

SECOND REGULAR SESSION

# SENATE BILL NO. 1081

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR CLEMENS.

Read 1st time February 20, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

5171S.011

## AN ACT

To repeal section 644.051, RSMo, and to enact in lieu thereof one new section relating to bond requirement for issuance of permits for construction of wastewater treatment facilities.

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

Section A. Section 644.051, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 644.051, to read as follows:

644.051. 1. It is unlawful for any person:

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

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

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

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

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

21 systems tributary to publicly owned treatment works.

22           3. Every proposed water contaminant or point source which, when  
23 constructed or installed or established, will be subject to any federal water  
24 pollution control act or sections 644.006 to 644.141 or regulations promulgated  
25 pursuant to the provisions of such act shall make application to the director for  
26 a permit at least thirty days prior to the initiation of construction or installation  
27 or establishment. Every water contaminant or point source in existence when  
28 regulations or sections 644.006 to 644.141 become effective shall make application  
29 to the director for a permit within sixty days after the regulations or sections  
30 644.006 to 644.141 become effective, whichever shall be earlier. The director shall  
31 promptly investigate each application, which investigation shall include such  
32 hearings and notice, and consideration of such comments and recommendations  
33 as required by sections 644.006 to 644.141 and any federal water pollution control  
34 act. If the director determines that the source meets or will meet the  
35 requirements of sections 644.006 to 644.141 and the regulations promulgated  
36 pursuant thereto, the director shall issue a permit with such conditions as he or  
37 she deems necessary to ensure that the source will meet the requirements of  
38 sections 644.006 to 644.141 and any federal water pollution control act as it  
39 applies to sources in this state. If the director determines that the source does  
40 not meet or will not meet the requirements of either act and the regulations  
41 pursuant thereto, the director shall deny the permit pursuant to the applicable  
42 act and issue any notices required by sections 644.006 to 644.141 and any federal  
43 water pollution control act.

44           4. Before issuing a permit to build or enlarge a water contaminant or  
45 point source or reissuing any permit, the director shall issue such notices, conduct  
46 such hearings, and consider such factors, comments and recommendations as  
47 required by sections 644.006 to 644.141 or any federal water pollution control  
48 act. The director shall determine if any state or any provisions of any federal  
49 water pollution control act the state is required to enforce, any state or federal  
50 effluent limitations or regulations, water quality-related effluent limitations,  
51 national standards of performance, toxic and pretreatment standards, or water  
52 quality standards which apply to the source, or any such standards in the vicinity  
53 of the source, are being exceeded, and shall determine the impact on such water  
54 quality standards from the source. The director, in order to effectuate the  
55 purposes of sections 644.006 to 644.141, shall deny a permit if the source will  
56 violate any such acts, regulations, limitations or standards or will appreciably  
57 affect the water quality standards or the water quality standards are being

58 substantially exceeded, unless the permit is issued with such conditions as to  
59 make the source comply with such requirements within an acceptable time  
60 schedule. Prior to the development or renewal of a general permit or permit by  
61 rule, for aquaculture, the director shall convene a meeting or meetings of permit  
62 holders and applicants to evaluate the impacts of permits and to discuss any  
63 terms and conditions that may be necessary to protect waters of the  
64 state. Following the discussions, the director shall finalize a draft permit that  
65 considers the comments of the meeting participants and post the draft permit on  
66 notice for public comment. The director shall concurrently post with the draft  
67 permit an explanation of the draft permit and shall identify types of facilities  
68 which are subject to the permit conditions. Affected public or applicants for new  
69 general permits, renewed general permits or permits by rule may request a  
70 hearing with respect to the new requirements in accordance with this section. If  
71 a request for a hearing is received, the commission shall hold a hearing to receive  
72 comments on issues of significant technical merit and concerns related to the  
73 responsibilities of the Missouri clean water law. The commission shall conduct  
74 such hearings in accordance with this section. After consideration of such  
75 comments, a final action on the permit shall be rendered. The time between the  
76 date of the hearing request and the hearing itself shall not be counted as time  
77 elapsed pursuant to subdivision (1) of subsection 13 of this section.

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

87         6. The director shall promptly notify the applicant in writing of his or her  
88 action and if the permit is denied state the reasons therefor. The applicant may  
89 appeal to the commission from the denial of a permit or from any condition in any  
90 permit by filing notice of appeal with the commission within thirty days of the  
91 notice of denial or issuance of the permit. The commission shall set the matter  
92 for hearing not less than thirty days after the notice of appeal is filed. In no  
93 event shall a permit constitute permission to violate the law or any standard, rule  
94 or regulation promulgated pursuant thereto.

95           7. In any hearing held pursuant to this section the burden of proof is on  
96 the applicant for a permit. Any decision of the commission made pursuant to a  
97 hearing held pursuant to this section is subject to judicial review as provided in  
98 section 644.071.

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

103           9. Unless a site-specific permit is requested by the applicant, aquaculture  
104 facilities shall be governed by a general permit issued pursuant to this section  
105 with a fee not to exceed two hundred fifty dollars pursuant to subdivision (5) of  
106 subsection 6 of section 644.052. However, any aquaculture facility which  
107 materially violates the conditions and requirements of such permit may be  
108 required to obtain a site-specific permit.

109           10. No manufacturing or processing plant or operating location shall be  
110 required to pay more than one operating fee. Operating permits shall be issued  
111 for a period not to exceed five years after date of issuance, except that general  
112 permits shall be issued for a five-year period, and also except that neither a  
113 construction nor an annual permit shall be required for a single residence's waste  
114 treatment facilities. Applications for renewal of an operating permit shall be filed  
115 at least one hundred eighty days prior to the expiration of the existing permit.

116           11. Every permit issued to municipal or any publicly owned treatment  
117 works or facility shall require the permittee to provide the clean water  
118 commission with adequate notice of any substantial new introductions of water  
119 contaminants or pollutants into such works or facility from any source for which  
120 such notice is required by sections 644.006 to 644.141 or any federal water  
121 pollution control act. Such permit shall also require the permittee to notify the  
122 clean water commission of any substantial change in volume or character of water  
123 contaminants or pollutants being introduced into its treatment works or facility  
124 by a source which was introducing water contaminants or pollutants into its  
125 works at the time of issuance of the permit. Notice must describe the quality and  
126 quantity of effluent being introduced or to be introduced into such works or  
127 facility by a source which was introducing water contaminants or pollutants into  
128 its works at the time of issuance of the permit. Notice must describe the quality  
129 and quantity of effluent being introduced or to be introduced into such works or  
130 facility and the anticipated impact of such introduction on the quality or quantity  
131 of effluent to be released from such works or facility into waters of the state.

132           12. The director or the commission may require the filing or posting of a  
133 bond as a condition for the issuance of permits for construction of temporary or  
134 future water treatment facilities **or facilities that utilize innovative**  
135 **technology for wastewater treatment** in an amount determined by the  
136 commission to be sufficient to ensure compliance with all provisions of sections  
137 644.006 to 644.141, and any rules or regulations of the commission and any  
138 condition as to such construction in the permit. **For the purpose of this**  
139 **section, innovative technology for wastewater treatment shall mean a**  
140 **completely new or generally unproven technology in the type or method**  
141 **of its application that bench testing or theory suggest has**  
142 **environmental, efficiency, and cost benefits beyond the standard**  
143 **technologies.** The bond shall be signed by the applicant as principal, and by a  
144 corporate surety licensed to do business in the state of Missouri and approved by  
145 the commission. The bond shall remain in effect until the terms and conditions  
146 of the permit are met and the provisions of sections 644.006 to 644.141 and rules  
147 and regulations promulgated pursuant thereto are complied with.

148           13. (1) The department shall issue or deny applications for construction  
149 and site-specific operating permits received after January 1, 2001, within one  
150 hundred eighty days of the department's receipt of an application. For general  
151 construction and operating permit applications received after January 1, 2001,  
152 that do not require a public participation process, the department shall issue or  
153 deny the requested permits within sixty days of the department's receipt of an  
154 application.

155           (2) If the department fails to issue or deny with good cause a construction  
156 or operating permit application within the time frames established in subdivision  
157 (1) of this subsection, the department shall refund the full amount of the initial  
158 application fee within forty-five days of failure to meet the established time  
159 frame. If the department fails to refund the application fee within forty-five days,  
160 the refund amount shall accrue interest at a rate established pursuant to section  
161 32.065, RSMo.

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

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

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

186 (6) Nothing in this subsection shall be interpreted to mean that inaction  
187 on a permit application shall be grounds to violate any provisions of sections  
188 644.006 to 644.141 or any rules promulgated pursuant to sections 644.006 to  
189 644.141.

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

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

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