

SENATE BILL NO. 1369

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR CARTER.

5372S.01I

KRISTINA MARTIN, Secretary

AN ACT

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

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

Section A. Sections 644.016, 644.041, 644.051, and
2 644.145, RSMo, are repealed and four new sections enacted in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 stored in nonmobile containers or dedicated**
9 **containers or are being mixed, applied, repackaged, or**
10 **transferred between containers for more than thirty**
11 **consecutive days per year;**

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

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

17 [(2)] (3) "Commission", the clean water commission of
18 the state of Missouri created in section 644.021;

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

29 [(4)] (5) "Department", the department of natural
30 resources;

31 [(5)] (6) "Director", the director of the department
32 of natural resources;

33 [(6)] (7) "Discharge", the causing or permitting of
34 one or more water contaminants to enter the waters of the
35 state;

36 [(7)] (8) "Effluent control regulations", limitations
37 on the discharge of water contaminants;

38 [(8)] (9) "General permit", a permit written with a
39 standard group of conditions and with applicability intended
40 for a designated category of water contaminant sources that
41 have the same or similar operations, discharges and
42 geographical locations, and that require the same or similar
43 monitoring, and that would be more appropriately controlled
44 pursuant to a general permit rather than pursuant to a site-
45 specific permit;

46 [(9)] (10) "General permit template", a draft general
47 permit that is being developed through a public
48 participation process;

49 [(10)] (11) "Human sewage", human excreta and
50 wastewater, including bath and toilet waste, residential
51 laundry waste, residential kitchen waste, and other similar
52 waste from household or establishment appurtenances;

53 [(11)] (12) "Income" includes retirement benefits,
54 consultant fees, and stock dividends;

55 [(12)] (13) "Minor violation", a violation which
56 possesses a small potential to harm the environment or human
57 health or cause pollution, was not knowingly committed, and
58 is not defined by the United States Environmental Protection
59 Agency as other than minor;

60 [(13)] (14) **"Operating location", all contiguous lands**
61 **owned, operated, or controlled by one or more persons**
62 **jointly or as tenants in common, except land application**
63 **sites are not required to be contiguous;**

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

67 [(14)] (16) "Permit holders or applicants for a
68 permit" shall not include officials or employees who work
69 full time for any department or agency of the state of
70 Missouri;

71 [(15)] (17) "Person", any individual, partnership,
72 copartnership, firm, company, public or private corporation,
73 association, joint stock company, trust, estate, political
74 subdivision, or any agency, board, department, or bureau of
75 the state or federal government, or any other legal entity
76 whatever which is recognized by law as the subject of rights
77 and duties;

78 [(16)] (18) "Point source", any discernible, confined
79 and discrete conveyance, including but not limited to any
80 pipe, ditch, channel, tunnel, conduit, well, discrete

81 fissure, container, rolling stock, concentrated animal
82 feeding operation, or vessel or other floating craft, from
83 which pollutants are or may be discharged. Point source
84 does not include agricultural storm water discharges and
85 return flows from irrigated agriculture;

86 [(17)] (19) "Pollution", such contamination or other
87 alteration of the physical, chemical or biological
88 properties of any waters of the state, including change in
89 temperature, taste, color, turbidity, or odor of the waters,
90 or such discharge of any liquid, gaseous, solid,
91 radioactive, or other substance into any waters of the state
92 as will or is reasonably certain to create a nuisance or
93 render such waters harmful, detrimental or injurious to
94 public health, safety or welfare, or to domestic,
95 industrial, agricultural, recreational, or other legitimate
96 beneficial uses, or to wild animals, birds, fish or other
97 aquatic life;

98 [(18)] (20) "Pretreatment regulations", limitations on
99 the introduction of pollutants or water contaminants into
100 publicly owned treatment works or facilities which the
101 commission determines are not susceptible to treatment by
102 such works or facilities or which would interfere with their
103 operation, except that wastes as determined compatible for
104 treatment pursuant to any federal water pollution control
105 act or guidelines shall be limited or treated pursuant to
106 this chapter only as required by such act or guidelines;

107 [(19)] (21) "Residential housing development", any
108 land which is divided or proposed to be divided into three
109 or more lots, whether contiguous or not, for the purpose of
110 sale or lease as part of a common promotional plan for
111 residential housing;

112 [(20)] (22) "Sewer system", pipelines or conduits,
113 pumping stations, and force mains, and all other structures,
114 devices, appurtenances and facilities used for collecting or
115 conducting wastes to an ultimate point for treatment or
116 handling;

117 [(21)] (23) "Significant portion of his or her income"
118 shall mean ten percent of gross personal income for a
119 calendar year, except that it shall mean fifty percent of
120 gross personal income for a calendar year if the recipient
121 is over sixty years of age, and is receiving such portion
122 pursuant to retirement, pension, or similar arrangement;

123 [(22)] (24) "Site-specific permit", a permit written
124 for discharges emitted from a single water contaminant
125 source and containing specific conditions, monitoring
126 requirements and effluent limits to control such discharges;

127 [(23)] (25) "Treatment facilities", any method,
128 process, or equipment which removes, reduces, or renders
129 less obnoxious water contaminants released from any source;

130 [(24)] (26) "Water contaminant", any particulate
131 matter or solid matter or liquid or any gas or vapor or any
132 combination thereof, or any temperature change which is in
133 or enters any waters of the state either directly or
134 indirectly by surface runoff, by sewer, by subsurface
135 seepage or otherwise, which causes or would cause pollution
136 upon entering waters of the state, or which violates or
137 exceeds any of the standards, regulations or limitations set
138 forth in sections 644.006 to 644.141 or any federal water
139 pollution control act, or is included in the definition of
140 pollutant in such federal act;

141 [(25)] (27) "Water contaminant source", the point or
142 points of discharge from a single tract of property on which
143 is located any installation, operation or condition which

144 includes any point source defined in sections 644.006 to
145 644.141 and nonpoint source pursuant to any federal water
146 pollution control act, which causes or permits a water
147 contaminant therefrom to enter waters of the state either
148 directly or indirectly;

149 [(26)] (28) "Water quality standards", specified
150 concentrations and durations of water contaminants which
151 reflect the relationship of the intensity and composition of
152 water contaminants to potential undesirable effects;

153 [(27)] (29) "Waters of the state", all waters within
154 the jurisdiction of this state, including all rivers,
155 streams, lakes and other bodies of surface and subsurface
156 water lying within or forming a part of the boundaries of
157 the state which are not entirely confined and located
158 completely upon lands owned, leased or otherwise controlled
159 by a single person or by two or more persons jointly or as
160 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, setbacks, sampling**
19 **requirements and frequency, and a process for establishing**
20 **land application rates. Such rules shall be designed to**
21 **afford a prudent degree of environmental protection while**
22 **accommodating modern agricultural practices.**

644.051. 1. It is unlawful for any person:

2 (1) To cause pollution of any waters of the state or
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. (1) In order to receive an operating permit under
93 this section, any point source or operating location seeking
94 an operating permit for a commingled offsite industrial
95 wastewater or wastewater residuals open storage basin or
96 open storage vessel shall meet current design requirements
97 for wastewater treatment facilities and demonstrate the
98 capacity to manage its design flow.

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

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

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

116 (c) For a facility with a capacity of more than ten
117 million gallons, four thousand feet.

118 (3) All commingled offsite industrial wastewater or
119 wastewater residuals open storage basins or open storage
120 vessels holding valid operating permits as of the effective
121 date of this section shall be exempt from the buffer

122 distances prescribed in subdivision (2) of this subsection.
123 Such distances shall not apply to a facility that has
124 received a written agreement signed by all affected property
125 owners within the relevant buffer distance.

126 (4) The department shall require groundwater
127 monitoring wells on a site-specific basis when, in the
128 determination of the division of geological survey, the
129 commingled offsite industrial wastewater and wastewater
130 residuals open storage basin or open storage vessel is
131 located in hydrologically sensitive areas where the
132 groundwater may be compromised.

133 (5) (a) The department shall establish by rule
134 sampling requirements for commingled offsite industrial
135 wastewater and wastewater residuals open storage basins or
136 open storage vessels based on a basin's or vessel's design
137 flow and permitted materials.

138 (b) The department shall, within one hundred twenty
139 days of the effective date of this section, promulgate rules
140 that, at a minimum, establish criteria to require monthly
141 sampling and testing of any contents of any commingled
142 offsite industrial wastewater or wastewater residuals open
143 storage basin or open storage vessel for:

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

147 b. Any pathogens, including E. coli, fecal coliform,
148 and salmonella.

149 8. A governmental unit may apply to the department for
150 authorization to operate a local supervised program, and the
151 department may authorize such a program. A local supervised
152 program would recognize the governmental unit's engineering
153 capacity and ability to conduct engineering work, supervise

154 construction and maintain compliance with relevant operating
155 permit requirements.

156 [7.] 9. Before issuing any permit required by this
157 section, the director shall issue such notices, conduct such
158 hearings, and consider such factors, comments and
159 recommendations as required by sections 644.006 to 644.141
160 or any federal water pollution control act. The director
161 shall determine if any state or any provisions of any
162 federal water pollution control act the state is required to
163 enforce, any state or federal effluent limitations or
164 regulations, water quality-related effluent limitations,
165 national standards of performance, toxic and pretreatment
166 standards, or water quality standards which apply to the
167 source, or any such standards in the vicinity of the source,
168 are being exceeded, and shall determine the impact on such
169 water quality standards from the source. The director, in
170 order to effectuate the purposes of sections 644.006 to
171 644.141, shall deny a permit if the source will violate any
172 such acts, regulations, limitations or standards or will
173 appreciably affect the water quality standards or the water
174 quality standards are being substantially exceeded, unless
175 the permit is issued with such conditions as to make the
176 source comply with such requirements within an acceptable
177 time schedule.

178 [8.] 10. The director shall grant or deny the permit
179 within sixty days after all requirements of the Federal
180 Water Pollution Control Act concerning issuance of permits
181 have been satisfied unless the application does not require
182 any permit pursuant to any federal water pollution control
183 act. The director or the commission may require the
184 applicant to provide and maintain such facilities or to
185 conduct such tests and monitor effluents as necessary to

186 determine the nature, extent, quantity or degree of water
187 contaminant discharged or released from the source,
188 establish and maintain records and make reports regarding
189 such determination.

190 [9.] 11. The director shall promptly notify the
191 applicant in writing of his or her action and if the permit
192 is denied state the reasons for such denial. As provided by
193 sections 621.250 and 640.013, the applicant may appeal to
194 the administrative hearing commission from the denial of a
195 permit or from any condition in any permit by filing a
196 petition with the administrative hearing commission within
197 thirty days of the notice of denial or issuance of the
198 permit. After a final action is taken on a new or reissued
199 general permit, a potential applicant for the general permit
200 who can demonstrate that he or she is or may be adversely
201 affected by any permit term or condition may appeal the
202 terms and conditions of the general permit within thirty
203 days of the department's issuance of the general permit. In
204 no event shall a permit constitute permission to violate the
205 law or any standard, rule or regulation promulgated pursuant
206 thereto. Once the administrative hearing commission has
207 reviewed the appeal, the administrative hearing commission
208 shall issue a recommended decision to the commission on
209 permit issuance, denial, or any condition of the permit.
210 The commission shall issue its own decision, based on the
211 appeal, for permit issuance, denial, or any condition of the
212 permit. If the commission changes a finding of fact or
213 conclusion of law made by the administrative hearing
214 commission, or modifies or vacates the decision recommended
215 by the administrative hearing commission, it shall issue its
216 own decision, which shall include findings of fact and
217 conclusions of law. The commission shall mail copies of its

218 final decision to the parties to the appeal or their counsel
219 of record. The commission's decision shall be subject to
220 judicial review pursuant to chapter 536, except that the
221 court of appeals district with territorial jurisdiction
222 coextensive with the county where the point source is to be
223 located shall have original jurisdiction. No judicial
224 review shall be available until and unless all
225 administrative remedies are exhausted.

226 [10.] 12. In any hearing held pursuant to this section
227 that involves a permit, license, or registration, the burden
228 of proof is on the party specified in section 640.012. Any
229 decision of the commission made pursuant to a hearing held
230 pursuant to this section is subject to judicial review as
231 provided in section 644.071.

232 [11.] 13. In any event, no permit issued pursuant to
233 this section shall be issued if properly objected to by the
234 federal government or any agency authorized to object
235 pursuant to any federal water pollution control act unless
236 the application does not require any permit pursuant to any
237 federal water pollution control act.

238 [12.] 14. Permits may be modified, reissued, or
239 terminated at the request of the permittee. All requests
240 shall be in writing and shall contain facts or reasons
241 supporting the request.

242 [13.] 15. No manufacturing or processing plant or
243 operating location shall be required to pay more than one
244 operating fee. Operating permits shall be issued for a
245 period not to exceed five years after date of issuance,
246 except that general permits shall be issued for a five-year
247 period, and also except that neither a construction nor an
248 annual permit shall be required for a single residence's
249 waste treatment facilities. Applications for renewal of a

250 site-specific operating permit shall be filed at least one
251 hundred eighty days prior to the expiration of the existing
252 permit. Applications seeking to renew coverage under a
253 general permit shall be submitted at least thirty days prior
254 to the expiration of the general permit, unless the
255 permittee has been notified by the director that an earlier
256 application must be made. General permits may be applied
257 for and issued electronically once made available by the
258 director.

259 [14.] 16. Every permit issued to municipal or any
260 publicly owned treatment works or facility shall require the
261 permittee to provide the clean water commission with
262 adequate notice of any substantial new introductions of
263 water contaminants or pollutants into such works or facility
264 from any source for which such notice is required by
265 sections 644.006 to 644.141 or any federal water pollution
266 control act. Such permit shall also require the permittee
267 to notify the clean water commission of any substantial
268 change in volume or character of water contaminants or
269 pollutants being introduced into its treatment works or
270 facility by a source which was introducing water
271 contaminants or pollutants into its works at the time of
272 issuance of the permit. Notice must describe the quality
273 and quantity of effluent being introduced or to be
274 introduced into such works or facility by a source which was
275 introducing water contaminants or pollutants into its works
276 at the time of issuance of the permit. Notice must describe
277 the quality and quantity of effluent being introduced or to
278 be introduced into such works or facility and the
279 anticipated impact of such introduction on the quality or
280 quantity of effluent to be released from such works or
281 facility into waters of the state.

282 [15.] 17. The director or the commission may require
283 the filing or posting of a bond as a condition for the
284 issuance of permits for construction of temporary or future
285 water treatment facilities or facilities that utilize
286 innovative technology for wastewater treatment in an amount
287 determined by the commission to be sufficient to ensure
288 compliance with all provisions of sections 644.006 to
289 644.141, and any rules or regulations of the commission and
290 any condition as to such construction in the permit. For
291 the purposes of this section, "innovative technology for
292 wastewater treatment" shall mean a completely new and
293 generally unproven technology in the type or method of its
294 application that bench testing or theory suggest has
295 environmental, efficiency, and cost benefits beyond the
296 standard technologies. No bond shall be required for
297 designs approved by any federal agency or environmental
298 regulatory agency of another state. The bond shall be
299 signed by the applicant as principal, and by a corporate
300 surety licensed to do business in the state of Missouri and
301 approved by the commission. The bond shall remain in effect
302 until the terms and conditions of the permit are met and the
303 provisions of sections 644.006 to 644.141 and rules and
304 regulations promulgated pursuant thereto are complied with.

305 [16.] 18. (1) The department shall issue or deny
306 applications for construction and site-specific operating
307 permits received after January 1, 2001, within one hundred
308 eighty days of the department's receipt of an application.
309 For general construction and operating permit applications
310 received after January 1, 2001, that do not require a public
311 participation process, the department shall issue or deny
312 the permits within sixty days of the department's receipt of
313 an application. For an application seeking coverage under a

314 renewed general permit that does not require an individual
315 public participation process, the director shall issue or
316 deny the permit within sixty days of the director's receipt
317 of the application, or upon issuance of the general permit,
318 whichever is later. In regard to an application seeking
319 coverage under an initial general permit that does not
320 require an individual public participation process, the
321 director shall issue or deny the permit within sixty days of
322 the department's receipt of the application. For an
323 application seeking coverage under a renewed general permit
324 that requires an individual public participation process,
325 the director shall issue or deny the permit within ninety
326 days of the director's receipt of the application, or upon
327 issuance of the general permit, whichever is later. In
328 regard to an application for an initial general permit that
329 requires an individual public participation process, the
330 director shall issue or deny the permit within ninety days
331 of the director's receipt of the application.

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

341 (3) Permit fee disputes may be appealed to the
342 commission within thirty days of the date established in
343 subdivision (2) of this subsection. If the applicant
344 prevails in a permit fee dispute appealed to the commission,
345 the commission may order the director to refund the

346 applicant's permit fee plus interest and reasonable
347 attorney's fees as provided in sections 536.085 and
348 536.087. A refund of the initial application or annual fee
349 does not waive the applicant's responsibility to pay any
350 annual fees due each year following issuance of a permit.

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

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

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

377 any rules promulgated pursuant to sections 644.006 to
378 644.141.

379 [17.] 19. The department shall respond to all requests
380 for individual certification under Section 401 of the
381 Federal Clean Water Act within the lesser of sixty days or
382 the allowed response period established pursuant to
383 applicable federal regulations without request for an
384 extension period unless such extension is determined by the
385 commission to be necessary to evaluate significant impacts
386 on water quality standards and the commission establishes a
387 timetable for completion of such evaluation in a period of
388 no more than one hundred eighty days.

389 [18.] 20. All permit fees generated pursuant to this
390 chapter shall not be used for the development or expansion
391 of total maximum daily loads studies on either the Missouri
392 or Mississippi rivers.

393 [19.] 21. The department shall implement permit shield
394 provisions equivalent to the permit shield provisions
395 implemented by the U.S. Environmental Protection Agency
396 pursuant to the Clean Water Act, Section 402(k), 33 U.S.C.
397 Section 1342(k), and its implementing regulations, for
398 permits issued pursuant to this chapter.

399 [20.] 22. Prior to the development of a new general
400 permit or reissuance of a general permit for aquaculture,
401 land disturbance requiring a storm water permit, or
402 reissuance of a general permit under which fifty or more
403 permits were issued under a general permit during the
404 immediately preceding five-year period for a designated
405 category of water contaminant sources, the director shall
406 implement a public participation process complying with the
407 following minimum requirements:

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

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

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

433 (4) The director shall hold a thirty-day public
434 comment period to receive comments on the general permit
435 template with the thirty-day comment period expiring at
436 least sixty days prior to the effective date of the general
437 permit. Scanned copies of the comments received during the
438 public comment period shall be posted on the department's

439 website within five business days after close of the public
440 comment period;

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

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

452 [21.] 23. Notices required to be made by the
453 department pursuant to subsection [20] 22 of this section
454 may be made by electronic mail. The department shall not be
455 required to make notice to any permittee or other person who
456 has not provided a current electronic mail address to the
457 department. In the event the department chooses to make
458 material modifications to the general permit before its
459 expiration, the department shall follow the public
460 participation process described in subsection [20] 22 of
461 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] 11 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.

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