

FIRST REGULAR SESSION

HOUSE BILL NO. 622

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KNIGHT.

1036H.02I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 640.099 and 644.051, RSMo, and to enact in lieu thereof two new sections relating to the construction of earthen basins.

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

Section A. Sections 640.099 and 644.051, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 640.099 and 644.051, to read as follows:

640.099. Notwithstanding the provisions of section 1.140 to the contrary, the
2 provisions of sections 37.070, 67.4500, 67.4505, 67.4510, 67.4515, 67.4520, ~~[192.105,]~~
3 247.060, 253.090, 442.014, 444.771, 444.773, 621.250, 640.018, 640.128, ~~[640.850,]~~
4 643.020, 643.040, 643.050, 643.060, 643.079, 643.080, 643.130, 643.191, 643.225,
5 643.232, 643.237, 643.240, 643.242, 643.245, 643.250, 644.036, ~~[644.051,]~~ 644.054,
6 644.071, 644.145, 701.033, ~~[701.058,]~~ and this section shall be nonseverable, and if any
7 provision is for any reason held to be invalid, such decision shall invalidate all of the
8 remaining provisions of sections 37.070, 67.4500, 67.4505, 67.4510, 67.4515, 67.4520,
9 ~~[192.105,]~~ 247.060, 253.090, 442.014, 444.771, 444.773, 621.250, 640.018, 640.128,
10 ~~[640.850,]~~ 643.020, 643.040, 643.050, 643.060, 643.079, 643.080, 643.130, 643.191,
11 643.225, 643.232, 643.237, 643.240, 643.242, 643.245, 643.250, 644.036, ~~[644.051,]~~
12 644.054, 644.071, 644.145, 701.033, ~~[701.058,]~~ and this section.

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 permit to be
3 placed any water contaminant in a location where it is reasonably certain to cause pollution of
4 any waters of the state;

EXPLANATION — Matter enclosed in bold-faced brackets ~~[thus]~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

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

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

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

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

29 (3) All sewer collection projects that are authorized through a local supervised
30 program; ~~and~~

31 (4) **Any earthen basin constructed to retain and settle earthen materials such as**
32 **soil, silt, and rock; and**

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

34 4. A construction permit may be required by the department in the following
35 circumstances:

36 ~~(a)~~ (1) Substantial deviation from the commission's design standards;

37 ~~(b)~~ (2) To address noncompliance;

38 ~~(c)~~ (3) When an unauthorized discharge has occurred or has the potential to occur;

39 or

40 ~~(d)~~ (4) To correct a violation of water quality standards.

41 ~~[In addition,]~~ 5. Any point source that proposes to construct an earthen storage
42 structure to hold, convey, contain, store or treat domestic, agricultural, or industrial process
43 wastewater also shall be subject to the construction permit provisions of this subsection
44 **unless exempted by the commission.** All other construction-related activities at point
45 sources shall be exempt from the construction permit requirements. All activities that are
46 exempted from the construction permit requirement are subject to the following conditions:

47 ~~[a-]~~ (1) Any point source system designed to hold, convey, contain, store or treat
48 domestic, agricultural or industrial process wastewater shall be designed by a professional
49 engineer registered in Missouri in accordance with the commission's design rules **unless**
50 **exempted by the commission;**

51 ~~[b-]~~ (2) Such point source system shall be constructed in accordance with the
52 registered professional engineer's design and plans **unless exempted by the commission;** and

53 ~~[c-]~~ (3) Such point source system may receive a post-construction site inspection by
54 the department prior to receiving operating permit approval. A site inspection may be
55 performed by the department, upon receipt of a complete operating permit application or
56 submission of an engineer's statement of work complete.

57 6. A governmental unit may apply to the department for authorization to operate a
58 local supervised program, and the department may authorize such a program. A local
59 supervised program would recognize the governmental unit's engineering capacity and ability
60 to conduct engineering work, supervise construction and maintain compliance with relevant
61 operating permit requirements.

62 ~~[4-]~~ 7. Before issuing any permit required by this section, the director shall issue such
63 notices, conduct such hearings, and consider such factors, comments and recommendations as
64 required by sections 644.006 to 644.141 or any federal water pollution control act. The
65 director shall determine if any state or any provisions of any federal water pollution control
66 act the state is required to enforce, any state or federal effluent limitations or regulations,
67 water quality-related effluent limitations, national standards of performance, toxic and
68 pretreatment standards, or water quality standards which apply to the source, or any such
69 standards in the vicinity of the source, are being exceeded, and shall determine the impact on
70 such water quality standards from the source. The director, in order to effectuate the purposes
71 of sections 644.006 to 644.141, shall deny a permit if the source will violate any such acts,
72 regulations, limitations or standards or will appreciably affect the water quality standards or
73 the water quality standards are being substantially exceeded, unless the permit is issued with
74 such conditions as to make the source comply with such requirements within an acceptable
75 time schedule.

76 ~~[5-]~~ 8. The director shall grant or deny the permit within sixty days after all
77 requirements of the Federal Water Pollution Control Act concerning issuance of permits have

78 been satisfied unless the application does not require any permit pursuant to any federal water
79 pollution control act. The director or the commission may require the applicant to provide
80 and maintain such facilities or to conduct such tests and monitor effluents as necessary to
81 determine the nature, extent, quantity or degree of water contaminant discharged or released
82 from the source, establish and maintain records and make reports regarding such
83 determination.

84 ~~[6-]~~ **9.** The director shall promptly notify the applicant in writing of ~~[his or her]~~ **the**
85 **director's** action and if the permit is denied state the reasons for such denial. As provided by
86 sections 621.250 and 640.013, the applicant may appeal to the administrative hearing
87 commission from the denial of a permit or from any condition in any permit by filing a
88 petition with the administrative hearing commission within thirty days of the notice of denial
89 or issuance of the permit. After a final action is taken on a new or reissued general permit, a
90 potential applicant for the general permit who can demonstrate that ~~[he or she]~~ **such potential**
91 **applicant** is or may be adversely affected by any permit term or condition may appeal the
92 terms and conditions of the general permit within thirty days of the department's issuance of
93 the general permit. In no event shall a permit constitute permission to violate the law or any
94 standard, rule or regulation promulgated pursuant thereto. Once the administrative hearing
95 commission has reviewed the appeal, the administrative hearing commission shall issue a
96 recommended decision to the commission on permit issuance, denial, or any condition of the
97 permit. The commission shall issue its own decision, based on the appeal, for permit
98 issuance, denial, or any condition of the permit. If the commission changes a finding of fact
99 or conclusion of law made by the administrative hearing commission, or modifies or vacates
100 the decision recommended by the administrative hearing commission, it shall issue its own
101 decision, which shall include findings of fact and conclusions of law. The commission shall
102 mail copies of its final decision to the parties to the appeal or their counsel of record. The
103 commission's decision shall be subject to judicial review pursuant to chapter 536, except that
104 the court of appeals district with territorial jurisdiction coextensive with the county where the
105 point source is to be located shall have original jurisdiction. No judicial review shall be
106 available until and unless all administrative remedies are exhausted.

107 ~~[7-]~~ **10.** In any hearing held pursuant to this section that involves a permit, license, or
108 registration, the burden of proof is on the party specified in section 640.012. Any decision of
109 the commission made pursuant to a hearing held pursuant to this section is subject to judicial
110 review as provided in section 644.071.

111 ~~[8-]~~ **11.** In any event, no permit issued pursuant to this section shall be issued if
112 properly objected to by the federal government or any agency authorized to object pursuant to
113 any federal water pollution control act unless the application does not require any permit
114 pursuant to any federal water pollution control act.

115 ~~[9-]~~ **12.** Permits may be modified, reissued, or terminated at the request of the
116 permittee. All requests shall be in writing and shall contain facts or reasons supporting the
117 request.

118 ~~[10-]~~ **13.** No manufacturing or processing plant or operating location shall be required
119 to pay more than one operating fee. Operating permits shall be issued for a period not to
120 exceed five years after date of issuance, except that general permits shall be issued for a five-
121 year period, and also except that neither a construction nor an annual permit shall be required
122 for a single residence's waste treatment facilities. Applications for renewal of a site-specific
123 operating permit shall be filed at least one hundred eighty days prior to the expiration of the
124 existing permit. Applications seeking to renew coverage under a general permit shall be
125 submitted at least thirty days prior to the expiration of the general permit, unless the permittee
126 has been notified by the director that an earlier application must be made. General permits
127 may be applied for and issued electronically once made available by the director.

128 ~~[11-]~~ **14.** Every permit issued to municipal or any publicly owned treatment works or
129 facility shall require the permittee to provide the clean water commission with adequate
130 notice of any substantial new introductions of water contaminants or pollutants into such
131 works or facility from any source for which such notice is required by sections 644.006 to
132 644.141 or any federal water pollution control act. Such permit shall also require the
133 permittee to notify the clean water commission of any substantial change in volume or
134 character of water contaminants or pollutants being introduced into its treatment works or
135 facility by a source which was introducing water contaminants or pollutants into its works at
136 the time of issuance of the permit. Notice must describe the quality and quantity of effluent
137 being introduced or to be introduced into such works or facility by a source which was
138 introducing water contaminants or pollutants into its works at the time of issuance of the
139 permit. Notice must describe the quality and quantity of effluent being introduced or to be
140 introduced into such works or facility and the anticipated impact of such introduction on the
141 quality or quantity of effluent to be released from such works or facility into waters of the
142 state.

143 ~~[12-]~~ **15.** The director or the commission may require the filing or posting of a bond
144 as a condition for the issuance of permits for construction of temporary or future water
145 treatment facilities or facilities that utilize innovative technology for wastewater treatment in
146 an amount determined by the commission to be sufficient to ensure compliance with all
147 provisions of sections 644.006 to 644.141, and any rules or regulations of the commission and
148 any condition as to such construction in the permit. For the purposes of this section,
149 "innovative technology for wastewater treatment" shall mean a completely new and generally
150 unproven technology in the type or method of its application that bench testing or theory
151 suggest has environmental, efficiency, and cost benefits beyond the standard technologies.

152 No bond shall be required for designs approved by any federal agency or environmental
153 regulatory agency of another state. The bond shall be signed by the applicant as principal,
154 and by a corporate surety licensed to do business in the state of Missouri and approved by the
155 commission. The bond shall remain in effect until the terms and conditions of the permit are
156 met and the provisions of sections 644.006 to 644.141 and rules and regulations promulgated
157 pursuant thereto are complied with.

158 ~~[13-]~~ **16.** (1) The department shall issue or deny applications for construction and
159 site-specific operating permits received after January 1, 2001, within one hundred eighty days
160 of the department's receipt of an application. For general construction and operating permit
161 applications received after January 1, 2001, that do not require a public participation process,
162 the department shall issue or deny the permits within sixty days of the department's receipt of
163 an application. For an application seeking coverage under a renewed general permit that does
164 not require an individual public participation process, the director shall issue or deny the
165 permit within sixty days of the director's receipt of the application, or upon issuance of the
166 general permit, whichever is later. In regard to an application seeking coverage under an
167 initial general permit that does not require an individual public participation process, the
168 director shall issue or deny the permit within sixty days of the department's receipt of the
169 application. For an application seeking coverage under a renewed general permit that
170 requires an individual public participation process, the director shall issue or deny the permit
171 within ninety days of the director's receipt of the application, or upon issuance of the general
172 permit, whichever is later. In regard to an application for an initial general permit that
173 requires an individual public participation process, the director shall issue or deny the permit
174 within ninety days of the director's receipt of the application.

175 (2) If the department fails to issue or deny with good cause a construction or
176 operating permit application within the time frames established in subdivision (1) of this
177 subsection, the department shall refund the full amount of the initial application fee within
178 forty-five days of failure to meet the established time frame. If the department fails to refund
179 the application fee within forty-five days, the refund amount shall accrue interest at a rate
180 established pursuant to section 32.065.

181 (3) Permit fee disputes may be appealed to the commission within thirty days of the
182 date established in subdivision (2) of this subsection. If the applicant prevails in a permit fee
183 dispute appealed to the commission, the commission may order the director to refund the
184 applicant's permit fee plus interest and reasonable attorney's fees as provided in sections
185 536.085 and 536.087. A refund of the initial application or annual fee does not waive the
186 applicant's responsibility to pay any annual fees due each year following issuance of a permit.

187 (4) No later than December 31, 2001, the commission shall promulgate regulations
188 defining shorter review time periods than the time frames established in subdivision (1) of

189 this subsection, when appropriate, for different classes of construction and operating permits.
190 In no case shall commission regulations adopt permit review times that exceed the time
191 frames established in subdivision (1) of this subsection. The department's failure to comply
192 with the commission's permit review time periods shall result in a refund of said permit fees
193 as set forth in subdivision (2) of this subsection. On a semiannual basis, the department shall
194 submit to the commission a report which describes the different classes of permits and reports
195 on the number of days it took the department to issue each permit from the date of receipt of
196 the application and show averages for each different class of permits.

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

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

204 ~~[14.]~~ **17.** The department shall respond to all requests for individual certification
205 under Section 401 of the Federal Clean Water Act (**33 U.S.C. Section 1341**) within the lesser
206 of sixty days or the allowed response period established pursuant to applicable federal
207 regulations without request for an extension period unless such extension is determined by the
208 commission to be necessary to evaluate significant impacts on water quality standards and the
209 commission establishes a timetable for completion of such evaluation in a period of no more
210 than one hundred eighty days.

211 ~~[15.]~~ **18.** All permit fees generated pursuant to this chapter shall not be used for the
212 development or expansion of total maximum daily loads studies on either the Missouri or
213 Mississippi rivers.

214 ~~[16.]~~ **19.** The department shall implement permit shield provisions equivalent to the
215 permit shield provisions implemented by the U.S. Environmental Protection Agency pursuant
216 to the Clean Water Act, Section 402(k), 33 U.S.C. Section 1342(k), and its implementing
217 regulations, for permits issued pursuant to chapter 644.

218 ~~[17.]~~ **20.** Prior to the development of a new general permit or reissuance of a general
219 permit for aquaculture, land disturbance requiring a storm water permit, or reissuance of a
220 general permit under which fifty or more permits were issued under a general permit during
221 the immediately preceding five-year period for a designated category of water contaminant
222 sources, the director shall implement a public participation process complying with the
223 following minimum requirements:

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

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

230 (3) The director shall hold a public informational meeting to provide information on
231 anticipated permit conditions and requirements and to receive informal comments from
232 permittees and other interested persons. The director shall include notice of the public
233 informational meeting with the notice of intent to issue a new general permit or reissue a
234 general permit under subdivision (2) of this subsection. The notice of the public
235 informational meeting, including the date, time and location, shall be posted on the
236 department's website at least thirty days in advance of the public meeting. If the meeting is
237 being held for reissuance of a general permit, notice shall also be made by electronic mail to
238 all permittees holding the current general permit which is expiring. Notice to current
239 permittees shall be made at least twenty days prior to the public meeting;

240 (4) The director shall hold a thirty-day public comment period to receive comments
241 on the general permit template with the thirty-day comment period expiring at least sixty days
242 prior to the effective date of the general permit. Scanned copies of the comments received
243 during the public comment period shall be posted on the department's website within five
244 business days after close of the public comment period;

245 (5) A revised draft of a general permit template and the director's response to
246 comments submitted during the public comment period shall be posted on the department's
247 website at least forty-five days prior to issuance of the general permit. At least forty-five days
248 prior to issuance of the general permit the department shall notify all persons who submitted
249 comments to the department that these documents have been posted to the department's
250 website;

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

253 ~~[18-]~~ **21.** Notices required to be made by the department pursuant to subsection ~~[17]~~
254 **20** of this section may be made by electronic mail. The department shall not be required to
255 make notice to any permittee or other person who has not provided a current electronic mail
256 address to the department. In the event the department chooses to make material
257 modifications to the general permit before its expiration, the department shall follow the
258 public participation process described in subsection ~~[17]~~ **20** of this section.

259 ~~[19- The provisions of subsection 17 of this section shall become effective beginning~~
260 ~~January 1, 2013-]~~