

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NOS. 2134 & 1956

102ND GENERAL ASSEMBLY

4407H.03P

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 644.016, 644.041, 644.051, and 644.145, RSMo, and to enact in lieu thereof four new sections relating to the Missouri clean water law, with an emergency clause.

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

Section A. Sections 644.016, 644.041, 644.051, and 644.145, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 644.016, 644.041,
3 644.051, and 644.145, to read as follows:

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

4 (1) "**Agrichemical facility**", any site, with the exception of chemical production
5 facilities, where bulk pesticides or fertilizers, excluding anhydrous ammonia fertilizer,
6 are:

7 (a) **Stored and combined in nonmobile containers, dedicated containers, or**
8 **storage basins; or**

9 (b) **Stored or being mixed, applied, repackaged, or transferred between**
10 **containers or storage basins;**

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

14 [~~2~~] (3) "Commission", the clean water commission of the state of Missouri created
15 in section 644.021;

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.

16 ~~[(3)]~~ (4) "Conference, conciliation and persuasion", a process of verbal or written
17 communications consisting of meetings, reports, correspondence or telephone conferences
18 between authorized representatives of the department and the alleged violator. The process
19 shall, at a minimum, consist of one offer to meet with the alleged violator tendered by the
20 department. During any such meeting, the department and the alleged violator shall negotiate
21 in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to
22 achieve compliance;

23 ~~[(4)]~~ (5) "Department", the department of natural resources;

24 ~~[(5)]~~ (6) "Director", the director of the department of natural resources;

25 ~~[(6)]~~ (7) "Discharge", the causing or permitting of one or more water contaminants to
26 enter the waters of the state;

27 ~~[(7)]~~ (8) "Effluent control regulations", limitations on the discharge of water
28 contaminants;

29 ~~[(8)]~~ (9) "General permit", a permit written with a standard group of conditions and
30 with applicability intended for a designated category of water contaminant sources that have
31 the same or similar operations, discharges and geographical locations, and that require the
32 same or similar monitoring, and that would be more appropriately controlled pursuant to a
33 general permit rather than pursuant to a site-specific permit;

34 ~~[(9)]~~ (10) "General permit template", a draft general permit that is being developed
35 through a public participation process;

36 ~~[(10)]~~ (11) "Human sewage", human excreta and wastewater, including bath and toilet
37 waste, residential laundry waste, residential kitchen waste, and other similar waste from
38 household or establishment appurtenances;

39 ~~[(11)]~~ (12) "Income" includes retirement benefits, consultant fees, and stock
40 dividends;

41 ~~[(12)]~~ (13) "Minor violation", a violation which possesses a small potential to harm
42 the environment or human health or cause pollution, was not knowingly committed, and is not
43 defined by the United States Environmental Protection Agency as other than minor;

44 ~~[(13)]~~ (14) **"Operating location", all contiguous lands owned, operated, or**
45 **controlled by one or more persons jointly or as tenants in common, except land**
46 **application sites are not required to be contiguous;**

47 (15) "Permit by rule", a permit granted by rule, not by a paper certificate, and
48 conditioned by the permit holder's compliance with commission rules;

49 ~~[(14)]~~ (16) "Permit holders or applicants for a permit" shall not include officials or
50 employees who work full time for any department or agency of the state of Missouri;

51 ~~[(15)]~~ (17) "Person", any individual, partnership, copartnership, firm, company,
52 public or private corporation, association, joint stock company, trust, estate, political

53 subdivision, or any agency, board, department, or bureau of the state or federal government,
54 or any other legal entity whatever which is recognized by law as the subject of rights and
55 duties;

56 ~~[(16)]~~ **(18)** "Point source", any discernible, confined and discrete conveyance,
57 including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure,
58 container, rolling stock, concentrated animal feeding operation, or vessel or other floating
59 craft, from which pollutants are or may be discharged. Point source does not include
60 agricultural storm water discharges and return flows from irrigated agriculture;

61 ~~[(17)]~~ **(19)** "Pollution", such contamination or other alteration of the physical,
62 chemical or biological properties of any waters of the state, including change in temperature,
63 taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid,
64 radioactive, or other substance into any waters of the state as will or is reasonably certain to
65 create a nuisance or render such waters harmful, detrimental or injurious to public health,
66 safety or welfare, or to domestic, industrial, agricultural, recreational, or other legitimate
67 beneficial uses, or to wild animals, birds, fish or other aquatic life;

68 ~~[(18)]~~ **(20)** "Pretreatment regulations", limitations on the introduction of pollutants or
69 water contaminants into publicly owned treatment works or facilities which the commission
70 determines are not susceptible to treatment by such works or facilities or which would
71 interfere with their operation, except that wastes as determined compatible for treatment
72 pursuant to any federal water pollution control act or guidelines shall be limited or treated
73 pursuant to this chapter only as required by such act or guidelines;

74 ~~[(19)]~~ **(21)** "Residential housing development", any land which is divided or proposed
75 to be divided into three or more lots, whether contiguous or not, for the purpose of sale or
76 lease as part of a common promotional plan for residential housing;

77 ~~[(20)]~~ **(22)** "Sewer system", pipelines or conduits, pumping stations, and force mains,
78 and all other structures, devices, appurtenances and facilities used for collecting or
79 conducting wastes to an ultimate point for treatment or handling;

80 ~~[(21)]~~ **(23)** "Significant portion of his or her income" shall mean ten percent of gross
81 personal income for a calendar year, except that it shall mean fifty percent of gross personal
82 income for a calendar year if the recipient is over sixty years of age, and is receiving such
83 portion pursuant to retirement, pension, or similar arrangement;

84 ~~[(22)]~~ **(24)** "Site-specific permit", a permit written for discharges emitted from a
85 single water contaminant source and containing specific conditions, monitoring requirements
86 and effluent limits to control such discharges;

87 ~~[(23)]~~ **(25)** "Treatment facilities", any method, process, or equipment which removes,
88 reduces, or renders less obnoxious water contaminants released from any source;

89 [~~24~~] (26) "Water contaminant", any particulate matter or solid matter or liquid or
90 any gas or vapor or any combination thereof, or any temperature change which is in or enters
91 any waters of the state either directly or indirectly by surface runoff, by sewer, by subsurface
92 seepage or otherwise, which causes or would cause pollution upon entering waters of the
93 state, or which violates or exceeds any of the standards, regulations or limitations set forth in
94 sections 644.006 to 644.141 or any federal water pollution control act, or is included in the
95 definition of pollutant in such federal act;

96 [~~25~~] (27) "Water contaminant source", the point or points of discharge from a single
97 tract of property on which is located any installation, operation or condition which includes
98 any point source defined in sections 644.006 to 644.141 and nonpoint source pursuant to any
99 federal water pollution control act, which causes or permits a water contaminant therefrom to
100 enter waters of the state either directly or indirectly;

101 [~~26~~] (28) "Water quality standards", specified concentrations and durations of water
102 contaminants which reflect the relationship of the intensity and composition of water
103 contaminants to potential undesirable effects;

104 [~~27~~] (29) "Waters of the state", all waters within the jurisdiction of this state,
105 including all rivers, streams, lakes and other bodies of surface and subsurface water lying
106 within or forming a part of the boundaries of the state which are not entirely confined and
107 located completely upon lands owned, leased or otherwise controlled by a single person or by
108 two or more persons jointly or as tenants in common.

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, excluding concentrated animal feeding**
10 **operations, livestock markets, and animal manure, shall be subject to a nutrient**
11 **management technical standard established and incorporated into rule by the**
12 **department, which shall include land application practices, setbacks, sampling**
13 **requirements and frequency, and a process for establishing land application rates.**
14 **Such rules shall be designed to ensure safe and clean soils and water for the surrounding**
15 **community 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 **may exempt an entity from the requirement to obtain a permit under this section based**
58 **on licensure under the Missouri fertilizer law, sections 266.291 to 266.351, only if the**
59 **entity is producing products that are commercially sold to an end user in accordance**
60 **with such sections and has accurate labeling for each container that includes the**
61 **information required under subsection 1 of section 266.321.**

62 **7. Entities currently storing combined bulk fertilizers in storage basins shall not**
63 **be exempt from any design requirements for agrichemical facilities established by rule**
64 **when constructing new agrichemical facilities.**

65 **8. (1) In order to receive an operating permit under this section, any point**
66 **source or operating location seeking an operating permit for a commingled offsite**
67 **industrial wastewater or wastewater residuals open storage basin or open storage vessel**
68 **shall meet current design requirements for wastewater treatment facilities and**
69 **demonstrate the capacity to manage its design flow.**

70 **(2) Except as provided in subdivision (3) of this subsection, the department shall**
71 **require at least, but not more than, the following buffer distances between the nearest**
72 **commingled offsite industrial wastewater or wastewater residuals open storage basin or**
73 **open storage vessel and any public building or occupied residence other than a public**
74 **building or occupied residence that is owned by the commingled offsite industrial**

75 **wastewater or wastewater residuals open storage basin or open storage vessel or a**
76 **residence from which a written agreement for operation is obtained:**

77 **(a) For a facility with a capacity of more than five hundred thousand gallons but**
78 **less than or equal to five million gallons, one thousand feet;**

79 **(b) For a facility with a capacity of more than five million gallons but less than**
80 **or equal to ten million gallons, two thousand feet; and**

81 **(c) For a facility with a capacity of more than ten million gallons, four thousand**
82 **feet.**

83 **(3) All commingled offsite industrial wastewater or wastewater residuals open**
84 **storage basins or open storage vessels holding valid operating permits as of the effective**
85 **date of this section shall be exempt from the buffer distances prescribed in subdivision**
86 **(2) of this subsection. Such distances shall not apply to a facility that has received a**
87 **written agreement signed by all affected property owners within the relevant buffer**
88 **distance.**

89 **(4) The department shall require groundwater monitoring wells on a site-specific**
90 **basis when, in the determination of the division of geological survey, the commingled**
91 **offsite industrial wastewater and wastewater residuals open storage basin or open**
92 **storage vessel is located in hydrologically sensitive areas where the groundwater may be**
93 **compromised.**

94 **(5) (a) The department shall establish by rule sampling requirements for**
95 **commingled offsite industrial wastewater and wastewater residuals open storage basins**
96 **or open storage vessels based on a basin's or vessel's design flow and permitted**
97 **materials.**

98 **(b) The department shall, within one hundred twenty days of the effective date**
99 **of this section, promulgate rules, including creating a chain of custody record form to be**
100 **used by all parties during the handling of testing samples, and, at a minimum, establish**
101 **criteria to require monthly sampling and testing of any contents of any commingled**
102 **offsite industrial wastewater or wastewater residuals open storage basin or open storage**
103 **vessel for:**

104 **a. The total concentrations of metals, including arsenic, aluminum, barium,**
105 **cadmium, chromium, copper, lead, mercury, selenium, silver, and thallium; and**

106 **b. Any pathogens, including E. coli, fecal coliform, and salmonella.**

107 **(c) Testing under paragraph (b) of this subdivision shall be done by a third-party**
108 **certified laboratory and results of the testing shall be sent to the department by the**
109 **third-party certified laboratory.**

110 **9. A governmental unit may apply to the department for authorization to operate a**
111 **local supervised program, and the department may authorize such a program. A local**

112 supervised program would recognize the governmental unit's engineering capacity and ability
113 to conduct engineering work, supervise construction and maintain compliance with relevant
114 operating permit requirements.

115 ~~[7-]~~ **10.** Before issuing any permit required by this section, the director shall issue
116 such notices, conduct such hearings, and consider such factors, comments and
117 recommendations as required by sections 644.006 to 644.141 or any federal water
118 pollution control act. The director shall determine if any state or any provisions of any
119 federal water pollution control act the state is required to enforce, any state or federal effluent
120 limitations or regulations, water quality-related effluent limitations, national standards of
121 performance, toxic and pretreatment standards, or water quality standards which apply to the
122 source, or any such standards in the vicinity of the source, are being exceeded, and shall
123 determine the impact on such water quality standards from the source. The director, in order
124 to effectuate the purposes of sections 644.006 to 644.141, shall deny a permit if the source
125 will violate any such acts, regulations, limitations or standards or will appreciably affect the
126 water quality standards or the water quality standards are being substantially exceeded, unless
127 the permit is issued with such conditions as to make the source comply with such
128 requirements within an acceptable time schedule.

129 ~~[8-]~~ **11.** The director shall grant or deny the permit within sixty days after all
130 requirements of the Federal Water Pollution Control Act concerning issuance of permits have
131 been satisfied unless the application does not require any permit pursuant to any federal water
132 pollution control act. The director or the commission may require the applicant to provide
133 and maintain such facilities or to conduct such tests and monitor effluents as necessary to
134 determine the nature, extent, quantity or degree of water contaminant discharged or released
135 from the source, establish and maintain records and make reports regarding such
136 determination.

137 ~~[9-]~~ **12.** The director shall promptly notify the applicant in writing of his or her action
138 and if the permit is denied state the reasons for such denial. As provided by sections 621.250
139 and 640.013, the applicant may appeal to the administrative hearing commission from the
140 denial of a permit or from any condition in any permit by filing a petition with the
141 administrative hearing commission within thirty days of the notice of denial or issuance of the
142 permit. After a final action is taken on a new or reissued general permit, a potential applicant
143 for the general permit who can demonstrate that he or she is or may be adversely affected by
144 any permit term or condition may appeal the terms and conditions of the general permit
145 within thirty days of the department's issuance of the general permit. In no event shall a
146 permit constitute permission to violate the law or any standard, rule or regulation promulgated
147 pursuant thereto. Once the administrative hearing commission has reviewed the appeal, the
148 administrative hearing commission shall issue a recommended decision to the commission on

149 permit issuance, denial, or any condition of the permit. The commission shall issue its own
150 decision, based on the appeal, for permit issuance, denial, or any condition of the permit. If
151 the commission changes a finding of fact or conclusion of law made by the administrative
152 hearing commission, or modifies or vacates the decision recommended by the administrative
153 hearing commission, it shall issue its own decision, which shall include findings of fact and
154 conclusions of law. The commission shall mail copies of its final decision to the parties to the
155 appeal or their counsel of record. The commission's decision shall be subject to judicial
156 review pursuant to chapter 536, except that the court of appeals district with territorial
157 jurisdiction coextensive with the county where the point source is to be located shall have
158 original jurisdiction. No judicial review shall be available until and unless all administrative
159 remedies are exhausted.

160 ~~[10.]~~ **13.** In any hearing held pursuant to this section that involves a permit, license, or
161 registration, the burden of proof is on the party specified in section 640.012. Any decision of
162 the commission made pursuant to a hearing held pursuant to this section is subject to judicial
163 review as provided in section 644.071.

164 ~~[11.]~~ **14.** In any event, no permit issued pursuant to this section shall be issued if
165 properly objected to by the federal government or any agency authorized to object pursuant to
166 any federal water pollution control act unless the application does not require any permit
167 pursuant to any federal water pollution control act.

168 ~~[12.]~~ **15.** Permits may be modified, reissued, or terminated at the request of the
169 permittee. All requests shall be in writing and shall contain facts or reasons supporting the
170 request.

171 ~~[13.]~~ **16.** No manufacturing or processing plant or operating location shall be required
172 to pay more than one operating fee. Operating permits shall be issued for a period not to
173 exceed five years after date of issuance, except that general permits shall be issued for a five-
174 year period, and also except that neither a construction nor an annual permit shall be required
175 for a single residence's waste treatment facilities. Applications for renewal of a site-specific
176 operating permit shall be filed at least one hundred eighty days prior to the expiration of the
177 existing permit. Applications seeking to renew coverage under a general permit shall be
178 submitted at least thirty days prior to the expiration of the general permit, unless the permittee
179 has been notified by the director that an earlier application must be made. General permits
180 may be applied for and issued electronically once made available by the director.

181 ~~[14.]~~ **17.** Every permit issued to municipal or any publicly owned treatment works or
182 facility shall require the permittee to provide the clean water commission with adequate
183 notice of any substantial new introductions of water contaminants or pollutants into such
184 works or facility from any source for which such notice is required by sections 644.006 to
185 644.141 or any federal water pollution control act. Such permit shall also require the

186 permittee to notify the clean water commission of any substantial change in volume or
187 character of water contaminants or pollutants being introduced into its treatment works or
188 facility by a source which was introducing water contaminants or pollutants into its works at
189 the time of issuance of the permit. Notice must describe the quality and quantity of effluent
190 being introduced or to be introduced into such works or facility by a source which was
191 introducing water contaminants or pollutants into its works at the time of issuance of the
192 permit. Notice must describe the quality and quantity of effluent being introduced or to be
193 introduced into such works or facility and the anticipated impact of such introduction on the
194 quality or quantity of effluent to be released from such works or facility into waters of the
195 state.

196 ~~[15.]~~ **18.** The director or the commission may require the filing or posting of a bond
197 as a condition for the issuance of permits for construction of temporary or future water
198 treatment facilities or facilities that utilize innovative technology for wastewater treatment in
199 an amount determined by the commission to be sufficient to ensure compliance with all
200 provisions of sections 644.006 to 644.141, and any rules or regulations of the commission and
201 any condition as to such construction in the permit. For the purposes of this section,
202 "innovative technology for wastewater treatment" shall mean a completely new and generally
203 unproven technology in the type or method of its application that bench testing or theory
204 suggest has environmental, efficiency, and cost benefits beyond the standard technologies.
205 No bond shall be required for designs approved by any federal agency or environmental
206 regulatory agency of another state. The bond shall be signed by the applicant as principal,
207 and by a corporate surety licensed to do business in the state of Missouri and approved by the
208 commission. The bond shall remain in effect until the terms and conditions of the permit are
209 met and the provisions of sections 644.006 to 644.141 and rules and regulations promulgated
210 pursuant thereto are complied with.

211 ~~[16.]~~ **19.** (1) The department shall issue or deny applications for construction and
212 site-specific operating permits received after January 1, 2001, within one hundred eighty days
213 of the department's receipt of an application. For general construction and operating permit
214 applications received after January 1, 2001, that do not require a public participation process,
215 the department shall issue or deny the permits within sixty days of the department's receipt of
216 an application. For an application seeking coverage under a renewed general permit that does
217 not require an individual public participation process, the director shall issue or deny the
218 permit within sixty days of the director's receipt of the application, or upon issuance of the
219 general permit, whichever is later. In regard to an application seeking coverage under an
220 initial general permit that does not require an individual public participation process, the
221 director shall issue or deny the permit within sixty days of the department's receipt of the
222 application. For an application seeking coverage under a renewed general permit that

223 requires an individual public participation process, the director shall issue or deny the permit
224 within ninety days of the director's receipt of the application, or upon issuance of the general
225 permit, whichever is later. In regard to an application for an initial general permit that
226 requires an individual public participation process, the director shall issue or deny the permit
227 within ninety days of the director's receipt of the application.

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

234 (3) Permit fee disputes may be appealed to the commission within thirty days of the
235 date established in subdivision (2) of this subsection. If the applicant prevails in a permit fee
236 dispute appealed to the commission, the commission may order the director to refund the
237 applicant's permit fee plus interest and reasonable attorney's fees as provided in sections
238 536.085 and 536.087. A refund of the initial application or annual fee does not waive the
239 applicant's responsibility to pay any annual fees due each year following issuance of a permit.

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

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

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

257 ~~[17-]~~ **20.** The department shall respond to all requests for individual certification
258 under Section 401 of the Federal Clean Water Act within the lesser of sixty days or the
259 allowed response period established pursuant to applicable federal regulations without request

260 for an extension period unless such extension is determined by the commission to be
261 necessary to evaluate significant impacts on water quality standards and the commission
262 establishes a timetable for completion of such evaluation in a period of no more than one
263 hundred eighty days.

264 ~~[18.]~~ **21.** All permit fees generated pursuant to this chapter shall not be used for the
265 development or expansion of total maximum daily loads studies on either the Missouri or
266 Mississippi rivers.

267 ~~[19.]~~ **22.** The department shall implement permit shield provisions equivalent to the
268 permit shield provisions implemented by the U.S. Environmental Protection Agency pursuant
269 to the Clean Water Act, Section 402(k), 33 U.S.C. Section 1342(k), and its implementing
270 regulations, for permits issued pursuant to this chapter.

271 ~~[20.]~~ **23.** Prior to the development of a new general permit or reissuance of a general
272 permit for aquaculture, land disturbance requiring a storm water permit, or reissuance of a
273 general permit under which fifty or more permits were issued under a general permit during
274 the immediately preceding five-year period for a designated category of water contaminant
275 sources, the director shall implement a public participation process complying with the
276 following minimum requirements:

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

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

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

293 (4) The director shall hold a thirty-day public comment period to receive comments
294 on the general permit template with the thirty-day comment period expiring at least sixty days
295 prior to the effective date of the general permit. Scanned copies of the comments received

296 during the public comment period shall be posted on the department's website within five
297 business days after close of the public comment period;

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

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

306 ~~[21.]~~ **24.** Notices required to be made by the department pursuant to subsection ~~[20]~~
307 **23** of this section may be made by electronic mail. The department shall not be required to
308 make notice to any permittee or other person who has not provided a current electronic mail
309 address to the department. In the event the department chooses to make material
310 modifications to the general permit before its expiration, the department shall follow the
311 public participation process described in subsection ~~[20]~~ **23** of this section.

644.145. 1. When issuing permits under this chapter that incorporate a new
2 requirement for discharges from publicly owned combined or separate sanitary or storm
3 sewer systems or water or sewer treatment works, or when enforcing provisions of this
4 chapter or the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq.,
5 pertaining to any portion of a publicly owned combined or separate sanitary or storm sewer
6 system or water or sewer treatment works, the department of natural resources shall make a
7 finding of affordability on the costs to be incurred and the impact of any rate changes on
8 ratepayers upon which to base such permits and decisions, to the extent allowable under this
9 chapter and the Federal Water Pollution Control Act.

10 2. (1) The department of natural resources shall not be required under this section to
11 make a finding of affordability when:

12 (a) Issuing collection system extension permits;

13 (b) Issuing National Pollution Discharge Elimination System operating permit
14 renewals which include no new environmental requirements; or

15 (c) The permit applicant certifies that the applicable requirements are affordable to
16 implement or otherwise waives the requirement for an affordability finding; however, at no
17 time shall the department require that any applicant certify, as a condition to approving any
18 permit, administrative or civil action, that a requirement, condition, or penalty is affordable.

19 (2) The exceptions provided under paragraph (c) of subdivision (1) of this subsection
20 do not apply when the community being served has less than three thousand three hundred
21 residents.

22 3. When used in this chapter and in standards, rules and regulations promulgated
23 pursuant to this chapter, the following words and phrases mean:

24 (1) "Affordability", with respect to payment of a utility bill, a measure of whether an
25 individual customer or household with an income equal to or lower than the median
26 household income for their community can pay the bill without undue hardship or
27 unreasonable sacrifice in the essential lifestyle or spending patterns of the individual or
28 household, taking into consideration the criteria described in subsection 4 of this section;

29 (2) "Financial capability", the financial capability of a community to make
30 investments necessary to make water quality-related improvements;

31 (3) "Finding of affordability", a department statement as to whether an individual or a
32 household receiving as income an amount equal to or lower than the median household
33 income for the applicant community would be required to make unreasonable sacrifices in the
34 individual's or the household's essential lifestyle or spending patterns or undergo hardships in
35 order to make the projected monthly payments for sewer services. The department shall
36 make a statement that the proposed changes meet the definition of affordable, or fail to meet
37 the definition of affordable, or are implemented as a federal mandate regardless of
38 affordability.

39 4. The department of natural resources shall adopt procedures by which it will make
40 affordability findings that evaluate the affordability of permit requirements and enforcement
41 actions described in subsection 1 of this section, and may begin implementing such
42 procedures prior to promulgating implementing regulations. The commission shall have the
43 authority to promulgate rules to implement this section pursuant to chapters 536 and 644, and
44 shall promulgate such rules as soon as practicable. Affordability findings shall be based upon
45 reasonably verifiable data and shall include an assessment of affordability with respect to
46 persons or entities affected. The department shall offer the permittee an opportunity to review
47 a draft affordability finding, and the permittee may suggest changes and provide additional
48 supporting information, subject to subsection 6 of this section. The finding shall be based
49 upon the following criteria:

50 (1) A community's financial capability and ability to raise or secure necessary
51 funding;

52 (2) Affordability of pollution control options for the individuals or households at or
53 below the median household income level of the community;

54 (3) An evaluation of the overall costs and environmental benefits of the control
55 technologies;

56 (4) Inclusion of ongoing costs of operating and maintaining the existing wastewater
57 collection and treatment system, including payments on outstanding debts for wastewater
58 collection and treatment systems when calculating projected rates;

59 (5) An inclusion of ways to reduce economic impacts on distressed populations in the
60 community, including but not limited to low- and fixed-income populations. This
61 requirement includes but is not limited to:

62 (a) Allowing adequate time in implementation schedules to mitigate potential adverse
63 impacts on distressed populations resulting from the costs of the improvements and taking
64 into consideration local community economic considerations; and

65 (b) Allowing for reasonable accommodations for regulated entities when inflexible
66 standards and fines would impose a disproportionate financial hardship in light of the
67 environmental benefits to be gained;

68 (6) An assessment of other community investments and operating costs relating to
69 environmental improvements and public health protection;

70 (7) An assessment of factors set forth in the United States Environmental Protection
71 Agency's guidance, including but not limited to the "Combined Sewer Overflow Guidance for
72 Financial Capability Assessment and Schedule Development" that may ease the cost burdens
73 of implementing wet weather control plans, including but not limited to small system
74 considerations, the attainability of water quality standards, and the development of wet
75 weather standards; and

76 (8) An assessment of any other relevant local community economic condition.

77 5. Prescriptive formulas and measures used in determining financial capability,
78 affordability, and thresholds for expenditure, such as median household income, should not be
79 considered to be the only indicator of a community's ability to implement control technology
80 and shall be viewed in the context of other economic conditions rather than as a threshold to
81 be achieved.

82 6. Reasonable time spent preparing draft affordability findings, allowing permittees to
83 review draft affordability findings or draft permits, or revising draft affordability findings,
84 shall be allowed in addition to the department's deadlines for making permitting decisions
85 pursuant to section 644.051.

86 7. If the department of natural resources fails to make a finding of affordability where
87 required by this section, then the resulting permit or decision shall be null, void and
88 unenforceable.

89 8. The department of natural resources' findings under this section may be appealed to
90 the commission pursuant to subsection [9] 12 of section 644.051.

91 9. The department shall file an annual report by the beginning of the fiscal year with
92 the governor, the speaker of the house of representatives, the president pro tempore of the
93 senate, and the chairs of the committees in both houses having primary jurisdiction over
94 natural resource issues showing at least the following information on the findings of
95 affordability completed in the previous calendar year:

96 (1) The total number of findings of affordability issued by the department, those
97 categorized as affordable, those categorized as not meeting the definition of affordable, and
98 those implemented as a federal mandate regardless of affordability;

99 (2) The average increase in sewer rates both in dollars and percentage for all findings
100 found to be affordable;

101 (3) The average increase in sewer rates as a percentage of median house income in the
102 communities for those findings determined to be affordable and a separate calculation of
103 average increases in sewer rates for those found not to meet the definition of affordable;

104 (4) A list of all the permit holders receiving findings, and for each permittee the
105 following data taken from the finding of affordability shall be listed:

106 (a) Current and projected monthly residential sewer rates in dollars;

107 (b) Projected monthly residential sewer rates as a percentage of median household
108 income;

109 (c) Percentage of households at or below the state poverty rate.

Section B. Because immediate action is necessary to protect the health of Missourians
2 living near certain industrial wastewater facilities and to protect the environment from the
3 release of pollution, section A of this act is deemed necessary for the immediate preservation
4 of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act
5 within the meaning of the constitution, and section A of this act shall be in full force and
6 effect upon its passage and approval.

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