

SENATE SUBSTITUTE  
FOR  
SENATE COMMITTEE SUBSTITUTE  
FOR  
HOUSE COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILLS NOS. 2134 & 1956

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 water pollution, with an emergency clause.

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

Section A. Sections 644.016, 644.041, 644.051, and 2 644.145, RSMo, are repealed and four new sections enacted in 3 lieu thereof, to be known as sections 644.016, 644.041, 644.051, 4 and 644.145, to read as follows:

644.016. When used in sections 644.006 to 644.141 and 2 in standards, rules and regulations promulgated pursuant to 3 sections 644.006 to 644.141, the following words and phrases 4 mean:

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

9 (a) Stored and combined in nonmobile containers,  
10 dedicated containers, or storage basins; or

11 (b) Stored or being mixed, applied, repackaged, or  
12 transferred between containers or storage basins;

13 (2) "Aquaculture facility", a hatchery, fish farm, or  
14 other facility used for the production of aquatic animals  
15 that is required to have a permit pursuant to the federal

16 Clean Water Act, as amended, 33 U.S.C. Section 1251, et  
17 seq.;

18 [(2)] (3) "Commission", the clean water commission of  
19 the state of Missouri created in section 644.021;

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

30 [(4)] (5) "Department", the department of natural  
31 resources;

32 [(5)] (6) "Director", the director of the department  
33 of natural resources;

34 [(6)] (7) "Discharge", the causing or permitting of  
35 one or more water contaminants to enter the waters of the  
36 state;

37 [(7)] (8) "Effluent control regulations", limitations  
38 on the discharge of water contaminants;

39 [(8)] (9) "General permit", a permit written with a  
40 standard group of conditions and with applicability intended  
41 for a designated category of water contaminant sources that  
42 have the same or similar operations, discharges and  
43 geographical locations, and that require the same or similar  
44 monitoring, and that would be more appropriately controlled  
45 pursuant to a general permit rather than pursuant to a site-  
46 specific permit;

47            [(9)] (10) "General permit template", a draft general  
48 permit that is being developed through a public  
49 participation process;

50            [(10)] (11) "Human sewage", human excreta and  
51 wastewater, including bath and toilet waste, residential  
52 laundry waste, residential kitchen waste, and other similar  
53 waste from household or establishment appurtenances;

54            [(11)] (12) "Income" includes retirement benefits,  
55 consultant fees, and stock dividends;

56            [(12)] (13) "Minor violation", a violation which  
57 possesses a small potential to harm the environment or human  
58 health or cause pollution, was not knowingly committed, and  
59 is not defined by the United States Environmental Protection  
60 Agency as other than minor;

61            (14) "Open storage basin", an open earthen basin  
62 (nonconcrete) with a capacity of two and one-half million  
63 gallons or larger that stores industrial process wastewater  
64 or industrial process wastewater residuals for disposal or  
65 land application;

66            (15) "Open storage vessel", any metal, plastic, or  
67 polymer lined basin with a capacity of two and one-half  
68 million gallons or larger that stores industrial process  
69 wastewater or industrial process wastewater residuals for  
70 disposal or land application;

71            (16) "Operating location", all contiguous lands owned,  
72 operated, or controlled by one or more persons jointly or as  
73 tenants in common, except land application sites are not  
74 required to be contiguous;

75            [(13)] (17) "Permit by rule", a permit granted by  
76 rule, not by a paper certificate, and conditioned by the  
77 permit holder's compliance with commission rules;

78            [(14)] (18) "Permit holders or applicants for a  
79 permit" shall not include officials or employees who work

80 full time for any department or agency of the state of  
81 Missouri;

82 [(15)] (19) "Person", any individual, partnership,  
83 copartnership, firm, company, public or private corporation,  
84 association, joint stock company, trust, estate, political  
85 subdivision, or any agency, board, department, or bureau of  
86 the state or federal government, or any other legal entity  
87 whatever which is recognized by law as the subject of rights  
88 and duties;

89 [(16)] (20) "Point source", any discernible, confined  
90 and discrete conveyance, including but not limited to any  
91 pipe, ditch, channel, tunnel, conduit, well, discrete  
92 fissure, container, rolling stock, concentrated animal  
93 feeding operation, or vessel or other floating craft, from  
94 which pollutants are or may be discharged. Point source  
95 does not include agricultural storm water discharges and  
96 return flows from irrigated agriculture;

97 [(17)] (21) "Pollution", such contamination or other  
98 alteration of the physical, chemical or biological  
99 properties of any waters of the state, including change in  
100 temperature, taste, color, turbidity, or odor of the waters,  
101 or such discharge of any liquid, gaseous, solid,  
102 radioactive, or other substance into any waters of the state  
103 as will or is reasonably certain to create a nuisance or  
104 render such waters harmful, detrimental or injurious to  
105 public health, safety or welfare, or to domestic,  
106 industrial, agricultural, recreational, or other legitimate  
107 beneficial uses, or to wild animals, birds, fish or other  
108 aquatic life;

109 [(18)] (22) "Pretreatment regulations", limitations on  
110 the introduction of pollutants or water contaminants into  
111 publicly owned treatment works or facilities which the  
112 commission determines are not susceptible to treatment by

113 such works or facilities or which would interfere with their  
114 operation, except that wastes as determined compatible for  
115 treatment pursuant to any federal water pollution control  
116 act or guidelines shall be limited or treated pursuant to  
117 this chapter only as required by such act or guidelines;

118 [(19)] (23) "Residential housing development", any  
119 land which is divided or proposed to be divided into three  
120 or more lots, whether contiguous or not, for the purpose of  
121 sale or lease as part of a common promotional plan for  
122 residential housing;

123 [(20)] (24) "Sewer system", pipelines or conduits,  
124 pumping stations, and force mains, and all other structures,  
125 devices, appurtenances and facilities used for collecting or  
126 conducting wastes to an ultimate point for treatment or  
127 handling;

128 [(21)] (25) "Significant portion of his or her income"  
129 shall mean ten percent of gross personal income for a  
130 calendar year, except that it shall mean fifty percent of  
131 gross personal income for a calendar year if the recipient  
132 is over sixty years of age, and is receiving such portion  
133 pursuant to retirement, pension, or similar arrangement;

134 [(22)] (26) "Site-specific permit", a permit written  
135 for discharges emitted from a single water contaminant  
136 source and containing specific conditions, monitoring  
137 requirements and effluent limits to control such discharges;

138 [(23)] (27) "Treatment facilities", any method,  
139 process, or equipment which removes, reduces, or renders  
140 less obnoxious water contaminants released from any source;

141 [(24)] (28) "Water contaminant", any particulate  
142 matter or solid matter or liquid or any gas or vapor or any  
143 combination thereof, or any temperature change which is in  
144 or enters any waters of the state either directly or  
145 indirectly by surface runoff, by sewer, by subsurface

146 seepage or otherwise, which causes or would cause pollution  
147 upon entering waters of the state, or which violates or  
148 exceeds any of the standards, regulations or limitations set  
149 forth in sections 644.006 to 644.141 or any federal water  
150 pollution control act, or is included in the definition of  
151 pollutant in such federal act;

152 [(25)] (29) "Water contaminant source", the point or  
153 points of discharge from a single tract of property on which  
154 is located any installation, operation or condition which  
155 includes any point source defined in sections 644.006 to  
156 644.141 and nonpoint source pursuant to any federal water  
157 pollution control act, which causes or permits a water  
158 contaminant therefrom to enter waters of the state either  
159 directly or indirectly;

160 [(26)] (30) "Water quality standards", specified  
161 concentrations and durations of water contaminants which  
162 reflect the relationship of the intensity and composition of  
163 water contaminants to potential undesirable effects;

164 [(27)] (31) "Waters of the state", all waters within  
165 the jurisdiction of this state, including all rivers,  
166 streams, lakes and other bodies of surface and subsurface  
167 water lying within or forming a part of the boundaries of  
168 the state which are not entirely confined and located  
169 completely upon lands owned, leased or otherwise controlled  
170 by a single person or by two or more persons jointly or as  
171 tenants in common.

644.041. 1. As promptly as possible the commission  
2 shall adopt and promulgate reasonable effluent, pretreatment  
3 and toxic material control regulations which require the use  
4 of effective treatment facilities, or other methods to  
5 prevent water contamination, for each and every significant  
6 source, potential source, and classification of sources of  
7 water contaminants, or to limit or prevent introduction of

8 water contaminants into publicly owned treatment works or  
9 facilities as required under any federal water pollution  
10 control act, throughout the state and thereafter may modify  
11 such regulations from time to time.

12 2. Any land application of industrial wastewater,  
13 industrial wastewater treatment sludge, and related process  
14 wastes, excluding concentrated animal feeding operations,  
15 livestock markets, and animal manure, shall be subject to a  
16 nutrient management technical standard established and  
17 incorporated into rule by the department, which shall  
18 include land application practices, annual soil sampling,  
19 setbacks, material sampling requirements and frequency, and  
20 a process for establishing land application rates. The  
21 nutrient management technical standard shall allow the use  
22 of a phosphorus index developed by Missouri's first land  
23 grant university, regardless of operational control over  
24 land application fields. Such phosphorus index shall be  
25 revised for each annual planned application of such material  
26 and include, but shall not be limited to, data inputs for  
27 field use, field slope, field management practices,  
28 application method, soil type, phosphorus soil test,  
29 phosphorus solubility, and tillage type. Results of any  
30 sampling required under this subsection shall be provided to  
31 the department. Such rules shall afford a prudent degree of  
32 environmental protection designed to ensure safe and clean  
33 soils and water for the surrounding community while  
34 accommodating modern agricultural practices. Any rule or  
35 portion of a rule, as that term is defined in section  
36 536.010, that is created under the authority delegated in  
37 this section shall become effective only if it complies with  
38 and is subject to all of the provisions of chapter 536 and,  
39 if applicable, section 536.028. This section and chapter  
40 536 are nonseverable and if any of the powers vested with

41 the general assembly pursuant to chapter 536 to review, to  
42 delay the effective date, or to disapprove and annul a rule  
43 are subsequently held unconstitutional, then the grant of  
44 rulemaking authority and any rule proposed or adopted after  
45 the effective date of this act, shall be invalid and void.

46 3. The provisions of subsection 2 of this section  
47 shall not apply to land application conducted in compliance  
48 with a land application management plan approved by the  
49 department.

644.051. 1. It is unlawful for any person:

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

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

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

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

19 2. It shall be unlawful for any person to operate, use  
20 or maintain any water contaminant or point source in this  
21 state that is subject to standards, rules or regulations  
22 promulgated pursuant to the provisions of sections 644.006  
23 to 644.141 unless such person holds an operating permit from  
24 the commission, subject to such exceptions as the commission



25 may prescribe by rule or regulation. However, no operating  
26 permit shall be required of any person for any emission into  
27 publicly owned treatment facilities or into publicly owned  
28 sewer systems tributary to publicly owned treatment works.

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

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

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

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

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

47 4. A construction permit may be required by the  
48 department in the following circumstances:

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

51 (2) To address noncompliance;

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

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

55 5. Any point source that proposes to construct an  
56 earthen storage structure to hold, convey, contain, store or  
57 treat domestic, agricultural, or industrial process

58 wastewater also shall be subject to the construction permit  
59 provisions of subsections 3 to 5 of this section. However,  
60 any earthen basin constructed to retain and settle nontoxic,  
61 nonmetallic earthen materials such as soil, silt, and rock  
62 shall be exempt from the construction permit provisions of  
63 subsections 3 to 5 of this section. All other construction-  
64 related activities at point sources not subject to  
65 subsections 3 to 5 of this section shall be exempt from the  
66 construction permit requirements. All activities that are  
67 exempted from the construction permit requirement are  
68 subject to the following conditions:

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

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

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

83 6. Notwithstanding any provision of this section to  
84 the contrary, the commission may exempt an entity from the  
85 requirement to obtain a permit under this section based on  
86 licensure under the Missouri fertilizer law, sections  
87 266.291 to 266.351, only if the entity is producing products  
88 that are commercially sold to an end user in accordance with  
89 such sections and has accurate labeling for each container

90 that includes the information required under subsection 1 of  
91 section 266.321.

92 7. Entities currently storing combined bulk  
93 fertilizers in storage basins shall not be exempt from any  
94 design requirements for agrichemical facilities established  
95 by rule when constructing new agrichemical facilities.

96 8. (1) In order to receive an operating permit under  
97 this section, any point source or operating location seeking  
98 an operating permit for a commingled offsite industrial  
99 wastewater or wastewater residuals open storage basin or  
100 open storage vessel shall meet current design requirements  
101 for a wastewater treatment facility's design capacity.

102 (2) Except as provided in subdivision (3) of this  
103 subsection, the department shall require at least, but not  
104 more than, the following buffer distances between the  
105 nearest commingled offsite industrial wastewater or  
106 wastewater residuals open storage basin or open storage  
107 vessel and any public building or occupied residence other  
108 than a public building or occupied residence that is  
109 operated by the commingled offsite industrial wastewater or  
110 wastewater residuals open storage basin or open storage  
111 vessel or a residence from which a written agreement for  
112 operation is obtained:

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

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

119 (c) For a facility with a capacity of more than ten  
120 million gallons, three thousand five hundred feet.

121 (3) All commingled offsite industrial wastewater or  
122 wastewater residuals open storage basins or open storage

123 vessels holding valid operating permits as of the effective  
124 date of this section shall be exempt from the buffer  
125 distances prescribed in subdivision (2) of this subsection.  
126 Such distances shall not apply to a facility that has  
127 received a written agreement signed by all affected property  
128 owners within the relevant buffer distance.

129 (4) The department shall require groundwater  
130 monitoring on a site-specific basis when, in the  
131 determination of the division of geological survey, the  
132 commingled offsite industrial wastewater and wastewater  
133 residuals open storage basin or open storage vessel is  
134 located in proximity to a geological feature that increases  
135 the likelihood of groundwater contamination.

136 (5) (a) The department shall establish by rule  
137 sampling requirements for commingled offsite industrial  
138 wastewater and wastewater residuals open storage basins or  
139 open storage vessels based on permitted materials.

140 (b) The department shall, within sixty days of the  
141 effective date of this section, begin the process of  
142 promulgating rules, which shall include creating a chain of  
143 custody record form to be used by all parties during the  
144 handling of testing samples, and, at a minimum, establish  
145 criteria to require monthly sampling and testing of any  
146 contents of any commingled offsite industrial wastewater or  
147 wastewater residuals open storage basin or open storage  
148 vessel for:

149 a. The total concentrations of metals, including  
150 arsenic, aluminum, barium, cadmium, chromium, copper, lead,  
151 mercury, selenium, silver, and thallium; and

152 b. E. coli and fecal coliform.

153 (c) Testing under paragraph (b) of this subdivision  
154 shall be done by a third-party certified laboratory and

155 results of the testing shall be sent to the department by  
156 the third-party certified laboratory annually.

157 9. A governmental unit may apply to the department for  
158 authorization to operate a local supervised program, and the  
159 department may authorize such a program. A local supervised  
160 program would recognize the governmental unit's engineering  
161 capacity and ability to conduct engineering work, supervise  
162 construction and maintain compliance with relevant operating  
163 permit requirements.

164 **[7.]** 10. Before issuing any permit required by this  
165 section, the director shall issue such notices, conduct such  
166 hearings, and consider such factors, comments and  
167 recommendations as required by sections 644.006 to 644.141  
168 or any federal water pollution control act. The director  
169 shall determine if any state or any provisions of any  
170 federal water pollution control act the state is required to  
171 enforce, any state or federal effluent limitations or  
172 regulations, water quality-related effluent limitations,  
173 national standards of performance, toxic and pretreatment  
174 standards, or water quality standards which apply to the  
175 source, or any such standards in the vicinity of the source,  
176 are being exceeded, and shall determine the impact on such  
177 water quality standards from the source. The director, in  
178 order to effectuate the purposes of sections 644.006 to  
179 644.141, shall deny a permit if the source will violate any  
180 such acts, regulations, limitations or standards or will  
181 appreciably affect the water quality standards or the water  
182 quality standards are being substantially exceeded, unless  
183 the permit is issued with such conditions as to make the  
184 source comply with such requirements within an acceptable  
185 time schedule.

186 **[8.]** 11. The director shall grant or deny the permit  
187 within sixty days after all requirements of the Federal

188 Water Pollution Control Act concerning issuance of permits  
189 have been satisfied unless the application does not require  
190 any permit pursuant to any federal water pollution control  
191 act. The director or the commission may require the  
192 applicant to provide and maintain such facilities or to  
193 conduct such tests and monitor effluents as necessary to  
194 determine the nature, extent, quantity or degree of water  
195 contaminant discharged or released from the source,  
196 establish and maintain records and make reports regarding  
197 such determination.

198 [9.] 12. The director shall promptly notify the  
199 applicant in writing of his or her action and if the permit  
200 is denied state the reasons for such denial. As provided by  
201 sections 621.250 and 640.013, the applicant may appeal to  
202 the administrative hearing commission from the denial of a  
203 permit or from any condition in any permit by filing a  
204 petition with the administrative hearing commission within  
205 thirty days of the notice of denial or issuance of the  
206 permit. After a final action is taken on a new or reissued  
207 general permit, a potential applicant for the general permit  
208 who can demonstrate that he or she is or may be adversely  
209 affected by any permit term or condition may appeal the  
210 terms and conditions of the general permit within thirty  
211 days of the department's issuance of the general permit. In  
212 no event shall a permit constitute permission to violate the  
213 law or any standard, rule or regulation promulgated pursuant  
214 thereto. Once the administrative hearing commission has  
215 reviewed the appeal, the administrative hearing commission  
216 shall issue a recommended decision to the commission on  
217 permit issuance, denial, or any condition of the permit.  
218 The commission shall issue its own decision, based on the  
219 appeal, for permit issuance, denial, or any condition of the  
220 permit. If the commission changes a finding of fact or

221 conclusion of law made by the administrative hearing  
222 commission, or modifies or vacates the decision recommended  
223 by the administrative hearing commission, it shall issue its  
224 own decision, which shall include findings of fact and  
225 conclusions of law. The commission shall mail copies of its  
226 final decision to the parties to the appeal or their counsel  
227 of record. The commission's decision shall be subject to  
228 judicial review pursuant to chapter 536, except that the  
229 court of appeals district with territorial jurisdiction  
230 coextensive with the county where the point source is to be  
231 located shall have original jurisdiction. No judicial  
232 review shall be available until and unless all  
233 administrative remedies are exhausted.

234 [10.] 13. In any hearing held pursuant to this section  
235 that involves a permit, license, or registration, the burden  
236 of proof is on the party specified in section 640.012. Any  
237 decision of the commission made pursuant to a hearing held  
238 pursuant to this section is subject to judicial review as  
239 provided in section 644.071.

240 [11.] 14. In any event, no permit issued pursuant to  
241 this section shall be issued if properly objected to by the  
242 federal government or any agency authorized to object  
243 pursuant to any federal water pollution control act unless  
244 the application does not require any permit pursuant to any  
245 federal water pollution control act.

246 [12.] 15. Permits may be modified, reissued, or  
247 terminated at the request of the permittee. All requests  
248 shall be in writing and shall contain facts or reasons  
249 supporting the request.

250 [13.] 16. No manufacturing or processing plant or  
251 operating location shall be required to pay more than one  
252 operating fee. Operating permits shall be issued for a  
253 period not to exceed five years after date of issuance,

254 except that general permits shall be issued for a five-year  
255 period, and also except that neither a construction nor an  
256 annual permit shall be required for a single residence's  
257 waste treatment facilities. Applications for renewal of a  
258 site-specific operating permit shall be filed at least one  
259 hundred eighty days prior to the expiration of the existing  
260 permit. Applications seeking to renew coverage under a  
261 general permit shall be submitted at least thirty days prior  
262 to the expiration of the general permit, unless the  
263 permittee has been notified by the director that an earlier  
264 application must be made. General permits may be applied  
265 for and issued electronically once made available by the  
266 director.

267 [14.] 17. Every permit issued to municipal or any  
268 publicly owned treatment works or facility shall require the  
269 permittee to provide the clean water commission with  
270 adequate notice of any substantial new introductions of  
271 water contaminants or pollutants into such works or facility  
272 from any source for which such notice is required by  
273 sections 644.006 to 644.141 or any federal water pollution  
274 control act. Such permit shall also require the permittee  
275 to notify the clean water commission of any substantial  
276 change in volume or character of water contaminants or  
277 pollutants being introduced into its treatment works or  
278 facility by a source which was introducing water  
279 contaminants or pollutants into its works at the time of  
280 issuance of the permit. Notice must describe the quality  
281 and quantity of effluent being introduced or to be  
282 introduced into such works or facility by a source which was  
283 introducing water contaminants or pollutants into its works  
284 at the time of issuance of the permit. Notice must describe  
285 the quality and quantity of effluent being introduced or to  
286 be introduced into such works or facility and the



287 anticipated impact of such introduction on the quality or  
288 quantity of effluent to be released from such works or  
289 facility into waters of the state.

290 [15.] 18. The director or the commission may require  
291 the filing or posting of a bond as a condition for the  
292 issuance of permits for construction of temporary or future  
293 water treatment facilities or facilities that utilize  
294 innovative technology for wastewater treatment in an amount  
295 determined by the commission to be sufficient to ensure  
296 compliance with all provisions of sections 644.006 to  
297 644.141, and any rules or regulations of the commission and  
298 any condition as to such construction in the permit. For  
299 the purposes of this section, "innovative technology for  
300 wastewater treatment" shall mean a completely new and  
301 generally unproven technology in the type or method of its  
302 application that bench testing or theory suggest has  
303 environmental, efficiency, and cost benefits beyond the  
304 standard technologies. No bond shall be required for  
305 designs approved by any federal agency or environmental  
306 regulatory agency of another state. The bond shall be  
307 signed by the applicant as principal, and by a corporate  
308 surety licensed to do business in the state of Missouri and  
309 approved by the commission. The bond shall remain in effect  
310 until the terms and conditions of the permit are met and the  
311 provisions of sections 644.006 to 644.141 and rules and  
312 regulations promulgated pursuant thereto are complied with.

313 [16.] 19. (1) The department shall issue or deny  
314 applications for construction and site-specific operating  
315 permits received after January 1, 2001, within one hundred  
316 eighty days of the department's receipt of an application.  
317 For general construction and operating permit applications  
318 received after January 1, 2001, that do not require a public  
319 participation process, the department shall issue or deny

320 the permits within sixty days of the department's receipt of  
321 an application. For an application seeking coverage under a  
322 renewed general permit that does not require an individual  
323 public participation process, the director shall issue or  
324 deny the permit within sixty days of the director's receipt  
325 of the application, or upon issuance of the general permit,  
326 whichever is later. In regard to an application seeking  
327 coverage under an initial general permit that does not  
328 require an individual public participation process, the  
329 director shall issue or deny the permit within sixty days of  
330 the department's receipt of the application. For an  
331 application seeking coverage under a renewed general permit  
332 that requires an individual public participation process,  
333 the director shall issue or deny the permit within ninety  
334 days of the director's receipt of the application, or upon  
335 issuance of the general permit, whichever is later. In  
336 regard to an application for an initial general permit that  
337 requires an individual public participation process, the  
338 director shall issue or deny the permit within ninety days  
339 of the director's receipt of the application.

340 (2) If the department fails to issue or deny with good  
341 cause a construction or operating permit application within  
342 the time frames established in subdivision (1) of this  
343 subsection, the department shall refund the full amount of  
344 the initial application fee within forty-five days of  
345 failure to meet the established time frame. If the  
346 department fails to refund the application fee within forty-  
347 five days, the refund amount shall accrue interest at a rate  
348 established pursuant to section 32.065.

349 (3) Permit fee disputes may be appealed to the  
350 commission within thirty days of the date established in  
351 subdivision (2) of this subsection. If the applicant  
352 prevails in a permit fee dispute appealed to the commission,

353 the commission may order the director to refund the  
354 applicant's permit fee plus interest and reasonable  
355 attorney's fees as provided in sections 536.085 and  
356 536.087. A refund of the initial application or annual fee  
357 does not waive the applicant's responsibility to pay any  
358 annual fees due each year following issuance of a permit.

359 (4) No later than December 31, 2001, the commission  
360 shall promulgate regulations defining shorter review time  
361 periods than the time frames established in subdivision (1)  
362 of this subsection, when appropriate, for different classes  
363 of construction and operating permits. In no case shall  
364 commission regulations adopt permit review times that exceed  
365 the time frames established in subdivision (1) of this  
366 subsection. The department's failure to comply with the  
367 commission's permit review time periods shall result in a  
368 refund of said permit fees as set forth in subdivision (2)  
369 of this subsection. On a semiannual basis, the department  
370 shall submit to the commission a report which describes the  
371 different classes of permits and reports on the number of  
372 days it took the department to issue each permit from the  
373 date of receipt of the application and show averages for  
374 each different class of permits.

375 (5) During the department's technical review of the  
376 application, the department may request the applicant submit  
377 supplemental or additional information necessary for  
378 adequate permit review. The department's technical review  
379 letter shall contain a sufficient description of the type of  
380 additional information needed to comply with the application  
381 requirements.

382 (6) Nothing in this subsection shall be interpreted to  
383 mean that inaction on a permit application shall be grounds  
384 to violate any provisions of sections 644.006 to 644.141 or

385 any rules promulgated pursuant to sections 644.006 to  
386 644.141.

387 [17.] 20. The department shall respond to all requests  
388 for individual certification under Section 401 of the  
389 Federal Clean Water Act within the lesser of sixty days or  
390 the allowed response period established pursuant to  
391 applicable federal regulations without request for an  
392 extension period unless such extension is determined by the  
393 commission to be necessary to evaluate significant impacts  
394 on water quality standards and the commission establishes a  
395 timetable for completion of such evaluation in a period of  
396 no more than one hundred eighty days.

397 [18.] 21. All permit fees generated pursuant to this  
398 chapter shall not be used for the development or expansion  
399 of total maximum daily loads studies on either the Missouri  
400 or Mississippi rivers.

401 [19.] 22. The department shall implement permit shield  
402 provisions equivalent to the permit shield provisions  
403 implemented by the U.S. Environmental Protection Agency  
404 pursuant to the Clean Water Act, Section 402(k), 33 U.S.C.  
405 Section 1342(k), and its implementing regulations, for  
406 permits issued pursuant to this chapter.

407 [20.] 23. Prior to the development of a new general  
408 permit or reissuance of a general permit for aquaculture,  
409 land disturbance requiring a storm water permit, or  
410 reissuance of a general permit under which fifty or more  
411 permits were issued under a general permit during the  
412 immediately preceding five-year period for a designated  
413 category of water contaminant sources, the director shall  
414 implement a public participation process complying with the  
415 following minimum requirements:

416 (1) For a new general permit or reissuance of a  
417 general permit, a general permit template shall be developed

418 for which comments shall be sought from permittees and other  
419 interested persons prior to issuance of the general permit;

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

425 (3) The director shall hold a public informational  
426 meeting to provide information on anticipated permit  
427 conditions and requirements and to receive informal comments  
428 from permittees and other interested persons. The director  
429 shall include notice of the public informational meeting  
430 with the notice of intent to issue a new general permit or  
431 reissue a general permit under subdivision (2) of this  
432 subsection. The notice of the public informational meeting,  
433 including the date, time and location, shall be posted on  
434 the department's website at least thirty days in advance of  
435 the public meeting. If the meeting is being held for  
436 reissuance of a general permit, notice shall also be made by  
437 electronic mail to all permittees holding the current  
438 general permit which is expiring. Notice to current  
439 permittees shall be made at least twenty days prior to the  
440 public meeting;

441 (4) The director shall hold a thirty-day public  
442 comment period to receive comments on the general permit  
443 template with the thirty-day comment period expiring at  
444 least sixty days prior to the effective date of the general  
445 permit. Scanned copies of the comments received during the  
446 public comment period shall be posted on the department's  
447 website within five business days after close of the public  
448 comment period;

449 (5) A revised draft of a general permit template and  
450 the director's response to comments submitted during the

451 public comment period shall be posted on the department's  
452 website at least forty-five days prior to issuance of the  
453 general permit. At least forty-five days prior to issuance  
454 of the general permit the department shall notify all  
455 persons who submitted comments to the department that these  
456 documents have been posted to the department's website;

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

460 [21.] 24. Notices required to be made by the  
461 department pursuant to subsection [20] 23 of this section  
462 may be made by electronic mail. The department shall not be  
463 required to make notice to any permittee or other person who  
464 has not provided a current electronic mail address to the  
465 department. In the event the department chooses to make  
466 material modifications to the general permit before its  
467 expiration, the department shall follow the public  
468 participation process described in subsection [20] 23 of  
469 this section.

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

14           2.   (1)   The department of natural resources shall not  
15 be required under this section to make a finding of  
16 affordability when:

17           (a)   Issuing collection system extension permits;

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

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

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

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

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

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

46           (3) "Finding of affordability", a department statement  
47 as to whether an individual or a household receiving as  
48 income an amount equal to or lower than the median household  
49 income for the applicant community would be required to make  
50 unreasonable sacrifices in the individual's or the  
51 household's essential lifestyle or spending patterns or  
52 undergo hardships in order to make the projected monthly  
53 payments for sewer services. The department shall make a  
54 statement that the proposed changes meet the definition of  
55 affordable, or fail to meet the definition of affordable, or  
56 are implemented as a federal mandate regardless of  
57 affordability.

58           4. The department of natural resources shall adopt  
59 procedures by which it will make affordability findings that  
60 evaluate the affordability of permit requirements and  
61 enforcement actions described in subsection 1 of this  
62 section, and may begin implementing such procedures prior to  
63 promulgating implementing regulations. The commission shall  
64 have the authority to promulgate rules to implement this  
65 section pursuant to chapters 536 and 644, and shall  
66 promulgate such rules as soon as practicable. Affordability  
67 findings shall be based upon reasonably verifiable data and  
68 shall include an assessment of affordability with respect to  
69 persons or entities affected. The department shall offer  
70 the permittee an opportunity to review a draft affordability  
71 finding, and the permittee may suggest changes and provide  
72 additional supporting information, subject to subsection 6  
73 of this section. The finding shall be based upon the  
74 following criteria:

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



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

80 (3) An evaluation of the overall costs and  
81 environmental benefits of the control technologies;

82 (4) Inclusion of ongoing costs of operating and  
83 maintaining the existing wastewater collection and treatment  
84 system, including payments on outstanding debts for  
85 wastewater collection and treatment systems when calculating  
86 projected rates;

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

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

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

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

103 (7) An assessment of factors set forth in the United  
104 States Environmental Protection Agency's guidance, including  
105 but not limited to the "Combined Sewer Overflow Guidance for  
106 Financial Capability Assessment and Schedule Development"  
107 that may ease the cost burdens of implementing wet weather  
108 control plans, including but not limited to small system

109 considerations, the attainability of water quality  
110 standards, and the development of wet weather standards; and

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

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

120 6. Reasonable time spent preparing draft affordability  
121 findings, allowing permittees to review draft affordability  
122 findings or draft permits, or revising draft affordability  
123 findings, shall be allowed in addition to the department's  
124 deadlines for making permitting decisions pursuant to  
125 section 644.051.

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

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

133 9. The department shall file an annual report by the  
134 beginning of the fiscal year with the governor, the speaker  
135 of the house of representatives, the president pro tempore  
136 of the senate, and the chairs of the committees in both  
137 houses having primary jurisdiction over natural resource  
138 issues showing at least the following information on the  
139 findings of affordability completed in the previous calendar  
140 year:

141 (1) The total number of findings of affordability  
142 issued by the department, those categorized as affordable,  
143 those categorized as not meeting the definition of  
144 affordable, and those implemented as a federal mandate  
145 regardless of affordability;

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

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

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

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

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

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

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