

SECOND REGULAR SESSION

HOUSE BILL NO. 2134

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LEWIS (6).

4407H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 644.041 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Section A. Sections 644.041 and 644.051, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 644.041 and 644.051, to read as follows:

644.041. **1.** As promptly as possible the commission shall adopt and promulgate
2 reasonable effluent, pretreatment and toxic material control regulations which require the use
3 of effective treatment facilities, or other methods to prevent water contamination, for each
4 and every significant source, potential source, and classification of sources of water
5 contaminants, or to limit or prevent introduction of water contaminants into publicly owned
6 treatment works or facilities as required under any federal water pollution control act,
7 throughout the state and thereafter may modify such regulations from time to time.

8 **2.** Any land application of industrial wastewater, industrial wastewater
9 treatment sludge, and related process wastes shall be subject to a nutrient
10 management technical standard established by the department, which shall include
11 land application practices, setbacks, and a process for establishing land application
12 rates. The department shall create, maintain, and incorporate into rule a separate
13 nutrient management technical standard for industrial facilities that are not
14 concentrated animal feeding operations. The department may require surface water
15 sampling and groundwater monitoring wells on a site-specific basis when, in the
16 determination of the division of Missouri geological survey, the land application fields
17 are located in hydrologically sensitive areas where the groundwater may be

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.

18 **compromised. Such rules shall be designed to afford a prudent degree of environmental**
19 **protection while accommodating modern agricultural practices.**

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 pollution of
4 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
9 permit provisions as established by the commission or required by any federal water pollution
10 control 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
14 contaminant or point source in this state that is subject to standards, rules or regulations
15 promulgated pursuant to the provisions of sections 644.006 to 644.141 unless such person
16 holds an operating permit from the commission, subject to such exceptions as the commission
17 may prescribe by rule or regulation. However, no operating permit shall be required of any
18 person for any emission into publicly owned treatment facilities or into publicly owned sewer
19 systems tributary to publicly 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
23 permit from the commission, except as provided in this section. The following activities shall
24 be excluded from construction permit requirements:

25 (1) Facilities greater than one million gallons per day that are authorized through a
26 local 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
28 less with fewer than two lift stations;

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

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

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

34 (1) Substantial deviation from the commission's design standards;

35 (2) To address noncompliance;

36 (3) When an unauthorized discharge has occurred or has the potential to occur; or

37 (4) To correct a violation of water quality standards.

38 5. Any point source that proposes to construct an earthen storage structure to hold,
39 convey, contain, store or treat domestic, agricultural, or industrial process wastewater also
40 shall be subject to the construction permit provisions of subsections 3 to 5 of this section.
41 However, any earthen basin constructed to retain and settle nontoxic, nonmetallic earthen
42 materials such as soil, silt, and rock shall be exempt from the construction permit provisions
43 of subsections 3 to 5 of this section. All other construction-related activities at point sources
44 not subject to subsections 3 to 5 of this section shall be exempt from the construction permit
45 requirements. All activities that are exempted from the construction permit requirement are
46 subject to the following conditions:

47 (1) Any point source system designed to hold, convey, contain, store or treat
48 domestic, agricultural or industrial process wastewater shall be designed by a professional
49 engineer registered in Missouri in accordance with the commission's design rules;

50 (2) Such point source system shall be constructed in accordance with the registered
51 professional engineer's design and plans; and

52 (3) Such point source system may receive a post-construction site inspection by the
53 department prior to receiving operating permit approval. A site inspection may be performed
54 by the department, upon receipt of a complete operating permit application or submission of
55 an engineer's statement of work complete.

56 **6. Notwithstanding any provision of this section to the contrary, the commission**
57 **shall not exempt any entity from the requirement to obtain a permit under this section**
58 **based on licensure under the Missouri fertilizer law, sections 266.291 to 266.351, unless**
59 **the entity is producing products that are commercially sold to an end user in accordance**
60 **with such sections, to include meeting labeling requirements of section 266.321.**

61 **7. In order to receive an operating permit under this section, any point source or**
62 **operating location seeking an operating permit shall have applied for and received a**
63 **construction permit, if a construction permit is required under this chapter, prior to**
64 **construction of the facility.**

65 **8.** A governmental unit may apply to the department for authorization to operate a
66 local supervised program, and the department may authorize such a program. A local
67 supervised program would recognize the governmental unit's engineering capacity and ability
68 to conduct engineering work, supervise construction and maintain compliance with relevant
69 operating permit requirements.

70 ~~7.~~ **9.** Before issuing any permit required by this section, the director shall issue such
71 notices, conduct such hearings, and consider such factors, comments and recommendations as
72 required by sections 644.006 to 644.141 or any federal water pollution control act. The

73 director shall determine if any state or any provisions of any federal water pollution control
74 act the state is required to enforce, any state or federal effluent limitations or regulations,
75 water quality-related effluent limitations, national standards of performance, toxic and
76 pretreatment standards, or water quality standards which apply to the source, or any such
77 standards in the vicinity of the source, are being exceeded, and shall determine the impact on
78 such water quality standards from the source. The director, in order to effectuate the purposes
79 of sections 644.006 to 644.141, shall deny a permit if the source will violate any such acts,
80 regulations, limitations or standards or will appreciably affect the water quality standards or
81 the water quality standards are being substantially exceeded, unless the permit is issued with
82 such conditions as to make the source comply with such requirements within an acceptable
83 time schedule.

84 ~~[8-]~~ **10.** The director shall grant or deny the permit within sixty days after all
85 requirements of the Federal Water Pollution Control Act concerning issuance of permits have
86 been satisfied unless the application does not require any permit pursuant to any federal water
87 pollution control act. The director or the commission may require the applicant to provide
88 and maintain such facilities or to conduct such tests and monitor effluents as necessary to
89 determine the nature, extent, quantity or degree of water contaminant discharged or released
90 from the source, establish and maintain records and make reports regarding such
91 determination.

92 ~~[9-]~~ **11.** The director shall promptly notify the applicant in writing of his or her action
93 and if the permit is denied state the reasons for such denial. As provided by sections 621.250
94 and 640.013, the applicant may appeal to the administrative hearing commission from the
95 denial of a permit or from any condition in any permit by filing a petition with the
96 administrative hearing commission within thirty days of the notice of denial or issuance of the
97 permit. After a final action is taken on a new or reissued general permit, a potential applicant
98 for the general permit who can demonstrate that he or she is or may be adversely affected by
99 any permit term or condition may appeal the terms and conditions of the general permit
100 within thirty days of the department's issuance of the general permit. In no event shall a
101 permit constitute permission to violate the law or any standard, rule or regulation promulgated
102 pursuant thereto. Once the administrative hearing commission has reviewed the appeal, the
103 administrative hearing commission shall issue a recommended decision to the commission on
104 permit issuance, denial, or any condition of the permit. The commission shall issue its own
105 decision, based on the appeal, for permit issuance, denial, or any condition of the permit. If
106 the commission changes a finding of fact or conclusion of law made by the administrative
107 hearing commission, or modifies or vacates the decision recommended by the administrative
108 hearing commission, it shall issue its own decision, which shall include findings of fact and
109 conclusions of law. The commission shall mail copies of its final decision to the parties to the

110 appeal or their counsel of record. The commission's decision shall be subject to judicial
111 review pursuant to chapter 536, except that the court of appeals district with territorial
112 jurisdiction coextensive with the county where the point source is to be located shall have
113 original jurisdiction. No judicial review shall be available until and unless all administrative
114 remedies are exhausted.

115 ~~[10.]~~ **12.** In any hearing held pursuant to this section that involves a permit, license, or
116 registration, the burden of proof is on the party specified in section 640.012. Any decision of
117 the commission made pursuant to a hearing held pursuant to this section is subject to judicial
118 review as provided in section 644.071.

119 ~~[11.]~~ **13.** In any event, no permit issued pursuant to this section shall be issued if
120 properly objected to by the federal government or any agency authorized to object pursuant to
121 any federal water pollution control act unless the application does not require any permit
122 pursuant to any federal water pollution control act.

123 ~~[12.]~~ **14.** Permits may be modified, reissued, or terminated at the request of the
124 permittee. All requests shall be in writing and shall contain facts or reasons supporting the
125 request.

126 ~~[13.]~~ **15.** No manufacturing or processing plant or operating location shall be required
127 to pay more than one operating fee. Operating permits shall be issued for a period not to
128 exceed five years after date of issuance, except that general permits shall be issued for a five-
129 year period, and also except that neither a construction nor an annual permit shall be required
130 for a single residence's waste treatment facilities. Applications for renewal of a site-specific
131 operating permit shall be filed at least one hundred eighty days prior to the expiration of the
132 existing permit. Applications seeking to renew coverage under a general permit shall be
133 submitted at least thirty days prior to the expiration of the general permit, unless the permittee
134 has been notified by the director that an earlier application must be made. General permits
135 may be applied for and issued electronically once made available by the director.

136 ~~[14.]~~ **16.** Every permit issued to municipal or any publicly owned treatment works or
137 facility shall require the permittee to provide the clean water commission with adequate
138 notice of any substantial new introductions of water contaminants or pollutants into such
139 works or facility from any source for which such notice is required by sections 644.006 to
140 644.141 or any federal water pollution control act. Such permit shall also require the
141 permittee to notify the clean water commission of any substantial change in volume or
142 character of water contaminants or pollutants being introduced into its treatment works or
143 facility by a source which was introducing water contaminants or pollutants into its works at
144 the time of issuance of the permit. Notice must describe the quality and quantity of effluent
145 being introduced or to be introduced into such works or facility by a source which was
146 introducing water contaminants or pollutants into its works at the time of issuance of the

147 permit. Notice must describe the quality and quantity of effluent being introduced or to be
148 introduced into such works or facility and the anticipated impact of such introduction on the
149 quality or quantity of effluent to be released from such works or facility into waters of the
150 state.

151 ~~[15.]~~ 17. The director or the commission may require the filing or posting of a bond
152 as a condition for the issuance of permits for construction of temporary or future water
153 treatment facilities or facilities that utilize innovative technology for wastewater treatment in
154 an amount determined by the commission to be sufficient to ensure compliance with all
155 provisions of sections 644.006 to 644.141, and any rules or regulations of the commission and
156 any condition as to such construction in the permit. For the purposes of this section,
157 "innovative technology for wastewater treatment" shall mean a completely new and generally
158 unproven technology in the type or method of its application that bench testing or theory
159 suggest has environmental, efficiency, and cost benefits beyond the standard technologies.
160 No bond shall be required for designs approved by any federal agency or environmental
161 regulatory agency of another state. The bond shall be signed by the applicant as principal,
162 and by a corporate surety licensed to do business in the state of Missouri and approved by the
163 commission. The bond shall remain in effect until the terms and conditions of the permit are
164 met and the provisions of sections 644.006 to 644.141 and rules and regulations promulgated
165 pursuant thereto are complied with.

166 ~~[16.]~~ 18. (1) The department shall issue or deny applications for construction and
167 site-specific operating permits received after January 1, 2001, within one hundred eighty days
168 of the department's receipt of an application. For general construction and operating permit
169 applications received after January 1, 2001, that do not require a public participation process,
170 the department shall issue or deny the permits within sixty days of the department's receipt of
171 an application. For an application seeking coverage under a renewed general permit that does
172 not require an individual public participation process, the director shall issue or deny the
173 permit within sixty days of the director's receipt of the application, or upon issuance of the
174 general permit, whichever is later. In regard to an application seeking coverage under an
175 initial general permit that does not require an individual public participation process, the
176 director shall issue or deny the permit within sixty days of the department's receipt of the
177 application. For an application seeking coverage under a renewed general permit that
178 requires an individual public participation process, the director shall issue or deny the permit
179 within ninety days of the director's receipt of the application, or upon issuance of the general
180 permit, whichever is later. In regard to an application for an initial general permit that
181 requires an individual public participation process, the director shall issue or deny the permit
182 within ninety days of the director's receipt of the application.

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

189 (3) Permit fee disputes may be appealed to the commission within thirty days of the
190 date established in subdivision (2) of this subsection. If the applicant prevails in a permit fee
191 dispute appealed to the commission, the commission may order the director to refund the
192 applicant's permit fee plus interest and reasonable attorney's fees as provided in sections
193 536.085 and 536.087. A refund of the initial application or annual fee does not waive the
194 applicant's responsibility to pay any annual fees due each year following issuance of a permit.

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

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

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

212 ~~[17-]~~ **19.** The department shall respond to all requests for individual certification
213 under Section 401 of the Federal Clean Water Act within the lesser of sixty days or the
214 allowed response period established pursuant to applicable federal regulations without request
215 for an extension period unless such extension is determined by the commission to be
216 necessary to evaluate significant impacts on water quality standards and the commission
217 establishes a timetable for completion of such evaluation in a period of no more than one
218 hundred eighty days.

219 ~~[18:]~~ **20.** All permit fees generated pursuant to this chapter shall not be used for the
220 development or expansion of total maximum daily loads studies on either the Missouri or
221 Mississippi rivers.

222 ~~[19:]~~ **21.** The department shall implement permit shield provisions equivalent to the
223 permit shield provisions implemented by the U.S. Environmental Protection Agency pursuant
224 to the Clean Water Act, Section 402(k), 33 U.S.C. Section 1342(k), and its implementing
225 regulations, for permits issued pursuant to this chapter.

226 ~~[20:]~~ **22.** Prior to the development of a new general permit or reissuance of a general
227 permit for aquaculture, land disturbance requiring a storm water permit, or reissuance of a
228 general permit under which fifty or more permits were issued under a general permit during
229 the immediately preceding five-year period for a designated category of water contaminant
230 sources, the director shall implement a public participation process complying with the
231 following minimum requirements:

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

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

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

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

253 (5) A revised draft of a general permit template and the director's response to
254 comments submitted during the public comment period shall be posted on the department's
255 website at least forty-five days prior to issuance of the general permit. At least forty-five days

256 prior to issuance of the general permit the department shall notify all persons who submitted
257 comments to the department that these documents have been posted to the department's
258 website;

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

261 ~~[21.]~~ **23.** Notices required to be made by the department pursuant to subsection ~~[20]~~
262 **22** of this section may be made by electronic mail. The department shall not be required to
263 make notice to any permittee or other person who has not provided a current electronic mail
264 address to the department. In the event the department chooses to make material
265 modifications to the general permit before its expiration, the department shall follow the
266 public participation process described in subsection ~~[20]~~ **22** of this section.

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