

SECOND REGULAR SESSION

# SENATE BILL NO. 823

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHATZ.

Pre-filed December 21, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5591S.011

## AN ACT

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

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

Section A. Sections 644.016 and 644.051, RSMo, are repealed and two new  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

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

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

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

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

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

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

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 (6) "Discharge", the causing or permitting of one or more water  
20 contaminants to enter the waters of the state **from any point source**;

21 (7) "Effluent control regulations", limitations on the discharge of water  
22 contaminants;

23 (8) "General permit", a permit written with a standard group of conditions  
24 and with applicability intended for a designated category of water contaminant  
25 sources that have the same or similar operations, discharges and geographical  
26 locations, and that require the same or similar monitoring, and that would be  
27 more appropriately controlled pursuant to a general permit rather than pursuant  
28 to a site-specific permit;

29 (9) "General permit template", a draft general permit that is being  
30 developed through a public participation process;

31 (10) "Human sewage", human excreta and wastewater, including bath and  
32 toilet waste, residential laundry waste, residential kitchen waste, and other  
33 similar waste from household or establishment appurtenances;

34 (11) "Income" includes retirement benefits, consultant fees, and stock  
35 dividends;

36 (12) "Minor violation", a violation which possesses a small potential to  
37 harm the environment or human health or cause pollution, was not knowingly  
38 committed, and is not defined by the United States Environmental Protection  
39 Agency as other than minor;

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

42 (14) "Permit holders or applicants for a permit" shall not include officials  
43 or employees who work full time for any department or agency of the state of  
44 Missouri;

45 (15) "Person", any individual, partnership, copartnership, firm, company,  
46 public or private corporation, association, joint stock company, trust, estate,  
47 political subdivision, or any agency, board, department, or bureau of the state or  
48 federal government, or any other legal entity whatever which is recognized by law  
49 as the subject of rights and duties;

50 (16) "Point source", any discernible, confined and discrete conveyance,  
51 including but not limited to any pipe, ditch, channel, tunnel, conduit, well,  
52 discrete fissure, container, rolling stock, concentrated animal feeding operation,  
53 or vessel or other floating craft, from which pollutants are or may be  
54 discharged. Point source does not include agricultural storm water discharges

55 and return flows from irrigated agriculture;

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

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

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

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

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

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

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

89 (24) "Water contaminant", any particulate matter or solid matter or liquid  
90 or any gas or vapor or any combination thereof, or any temperature change which

91 [is in or enters] **discharges into** any waters of the state [either directly or  
92 indirectly by surface runoff, by sewer, by subsurface seepage or otherwise, which  
93 causes or would cause pollution upon entering waters of the state, or which  
94 violates or exceeds any of the standards, regulations or limitations set forth in  
95 sections 644.006 to 644.141 or any federal water pollution control act,] or is  
96 included in the definition of pollutant in [such] **any federal water pollution**  
97 **control act**;

98 (25) "Water contaminant source", [the] **any point [or points of discharge]**  
99 **source** from a single tract of property on which is located any installation,  
100 operation or condition which [includes any point source defined in sections  
101 644.006 to 644.141 and nonpoint source pursuant to any federal water pollution  
102 control act, which] causes or permits a water contaminant therefrom to enter  
103 waters of the state [either directly or indirectly]. **Water contaminant source**  
104 **does not include agricultural storm water discharges and return flows**  
105 **from irrigated agriculture**;

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

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

644.051. 1. It is unlawful for any person:

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

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

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

12 (4) To discharge any radiological, chemical, or biological warfare agent or

13 high-level radioactive waste into the waters of the state.

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

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

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

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

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

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

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

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

39           (b) To address noncompliance;

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

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

43 In addition, any point source that proposes to construct an earthen storage  
44 structure to hold, convey, contain, store or treat domestic, agricultural, or  
45 industrial process wastewater also shall be subject to the construction permit  
46 provisions of this subsection. All other construction-related activities at point  
47 sources shall be exempt from the construction permit requirements. All activities  
48 that are exempted from the construction permit requirement are subject to the

49 following conditions:

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

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

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

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

66 4. Before issuing any permit required by this section, the director shall  
67 issue such notices, conduct such hearings, and consider such factors, comments  
68 and recommendations as required by sections 644.006 to 644.141 or any federal  
69 water pollution control act. The director shall determine if any state or any  
70 provisions of any federal water pollution control act the state is required to  
71 enforce, any state or federal effluent limitations or regulations, water  
72 quality-related effluent limitations, national standards of performance, toxic and  
73 pretreatment standards, or water quality standards which apply to the source, or  
74 any such standards in the vicinity of the source, are being exceeded, and shall  
75 determine the impact on such water quality standards from the source. The  
76 director, in order to effectuate the purposes of sections 644.006 to 644.141, shall  
77 deny a permit if the source will violate any such acts, regulations, limitations or  
78 standards or will appreciably affect the water quality standards or the water  
79 quality standards are being substantially exceeded, unless the permit is issued  
80 with such conditions as to make the source comply with such requirements within  
81 an acceptable time schedule.

82 5. The director shall grant or deny the permit within sixty days after all  
83 requirements of the Federal Water Pollution Control Act concerning issuance of  
84 permits have been satisfied unless the application does not require any permit

85 pursuant to any federal water pollution control act. The director or the  
86 commission may require the applicant to provide and maintain such facilities or  
87 to conduct such tests and monitor effluents as necessary to determine the nature,  
88 extent, quantity or degree of water contaminant discharged or released from the  
89 source, establish and maintain records and make reports regarding such  
90 determination.

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

117         7. In any hearing held pursuant to this section that involves a permit,  
118 license, or registration, the burden of proof is on the party specified in section  
119 640.012. Any decision of the commission made pursuant to a hearing held  
120 pursuant to this section is subject to judicial review as provided in section

121 644.071.

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

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

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

141 11. Every permit issued to municipal or any publicly owned treatment  
142 works or facility shall require the permittee to provide the clean water  
143 commission with adequate notice of any substantial new introductions of water  
144 contaminants or pollutants into such works or facility from any source for which  
145 such notice is required by sections 644.006 to 644.141 or any federal water  
146 pollution control act. Such permit shall also require the permittee to notify the  
147 clean water commission of any substantial change in volume or character of water  
148 contaminants or pollutants being introduced into its treatment works or facility  
149 by a source which was introducing water contaminants or pollutants into its  
150 works at the time of issuance of the permit. Notice must describe the quality and  
151 quantity of effluent being introduced or to be introduced into such works or  
152 facility by a source which was introducing water contaminants or pollutants into  
153 its works at the time of issuance of the permit. Notice must describe the quality  
154 and quantity of effluent being introduced or to be introduced into such works or  
155 facility and the anticipated impact of such introduction on the quality or quantity  
156 of effluent to be released from such works or facility into waters of the state.

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

174           13. (1) The department shall issue or deny applications for construction  
175 and site-specific operating permits received after January 1, 2001, within one  
176 hundred eighty days of the department's receipt of an application. For general  
177 construction and operating permit applications received after January 1, 2001,  
178 that do not require a public participation process, the department shall issue or  
179 deny the permits within sixty days of the department's receipt of an  
180 application. For an application seeking coverage under a renewed general permit  
181 that does not require an individual public participation process, the director shall  
182 issue or deny the permit within sixty days of the director's receipt of the  
183 application, or upon issuance of the general permit, whichever is later. In regard  
184 to an application seeking coverage under an initial general permit that does not  
185 require an individual public participation process, the director shall issue or deny  
186 the permit within sixty days of the department's receipt of the application. For  
187 an application seeking coverage under a renewed general permit that requires an  
188 individual public participation process, the director shall issue or deny the permit  
189 within ninety days of the director's receipt of the application, or upon issuance  
190 of the general permit, whichever is later. In regard to an application for an  
191 initial general permit that requires an individual public participation process, the  
192 director shall issue or deny the permit within ninety days of the director's receipt

193 of the application.

194 (2) If the department fails to issue or deny with good cause a construction  
195 or operating permit application within the time frames established in subdivision  
196 (1) of this subsection, the department shall refund the full amount of the initial  
197 application fee within forty-five days of failure to meet the established time  
198 frame. If the department fails to refund the application fee within forty-five days,  
199 the refund amount shall accrue interest at a rate established pursuant to section  
200 32.065.

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

209 (4) No later than December 31, 2001, the commission shall promulgate  
210 regulations defining shorter review time periods than the time frames established  
211 in subdivision (1) of this subsection, when appropriate, for different classes of  
212 construction and operating permits. In no case shall commission regulations  
213 adopt permit review times that exceed the time frames established in subdivision  
214 (1) of this subsection. The department's failure to comply with the commission's  
215 permit review time periods shall result in a refund of said permit fees as set forth  
216 in subdivision (2) of this subsection. On a semiannual basis, the department  
217 shall submit to the commission a report which describes the different classes of  
218 permits and reports on the number of days it took the department to issue each  
219 permit from the date of receipt of the application and show averages for each  
220 different class of permits.

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

226 (6) Nothing in this subsection shall be interpreted to mean that inaction  
227 on a permit application shall be grounds to violate any provisions of sections  
228 644.006 to 644.141 or any rules promulgated pursuant to sections 644.006 to

229 644.141.

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

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

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

246 17. Prior to the development of a new general permit or reissuance of a  
247 general permit for aquaculture, land disturbance requiring a storm water permit,  
248 or reissuance of a general permit under which fifty or more permits were issued  
249 under a general permit during the immediately preceding five-year period for a  
250 designated category of water contaminant sources, the director shall implement  
251 a public participation process complying with the following minimum  
252 requirements:

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

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

260 (3) The director shall hold a public informational meeting to provide  
261 information on anticipated permit conditions and requirements and to receive  
262 informal comments from permittees and other interested persons. The director  
263 shall include notice of the public informational meeting with the notice of intent  
264 to issue a new general permit or reissue a general permit under subdivision (2)

265 of this subsection. The notice of the public informational meeting, including the  
266 date, time and location, shall be posted on the department's website at least  
267 thirty days in advance of the public meeting. If the meeting is being held for  
268 reissuance of a general permit, notice shall also be made by electronic mail to all  
269 permittees holding the current general permit which is expiring. Notice to  
270 current permittees shall be made at least twenty days prior to the public meeting;

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

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

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

285 18. Notices required to be made by the department pursuant to subsection  
286 17 of this section may be made by electronic mail. The department shall not be  
287 required to make notice to any permittee or other person who has not provided  
288 a current electronic mail address to the department. In the event the department  
289 chooses to make material modifications to the general permit before its  
290 expiration, the department shall follow the public participation process described  
291 in subsection 17 of this section.

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

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