination, adjacent property owners should absolutely be made aware of any potential contamination; however, approving what levels of chemicals are acceptable to remain should not be their ultimate decision. Rather, DNR should make the determination based upon information provided by the consultant and the risk to human health and the environment posed. There is already a public participation method that works, with the degree of public involvement varying with the intensity of contamination."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #8: Ms. Christiansen stated that she saw no need for the department to expand the public participation rule and that the current rule works "fairly well." She also stated that the current property access process provided for in the 2004 guidance is acceptable as is.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #9: Mark Burton and Ed Creadon stated the following: "The adjacent property owners potentially impacted by a release are currently notified when plume delineation requires access to these adjacent properties. Regardless of the delineation criteria, adequate notification is achieved while obtaining this access. Any property not impacted by the release at levels exceeding the standards applicable to that property should not be involved in the notification process. Notification to unaffected parties will almost certainly generate confusion with respect to potential property damages and the technical nature of petroleum hydrocarbons release and cleanup activities. As such, the potential for confusion and undue concern would be minimized by notifying only the affected adjacent property owners."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #10: Mr. Burton testified that he believed that any affected properties that are already notified during the delineation criteria by property access are really the only ones that need to be notified and that notifying adjacent owners not affected—through the proposed residential delineation requirements—would result in confusion with respect to potential property damage and undue concern.
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #11: Atul Salhotra stated that "adjacent property owners must be notified if the off-site plume migration is potentially likely to cause unacceptable human health risk. Notification in the absence of potentially unacceptable human health risk may result in costly litigation with minimum benefit to society."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #12: Mike Tripp testified as follows: "I really address just three (3) issues with regard to the proposed rules. The first one is the amendment of the Public Participation Rule. You already have a regulation, 10 CSR 20-10.067, that actually mirrors the Environmental Protection Agency (EPA) regulation found at 40 CFR 280.67, and that currently require notice to those members of the public directly affected by the release and a proposed corrective action plan. That is already in place. That is already been working. I am unaware of what defect there is in that rule that is being addressed by some of the changes in the proposed rule. What DNR is doing is expanding the scope of the public participation in a new rule to require that public participation, when residential cleanup standards are exceeded, even where the site-specific risk-based standards appropriate to the property are for nonresidential land use."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #13: Mr. Tripp testified as follows: "Now, the PSTIF proposed rule—which only requires a corrective action plan when the applicable cleanup standards are exceeded, meaning the site-specific standards—really, I think, uses the approach that we have been using up to this point. Well, what the effect of the proposed rule change is is that we are going to increase that requirement for public participation, and here is the problem. Public participation is good. Let me say that, first of all, but, like anything, there is a balance, and DNR recognizes the problem or the potential harm of this increased requirement for public participation. In their response they said, 'We anticipate that some adjacent owners will demand that their property be cleaned up to residential standard regardless of what standard the department determines to be appropriate to protect human health and the environment.' But they do generalize . . . I am not sure on what basis, but DNR's position is that that is not going to be any different than it is now. I guess I disagree with that proposal."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #14: Mr. Tripp testified as follows: "Essentially what the net effect of that is is that we are going to be faced as property owners with owners/operators conducting these cleanups with an added pressure to clean up to residential standard, whether or not that is scientifically or site-specifically appropriate and, in fact and whether or not DNR has agreed that that is the case."
RESPONSE: The commission is withdrawing the proposed rule.

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ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission (commission) under sections 319.109 and 319.137, RSMo Supp. 2008, the commission hereby withdraws a proposed rule as follows:

10 CSR 26-2.081 Long-Term Stewardship **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 1, 2009 (34 MoReg 1009–1019). This proposed rule is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received thirty-three (33) comments regarding the proposed rule from fifteen (15) sources: Dave Murphy, Conservation Federation of Missouri; David Pate, Midwest Environmental Consultants; Angela Dunn, Delta Consultants; Cherri Baysinger, Department of Health and Senior Services; Caroline Ishida, Missouri Coalition for the Environment; Thomas Gredell, Gredell Engineering Resources, Inc.; Roger Levin, MRP Properties Company, LLC; Carol Eighmey, Petroleum Storage Tank Insurance Fund; Jessica Christiansen, Wallis Companies; Mark Jordan, Wallis Companies; Mark Burton and Ed Creadon, ATC Associates, Inc.; Mike Tripp; Tracy Barth, MFA Oil Company; Ron Leone, Missouri Petroleum Marketers and Convenience Store Association; and Trent Summers, Missouri Chamber of Commerce.

COMMENT #1: Dave Murphy stated the following: "Any risk-based cleanup process, which leaves some level of contamination on site, should not be implemented without some mechanism of a long-term stewardship effort. Potential, future property owners should be given the opportunity to know fully the concerns of the property."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #2: Dave Pate stated the following: "Long-Term Stewardship (LTS). The proposed rule is not clear on how this will be monitored or enforced long term. Do you see the department requiring money in escrow, or something similar, to periodically check or monitor that any restriction imposed by a deed notice or restrictive covenant are being honored? MFA, one (1) of our main clients, has expressed some concerns about potential long term costs associated with LTS, and whether such costs will be Petroleum Storage Tank Insurance Fund (PSTIF)-eligible, or a long-term cost MFA will have to bear."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #3: Mr. Pate stated the following: "[The department's] rule states that the Missouri Department of Natural Resources

(MDNR) will require two (2) years of monitoring for light non-aqueous phase liquid (LNAPL), and require some type of LTS if residual impacts exceed residential standards. That seems to be much more onerous than current requirements. How much latitude do you envision on LNAPL? This could be a real sticking point on many sites, particularly on non-residential sites where there is no real chance that the usage will change. We can get closure on sites now that are non-residential, without using LTS. Why make this more difficult than it needs to be?"
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #4: Angela Dunn stated the following: "The risk-based corrective action (RBCA) process is a function of current and future land use, site-specific conditions, and risk. The above items do not utilize the RBCA process and, instead, require more stringent and conservative requirements. It has not been demonstrated why the RBCA process is not effective at mitigating risk at non-residential properties with a preponderance of evidence (such as location, zoning, historical usage, surrounding property usage) indicating the property will remain non-residential. Essentially, the proposed rule does not allow for cleanup of non-residential properties to non-residential target levels unless the property is a retail gasoline station."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #5: Ms. Dunn also stated the following: "MDNR's No Further Remedial Action (NFRA) letters are currently based on current and reasonably anticipated future land use. The NFRA letters for non-residential sites state the determination is conditioned on the stipulated non-residential future use of the land. The NFRA letter also states, per 10 CSR 20-10.068(3)(B): "*if subsequent information becomes available to indicate that contamination may be present at the site at levels which may threaten human health or the environment, the department may require additional investigation or site characterization and/or corrective action*." It is Delta's opinion the language in the NFRA letters is very clear that it is based on current and future land use. The NFRA designation will not be maintained if non-residential land use changes to residential land use. It is our opinion that the NFRA letters themselves are protective of changes in future land use. It is suggested the NFRA letters be posted to the affected property's deed for future awareness in lieu of requiring the implementation of long-term stewardship measures."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #6: Cherri Baysinger stated the following: ". . . the Missouri Department of Health and Senior Services, Bureau of Environmental Epidemiology expresses our strong conviction that thorough site characterization and long-term stewardship plans are a necessary part of any risk-based cleanup program such as proposed in these rules. We know that the Department of Natural Resources shares this understanding and we support and encourage you in advancing these principles through this rulemaking process."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #7: Thomas Gredell expressed concerns with the department's rule provisions related to reasonably anticipated future use determinations. He also stated that long-term stewardship requirements should not be required. Specifically, he stated, "One of the basic concepts of Missouri Risk-Based Corrective Action (MRBCA), and all other risk-based corrective action programs across the country, is the idea of treating each project on a site-specific basis and using the best available information, science, engineering, technology, and cultural parameters to determine an appropriate corrective action for each specific site without the use of activity use limitations and deed restrictions. If neighboring properties that are not impacted above non-residential use concentrations for all appropriate exposure pathways (both current and foreseeable future) and the 'reasonably anticipated future use' of the property has been found to be non-residential, then to require the offsite property owner to accept a deed restriction would be an injustice to both the site (owner/operator) and the offsite landowner. More than likely, the offsite landowner would not accept such a limitation to their land without reasonable compensation, a cost to Missouri businesses that is not justified and could drastically affect the potential for continued success of the MRBCA program, sites achieving NFA status, and business/redevelopment of the potentially clean site."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #8: Caroline Ishida stated the following: "PSTIF's proposed rule does not include any mention of Long-Term Stewardship, which is defined in DNR's proposed rule as, 'department-approved legal or physical restrictions or limitations, as well as informational devices, designed to eliminate or minimize the risk of exposures to chemicals of concern associated with the use of, or access to a tank system, site, or facility, or to prevent activities that could interfere with the effectiveness of a response action, for the duration of time that chemicals pose an elevated risk. All long-term stewardship measures are intended to ensure maintenance of a condition of acceptable risk to human health and the environment. . . '

A provision regarding long-term stewardship is essential to the Risk-Based Corrective Action Rules for Tank Sites. It maintains the responsibility of an owner/operator over time and recognizes that just because an owner/operator may no longer be on-site or the release of hazardous substances may have occurred a significant length of time ago does not mean that a site is cleaned to a level that is protective of human health and the environment. Because most hazardous chemicals that leak into soil, surrounding bodies of water, and groundwater can linger for decades, owner/operators must be held responsible for the condition of the site as long as those hazardous substances remain. A rule adopted without this provision would be incomplete and inadequate to protect surrounding communities, landowners, and the environment. Additionally, the coalition believes that any long-term stewardship provision in the rule should be even stricter than the one proposed by DNR, because terms like 'elevated risk' and 'acceptable risk' indicate that there is a level of contamination that is acceptable, which should not be the case."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #9: Roger Levin stated the following: "Since MRP has divested all Missouri retail petroleum stations, we are no longer in direct control of our sites. Complying with long-term stewardship (LTS) requirements may not be possible at these sites. A 'no further action' (NFA) letter for a site with contamination above residential target levels is already issued on the condition that, if land use is going to change, the NFA letter will be re-evaluated. As such, requiring long-term stewardship (LTS) at these sites is unnecessary. As an alternative, MRP suggests recording NFA letters on the property deed. MDNR's NFA letter should include any corrective actions, including activity and use limitations (AULs) as appropriate and necessary to keep the NFA in place. MRP further suggests that a fee be paid and the MDNR monitors AULs to make sure that they stay in place. This practice is currently performed by MDNR within the departmental MRBCA process."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #10: Carol Eighmey stated the following: "Please see PSTIF proposed rules for suggested alternate wording to paragraph (10)(B)1. We appreciate the inclusion of Figure 1, which was developed by the Stakeholders' Group. We note, however, that the rule does not reflect the consensus of that group that one (1) of the most reliable and effective tools for assuring that no future well will intersect an impacted groundwater zone is the DNR's own Well Construction Code. The stakeholders, including DNR representatives who were involved in that dialogue, that the existing state regulations governing well construction are one (1) of the most effective 'activity and use limitations' available; we concur and urge you to retain this agreed upon concept in the rules."

RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #11: Ms. Eighmey also stated, with regard to 10 CSR 26-2.081, the following: "We object to this entire rule; no evidence has been presented to demonstrate that it is needed. In addition, the rule would impose new requirements on the few remaining tank owner/operators whose cleanups of old, legacy pollution will be done in the next few years, disadvantaging them and reducing the value of their properties compared to the owners of the ten-thousand plus (10,000+) properties already cleaned up."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #12: Jessica Christiansen stated the following with regard to long-term stewardship requirements: "The cost, tracking, and maintenance responsibilities of LTS are not adequately addressed in the proposed rules. Furthermore, requiring LTS when chemical levels remain above residential target levels, regardless of the reasonable anticipated future use (RAFU) determination, defeats a risk-based philosophy."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #13: Mark Jordan stated the following: "The [long-term stewardship] provisions are complex and beyond the capabilities of most people (that are not attorneys, consultants, or real estate professionals) to understand their meaning and what they actually need to do to comply with them. As petroleum properties near the end of their 'highest and best use' lifecycle, they typically end up owned by individuals that do not have the expertise to understand, or comply with, LTS."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #14: Mr. Jordan stated the following: "Notwithstanding the current financial crisis, borrowing money to purchase or improve petroleum properties with LTS and AULs recorded against the deed will be virtually impossible. The Small Business Administration (SBA) has already instituted two (2) policies regarding use restrictions in property deeds and environmental conditions. Many commercial banks already struggle with the underwriting of contaminated properties. Placing limitations on the future uses of their collateral will further deter them from financing properties with these restrictions."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #15: Mr. Jordan stated the following: "There will necessarily be costs to comply with periodic reporting under the LTS provisions. It is unclear at this stage what those costs will be and who will bear them. If a seller transfers the obligation to the purchaser, the purchaser will most certainly want a discount from the market value of the property. If the seller retains the obligation, are the costs related to long-term stewardship reimbursable under PSTIF?"
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #16: Mr. Jordan stated the following: "DNR has asserted that LTS has not adversely affected the value of non-underground storage tanks (UST) Brownfield properties and it has even fostered their redevelopment. There are several distinctions between Brownfield properties, and what I will call 'Main Street' properties. There are literally thousands of current and former petroleum sites in Missouri and therefore are much more comparable than somewhat unique Brownfield's. All things being equal, a buyer would pay a higher price for a property that did not have restrictions on future uses, or any future requirements. Brownfield properties, by their very name, have already been discounted by the market. Main Street properties have not, but will be with LTS requirements."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #17: Mr. Jordan stated: "My first concern is that the structure of [the long-term stewardship] provisions in the rule are complex and are not something that . . . we had a lot of dealer-customers, and I sell them property all the time. When we sell the property, we prepare their PSTIF application, we get their DNR registration ready because they do not understand the paperwork. They do not understand the regulations. Explaining to them that they are buying this property subject to long-term stewardship and activity use limitations is not going to be easily understood, so I think there needs to be a way to simplify that process. I am not opposed to notices in the deed, and it is not about hiding that information from a prospective purchaser, but it is putting that long-term obligation on that property that concerns me."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #18: Mr. Jordan stated the following: "My third point that I think has kind of been brought up is costs. I will combine that with another one. We have talked about the owner/operators will have a choice as will nonresponsible owners of property that is impacted. I think Mr. Tripp mentioned we are kind of creating a gateway out of RBCA. If, you know, the company that I work for, if I have the choice of having PSTIF pay for a residential cleanup, that means I do not need to place long-term restrictions, even if it is just the perception of the diminution of value, I am going to choose that option. Why potentially restrict something on a piece of property that is going to limit its value to a future purchase or future purchases down the road when I can simply say, I am going to choose the residential option and I do not have to worry about that and can sell that property at its highest and best use? So I agree with that comment that we are literally creating a default."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #19: Mr. Jordan stated the following: "I do not think that the adjacent property owners, or, for that matter, the owner/operator of the station that was impacted, should have a choice. If we are going to use RBCA . . . and the whole point to me, at least, behind that was we have limited resources and we have a lot of sites to clean up, so what is the most effective use of those resources? Well, the way it appears to me, that the owner/operators that own all this property either take it out of their real estate value or we take it out of the fund, but one way or the other, we are not taking any risks. We are essentially guaranteeing that everything is going to get cleaned up to residential standards because no one, given the choice, is going to accept an activity use limitation or long-term stewardship."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #20: Mr. Jordan stated the following: "In addition to the cleanups that have been already on that, you know, were under a different set of criteria, there are properties that are bought and sold that were former petroleum sites, and they can be bought and sold. Nobody keeps track of when those properties are transferred and what the conditions are, and there are thousands of them out there. So now we are going to take this last small pool and create this framework that adds complexity and cost, and then every time one of those properties changes hands, this issue is going to rear its ugly head. So that property, once those things are reported and . . . and arguably you could . . . you can remove them when the concentrations go below the default target level, the residential level, but who is going to want to spend the money to go back and find that? Who is going to go drill holes or, you know, go check monitoring wells to say twenty (20) years from now that now this does not have to have an activity use limitation on it, so every time that property sells, this issue comes back up?"
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #21: Mark Burton and Ed Creadon stated the following: "Since our client has divested all Missouri retail petroleum stations, we are no longer in direct control of our sites. Complying with long-term stewardship (LTS) requirements may not be possible at these sites. A 'no further action' (NFA) letter for a site with contamination above residential target levels is already issued on the condition that, if land use is going to change, the NFA letter will be re-evaluated. As

such, requiring long-term stewardship (LTS) at these sites is unnecessary. As an alternative, our client suggests recording NFA letters on the property deed. MDNR's NFA letter should include any corrective actions, including AULs as appropriate, necessary to keep the NFA in place. Our client further suggests that a fee be paid and the MDNR monitors activity use limitations (AULs) to make sure that they stay in place. This practice is currently performed by MDNR within the departmental MRBCA process."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #22: Mike Tripp testified as follows: "This kind of goes back to the comments you have heard already, and that is: instead of moving to a site-specific approach . . . and I think the comment that I heard during the remarks this morning was the question, how much contamination can we safely leave? That is the paradigm that DNR has adopted. I think their answer to that is the residential standard, and I think that is a theme that you are going to see through the three (3) areas that I address today."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #23: Mr. Tripp testified as follows: "The second rule that I would like to comment on has to do with long-term stewardship, which basically requires long-term stewardship in any situation where, again, we do not have that one-size-fits-all residential standard net. And they acknowledge that there are several problems with this rule. The comment that I would like to make is that while DNR acknowledges that it has a cost, it is a huge cost, there are some questions that are not even answered by the proposed rules. How will these long-term stewardship measures be monitored? Who is going to monitor? Who is going to enforce it? And who is going to pay for it? DNR cannot give you an answer to that, so ultimately what we suspect is going to be the case is that the owners/operator is going to be the person on the hook to monitor or to enforce. And how is that going to be funded?"
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #24: Mr. Tripp testified as follows: "So, as an owner/operator cleaning up a site, you are faced with an unknown potential liability that you do not know, or as DNR's view in their comments, long-term stewardship can be avoided entirely by meeting residential target levels. Again, that just proves a point. We know where we are going here, and it is basically the easy way out. The gate back out of RBCA is to long-term or is to residential target levels, which just are not appropriate in some instances."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #25: Ron Leone testified as follows: "Long-term stewardship issues. I think, again, it was Mike Tripp talking about the cost of those that might be never-ending—the monitoring, things of that nature. I will not go into that, but I do want to talk briefly about AULs, which are activity and use limitations. We passed in Senate Bill 54 that was in 2007—you will see that at the bottom of page 3—as well as in 2008 in Senate Bill 907, we specifically exempted motor fuel tanks from AULs, so I am kind of scratching my head as I am listening to testimony this morning as to why we are even talking about AULs when we have, in fact, exempted motor fuel tank sites from the Missouri Environmental Covenants Act. And I can tell you from the legislature's perspective, they knew exactly what they were doing when they did that, and it took a long time to reach that compromise with DNR."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #26: Mr. Leone testified as follows: "Again, my members have had ten thousand (10,000) tank sites cleaned up to date without any activity use limitations, without this expanded definition of 'RAFU,' without the expanded definition of 'site,' and so you literally have a system that has worked, and there has really been no problems with that, and we are changing it to the point now where we have this potentially new system for in future tank sites that would be vastly different and has the potential—I think as Mark was saying—to devalue property."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #27: Tracy Barth testified as follows: "The first one is the process for determining reasonably anticipated future land use. According to DNR's proposed rules, they have selectively disregarded some of our weight of evidence arguments, for example, zoning and local ordinances, with regard to establishing current and reasonably anticipated future use of offsite and on-site property. Ideally, this information is necessary to establish a site's cleanup objectives whereby residential property would be cleaned up to a stricter standard than a nonresidential property. You would expect to clean up a residential property to stricter standards than you would, possibly, a cornfield. Instead, DNR's proposed rules will require us to default to residential standards for all affected properties regardless of their current and reasonably anticipated future use."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #28: Mr. Barth testified as follows: "If a petroleum release from our bulk plant is determined to have impacted a neighboring cornfield, while it is certainly less costly and makes sense to perform a cleanup to nonresidential standards on both properties, given their current reasonably anticipated future use, DNR's proposed rules are going to require affected properties like these to be cleaned up to much stricter standards unless, of course, the affected property owners implement an activity and use limitation, which is a means of long-term stewardship. I am referring to things like restrictive covenants placed on the deeds of trusts of these properties."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #29: Mr. Barth testified as follows: "Although we believe cleaning up a cornfield to residential standards is absurd, we know from firsthand experience that offsite property owners have no incentive to accept activity and use limitations on their property, which is going to conceivably require us to clean up cornfields to residential standards."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #30: Mr. Barth testified as follows: "DNR does not clarify in the proposed rules how it intends to enforce long-term stewardship of activity and use limitations such as deed restrictions, deed notices, that sort of thing. But one has to assume that it will require the responsible party to set aside or escrow funds, money, to pay for DNR's ongoing long-term stewardship monitoring costs. Assuming monitoring costs will be borne by the responsible party, in this case MFA Oil Company, this could greatly influence our decision whether to pursue corrective action to residential standards, especially since our company is performing cleanups on numerous properties where we do not even own the real property."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #31: Mr. Barth testified as follows: "Regrettably, MFA has already gone down the road of implementing activity and use limitations at approximately ten (10) properties owned by our company, plus we have been able to convince two (2) other property owners, whose properties we are cleaning up, to follow suit in a desperate move to finally achieve closure at these sites. The bottom line is that the regulated community needs to know the full impact of DNR's proposed long-term stewardship rule in terms of fee structure and costs before enacting this rule so that we understand the financial consequences of implementing activity and use limitations."
RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #32: Trent Summers testified as follows: "I think most real estate and financial lending institutions require that No Further Action letter in order to sell a property. Long-term stewardship

requirements, especially those of the enforcement type, I think complicate that to a great degree; however, I think there is a legitimate amount of comfort and assistance that that would provide to the process in the fact that we are leaving contamination on this property. It is to an acceptable level, which has been developed through scientific standards, however, that will carry on with that property in the future, and there is an argument that can be made that documenting that level and taking steps to provide that the future landowners are aware of that and able to address that most effectively can help the process.

In a sense, I think if it is done right, can also reduce costs on some of the work that is done on the front end with the testing and initial site characterization."

RESPONSE: The commission is withdrawing the proposed rule.

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. 2008, the commission hereby withdraws a proposed rule as follows:

10 CSR 26-2.082 No Further Remedial Action Determinations **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 1, 2009 (34 MoReg 1020–1023). This proposed rule is withdrawn.

SUMMARY OF COMMENTS: A public hearing was held on August 20, 2009, and the public comment period ended August 27, 2009. The Missouri Department of Natural Resources' Hazardous Waste Program received two (2) comments regarding the proposed rule from two (2) sources: Carol Eighmey, Petroleum Storage Tank Insurance Fund, and Keith Piontek, TRC. In addition, the department received comments regarding other rules that resulted in proposed revisions to the subject rule.

COMMENT #1: Carol Eighmey stated the following: "We find this entire rule to be unnecessary; there is no similar rule in effect today, and no evidence has been provided to demonstrate why this brand-new rule is necessary. The requirements for design, submittal, department approval, and implementation of a corrective action plan should be in the corrective action rule, as is currently the case. The rules should specify that an owner/operator is required to meet the standards established by the department, to the department's satisfaction, and to clearly state in a written report when he/she believes those standards have been met. If the department disagrees, the corrective action rule should state that the department will issue a letter explaining why it does not concur with the owner/operator's conclusion(s) and requiring further actions to meet specific requirements. If/when the department agrees that its standards have been met, the rule should specify that it will issue a letter confirming that 'no further action' or 'no further corrective action' is required. This is how the current rules are designed and how the cleanup process and communications worked in the past."

RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #2: Keith Piontek testified as follows: "There is also an attempt to correct what I perceive as a misapplication of something that came out of the stakeholder process. In the proposed DNR rule, there is a condition for no further action (NFA) which says you cannot have any locations on the site where the concentrations of chemicals are ten (10) times a representative concentration. It is not important that you understand the details of that, but I think it is important to recognize that during the stakeholder process the discussion surrounding that ten (10) times representative concentration topic, that was intended to be a test. You had to examine your data to find these conditions where the concentrations were ten (10) times the standard, and that would be a trigger for looking at the appropriateness of hotspot removal. I think in practice that is how it is used by the Department of Natural Resources (DNR), but it would be much clearer, it would be more transparent, to use this condition as a trigger for looking at the appropriateness of hotspot removal than as describing it as a black-and-white standard that must be met for no further action."

RESPONSE: The commission is withdrawing the proposed rule.

COMMENT #3: The department received comments from Ms. Eighmey regarding proposed rule 10 CSR 26-2.079 regarding changing the phrase "no further remedial action" to "no further corrective action" in order to promote consistency with the terminology used in the rules.

RESPONSE: The commission is withdrawing the proposed rule.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 40—Division of Fire Safety
Chapter 2—Boiler and Pressure Vessel Safety Rules

ORDER OF RULEMAKING

By the authority vested in the Division of Fire Safety under section 650.215, RSMo 2000, the division amends a rule as follows:

11 CSR 40-2.010 Definitions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1570–1572). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Division of Fire Safety received one (1) comment on the proposed amendment.

COMMENT: Mr. Kenneth Stoller with the American Insurance Association suggested that the proposed definition for waste heat boilers was confusing and should be left as is.

RESPONSE: The Board of Boiler and Pressure Vessel Rules reviewed the proposed definition and found it to be clear and understandable. No changes have been made to the rule as a result of this comment.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 40—Division of Fire Safety
Chapter 2—Boiler and Pressure Vessel Safety Rules

ORDER OF RULEMAKING

By the authority vested in the Division of Fire Safety under section 650.215, RSMo, the division amends a rule as follows:

11 CSR 40-2.015 Code/Standards Adopted by Board **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 3,

2009 (34 MoReg 1572–1573). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Division of Fire Safety received three (3) comments on the proposed amendment.

COMMENT #1: Mr. Kenneth Stoller with the American Insurance Association suggested that the adoption of the American National Standard/CSA Standard for Gas Water Heaters would allow the use of water heaters for space heating and cause safety concerns.
RESPONSE: The Board of Boiler and Pressure Vessel Rules reviewed the comment and found that it has no merit since the use of water heaters for space heating is clearly prohibited in the rules. No changes have been made to the rule as a result of this comment.

COMMENT #2: Mr. Kenneth Stoller with the American Insurance Association suggested that the American Society of Mechanical Engineers Pressure Vessels for Human Occupancy (ASME PVHO) should not be adopted without specific guidelines for duties and responsibilities for inservice inspectors. He continued to request the same guidelines for water heaters, pool heaters, and oil burning equipment.
RESPONSE: The Board of Boiler and Pressure Vessel Rules reviewed the comment and found it without merit since PVHO-1 is a construction standard and does not cover guidelines for inservice inspection. The board also agreed that guidelines are not a part of rules. No changes have been made to the rule as a result of this comment.

COMMENT #3: Mr. Kenneth Stoller with the American Insurance Association suggested that pool heaters should be exempted from the rules.
RESPONSE: The Board of Boiler and Pressure Vessel Rules reviewed the comment and found it without merit since exemptions are made by statute not by rule. No changes have been made to the rule as a result of this comment.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 40—Division of Fire Safety
Chapter 2—Boiler and Pressure Vessel Safety Rules

ORDER OF RULEMAKING

By the authority vested in the Division of Fire Safety under section 650.215, RSMo 2000, the division amends a rule as follows:

11 CSR 40-2.022 Certificates, Inspections and Fees **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1573–1574). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 40—Division of Fire Safety
Chapter 2—Boiler and Pressure Vessel Safety Rules

ORDER OF RULEMAKING

By the authority vested in the Division of Fire Safety under section 650.215, RSMo, the division amends a rule as follows:

11 CSR 40-2.030 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1574–1575). 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 Division of Fire Safety received four (4) comment on the proposed amendment.

COMMENT #1: Mr. Kenneth Stoller with the American Insurance Association recommended deleting reference to American Society of Mechanical Engineers Controls and Safety Devices (ASME CSD-1) since he felt it appeared to extend the standard beyond its scope.
RESPONSE: The Board of Boiler and Pressure Vessel Rules reviewed the comment and found that the current wording is clear and does not extend the standard beyond its scope. No changes have been made to the rule as a result of this comment.

COMMENT #2: Mr. Kenneth Stoller with the American Insurance Association stated that he does not believe it is feasible to apply adequate clearance criteria to all existing boilers.
RESPONSE: The Board of Boiler and Pressure Vessel Rules reviewed the comment and found the comment had no bearing on the proposed rule change since there was no change in the clearance requirements for existing equipment and the comment was on existing language. No changes have been made to the rule as a result of this comment.

COMMENT #3: Mr. Kenneth Stoller with the American Insurance Association stated that the combustion air requirements should be removed because he felt National Fire Protection Association (NFPA) 54 does not give proper guidance and some combustion air vents are sometimes not accessible to the inspector.
RESPONSE: The Board of Boiler and Pressure Vessel Rules reviewed the comment and found that NFPA 54 does give proper guidance and the board provided Mr. Stoller guidance for inspectors on how to verify combustion air if vents are not accessible to the inspector. No changes have been made to the rule as a result of this comment.

COMMENT #4: Mr. Kenneth Stoller with the American Insurance Association commented on 11 CSR 40-2.040 that the abbreviation to 0.2 cfm might be misinterpreted.
RESPONSE AND EXPLANATION OF CHANGE: The Board of Boiler and Pressure Vessel Rules reviewed the comment and found this comment also effects this rule since the same wording is used in both rules. The board agreed that the abbreviation might be misinterpreted and will use the full name of cubic meters per minute in the amendment.

11 CSR 40-2.030 Power Boilers

(5) General Requirements for Power Boilers.

(I) Combustion air—The boiler room shall have an adequate air supply to permit clean, safe combustion, minimize soot formation, and maintain a minimum of nineteen and one-half percent (19.5%) oxygen in the air of the boiler room. The combustion and ventilation air shall be supplied by an unobstructed opening or by power ventilation or fans.

1. Unobstructed air openings shall be sized on the basis of one (1) sq. in. (6.50 sq.mm) free area per two thousand British thermal units per hour (2,000 Btu/hr) (five hundred eighty-six watts per hour (586 W/hr)) maximum fuel input of the combined burners located in

the boiler room or as specified in the National Fire Protection Association (NFPA) standards for oil and gas burning installations for the particular job conditions. The boiler room air supply openings shall be kept clear at all times.

2. Power ventilators or fans shall be sized on the basis of 0.2 cfm (.0057 cubic meters per minute) for each one thousand British thermal units per hour (1,000 Btu/hr) (two hundred ninety-three watts per hour (293 W/hr)) of maximum fuel input for the combination burners of all boilers located in the boiler room. Additional capacity shall be required for any other fuel burning equipment in the boiler room.

3. When power ventilators or fans are used to supply combustion air, they shall be installed with interlock devices so that the burners will not operate without an adequate number of ventilators/fans in operation.

4. When combustion air is supplied to the boiler by an independent duct, with or without the employment of power ventilators or fans, the duct shall be sized and installed in accordance with the manufacturer's recommendations. However, ventilation of the boiler room must still be considered.

5. Care should be taken to ensure that steam and water lines are not routed across combustion air openings, where freezing may occur.

6. Opening boiler room door(s) and/or window(s) is unacceptable for supplying combustion air.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 40—Division of Fire Safety
Chapter 2—Boiler and Pressure Vessel Safety Rules

ORDER OF RULEMAKING

By the authority vested in the Division of Fire Safety under section 650.215, RSMo, the division amends a rule as follows:

11 CSR 40-2.040 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1575–1578). 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 Division of Fire Safety received four (4) comments on the proposed amendment.

COMMENT #1: Mr. Kenneth Stoller with the American Insurance Association recommended deleting reference to American Society of Mechanical Engineers Control and Safety Devices (ASME CSD-1) since he felt it appeared to extend the standard beyond its scope.
RESPONSE: The Board of Boiler and Pressure Vessel Rules reviewed the comment and found that the current wording is clear and does not extend the standard beyond its scope. No changes have been made to the rule as a result of this comment.

COMMENT #2: Mr. Kenneth Stoller with the American Insurance Association stated that he does not believe it is feasible to apply adequate clearance criteria to all existing boilers.
RESPONSE: The Board of Boiler and Pressure Vessel Rules reviewed the comment and found the comment had no bearing on the proposed rule change since there was no change in the clearance requirements for existing equipment and the comment was on existing language. No changes have been made to the rule as a result of this comment.

COMMENT #3: Mr. Kenneth Stoller with the American Insurance Association recommended referring to ANSI Z21.10.3 was incorrect and recommended referring to ANSI Z21.10.1.
RESPONSE: The Board of Boiler and Pressure Vessel Rules reviewed the standards and found Mr. Stoller's comment to be incorrect since Z21.10.1 is limited to gas-fired water heaters with inputs of seventy-five thousand British thermal units per hour (75,000 Btu/hr) and less and not within the scope of the statute. Z21.10.3 was found to be the appropriate standard. No changes have been made to the rule as a result of this comment.

COMMENT #4: Mr. Kenneth Stoller with the American Insurance Association commented that the abbreviation to 0.2 cfm might be misinterpreted.
RESPONSE AND EXPLANATION OF CHANGE: The Board of Boiler and Pressure Vessel Rules reviewed the comment and found this comment also effects the proposed amendment of 11 CSR 40-2.030, since the same wording is used in both rules. The board agreed that the abbreviation might be misinterpreted and will use the full name of cubic meters per minute in the amendment.

11 CSR 40-2.040 Heating Boiler

(4) General Requirements for Heating Boilers, Water Heaters, Pool Heaters, and Fired Jacketed Steam Kettles.

(I) Combustion air—The boiler room shall have an adequate air supply to permit clean, safe combustion, minimize soot formation, and maintain a minimum of nineteen and one-half percent (19.5%) oxygen in the air of the boiler room. The combustion and ventilation air shall be supplied by an unobstructed opening or by power ventilation or fans.

1. Unobstructed air openings shall be sized on the basis of one (1) sq. in. (6.50 sq.mm) free area per two thousand British thermal units per hour (2,000 Btu/hr) (five hundred eighty-six watts per hour (586 W/hr)) maximum fuel input of the combined burners located in the boiler room or as specified in the National Fire Protection Association (NFPA) standards for oil and gas burning installations for the particular job conditions. The boiler room air supply openings shall be kept clear at all times.

2. Power ventilators or fans shall be sized on the basis of 0.2 cfm (.0057 cubic meters per minute) for each one thousand British thermal units per hour (1,000 Btu/hr) (two hundred ninety-three watts per hour (293 W/hr)) of maximum fuel input for the combination burners of all boilers located in the boiler room. Additional capacity shall be required for any other fuel burning equipment in the boiler room.

3. When power ventilators or fans are used to supply combustion air, they shall be installed with interlock devices so that the burners will not operate without an adequate number of ventilators/fans in operation.

4. When combustion air is supplied to the boiler by an independent duct, with or without the employment of power ventilators or fans, the duct shall be sized and installed in accordance with the manufacturer's recommendations. However, ventilation of the boiler room must still be considered.

5. Care should be taken to ensure that steam and water lines are not routed across combustion air openings, where freezing may occur.

6. Opening boiler room door(s) and/or window(s) is unacceptable for supplying combustion air.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 40—Division of Fire Safety
Chapter 2—Boiler and Pressure Vessel Safety Rules

ORDER OF RULEMAKING

By the authority vested in the Division of Fire Safety under section 650.215, RSMo 2000, the division amends a rule as follows:

11 CSR 40-2.061 New Installations **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1578). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 50—Missouri State Highway Patrol
Chapter 2—Motor Vehicle Inspection Division

ORDER OF RULEMAKING

By the authority vested in the superintendent of the Missouri State Highway Patrol under section 307.360, RSMo 2000 and section 307.375, HB 683, Ninety-fifth General Assembly 2009, the superintendent hereby amends a rule as follows:

11 CSR 50-2.320 School Bus Inspection **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2009 (34 MoReg 1990). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 3—Conditions of Provider Participation, Reimbursement and Procedure of General Applicability

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 208.153 and 208.201, RSMo Supp. 2008, the division amends a rule as follows:

13 CSR 70-3.030 Sanctions for False or Fraudulent Claims for MO HealthNet Services **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2009 (34 MoReg 1990–1993). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 3—Conditions of Provider Participation, Reimbursement and Procedure of General Applicability

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 208.153 and 208.201, RSMo Supp. 2008, the division amends a rule as follows:

13 CSR 70-3.100 Filing of Claims, MO HealthNet Program **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2009 (34 MoReg 1993–1994). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 20—Pharmacy Program

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 208.152, 208.153, and 208.201, RSMo Supp. 2008, the division amends a rule as follows:

13 CSR 70-20.034 List of Non-Excludable Drugs for Which Prior Authorization Is Required **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2009 (34 MoReg 1994). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 35—Dental Program

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 208.152, 208.153, and 208.201, RSMo Supp. 2008, the division amends a rule as follows:

13 CSR 70-35.010 Dental Benefits and Limitations, MO HealthNet Program **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2009 (34 MoReg 1994–1995). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 40—Optical Program

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 208.152, 208.153, and 208.201, RSMo Supp. 2008, the division amends a rule as follows:

13 CSR 70-40.010 Optical Benefits and Limitations—MO HealthNet Program **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2009 (34 MoReg 1995–1998). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 90—Home Health Program

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 208.152, 208.153, and 208.201, RSMo Supp. 2008, the division amends a rule as follows:

13 CSR 70-90.010 Home Health-Care Services **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2009 (34 MoReg 1998–2000). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 90—Home Health Program

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under section 207.020, RSMo 2000 and sections 208.152, 208.153, and 208.201, RSMo Supp. 2008, the division amends a rule as follows:

13 CSR 70-90.020 Home Health-Care Services Reimbursement **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2009 (34 MoReg 2000). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 95—Private Duty Nursing Care Under the Healthy Children and Youth Program

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 208.152, 208.153, and 208.201, RSMo Supp. 2008, the division amends a rule as follows:

13 CSR 70-95.010 Private Duty Nursing **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2009 (34 MoReg 2000–2001). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 200—Insurance Solvency and Company Regulation
Chapter 1—Financial Solvency and Accounting Standards

ORDER OF RULEMAKING

By the authority vested in the director of the Missouri Department of Insurance, Financial Institutions and Professional Registration under section 374.045, RSMo Supp. 2008, the director adopts a rule as follows:

20 CSR 200-1.005 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 17, 2009 (34 MoReg 1738). Those sections with changes are reprinted here. This rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received comments from the department's Insurance Solvency and Company Regulation Division supporting the proposed rule and requesting two (2) changes to the proposed rule.

COMMENT: The division supported the proposed rule and requested that the first line be changed to read "in rules of this division" in order to emphasize that the proposed rule applies to all the rules in Division 200. The division also requested that in subsection (1)(C), the second reference to the word "Manual" be deleted.
RESPONSE AND EXPLANATION OF CHANGE: The department accepts these comments and has changed the rule accordingly.

20 CSR 200-1.005 Materials Incorporated by Reference

(1) The director adopts and incorporates by reference in rules of this division the following rules, regulations, standards, and guidelines of the National Association of Insurance Commissioners (NAIC) without publishing the materials in full:

(C) *Purposes and Procedures Manual of the NAIC Securities Valuation Office* (July 1, 2009), also referred to as the Valuation of Securities; and

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 200—Insurance Solvency and Company Regulation
Chapter 1—Financial Solvency and Accounting Standards

ORDER OF RULEMAKING

By the authority vested in the director of the Missouri Department of Insurance, Financial Institutions and Professional Registration under section 374.045, RSMo Supp. 2008, the director amends a rule as follows:

20 CSR 200-1.030 Financial Statement and Electronic Filing **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 17, 2009 (34 MoReg 1738–1739). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received comments from the National Association of Mutual Insurance Companies (NAMIC) and the department's Insurance Solvency and Company Regulation Division supporting the proposed amendment.

COMMENT #1: Brent Butler, representing NAMIC, spoke in favor of the proposed amendment as it removes the hard copy filing requirement for out-of-state insurers but allows regulators access to information through electronic filing which not only cuts down on costs, but makes it easier to access the information. Mr. Butler presented into evidence a letter from Mark Johnston with NAMIC specifically supporting the proposed amendment.
RESPONSE: The department accepts this comment. No changes have been made to the rule as a result of this comment.

COMMENT #2: The department's Insurance Solvency and Company Regulation Division made comments supporting the amendment and suggested no changes to the proposed amendment.
RESPONSE: The department accepts this comment. No changes have been made to the rule as a result of this comment.