

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 five new sections relating to water pollution and exportation, 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Section A. Sections 644.016, 644.041, 644.051, and 644.145, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 640.406, 644.016, 644.041, 644.051, and 644.145, to read as follows:

640.406. 1. For the purposes of this section, the following terms mean:

(1) "Beneficial uses", water uses, which include but are not limited to domestic, agricultural, industrial, and other legitimate beneficial uses;

(2) "Department", the Missouri department of natural resources;

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

(4) "End use", the final location for which the exported water will be used, consumed, or applied for a stated beneficial use;

(5) "Person", any individual, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political subdivision, water district, or any agency, board, department, or bureau of the federal or any state

government, or any other legal entity which is recognized by law as the subject of rights and duties;

(6) "Water resources", any Missouri water source occurring on the surface, in natural or artificial channels, lakes, reservoirs, or impoundments, and in subsurface aquifers which are available or which may be made available.

2. In order to protect the access, use, and enjoyment of Missouri's water resources, it shall be unlawful for any person to withdraw water from any water source for export outside the state of Missouri unless such person holds a water exportation permit issued by the department. A water exportation permit shall not be required to withdraw water from any water source for export outside of the state by a public water system, as defined in section 640.102, where the withdrawal and ultimate end use are within the same six-digit hydrological unit code as defined by the United States Geological Survey and within thirty miles of the state border.

3. It shall be unlawful for any permit exempted from the requirements of subsection 2 of this section to be used for any purpose other than a beneficial use, specifically where the withdrawal and ultimate end use of water are within thirty miles of the state border.

4. During the review process of any permit required by this section, the director shall determine from the application for a water exportation permit and any supporting materials whether the following conditions have been met:

(1) There is water available in the amount specified in the application to export for water use outside the state of Missouri;

(2) The applicant has a present need for the water and intends to put the water into beneficial use. In making the

determinations of need and beneficial use, the director shall consider the availability of all water sources and other relevant matters as the director deems appropriate, and may consider the availability of groundwater as an alternative source;

(3) The proposed use will not interfere with existing in-state uses;

(4) The proposed use will not interfere with proposed beneficial uses within the state, including recreational use. In making this determination, the director shall conduct a review pursuant to subsection 6 of this section;

(5) The water subject to the permit applications could feasibly be transported to alleviate water shortages in the state.

5. Within one hundred eighty days after the department's receipt of a complete application, the director shall issue a proposed decision to either approve the application if the conditions in subsection 4 of this section have been met or deny the application if the conditions in subsection 4 of this section have not been met and shall hold a thirty-day public comment period on the proposed approval or denial. After the comment period, the department shall respond to comments received and shall either approve the application or deny the application if the conditions in subsection 4 of this section have not been met. If the department approves the application, it shall send its findings to the clean water commission and Missouri soil and water districts commission for review using the criteria described in subsection 4 of this section. At the next scheduled meeting, the clean water commission and Missouri soil and water districts commission shall review the department's findings. If the clean water commission and Missouri soil and water districts commission agrees with

the department's decision that a permit should be issued, the clean water commission and Missouri soil and water districts commission shall send its decision back to the department for the issuance of the permit. If the clean water commission and Missouri soil and water districts commission disagrees with the department's decision for the issuance of the permit, the clean water commission and Missouri soil and water districts commission shall send its decision back to the department and the department shall deny the application. Any permit issued pursuant to this section shall state the time within which the water shall be applied to beneficial use. Permits issued pursuant to this section shall be issued for a period not to exceed three years after the date of issuance.

(1) In the absence of appeal as provided under chapter 536, the decision of the director subject to approval or disapproval of the clean water commission and Missouri soil and water districts commission shall be final.

(2) Applications for renewal of a water export permit shall be filed at least one hundred eighty days prior to the expiration date of the existing permit, and the director shall determine whether the conditions in subsection 4 of this section are still satisfied. The director's decision to renew the permit shall be subject to the clean water commission's and Missouri soil and water districts commission's review and approval or denial pursuant to this subsection.

(3) The department shall promulgate rules regarding the process of sending the department's findings to the Missouri soil and water districts commission and the clean water commission for review under this subsection. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in

this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2024, shall be invalid and void.

6. (1) Before granting water supply for access and use outside the state of Missouri, the director shall consider existing and proposed in-state uses in order to guarantee that in-state users will have access to and use of all of the water required to adequately supply for beneficial uses.

(2) The director shall review the needs for water supply export every three years to determine whether the water supply continues to be adequate for municipal, agricultural, industrial, domestic, and other beneficial uses within the state.

7. Subsections 4 to 6 of this section are subject to the most recent reports, data, and information in consideration of each permit application, whether the application is for an initial permit or renewal of an active or expired permit.

8. The review conducted pursuant to subsection 4 of this section shall not be used to reduce the quantity of water authorized to be transferred pursuant to the active life of permits issued prior to such review.

9. On the filing of an application to export water outside the state, the applicant shall designate an agent in the state of Missouri for service of process and to receive other notices.

10. In the event of a conflict between the conditions of use required in Missouri and conditions required in another state, the water permit holder shall consent to conditions imposed by the director.

11. A major water user, as defined in section 256.400, may, at any time, request the director to reevaluate any existing water exportation permit using the criteria under subsections 4 and 6 of this section. The director shall create a mechanism for a major water user to submit to him or her such a request for reevaluation and shall provide to the major water user his or her findings within sixty days of the request for reevaluation. After reevaluating the permit, the director shall impose additional conditions necessary for the continued exportation of water outside the state if the director determines that the existing permit is negatively impacting the requesting major water user's beneficial use of his or her water resources. The director's decision to modify or to decline to modify the conditions in an existing permit pursuant to this subsection shall be subject to the clean water commission's and Missouri soil and water districts commission's review and approval or denial pursuant to subsection 5 of this section.

12. Nothing in this section shall preclude a person from bringing any constitutional, statutory, or common law claim to vindicate or otherwise defend the user's water rights. A permit issued under this section shall not serve as a defense to any claim brought against a water permit holder for the infringement of water rights.

13. The time-limited, active life of the permit, not to exceed three years, requires the director to determine whether there has been a substantial or material change relating to any matters set forth in subsections 3 to 5 of this section in response to renewal applications requesting

a permit for authorization of the continued export of water outside the state. The director may impose additional conditions to address any such substantial or material change or may deny the permit renewal application as necessary to comply with this section based on any such substantial or material changes. The director's decision to renew the permit shall be subject to the requirements of subsection 5 of this section.

14. If the attorney general receives a complaint that provisions of this section have been violated, or, at the request of the department, the attorney general may bring an injunctive action or other appropriate action in the name of the people of the state to enforce provisions of this section. Suit may be brought in any county where the defendant's principal place of business is located or where the withdrawal of water occurred in violation of this section.

15. Whenever a person applies for a water exportation permit, the department of natural resources shall send a written notice to the county commission of the county where the water for exportation is located.

16. Whenever the United States Drought Monitor (USDM) indicates a D2 level drought for any county for which an export permit has been issued, the department of natural resources shall reevaluate such export permit. If the USDM indicates a D3 or worse drought condition in any county, the department shall reevaluate all existing permits within the state. If a state of emergency is declared for the state or any part of the state, the department may reevaluate any existing water exportation permit. Any reevaluation completed under this section shall use the criteria under subsection 3 and 5 of this section. After reevaluation of the permit is complete, the department shall have the

authority to impose additional conditions or revoke the permit if necessary for the continued exportation of water outside the state if the director determines that the existing permit negatively impacts beneficial use of water resources. The director's decision to modify, revoke, or make no changes to the permit shall be subject to the clean water commission's and Missouri soil and water districts commission's review and approval or denial pursuant to subsection 5 of this section.

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

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

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

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

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

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

[(3)] (4) "Conference, conciliation and persuasion", a process of verbal or written communications consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist

of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;

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

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

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

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

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

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

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

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

[(12)] (13) "Minor violation", a violation which possesses a small potential to harm the environment or human

health or cause pollution, was not knowingly committed, and is not defined by the United States Environmental Protection Agency as other than minor;

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

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

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

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

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

[(17)] (19) "Pollution", such contamination or other alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters,

or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is reasonably certain to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, industrial, agricultural, recreational, or other legitimate beneficial uses, or to wild animals, birds, fish or other aquatic life;

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

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

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

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

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

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

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

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

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

[(27)] (29) "Waters of the state", all waters within the jurisdiction of this state, including all rivers, streams, lakes and other bodies of surface and subsurface

water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased or otherwise controlled by a single person or by two or more persons jointly or as tenants in common.

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

2. Any land application of industrial wastewater, industrial wastewater treatment sludge, and related process wastes, excluding concentrated animal feeding operations, livestock markets, and animal manure, shall be subject to a nutrient management technical standard established and incorporated into rule by the department, which shall include land application practices, annual soil sampling, setbacks, material sampling requirements and frequency, and a process for establishing land application rates. The nutrient management technical standard shall allow the use of a phosphorus index developed by Missouri's first land grant university, regardless of operational control over land application fields. Such phosphorus index shall be revised for each annual planned application of such material and include, but shall not be limited to, data inputs for field use, field slope, field management practices, application method, soil type, phosphorus soil test,

phosphorus solubility, and tillage type. Results of any sampling required under this subsection shall be provided to the department. Such rules shall afford a prudent degree of environmental protection designed to ensure safe and clean soils and water for the surrounding community while accommodating modern agricultural practices. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after the effective date of this act, shall be invalid and void.

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

644.051. 1. It is unlawful for any person:

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

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

(3) To violate any pretreatment and toxic material control regulations, or to discharge any water contaminants into any waters of the state which exceed effluent

regulations or permit provisions as established by the commission or required by any federal water pollution control act;

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

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

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

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

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

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

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

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

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

(2) To address noncompliance;

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

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

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

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

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

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

6. Notwithstanding any provision of this section to the contrary, the commission may exempt an entity from the requirement to obtain a permit under this section based on licensure under the Missouri fertilizer law, sections 266.291 to 266.351, only if the entity is producing products that are commercially sold to an end user in accordance with such sections and has accurate labeling for each container that includes the information required under subsection 1 of section 266.321.

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

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

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

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

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

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

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

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

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

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

(b) The department shall, within sixty days of the effective date of this section, begin the process of promulgating rules, which shall include creating a chain of

custody record form to be used by all parties during the handling of testing samples, and, at a minimum, establish criteria to require monthly sampling and testing of any contents of any commingled offsite industrial wastewater or wastewater residuals open storage basin or open storage vessel for:

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

b. E. coli and fecal coliform.

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

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

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

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

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

[9.] 12. The director shall promptly notify the applicant in writing of his or her action and if the permit is denied state the reasons for such denial. As provided by sections 621.250 and 640.013, the applicant may appeal to the administrative hearing commission from the denial of a permit or from any condition in any permit by filing a petition with the administrative hearing commission within thirty days of the notice of denial or issuance of the permit. After a final action is taken on a new or reissued general permit, a potential applicant for the general permit who can demonstrate that he or she is or may be adversely

affected by any permit term or condition may appeal the terms and conditions of the general permit within thirty days of the department's issuance of the general permit. In no event shall a permit constitute permission to violate the law or any standard, rule or regulation promulgated pursuant thereto. Once the administrative hearing commission has reviewed the appeal, the administrative hearing commission shall issue a recommended decision to the commission on permit issuance, denial, or any condition of the permit. The commission shall issue its own decision, based on the appeal, for permit issuance, denial, or any condition of the permit. If the commission changes a finding of fact or conclusion of law made by the administrative hearing commission, or modifies or vacates the decision recommended by the administrative hearing commission, it shall issue its own decision, which shall include findings of fact and conclusions of law. The commission shall mail copies of its final decision to the parties to the appeal or their counsel of record. The commission's decision shall be subject to judicial review pursuant to chapter 536, except that the court of appeals district with territorial jurisdiction coextensive with the county where the point source is to be located shall have original jurisdiction. No judicial review shall be available until and unless all administrative remedies are exhausted.

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

[11.] 14. In any event, no permit issued pursuant to this section shall be issued if properly objected to by the

federal government or any agency authorized to object pursuant to any federal water pollution control act unless the application does not require any permit pursuant to any federal water pollution control act.

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

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

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

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

[15.] 18. The director or the commission may require the filing or posting of a bond as a condition for the issuance of permits for construction of temporary or future water treatment facilities or facilities that utilize innovative technology for wastewater treatment in an amount determined by the commission to be sufficient to ensure compliance with all provisions of sections 644.006 to 644.141, and any rules or regulations of the commission and any condition as to such construction in the permit. For the purposes of this section, "innovative technology for wastewater treatment" shall mean a completely new and generally unproven technology in the type or method of its application that bench testing or theory suggest has environmental, efficiency, and cost benefits beyond the standard technologies. No bond shall be required for designs approved by any federal agency or environmental regulatory agency of another state. The bond shall be signed by the applicant as principal, and by a corporate

surety licensed to do business in the state of Missouri and approved by the commission. The bond shall remain in effect until the terms and conditions of the permit are met and the provisions of sections 644.006 to 644.141 and rules and regulations promulgated pursuant thereto are complied with.

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

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

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

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

date of receipt of the application and show averages for each different class of permits.

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

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

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

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

[19.] 22. The department shall implement permit shield provisions equivalent to the permit shield provisions implemented by the U.S. Environmental Protection Agency pursuant to the Clean Water Act, Section 402(k), 33 U.S.C.

Section 1342(k), and its implementing regulations, for permits issued pursuant to this chapter.

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

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

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

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

general permit which is expiring. Notice to current permittees shall be made at least twenty days prior to the public meeting;

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

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

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

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

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

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

(a) Issuing collection system extension permits;

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

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

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

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

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

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

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

4. The department of natural resources shall adopt procedures by which it will make affordability findings that evaluate the affordability of permit requirements and enforcement actions described in subsection 1 of this section, and may begin implementing such procedures prior to promulgating implementing regulations. The commission shall have the authority to promulgate rules to implement this

section pursuant to chapters 536 and 644, and shall promulgate such rules as soon as practicable. Affordability findings shall be based upon reasonably verifiable data and shall include an assessment of affordability with respect to persons or entities affected. The department shall offer the permittee an opportunity to review a draft affordability finding, and the permittee may suggest changes and provide additional supporting information, subject to subsection 6 of this section. The finding shall be based upon the following criteria:

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

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

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

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

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

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

(b) Allowing for reasonable accommodations for regulated entities when inflexible standards and fines would

impose a disproportionate financial hardship in light of the environmental benefits to be gained;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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