

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILLS NOS. 2134 & 1956

102ND GENERAL ASSEMBLY

4407S.09C

KRISTINA MARTIN, Secretary

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
2 644.145, RSMo, are repealed and five new sections enacted in
3 lieu thereof, to be known as sections 640.406, 644.016, 644.041,
4 644.051, and 644.145, to read as follows:

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

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

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

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

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

13 (5) "Person", any individual, partnership,
14 copartnership, firm, company, public or private corporation,
15 association, joint stock company, trust, estate, political

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

16 subdivision, water district, or any agency, board,
17 department, or bureau of the federal or any state
18 government, or any other legal entity which is recognized by
19 law as the subject of rights and duties;

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

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

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

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

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

49 (2) The applicant has a present need for the water and
50 intends to put the water into beneficial use. In making the
51 determinations of need and beneficial use, the director
52 shall consider the availability of all water sources and
53 other relevant matters as the director deems appropriate,
54 and may consider the availability of groundwater as an
55 alternative source;

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

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

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

65 5. Within one hundred eighty days after the
66 department's receipt of a complete application, the director
67 shall issue a proposed decision to either approve the
68 application if the conditions in subsection 4 of this
69 section have been met or deny the application if the
70 conditions in subsection 4 of this section have not been met
71 and shall hold a thirty-day public comment period on the
72 proposed approval or denial. After the comment period, the
73 department shall respond to comments received and shall
74 either approve the application or deny the application if
75 the conditions in subsection 4 of this section have not been
76 met. If the department approves the application, it shall
77 send its findings to the clean water commission and Missouri

78 soil and water districts commission for review using the
79 criteria described in subsection 4 of this section. At the
80 next scheduled meeting, the clean water commission and
81 Missouri soil and water districts commission shall review
82 the department's findings. If the clean water commission
83 and Missouri soil and water districts commission agrees with
84 the department's decision that a permit should be issued,
85 the clean water commission and Missouri soil and water
86 districts commission shall send its decision back to the
87 department for the issuance of the permit. If the clean
88 water commission and Missouri soil and water districts
89 commission disagrees with the department's decision for the
90 issuance of the permit, the clean water commission and
91 Missouri soil and water districts commission shall send its
92 decision back to the department and the department shall
93 deny the application. Any permit issued pursuant to this
94 section shall state the time within which the water shall be
95 applied to beneficial use. Permits issued pursuant to this
96 section shall be issued for a period not to exceed three
97 years after the date of issuance.

98 (1) In the absence of appeal as provided under chapter
99 536, the decision of the director subject to approval or
100 disapproval of the clean water commission and Missouri soil
101 and water districts commission shall be final.

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

109 commission's review and approval or denial pursuant to this
110 subsection.

111 (3) The department shall promulgate rules regarding
112 the process of sending the department's findings to the
113 Missouri soil and water districts commission and the clean
114 water commission for review under this subsection. Any rule
115 or portion of a rule, as that term is defined in section
116 536.010, that is created under the authority delegated in
117 this section shall become effective only if it complies with
118 and is subject to all of the provisions of chapter 536 and,
119 if applicable, section 536.028. This section and chapter
120 536 are nonseverable and if any of the powers vested with
121 the general assembly pursuant to chapter 536 to review, to
122 delay the effective date, or to disapprove and annul a rule
123 are subsequently held unconstitutional, then the grant of
124 rulemaking authority and any rule proposed or adopted after
125 August 28, 2024, shall be invalid and void.

126 6. (1) Before granting water supply for access and
127 use outside the state of Missouri, the director shall
128 consider existing and proposed in-state uses in order to
129 guarantee that in-state users will have access to and use of
130 all of the water required to adequately supply for
131 beneficial uses.

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

137 7. Subsections 4 to 6 of this section are subject to
138 the most recent reports, data, and information in
139 consideration of each permit application, whether the

140 application is for an initial permit or renewal of an active
141 or expired permit.

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

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

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

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

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

178 13. The time-limited, active life of the permit, not
179 to exceed three years, requires the director to determine
180 whether there has been a substantial or material change
181 relating to any matters set forth in subsections 3 to 5 of
182 this section in response to renewal applications requesting
183 a permit for authorization of the continued export of water
184 outside the state. The director may impose additional
185 conditions to address any such substantial or material
186 change or may deny the permit renewal application as
187 necessary to comply with this section based on any such
188 substantial or material changes. The director's decision to
189 renew the permit shall be subject to the requirements of
190 subsection 5 of this section.

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

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

204 16. Whenever the United States Drought Monitor (USDM)
205 indicates a D2 level drought for any county for which an
206 export permit has been issued, the department of natural
207 resources shall reevaluate such export permit. If the USDM
208 indicates a D3 or worse drought condition in any county, the
209 department shall reevaluate all existing permits within the
210 state. If a state of emergency is declared for the state or
211 any part of the state, the department may reevaluate any
212 existing water exportation permit. Any reevaluation
213 completed under this section shall use the criteria under
214 subsections 3 and 5 of this section. After reevaluation of
215 the permit is complete, the department shall have the
216 authority to impose additional conditions or revoke the
217 permit if necessary for the continued exportation of water
218 outside the state if the director determines that the
219 existing permit negatively impacts beneficial use of water
220 resources. The director's decision to modify, revoke, or
221 make no changes to the permit shall be subject to the clean
222 water commission's and Missouri soil and water districts
223 commission's review and approval or denial pursuant to
224 subsection 5 of this section.

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

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

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

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

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

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

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

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

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

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

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

39 **[(8)] (9)** "General permit", a permit written with a
40 standard group of conditions and with applicability intended
41 for a designated category of water contaminant sources that
42 have the same or similar operations, discharges and

43 geographical locations, and that require the same or similar
44 monitoring, and that would be more appropriately controlled
45 pursuant to a general permit rather than pursuant to a site-
46 specific permit;

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

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

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

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

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

65 [(13)] (15) "Permit by rule", a permit granted by
66 rule, not by a paper certificate, and conditioned by the
67 permit holder's compliance with commission rules;

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

72 [(15)] (17) "Person", any individual, partnership,
73 copartnership, firm, company, public or private corporation,
74 association, joint stock company, trust, estate, political

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

79 [(16)] (18) "Point source", any discernible, confined
80 and discrete conveyance, including but not limited to any
81 pipe, ditch, channel, tunnel, conduit, well, discrete
82 fissure, container, rolling stock, concentrated animal
83 feeding operation, or vessel or other floating craft, from
84 which pollutants are or may be discharged. Point source
85 does not include agricultural storm water discharges and
86 return flows from irrigated agriculture;

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

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

106 act or guidelines shall be limited or treated pursuant to
107 this chapter only as required by such act or guidelines;

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

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

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

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

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

131 **[(24)] (26)** "Water contaminant", any particulate
132 matter or solid matter or liquid or any gas or vapor or any
133 combination thereof, or any temperature change which is in
134 or enters any waters of the state either directly or
135 indirectly by surface runoff, by sewer, by subsurface
136 seepage or otherwise, which causes or would cause pollution
137 upon entering waters of the state, or which violates or

138 exceeds any of the standards, regulations or limitations set
139 forth in sections 644.006 to 644.141 or any federal water
140 pollution control act, or is included in the definition of
141 pollutant in such federal act;

142 [(25)] (27) "Water contaminant source", the point or
143 points of discharge from a single tract of property on which
144 is located any installation, operation or condition which
145 includes any point source defined in sections 644.006 to
146 644.141 and nonpoint source pursuant to any federal water
147 pollution control act, which causes or permits a water
148 contaminant therefrom to enter waters of the state either
149 directly or indirectly;

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

154 [(27)] (29) "Waters of the state", all waters within
155 the jurisdiction of this state, including all rivers,
156 streams, lakes and other bodies of surface and subsurface
157 water lying within or forming a part of the boundaries of
158 the state which are not entirely confined and located
159 completely upon lands owned, leased or otherwise controlled
160 by a single person or by two or more persons jointly or as
161 tenants in common.

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

9 facilities as required under any federal water pollution
10 control act, throughout the state and thereafter may modify
11 such regulations from time to time.

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

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

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

644.051. 1. It is unlawful for any person:

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

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

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

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

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

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

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

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

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

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

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

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

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

51 (2) To address noncompliance;

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

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

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

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

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

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

83 **6. Notwithstanding any provision of this section to**
84 **the contrary, the commission may exempt an entity from the**
85 **requirement to obtain a permit under this section based on**
86 **licensure under the Missouri fertilizer law, sections**

87 266.291 to 266.351, only if the entity is producing products
88 that are commercially sold to an end user in accordance with
89 such sections and has accurate labeling for each container
90 that includes the information required under subsection 1 of
91 section 266.321.

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

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

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

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

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

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

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

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

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

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

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

152 **b. E. coli and fecal coliform.**

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

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

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

181 appreciably affect the water quality standards or the water
182 quality standards are being substantially exceeded, unless
183 the permit is issued with such conditions as to make the
184 source comply with such requirements within an acceptable
185 time schedule.

186 [8.] 11. The director shall grant or deny the permit
187 within sixty days after all requirements of the Federal
188 Water Pollution Control Act concerning issuance of permits
189 have been satisfied unless the application does not require
190 any permit pursuant to any federal water pollution control
191 act. The director or the commission may require the
192 applicant to provide and maintain such facilities or to
193 conduct such tests and monitor effluents as necessary to
194 determine the nature, extent, quantity or degree of water
195 contaminant discharged or released from the source,
196 establish and maintain records and make reports regarding
197 such determination.

198 [9.] 12. The director shall promptly notify the
199 applicant in writing of his or her action and if the permit
200 is denied state the reasons for such denial. As provided by
201 sections 621.250 and 640.013, the applicant may appeal to
202 the administrative hearing commission from the denial of a
203 permit or from any condition in any permit by filing a
204 petition with the administrative hearing commission within
205 thirty days of the notice of denial or issuance of the
206 permit. After a final action is taken on a new or reissued
207 general permit, a potential applicant for the general permit
208 who can demonstrate that he or she is or may be adversely
209 affected by any permit term or condition may appeal the
210 terms and conditions of the general permit within thirty
211 days of the department's issuance of the general permit. In
212 no event shall a permit constitute permission to violate the

213 law or any standard, rule or regulation promulgated pursuant
214 thereto. Once the administrative hearing commission has
215 reviewed the appeal, the administrative hearing commission
216 shall issue a recommended decision to the commission on
217 permit issuance, denial, or any condition of the permit.
218 The commission shall issue its own decision, based on the
219 appeal, for permit issuance, denial, or any condition of the
220 permit. If the commission changes a finding of fact or
221 conclusion of law made by the administrative hearing
222 commission, or modifies or vacates the decision recommended
223 by the administrative hearing commission, it shall issue its
224 own decision, which shall include findings of fact and
225 conclusions of law. The commission shall mail copies of its
226 final decision to the parties to the appeal or their counsel
227 of record. The commission's decision shall be subject to
228 judicial review pursuant to chapter 536, except that the
229 court of appeals district with territorial jurisdiction
230 coextensive with the county where the point source is to be
231 located shall have original jurisdiction. No judicial
232 review shall be available until and unless all
233 administrative remedies are exhausted.

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

240 [11.] 14. In any event, no permit issued pursuant to
241 this section shall be issued if properly objected to by the
242 federal government or any agency authorized to object
243 pursuant to any federal water pollution control act unless

244 the application does not require any permit pursuant to any
245 federal water pollution control act.

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

250 [13.] 16. No manufacturing or processing plant or
251 operating location shall be required to pay more than one
252 operating fee. Operating permits shall be issued for a
253 period not to exceed five years after date of issuance,
254 except that general permits shall be issued for a five-year
255 period, and also except that neither a construction nor an
256 annual permit shall be required for a single residence's
257 waste treatment facilities. Applications for renewal of a
258 site-specific operating permit shall be filed at least one
259 hundred eighty days prior to the expiration of the existing
260 permit. Applications seeking to renew coverage under a
261 general permit shall be submitted at least thirty days prior
262 to the expiration of the general permit, unless the
263 permittee has been notified by the director that an earlier
264 application must be made. General permits may be applied
265 for and issued electronically once made available by the
266 director.

267 [14.] 17. Every permit issued to municipal or any
268 publicly owned treatment works or facility shall require the
269 permittee to provide the clean water commission with
270 adequate notice of any substantial new introductions of
271 water contaminants or pollutants into such works or facility
272 from any source for which such notice is required by
273 sections 644.006 to 644.141 or any federal water pollution
274 control act. Such permit shall also require the permittee
275 to notify the clean water commission of any substantial

276 change in volume or character of water contaminants or
277 pollutants being introduced into its treatment works or
278 facility by a source which was introducing water
279 contaminants or pollutants into its works at the time of
280 issuance of the permit. Notice must describe the quality
281 and quantity of effluent being introduced or to be
282 introduced into such works or facility by a source which was
283 introducing water contaminants or pollutants into its works
284 at the time of issuance of the permit. Notice must describe
285 the quality and quantity of effluent being introduced or to
286 be introduced into such works or facility and the
287 anticipated impact of such introduction on the quality or
288 quantity of effluent to be released from such works or
289 facility into waters of the state.

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

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

313 [16.] 19. (1) The department shall issue or deny
314 applications for construction and site-specific operating
315 permits received after January 1, 2001, within one hundred
316 eighty days of the department's receipt of an application.
317 For general construction and operating permit applications
318 received after January 1, 2001, that do not require a public
319 participation process, the department shall issue or deny
320 the permits within sixty days of the department's receipt of
321 an application. For an application seeking coverage under a
322 renewed general permit that does not require an individual
323 public participation process, the director shall issue or
324 deny the permit within sixty days of the director's receipt
325 of the application, or upon issuance of the general permit,
326 whichever is later. In regard to an application seeking
327 coverage under an initial general permit that does not
328 require an individual public participation process, the
329 director shall issue or deny the permit within sixty days of
330 the department's receipt of the application. For an
331 application seeking coverage under a renewed general permit
332 that requires an individual public participation process,
333 the director shall issue or deny the permit within ninety
334 days of the director's receipt of the application, or upon
335 issuance of the general permit, whichever is later. In
336 regard to an application for an initial general permit that
337 requires an individual public participation process, the
338 director shall issue or deny the permit within ninety days
339 of the director's receipt of the application.

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

349 (3) Permit fee disputes may be appealed to the
350 commission within thirty days of the date established in
351 subdivision (2) of this subsection. If the applicant
352 prevails in a permit fee dispute appealed to the commission,
353 the commission may order the director to refund the
354 applicant's permit fee plus interest and reasonable
355 attorney's fees as provided in sections 536.085 and
356 536.087. A refund of the initial application or annual fee
357 does not waive the applicant's responsibility to pay any
358 annual fees due each year following issuance of a permit.

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

372 days it took the department to issue each permit from the
373 date of receipt of the application and show averages for
374 each different class of permits.

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

382 (6) Nothing in this subsection shall be interpreted to
383 mean that inaction on a permit application shall be grounds
384 to violate any provisions of sections 644.006 to 644.141 or
385 any rules promulgated pursuant to sections 644.006 to
386 644.141.

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

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

401 **[19.] 22.** The department shall implement permit shield
402 provisions equivalent to the permit shield provisions
403 implemented by the U.S. Environmental Protection Agency

404 pursuant to the Clean Water Act, Section 402(k), 33 U.S.C.
405 Section 1342(k), and its implementing regulations, for
406 permits issued pursuant to this chapter.

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

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

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

425 (3) The director shall hold a public informational
426 meeting to provide information on anticipated permit
427 conditions and requirements and to receive informal comments
428 from permittees and other interested persons. The director
429 shall include notice of the public informational meeting
430 with the notice of intent to issue a new general permit or
431 reissue a general permit under subdivision (2) of this
432 subsection. The notice of the public informational meeting,
433 including the date, time and location, shall be posted on
434 the department's website at least thirty days in advance of
435 the public meeting. If the meeting is being held for

436 reissuance of a general permit, notice shall also be made by
437 electronic mail to all permittees holding the current
438 general permit which is expiring. Notice to current
439 permittees shall be made at least twenty days prior to the
440 public meeting;

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

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

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

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

468 participation process described in subsection [20] 23 of
469 this section.

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

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

17 (a) Issuing collection system extension permits;

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

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

28 (2) The exceptions provided under paragraph (c) of
29 subdivision (1) of this subsection do not apply when the

30 community being served has less than three thousand three
31 hundred residents.

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

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

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

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

58 4. The department of natural resources shall adopt
59 procedures by which it will make affordability findings that
60 evaluate the affordability of permit requirements and
61 enforcement actions described in subsection 1 of this

62 section, and may begin implementing such procedures prior to
63 promulgating implementing regulations. The commission shall
64 have the authority to promulgate rules to implement this
65 section pursuant to chapters 536 and 644, and shall
66 promulgate such rules as soon as practicable. Affordability
67 findings shall be based upon reasonably verifiable data and
68 shall include an assessment of affordability with respect to
69 persons or entities affected. The department shall offer
70 the permittee an opportunity to review a draft affordability
71 finding, and the permittee may suggest changes and provide
72 additional supporting information, subject to subsection 6
73 of this section. The finding shall be based upon the
74 following criteria:

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

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

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

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

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

91 (a) Allowing adequate time in implementation schedules
92 to mitigate potential adverse impacts on distressed
93 populations resulting from the costs of the improvements and

94 taking into consideration local community economic
95 considerations; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

✓