

FIRST REGULAR SESSION

SENATE BILL NO. 266

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BEAN.

1127S.01H

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 644.051, RSMo, and to enact in lieu thereof one new section relating to water pollution.

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Section A. Section 644.051, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 644.051, to read as follows:

644.051. 1. It is unlawful for any person:

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

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

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

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

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

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 earthen basin constructed to retain and settle**
46 **earthen materials such as soil, silt, and rock;**

47 (5) Any other exclusions the commission may promulgate
48 by rule.

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

51 [(a)] (1) Substantial deviation from the commission's
52 design standards;

53 [(b)] (2) To address noncompliance;

54 [(c)] (3) When an unauthorized discharge has occurred
55 or has the potential to occur; or

56 [(d)] (4) To correct a violation of water quality
57 standards.

58 [In addition,] 5. Any point source that proposes to
59 construct an earthen storage structure to hold, convey,
60 contain, store or treat domestic, agricultural, or
61 industrial process wastewater also shall be subject to the
62 construction permit provisions of this subsection **unless**
63 **exempted by the commission.** All other construction-related
64 activities at point sources shall be exempt from the
65 construction permit requirements. All activities that are
66 exempted from the construction permit requirement are
67 subject to the following conditions:

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

74 [b.] (2) Such point source system shall be constructed
75 in accordance with the registered professional engineer's
76 design and plans **unless exempted by the commission;** and

77 [c.] (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 A governmental unit may apply to the department for
84 authorization to operate a local supervised program, and the
85 department may authorize such a program. A local supervised
86 program would recognize the governmental unit's engineering
87 capacity and ability to conduct engineering work, supervise
88 construction and maintain compliance with relevant operating
89 permit requirements.

90 [4.] 6. Before issuing any permit required by this
91 section, the director shall issue such notices, conduct such
92 hearings, and consider such factors, comments and
93 recommendations as required by sections 644.006 to 644.141
94 or any federal water pollution control act. The director
95 shall determine if any state or any provisions of any
96 federal water pollution control act the state is required to
97 enforce, any state or federal effluent limitations or
98 regulations, water quality-related effluent limitations,
99 national standards of performance, toxic and pretreatment
100 standards, or water quality standards which apply to the
101 source, or any such standards in the vicinity of the source,
102 are being exceeded, and shall determine the impact on such
103 water quality standards from the source. The director, in
104 order to effectuate the purposes of sections 644.006 to
105 644.141, shall deny a permit if the source will violate any
106 such acts, regulations, limitations or standards or will
107 appreciably affect the water quality standards or the water
108 quality standards are being substantially exceeded, unless
109 the permit is issued with such conditions as to make the
110 source comply with such requirements within an acceptable
111 time schedule.

112 [5.] 7. The director shall grant or deny the permit
113 within sixty days after all requirements of the Federal
114 Water Pollution Control Act concerning issuance of permits

115 have been satisfied unless the application does not require
116 any permit pursuant to any federal water pollution control
117 act. The director or the commission may require the
118 applicant to provide and maintain such facilities or to
119 conduct such tests and monitor effluents as necessary to
120 determine the nature, extent, quantity or degree of water
121 contaminant discharged or released from the source,
122 establish and maintain records and make reports regarding
123 such determination.

124 [6.] 8. The director shall promptly notify the
125 applicant in writing of his or her action and if the permit
126 is denied state the reasons for such denial. As provided by
127 sections 621.250 and 640.013, the applicant may appeal to
128 the administrative hearing commission from the denial of a
129 permit or from any condition in any permit by filing a
130 petition with the administrative hearing commission within
131 thirty days of the notice of denial or issuance of the
132 permit. After a final action is taken on a new or reissued
133 general permit, a potential applicant for the general permit
134 who can demonstrate that he or she is or may be adversely
135 affected by any permit term or condition may appeal the
136 terms and conditions of the general permit within thirty
137 days of the department's issuance of the general permit. In
138 no event shall a permit constitute permission to violate the
139 law or any standard, rule or regulation promulgated pursuant
140 thereto. Once the administrative hearing commission has
141 reviewed the appeal, the administrative hearing commission
142 shall issue a recommended decision to the commission on
143 permit issuance, denial, or any condition of the permit.
144 The commission shall issue its own decision, based on the
145 appeal, for permit issuance, denial, or any condition of the
146 permit. If the commission changes a finding of fact or

147 conclusion of law made by the administrative hearing
148 commission, or modifies or vacates the decision recommended
149 by the administrative hearing commission, it shall issue its
150 own decision, which shall include findings of fact and
151 conclusions of law. The commission shall mail copies of its
152 final decision to the parties to the appeal or their counsel
153 of record. The commission's decision shall be subject to
154 judicial review pursuant to chapter 536, except that the
155 court of appeals district with territorial jurisdiction
156 coextensive with the county where the point source is to be
157 located shall have original jurisdiction. No judicial
158 review shall be available until and unless all
159 administrative remedies are exhausted.

160 [7.] 9. In any hearing held pursuant to this section
161 that involves a permit, license, or registration, the burden
162 of proof is on the party specified in section 640.012. Any
163 decision of the commission made pursuant to a hearing held
164 pursuant to this section is subject to judicial review as
165 provided in section 644.071.

166 [8.] 10. In any event, no permit issued pursuant to
167 this section shall be issued if properly objected to by the
168 federal government or any agency authorized to object
169 pursuant to any federal water pollution control act unless
170 the application does not require any permit pursuant to any
171 federal water pollution control act.

172 [9.] 11. Permits may be modified, reissued, or
173 terminated at the request of the permittee. All requests
174 shall be in writing and shall contain facts or reasons
175 supporting the request.

176 [10.] 12. No manufacturing or processing plant or
177 operating location shall be required to pay more than one
178 operating fee. Operating permits shall be issued for a

179 period not to exceed five years after date of issuance,
180 except that general permits shall be issued for a five-year
181 period, and also except that neither a construction nor an
182 annual permit shall be required for a single residence's
183 waste treatment facilities. Applications for renewal of a
184 site-specific operating permit shall be filed at least one
185 hundred eighty days prior to the expiration of the existing
186 permit. Applications seeking to renew coverage under a
187 general permit shall be submitted at least thirty days prior
188 to the expiration of the general permit, unless the
189 permittee has been notified by the director that an earlier
190 application must be made. General permits may be applied
191 for and issued electronically once made available by the
192 director.

193 [11.] 13. Every permit issued to municipal or any
194 publicly owned treatment works or facility shall require the
195 permittee to provide the clean water commission with
196 adequate notice of any substantial new introductions of
197 water contaminants or pollutants into such works or facility
198 from any source for which such notice is required by
199 sections 644.006 to 644.141 or any federal water pollution
200 control act. Such permit shall also require the permittee
201 to notify the clean water commission of any substantial
202 change in volume or character of water contaminants or
203 pollutants being introduced into its treatment works or
204 facility by a source which was introducing water
205 contaminants or pollutants into its works at the time of
206 issuance of the permit. Notice must describe the quality
207 and quantity of effluent being introduced or to be
208 introduced into such works or facility by a source which was
209 introducing water contaminants or pollutants into its works
210 at the time of issuance of the permit. Notice must describe

211 the quality and quantity of effluent being introduced or to
212 be introduced into such works or facility and the
213 anticipated impact of such introduction on the quality or
214 quantity of effluent to be released from such works or
215 facility into waters of the state.

216 [12.] 14. The director or the commission may require
217 the filing or posting of a bond as a condition for the
218 issuance of permits for construction of temporary or future
219 water treatment facilities or facilities that utilize
220 innovative technology for wastewater treatment in an amount
221 determined by the commission to be sufficient to ensure
222 compliance with all provisions of sections 644.006 to
223 644.141, and any rules or regulations of the commission and
224 any condition as to such construction in the permit. For
225 the purposes of this section, "innovative technology for
226 wastewater treatment" shall mean a completely new and
227 generally unproven technology in the type or method of its
228 application that bench testing or theory suggest has
229 environmental, efficiency, and cost benefits beyond the
230 standard technologies. No bond shall be required for
231 designs approved by any federal agency or environmental
232 regulatory agency of another state. The bond shall be
233 signed by the applicant as principal, and by a corporate
234 surety licensed to do business in the state of Missouri and
235 approved by the commission. The bond shall remain in effect
236 until the terms and conditions of the permit are met and the
237 provisions of sections 644.006 to 644.141 and rules and
238 regulations promulgated pursuant thereto are complied with.

239 [13.] 15. (1) The department shall issue or deny
240 applications for construction and site-specific operating
241 permits received after January 1, 2001, within one hundred
242 eighty days of the department's receipt of an application.

243 For general construction and operating permit applications
244 received after January 1, 2001, that do not require a public
245 participation process, the department shall issue or deny
246 the permits within sixty days of the department's receipt of
247 an application. For an application seeking coverage under a
248 renewed general permit that does not require an individual
249 public participation process, the director shall issue or
250 deny the permit within sixty days of the director's receipt
251 of the application, or upon issuance of the general permit,
252 whichever is later. In regard to an application seeking
253 coverage under an initial general permit that does not
254 require an individual public participation process, the
255 director shall issue or deny the permit within sixty days of
256 the department's receipt of the application. For an
257 application seeking coverage under a renewed general permit
258 that requires an individual public participation process,
259 the director shall issue or deny the permit within ninety
260 days of the director's receipt of the application, or upon
261 issuance of the general permit, whichever is later. In
262 regard to an application for an initial general permit that
263 requires an individual public participation process, the
264 director shall issue or deny the permit within ninety days
265 of the director's receipt of the application.

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

275 (3) Permit fee disputes may be appealed to the
276 commission within thirty days of the date established in
277 subdivision (2) of this subsection. If the applicant
278 prevails in a permit fee dispute appealed to the commission,
279 the commission may order the director to refund the
280 applicant's permit fee plus interest and reasonable
281 attorney's fees as provided in sections 536.085 and
282 536.087. A refund of the initial application or annual fee
283 does not waive the applicant's responsibility to pay any
284 annual fees due each year following issuance of a permit.

285 (4) No later than December 31, 2001, the commission
286 shall promulgate regulations defining shorter review time
287 periods than the time frames established in subdivision (1)
288 of this subsection, when appropriate, for different classes
289 of construction and operating permits. In no case shall
290 commission regulations adopt permit review times that exceed
291 the time frames established in subdivision (1) of this
292 subsection. The department's failure to comply with the
293 commission's permit review time periods shall result in a
294 refund of said permit fees as set forth in subdivision (2)
295 of this subsection. On a semiannual basis, the department
296 shall submit to the commission a report which describes the
297 different classes of permits and reports on the number of
298 days it took the department to issue each permit from the
299 date of receipt of the application and show averages for
300 each different class of permits.

301 (5) During the department's technical review of the
302 application, the department may request the applicant submit
303 supplemental or additional information necessary for
304 adequate permit review. The department's technical review
305 letter shall contain a sufficient description of the type of

306 additional information needed to comply with the application
307 requirements.

308 (6) Nothing in this subsection shall be interpreted to
309 mean that inaction on a permit application shall be grounds
310 to violate any provisions of sections 644.006 to 644.141 or
311 any rules promulgated pursuant to sections 644.006 to
312 644.141.

313 [14.] 16. The department shall respond to all requests
314 for individual certification under Section 401 of the
315 Federal Clean Water Act within the lesser of sixty days or
316 the allowed response period established pursuant to
317 applicable federal regulations without request for an
318 extension period unless such extension is determined by the
319 commission to be necessary to evaluate significant impacts
320 on water quality standards and the commission establishes a
321 timetable for completion of such evaluation in a period of
322 no more than one hundred eighty days.

323 [15.] 17. All permit fees generated pursuant to this
324 chapter shall not be used for the development or expansion
325 of total maximum daily loads studies on either the Missouri
326 or Mississippi rivers.

327 [16.] 18. The department shall implement permit shield
328 provisions equivalent to the permit shield provisions
329 implemented by the U.S. Environmental Protection Agency
330 pursuant to the Clean Water Act, Section 402(k), 33 U.S.C.
331 Section 1342(k), and its implementing regulations, for
332 permits issued pursuant to chapter 644.

333 [17.] 19. Prior to the development of a new general
334 permit or reissuance of a general permit for aquaculture,
335 land disturbance requiring a storm water permit, or
336 reissuance of a general permit under which fifty or more
337 permits were issued under a general permit during the

338 immediately preceding five-year period for a designated
339 category of water contaminant sources, the director shall
340 implement a public participation process complying with the
341 following minimum requirements:

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

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

351 (3) The director shall hold a public informational
352 meeting to provide information on anticipated permit
353 conditions and requirements and to receive informal comments
354 from permittees and other interested persons. The director
355 shall include notice of the public informational meeting
356 with the notice of intent to issue a new general permit or
357 reissue a general permit under subdivision (2) of this
358 subsection. The notice of the public informational meeting,
359 including the date, time and location, shall be posted on
360 the department's website at least thirty days in advance of
361 the public meeting. If the meeting is being held for
362 reissuance of a general permit, notice shall also be made by
363 electronic mail to all permittees holding the current
364 general permit which is expiring. Notice to current
365 permittees shall be made at least twenty days prior to the
366 public meeting;

367 (4) The director shall hold a thirty-day public
368 comment period to receive comments on the general permit
369 template with the thirty-day comment period expiring at

370 least sixty days prior to the effective date of the general
371 permit. Scanned copies of the comments received during the
372 public comment period shall be posted on the department's
373 website within five business days after close of the public
374 comment period;

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

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

386 [18.] 20. Notices required to be made by the
387 department pursuant to subsection 17 of this section may be
388 made by electronic mail. The department shall not be
389 required to make notice to any permittee or other person who
390 has not provided a current electronic mail address to the
391 department. In the event the department chooses to make
392 material modifications to the general permit before its
393 expiration, the department shall follow the public
394 participation process described in subsection [17] 19 of
395 this section.

396 [19. The provisions of subsection 17 of this section
397 shall become effective beginning January 1, 2013.]

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