

SECOND REGULAR SESSION

HOUSE BILL NO. 1973

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WIEMANN.

5740H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 644.016 and 644.051, RSMo, and to enact in lieu thereof two new sections relating to the Missouri clean water law.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 644.016 and 644.051, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 644.016 and 644.051, to read as follows:

644.016. When used in sections 644.006 to 644.141 and in standards, rules and regulations promulgated pursuant to sections 644.006 to 644.141, the following words and phrases mean:

(1) "Aquaculture facility", a hatchery, fish farm, or other facility used for the production of aquatic animals that is required to have a permit pursuant to the federal Clean Water Act, as amended, 33 U.S.C. Section 1251, et seq.;

(2) "Commission", the clean water commission of the state of Missouri created in section 644.021;

(3) "Conference, conciliation and persuasion", a process of verbal or written communications consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;

(4) "Department", the department of natural resources;

(5) "Director", the director of the department of natural resources;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 17 (6) "Discharge", the causing or permitting of one or more water contaminants to enter
18 the waters of the state **from any point source**;
- 19 (7) "Effluent control regulations", limitations on the discharge of water contaminants;
- 20 (8) "General permit", a permit written with a standard group of conditions and with
21 applicability intended for a designated category of water contaminant sources that have the same
22 or similar operations, discharges and geographical locations, and that require the same or similar
23 monitoring, and that would be more appropriately controlled pursuant to a general permit rather
24 than pursuant to a site-specific permit;
- 25 (9) "General permit template", a draft general permit that is being developed through a
26 public participation process;
- 27 (10) "Human sewage", human excreta and wastewater, including bath and toilet waste,
28 residential laundry waste, residential kitchen waste, and other similar waste from household or
29 establishment appurtenances;
- 30 (11) "Income" includes retirement benefits, consultant fees, and stock dividends;
- 31 (12) "Minor violation", a violation which possesses a small potential to harm the
32 environment or human health or cause pollution, was not knowingly committed, and is not
33 defined by the United States Environmental Protection Agency as other than minor;
- 34 (13) "Permit by rule", a permit granted by rule, not by a paper certificate, and
35 conditioned by the permit holder's compliance with commission rules;
- 36 (14) "Permit holders or applicants for a permit" shall not include officials or employees
37 who work full time for any department or agency of the state of Missouri;
- 38 (15) "Person", any individual, partnership, copartnership, firm, company, public or
39 private corporation, association, joint stock company, trust, estate, political subdivision, or any
40 agency, board, department, or bureau of the state or federal government, or any other legal entity
41 whatever which is recognized by law as the subject of rights and duties;
- 42 (16) "Point source", any discernible, confined and discrete conveyance, including but not
43 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock,
44 concentrated animal feeding operation, or vessel or other floating craft, from which pollutants
45 are or may be discharged. Point source does not include agricultural storm water discharges and
46 return flows from irrigated agriculture;
- 47 (17) "Pollution", such contamination or other alteration of the physical, chemical or
48 biological properties of any waters of the state, including change in temperature, taste, color,
49 turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or
50 other substance into any waters of the state as will or is reasonably certain to create a nuisance
51 or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to

52 domestic, industrial, agricultural, recreational, or other legitimate beneficial uses, or to wild
53 animals, birds, fish or other aquatic life;

54 (18) "Pretreatment regulations", limitations on the introduction of pollutants or water
55 contaminants into publicly owned treatment works or facilities which the commission determines
56 are not susceptible to treatment by such works or facilities or which would interfere with their
57 operation, except that wastes as determined compatible for treatment pursuant to any federal
58 water pollution control act or guidelines shall be limited or treated pursuant to this chapter only
59 as required by such act or guidelines;

60 (19) "Residential housing development", any land which is divided or proposed to be
61 divided into three or more lots, whether contiguous or not, for the purpose of sale or lease as part
62 of a common promotional plan for residential housing;

63 (20) "Sewer system", pipelines or conduits, pumping stations, and force mains, and all
64 other structures, devices, appurtenances and facilities used for collecting or conducting wastes
65 to an ultimate point for treatment or handling;

66 (21) "Significant portion of his or her income" shall mean ten percent of gross personal
67 income for a calendar year, except that it shall mean fifty percent of gross personal income for
68 a calendar year if the recipient is over sixty years of age, and is receiving such portion pursuant
69 to retirement, pension, or similar arrangement;

70 (22) "Site-specific permit", a permit written for discharges emitted from a single water
71 contaminant source and containing specific conditions, monitoring requirements and effluent
72 limits to control such discharges;

73 (23) "Treatment facilities", any method, process, or equipment which removes, reduces,
74 or renders less obnoxious water contaminants released from any source;

75 (24) "Water contaminant", any particulate matter or solid matter or liquid or any gas or
76 vapor or any combination thereof, or any temperature change which ~~[is in or enters]~~ **discharges**
77 **into** any waters of the state ~~[either directly or indirectly by surface runoff, by sewer, by~~
78 ~~subsurface seepage or otherwise, which causes or would cause pollution upon entering waters~~
79 ~~of the state, or which violates or exceeds any of the standards, regulations or limitations set forth~~
80 ~~in sections 644.006 to 644.141 or any federal water pollution control act,]~~ or is included in the
81 definition of pollutant in ~~[such]~~ **any federal water pollution control act**;

82 (25) "Water contaminant source", ~~[the]~~ **any point [or points of discharge] source** from
83 a single tract of property on which is located any installation, operation or condition which
84 ~~[includes any point source defined in sections 644.006 to 644.141 and nonpoint source pursuant~~
85 ~~to any federal water pollution control act, which]~~ causes or permits a water contaminant
86 therefrom to enter waters of the state ~~[either directly or indirectly]~~ . **Water contaminant source**

87 **does not include agricultural storm water discharges and return flows from irrigated**
88 **agriculture;**

89 (26) "Water quality standards", specified concentrations and durations of water
90 contaminants which reflect the relationship of the intensity and composition of water
91 contaminants to potential undesirable effects;

92 (27) "Waters of the state", ~~[all waters within the jurisdiction of this state, including]~~ all
93 rivers, streams, lakes and other bodies of surface and subsurface water lying within or forming
94 a part of the boundaries of the state which are not entirely confined and located completely upon
95 lands owned, leased or otherwise controlled by a single person or by two or more persons jointly
96 or as tenants in common.

644.051. 1. It is unlawful for any person:

2 (1) To cause pollution of any waters of the state or to place or cause or permit to be
3 placed any water contaminant in a location where it ~~[is reasonably certain to cause]~~ **causes**
4 pollution of any waters of the state;

5 (2) To discharge any water contaminants into any waters of the state which reduce the
6 quality of such waters below the water quality standards established by the commission;

7 (3) To violate any pretreatment and toxic material control regulations, or to discharge
8 any water contaminants into any waters of the state which exceed effluent regulations or permit
9 provisions as established by the commission or required by any federal water pollution control
10 act;

11 (4) To discharge any radiological, chemical, or biological warfare agent or high-level
12 radioactive waste into the waters of the state.

13 2. It shall be unlawful for any person to operate, use or maintain any water contaminant
14 or point source in this state that is subject to standards, rules or regulations promulgated pursuant
15 to the provisions of sections 644.006 to 644.141 unless such person holds an operating permit
16 from the commission, subject to such exceptions as the commission may prescribe by rule or
17 regulation. However, no operating permit shall be required of any person for any emission into
18 publicly owned treatment facilities or into publicly owned sewer systems tributary to publicly
19 owned treatment works.

20 3. It shall be unlawful for any person to construct, build, replace or make major
21 modification to any point source or collection system that is principally designed to convey or
22 discharge human sewage to waters of the state, unless such person obtains a construction permit
23 from the commission, except as provided in this section. The following activities shall be
24 excluded from construction permit requirements:

25 (1) Facilities greater than one million gallons per day that are authorized through a local
26 supervised program, and are not receiving any department financial assistance;

27 (2) All sewer extensions or collection projects that are one thousand feet in length or less
28 with fewer than two lift stations;

29 (3) All sewer collection projects that are authorized through a local supervised program;
30 and

31 (4) Any other exclusions the commission may promulgate by rule.

32 A construction permit may be required by the department in the following circumstances:

33 (a) Substantial deviation from the commission's design standards;

34 (b) To address noncompliance;

35 (c) When an unauthorized discharge has occurred or has the potential to occur; or

36 (d) To correct a violation of water quality standards.

37 In addition, any point source that proposes to construct an earthen storage structure to hold,
38 convey, contain, store or treat domestic, agricultural, or industrial process wastewater also shall
39 be subject to the construction permit provisions of this subsection. All other construction-related
40 activities at point sources shall be exempt from the construction permit requirements. All
41 activities that are exempted from the construction permit requirement are subject to the following
42 conditions:

43 a. Any point source system designed to hold, convey, contain, store or treat domestic,
44 agricultural or industrial process wastewater shall be designed by a professional engineer
45 registered in Missouri in accordance with the commission's design rules;

46 b. Such point source system shall be constructed in accordance with the registered
47 professional engineer's design and plans; and

48 c. Such point source system may receive a post-construction site inspection by the
49 department prior to receiving operating permit approval. A site inspection may be performed
50 by the department, upon receipt of a complete operating permit application or submission of an
51 engineer's statement of work complete.

52 A governmental unit may apply to the department for authorization to operate a local supervised
53 program, and the department may authorize such a program. A local supervised program would
54 recognize the governmental unit's engineering capacity and ability to conduct engineering work,
55 supervise construction and maintain compliance with relevant operating permit requirements.

56 4. Before issuing any permit required by this section, the director shall issue such
57 notices, conduct such hearings, and consider such factors, comments and recommendations as
58 required by sections 644.006 to 644.141 or any federal water pollution control act. The director
59 shall determine if any state or any provisions of any federal water pollution control act the state
60 is required to enforce, any state or federal effluent limitations or regulations, water
61 quality-related effluent limitations, national standards of performance, toxic and pretreatment
62 standards, or water quality standards which apply to the source, or any such standards in the

63 vicinity of the source, are being exceeded, and shall determine the impact on such water quality
64 standards from the source. The director, in order to effectuate the purposes of sections 644.006
65 to 644.141, shall deny a permit if the source will violate any such acts, regulations, limitations
66 or standards or will appreciably affect the water quality standards or the water quality standards
67 are being substantially exceeded, unless the permit is issued with such conditions as to make the
68 source comply with such requirements within an acceptable time schedule.

69 5. The director shall grant or deny the permit within sixty days after all requirements of
70 the Federal Water Pollution Control Act concerning issuance of permits have been satisfied
71 unless the application does not require any permit pursuant to any federal water pollution control
72 act. The director or the commission may require the applicant to provide and maintain such
73 facilities or to conduct such tests and monitor effluents as necessary to determine the nature,
74 extent, quantity or degree of water contaminant discharged or released from the source, establish
75 and maintain records and make reports regarding such determination.

76 6. The director shall promptly notify the applicant in writing of his or her action and if
77 the permit is denied state the reasons for such denial. As provided by sections 621.250 and
78 640.013, the applicant may appeal to the administrative hearing commission from the denial of
79 a permit or from any condition in any permit by filing a petition with the administrative hearing
80 commission within thirty days of the notice of denial or issuance of the permit. After a final
81 action is taken on a new or reissued general permit, a potential applicant for the general permit
82 who can demonstrate that he or she is or may be adversely affected by any permit term or
83 condition may appeal the terms and conditions of the general permit within thirty days of the
84 department's issuance of the general permit. In no event shall a permit constitute permission to
85 violate the law or any standard, rule or regulation promulgated pursuant thereto. Once the
86 administrative hearing commission has reviewed the appeal, the administrative hearing
87 commission shall issue a recommended decision to the commission on permit issuance, denial,
88 or any condition of the permit. The commission shall issue its own decision, based on the
89 appeal, for permit issuance, denial, or any condition of the permit. If the commission changes
90 a finding of fact or conclusion of law made by the administrative hearing commission, or
91 modifies or vacates the decision recommended by the administrative hearing commission, it shall
92 issue its own decision, which shall include findings of fact and conclusions of law. The
93 commission shall mail copies of its final decision to the parties to the appeal or their counsel of
94 record. The commission's decision shall be subject to judicial review pursuant to chapter 536,
95 except that the court of appeals district with territorial jurisdiction coextensive with the county
96 where the point source is to be located shall have original jurisdiction. No judicial review shall
97 be available until and unless all administrative remedies are exhausted.

98 7. In any hearing held pursuant to this section that involves a permit, license, or
99 registration, the burden of proof is on the party specified in section 640.012. Any decision of the
100 commission made pursuant to a hearing held pursuant to this section is subject to judicial review
101 as provided in section 644.071.

102 8. In any event, no permit issued pursuant to this section shall be issued if properly
103 objected to by the federal government or any agency authorized to object pursuant to any federal
104 water pollution control act unless the application does not require any permit pursuant to any
105 federal water pollution control act.

106 9. Permits may be modified, reissued, or terminated at the request of the permittee. All
107 requests shall be in writing and shall contain facts or reasons supporting the request.

108 10. No manufacturing or processing plant or operating location shall be required to pay
109 more than one operating fee. Operating permits shall be issued for a period not to exceed five
110 years after date of issuance, except that general permits shall be issued for a five-year period, and
111 also except that neither a construction nor an annual permit shall be required for a single
112 residence's waste treatment facilities. Applications for renewal of a site-specific operating permit
113 shall be filed at least one hundred eighty days prior to the expiration of the existing permit.
114 Applications seeking to renew coverage under a general permit shall be submitted at least thirty
115 days prior to the expiration of the general permit, unless the permittee has been notified by the
116 director that an earlier application must be made. General permits may be applied for and issued
117 electronically once made available by the director.

118 11. Every permit issued to municipal or any publicly owned treatment works or facility
119 shall require the permittee to provide the clean water commission with adequate notice of any
120 substantial new introductions of water contaminants or pollutants into such works or facility
121 from any source for which such notice is required by sections 644.006 to 644.141 or any federal
122 water pollution control act. Such permit shall also require the permittee to notify the clean water
123 commission of any substantial change in volume or character of water contaminants or pollutants
124 being introduced into its treatment works or facility by a source which was introducing water
125 contaminants or pollutants into its works at the time of issuance of the permit. Notice must
126 describe the quality and quantity of effluent being introduced or to be introduced into such works
127 or facility by a source which was introducing water contaminants or pollutants into its works at
128 the time of issuance of the permit. Notice must describe the quality and quantity of effluent
129 being introduced or to be introduced into such works or facility and the anticipated impact of
130 such introduction on the quality or quantity of effluent to be released from such works or facility
131 into waters of the state.

132 12. The director or the commission may require the filing or posting of a bond as a
133 condition for the issuance of permits for construction of temporary or future water treatment

134 facilities or facilities that utilize innovative technology for wastewater treatment in an amount
135 determined by the commission to be sufficient to ensure compliance with all provisions of
136 sections 644.006 to 644.141, and any rules or regulations of the commission and any condition
137 as to such construction in the permit. For the purposes of this section, "innovative technology
138 for wastewater treatment" shall mean a completely new and generally unproven technology in
139 the type or method of its application that bench testing or theory suggest has environmental,
140 efficiency, and cost benefits beyond the standard technologies. No bond shall be required for
141 designs approved by any federal agency or environmental regulatory agency of another state.
142 The bond shall be signed by the applicant as principal, and by a corporate surety licensed to do
143 business in the state of Missouri and approved by the commission. The bond shall remain in
144 effect until the terms and conditions of the permit are met and the provisions of sections 644.006
145 to 644.141 and rules and regulations promulgated pursuant thereto are complied with.

146 13. (1) The department shall issue or deny applications for construction and site-specific
147 operating permits received after January 1, 2001, within one hundred eighty days of the
148 department's receipt of an application. For general construction and operating permit
149 applications received after January 1, 2001, that do not require a public participation process, the
150 department shall issue or deny the permits within sixty days of the department's receipt of an
151 application. For an application seeking coverage under a renewed general permit that does not
152 require an individual public participation process, the director shall issue or deny the permit
153 within sixty days of the director's receipt of the application, or upon issuance of the general
154 permit, whichever is later. In regard to an application seeking coverage under an initial general
155 permit that does not require an individual public participation process, the director shall issue
156 or deny the permit within sixty days of the department's receipt of the application. For an
157 application seeking coverage under a renewed general permit that requires an individual public
158 participation process, the director shall issue or deny the permit within ninety days of the
159 director's receipt of the application, or upon issuance of the general permit, whichever is later.
160 In regard to an application for an initial general permit that requires an individual public
161 participation process, the director shall issue or deny the permit within ninety days of the
162 director's receipt of the application.

163 (2) If the department fails to issue or deny with good cause a construction or operating
164 permit application within the time frames established in subdivision (1) of this subsection, the
165 department shall refund the full amount of the initial application fee within forty-five days of
166 failure to meet the established time frame. If the department fails to refund the application fee
167 within forty-five days, the refund amount shall accrue interest at a rate established pursuant to
168 section 32.065.

169 (3) Permit fee disputes may be appealed to the commission within thirty days of the date
170 established in subdivision (2) of this subsection. If the applicant prevails in a permit fee dispute
171 appealed to the commission, the commission may order the director to refund the applicant's
172 permit fee plus interest and reasonable attorney's fees as provided in sections 536.085 and
173 536.087. A refund of the initial application or annual fee does not waive the applicant's
174 responsibility to pay any annual fees due each year following issuance of a permit.

175 (4) No later than December 31, 2001, the commission shall promulgate regulations
176 defining shorter review time periods than the time frames established in subdivision (1) of this
177 subsection, when appropriate, for different classes of construction and operating permits. In no
178 case shall commission regulations adopt permit review times that exceed the time frames
179 established in subdivision (1) of this subsection. The department's failure to comply with the
180 commission's permit review time periods shall result in a refund of said permit fees as set forth
181 in subdivision (2) of this subsection. On a semiannual basis, the department shall submit to the
182 commission a report which describes the different classes of permits and reports on the number
183 of days it took the department to issue each permit from the date of receipt of the application and
184 show averages for each different class of permits.

185 (5) During the department's technical review of the application, the department may
186 request the applicant submit supplemental or additional information necessary for adequate
187 permit review. The department's technical review letter shall contain a sufficient description of
188 the type of additional information needed to comply with the application requirements.

189 (6) Nothing in this subsection shall be interpreted to mean that inaction on a permit
190 application shall be grounds to violate any provisions of sections 644.006 to 644.141 or any rules
191 promulgated pursuant to sections 644.006 to 644.141.

192 14. The department shall respond to all requests for individual certification under Section
193 401 of the Federal Clean Water Act within the lesser of sixty days or the allowed response period
194 established pursuant to applicable federal regulations without request for an extension period
195 unless such extension is determined by the commission to be necessary to evaluate significant
196 impacts on water quality standards and the commission establishes a timetable for completion
197 of such evaluation in a period of no more than one hundred eighty days.

198 15. All permit fees generated pursuant to this chapter shall not be used for the
199 development or expansion of total maximum daily loads studies on either the Missouri or
200 Mississippi rivers.

201 16. The department shall implement permit shield provisions equivalent to the permit
202 shield provisions implemented by the U.S. Environmental Protection Agency pursuant to the
203 Clean Water Act, Section 402(k), 33 U.S.C. Section 1342(k), and its implementing regulations,
204 for permits issued pursuant to chapter 644.

205 17. Prior to the development of a new general permit or reissuance of a general permit
206 for aquaculture, land disturbance requiring a storm water permit, or reissuance of a general
207 permit under which fifty or more permits were issued under a general permit during the
208 immediately preceding five-year period for a designated category of water contaminant sources,
209 the director shall implement a public participation process complying with the following
210 minimum requirements:

211 (1) For a new general permit or reissuance of a general permit, a general permit template
212 shall be developed for which comments shall be sought from permittees and other interested
213 persons prior to issuance of the general permit;

214 (2) The director shall publish notice of his intent to issue a new general permit or reissue
215 a general permit by posting notice on the department's website at least one hundred eighty days
216 before the proposed effective date of the general permit;

217 (3) The director shall hold a public informational meeting to provide information on
218 anticipated permit conditions and requirements and to receive informal comments from
219 permittees and other interested persons. The director shall include notice of the public
220 informational meeting with the notice of intent to issue a new general permit or reissue a general
221 permit under subdivision (2) of this subsection. The notice of the public informational meeting,
222 including the date, time and location, shall be posted on the department's website at least thirty
223 days in advance of the public meeting. If the meeting is being held for reissuance of a general
224 permit, notice shall also be made by electronic mail to all permittees holding the current general
225 permit which is expiring. Notice to current permittees shall be made at least twenty days prior
226 to the public meeting;

227 (4) The director shall hold a thirty-day public comment period to receive comments on
228 the general permit template with the thirty-day comment period expiring at least sixty days prior
229 to the effective date of the general permit. Scanned copies of the comments received during the
230 public comment period shall be posted on the department's website within five business days
231 after close of the public comment period;

232 (5) A revised draft of a general permit template and the director's response to comments
233 submitted during the public comment period shall be posted on the department's website at least
234 forty-five days prior to issuance of the general permit. At least forty-five days prior to issuance
235 of the general permit the department shall notify all persons who submitted comments to the
236 department that these documents have been posted to the department's website;

237 (6) Upon issuance of a new or renewed general permit, the general permit shall be posted
238 to the department's website.

239 18. Notices required to be made by the department pursuant to subsection 17 of this
240 section may be made by electronic mail. The department shall not be required to make notice

241 to any permittee or other person who has not provided a current electronic mail address to the
242 department. In the event the department chooses to make material modifications to the general
243 permit before its expiration, the department shall follow the public participation process
244 described in subsection 17 of this section.

245 19. The provisions of subsection 17 of this section shall become effective beginning
246 January 1, 2013.

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