

SECOND REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1081
93RD GENERAL ASSEMBLY

Reported from the Committee on Agriculture, Conservation, Parks and Natural Resources, March 16, 2006, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 1081, adopted April 10, 2006.

Taken up for Perfection April 10, 2006. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

5171S.02P

AN ACT

To repeal section 644.051, RSMo, and to enact in lieu thereof one new section relating to a 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Section A. Section 644.051, RSMo, is repealed and one new section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
31 shall promptly investigate each application, which investigation shall include
32 such hearings and notice, and consideration of such comments and
33 recommendations as required by sections 644.006 to 644.141 and any federal
34 water pollution control act. If the director determines that the source meets or
35 will meet the requirements of sections 644.006 to 644.141 and the regulations
36 promulgated pursuant thereto, the director shall issue a permit with such
37 conditions as he or she deems necessary to ensure that the source will meet the
38 requirements of sections 644.006 to 644.141 and any federal water pollution
39 control act as it applies to sources in this state. If the director determines that
40 the source does not meet or will not meet the requirements of either act and the
41 regulations pursuant thereto, the director shall deny the permit pursuant to the
42 applicable act and issue any notices required by sections 644.006 to 644.141 and
43 any federal 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**
140 **a completely new and generally unproven technology in the type or**
141 **method of its application that bench testing or theory suggest has**
142 **environmental, efficiency, and cost benefits beyond the standard**
143 **technologies. No bond shall be required for designs approved by any**
144 **federal agency or environmental regulatory agency of another**
145 **state.** The bond shall be signed by the applicant as principal, and by a corporate
146 surety licensed to do business in the state of Missouri and approved by the
147 commission. The bond shall remain in effect until the terms and conditions of the
148 permit are met and the provisions of sections 644.006 to 644.141 and rules and
149 regulations promulgated pursuant thereto are complied with.

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

157 (2) If the department fails to issue or deny with good cause a construction
158 or operating permit application within the time frames established in subdivision
159 (1) of this subsection, the department shall refund the full amount of the initial

160 application fee within forty-five days of failure to meet the established time
161 frame. If the department fails to refund the application fee within forty-five days,
162 the refund amount shall accrue interest at a rate established pursuant to section
163 32.065, RSMo.

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

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

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

189 (6) Nothing in this subsection shall be interpreted to mean that inaction
190 on a permit application shall be grounds to violate any provisions of sections
191 644.006 to 644.141 or any rules promulgated pursuant to sections 644.006 to
192 644.141.

193 14. The department shall respond to all requests for individual
194 certification under Section 401 of the Federal Clean Water Act within the lesser
195 of sixty days or the allowed response period established pursuant to applicable

196 federal regulations without request for an extension period unless such extension
197 is determined by the commission to be necessary to evaluate significant impacts
198 on water quality standards and the commission establishes a timetable for
199 completion of such evaluation in a period of no more than one hundred eighty
200 days.

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

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