

FIRST REGULAR SESSION

SENATE BILL NO. 425

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CIERPIOT.

Read 1st time February 21, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1725S.04I

AN ACT

To repeal sections 640.710, 640.715, and 644.051, RSMo, and to enact in lieu thereof four new sections relating to concentrated animal feeding operations.

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

Section A. Sections 640.710, 640.715, and 644.051, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 640.710,
3 640.715, 640.752, and 644.051, to read as follows:

640.710. 1. The department shall promulgate rules regulating the
2 establishment, permitting, design, construction, operation and management of
3 class I facilities. The department shall have the authority and jurisdiction to
4 regulate the establishment, permitting, design, construction, operation and
5 management of any class I facility. Such rules may require monitoring wells on
6 a site-specific basis when, in the determination of the division of geology and land
7 survey, class IA concentrated animal feeding operation lagoons are located in
8 hydrologically sensitive areas where the quality of groundwater may be
9 compromised. Such rules and regulations shall be designed to afford a prudent
10 degree of environmental protection while accommodating modern agricultural
11 practices.

12 2. Except as provided in subsections 3, 4, and [4] 5 of this section, the
13 department shall require at least but not more than the following buffer distances
14 between the nearest confinement building or lagoon and any public building or
15 occupied residence, except a residence which is owned by the concentrated animal
16 feeding operation or a residence from which a written agreement for operation is
17 obtained:

18 (1) For concentrated animal feeding operations with at least one thousand

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

19 animal units, one thousand feet;

20 (2) For concentrated animal feeding operations with between three
21 thousand and six thousand nine hundred ninety-nine animal units inclusive, two
22 thousand feet; and

23 (3) For concentrated animal feeding operations of seven thousand or more
24 animal units, three thousand feet.

25 **3. For concentrated animal feeding operations located in a**
26 **county without a county planning commission that abuts a county with**
27 **a county planning commission, the following buffer distances shall**
28 **apply:**

29 (1) **For concentrated animal feeding operations with at least one**
30 **thousand animal units, one mile;**

31 (2) **For concentrated animal feeding operations with between**
32 **three thousand and six thousand nine hundred ninety-nine animal units**
33 **inclusive, one and one-half mile; and**

34 (3) **For concentrated animal feeding operations of seven**
35 **thousand or more animal units, two miles.**

36 4. All concentrated animal feeding operations in existence as of June 25,
37 1996, shall be exempt from the buffer distances prescribed in [subsection 2]
38 **subsections 2 and 3** of this section. Such distances shall not apply to
39 concentrated animal feeding operations which have received a written agreement
40 which has been signed by all affected property owners within the buffer distance.

41 [4.] **5.** The department may, upon review of the information contained in
42 the site plan including, but not limited to, the prevailing winds, topography and
43 other local environmental factors, authorize a distance which is less than the
44 distance prescribed in [subsection 2] **subsections 2 and 3** of this section. The
45 department's recommendation shall be sent to the governing body of the county
46 in which such site is proposed. The department's authorized buffer distance shall
47 become effective unless the county governing body rejects the department's
48 recommendation by a majority vote at the next meeting of the governing body
49 after the recommendation is received.

50 [5.] **6.** Nothing in this section shall be construed as restricting local
51 controls.

640.715. 1. Prior to filing an application to acquire [an operating] **a**
2 **construction** permit [for a new or expanded facility] from the department, the
3 owner or operator of any class IA, class IB, or class IC concentrated animal

4 feeding operation shall provide the following information to the department, to
5 the county governing body and to all adjoining property owners of property
6 located within one and one-half times the buffer distance as specified in
7 [subsection] **subsections 2 and 3** of section 640.710 for the size of the proposed
8 facility:

- 9 (1) The number of animals anticipated at such facility;
- 10 (2) The waste handling plan and general layout of the facility;
- 11 (3) The location and number of acres of such facility;
- 12 (4) Name, address, telephone number and registered agent for further
13 information as it relates to subdivisions (1) to (3) of this subsection;
- 14 (5) Notice that the department will accept written comments from the
15 public for a period of thirty days; and
- 16 (6) The address of the regional or state office of the department.

17 The department shall require proof of such notification upon accepting an
18 application for [an operating] **a construction** permit [for a new or expanded
19 facility]. The department shall accept written comments from the public for
20 thirty days after receipt of application for [such] **a construction** permit.

21 2. The department shall not issue [an operating] **a** permit to a facility
22 described in subsection 1 of this section to engage in any activity regulated by the
23 department unless the applicant is in compliance with sections 640.700 to
24 640.755.

25 3. The department shall issue [an operating] **a** permit or respond with a
26 letter of comment to the owner or operator of such facility within forty-five days
27 of receiving a completed permit application and verification of compliance with
28 subsection 1 of this section.

640.752. The department shall promulgate rules relating to the
2 **creation of an odor control plan for class IB concentrated animal**
3 **feeding operations that shall be identical to rules in operation as of**
4 **August 28, 2019, for odor control plans for class IA concentrated animal**
5 **feeding operations. Any rule or portion of a rule, as that term is**
6 **defined in section 536.010 that is created under the authority delegated**
7 **in this section shall become effective only if it complies with and is**
8 **subject to all of the provisions of chapter 536, and, if applicable, section**
9 **536.028. This section and chapter 536 are nonseverable and if any of**
10 **the powers vested with the general assembly pursuant to chapter 536,**
11 **to review, to delay the effective date, or to disapprove and annul a rule**

12 **are subsequently held unconstitutional, then the grant of rulemaking**
13 **authority and any rule proposed or adopted after August 28, 2019, shall**
14 **be invalid and void.**

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 operate, use or maintain any
15 water contaminant or point source in this state that is subject to standards, rules
16 or regulations promulgated pursuant to the provisions of sections 644.006 to
17 644.141 unless such person holds an operating permit from the commission,
18 subject to such exceptions as the commission may prescribe by rule or
19 regulation. However, no operating 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. It shall be unlawful for any person to construct, build, replace or make
23 major modification to any point source or collection system that is principally
24 designed to convey or discharge human sewage to waters of the state, unless such
25 person obtains a construction permit from the commission, except as provided in
26 this section. The following activities shall be excluded from construction permit
27 requirements:

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

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

33 (3) All sewer collection projects that are authorized through a local

34 supervised program; and

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

36 A construction permit may be required by the department in the following
37 circumstances:

38 (a) Substantial deviation from the commission's design standards;

39 (b) To address noncompliance;

40 (c) When an unauthorized discharge has occurred or has the potential to
41 occur; or

42 (d) To correct a violation of water quality standards.

43 In addition, any point source that proposes to construct an earthen storage
44 structure to hold, convey, contain, store or treat domestic, agricultural, or
45 industrial process wastewater also shall be subject to the construction permit
46 provisions of this subsection. All other construction-related activities at point
47 sources shall be exempt from the construction permit requirements. All activities
48 that are exempted from the construction permit requirement are subject to the
49 following conditions:

50 a. Any point source system designed to hold, convey, contain, store or
51 treat domestic, agricultural or industrial process wastewater shall be designed
52 by a professional engineer registered in Missouri in accordance with the
53 commission's design rules;

54 b. Such point source system shall be constructed in accordance with the
55 registered professional engineer's design and plans; and

56 c. Such point source system may receive a post-construction site
57 inspection by the department prior to receiving operating permit approval. A site
58 inspection may be performed by the department, upon receipt of a complete
59 operating permit application or submission of an engineer's statement of work
60 complete.

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

66 4. Before issuing any permit required by this section, the director shall
67 issue such notices, conduct such hearings, and consider such factors, comments
68 and recommendations as required by sections 644.006 to 644.141 or any federal
69 water pollution control act. The director shall determine if any state or any

70 provisions of any federal water pollution control act the state is required to
71 enforce, any state or federal effluent limitations or regulations, water
72 quality-related effluent limitations, national standards of performance, toxic and
73 pretreatment standards, or water quality standards which apply to the source, or
74 any such standards in the vicinity of the source, are being exceeded, and shall
75 determine the impact on such water quality standards from the source. The
76 director, in order to effectuate the purposes of sections 644.006 to 644.141, shall
77 deny a permit if the source will violate any such acts, regulations, limitations or
78 standards or will appreciably affect the water quality standards or the water
79 quality standards are being substantially exceeded, unless the permit is issued
80 with such conditions as to make the source comply with such requirements within
81 an acceptable time schedule.

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

91 6. The director shall promptly notify the applicant in writing of his or her
92 action and if the permit is denied state the reasons for such denial. As provided
93 by sections 621.250 and 640.013, the applicant may appeal to the administrative
94 hearing commission from the denial of a permit or from any condition in any
95 permit by filing a petition with the administrative hearing commission within
96 thirty days of the notice of denial or issuance of the permit. After a final action
97 is taken on a new or reissued general permit, a potential applicant for the general
98 permit who can demonstrate that he or she is or may be adversely affected by any
99 permit term or condition may appeal the terms and conditions of the general
100 permit within thirty days of the department's issuance of the general permit. In
101 no event shall a permit constitute permission to violate the law or any standard,
102 rule or regulation promulgated pursuant thereto. Once the administrative
103 hearing commission has reviewed the appeal, the administrative hearing
104 commission shall issue a recommended decision to the commission on permit
105 issuance, denial, or any condition of the permit. The commission shall issue its

106 own decision, based on the appeal, for permit issuance, denial, or any condition
107 of the permit. If the commission changes a finding of fact or conclusion of law
108 made by the administrative hearing commission, or modifies or vacates the
109 decision recommended by the administrative hearing commission, it shall issue
110 its own decision, which shall include findings of fact and conclusions of law. The
111 commission shall mail copies of its final decision to the parties to the appeal or
112 their counsel of record. The commission's decision shall be subject to judicial
113 review pursuant to chapter 536, except that the court of appeals district with
114 territorial jurisdiction coextensive with the county where the point source is to
115 be located shall have original jurisdiction. No judicial review shall be available
116 until and unless all administrative remedies are exhausted.

117 7. In any hearing held pursuant to this section that involves a permit,
118 license, or registration, the burden of proof is on the party specified in section
119 640.012. Any decision of the commission made pursuant to a hearing held
120 pursuant to this section is subject to judicial review as provided in section
121 644.071.

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

126 9. Permits may be modified, reissued, or terminated at the request of the
127 permittee. All requests shall be in writing and shall contain facts or reasons
128 supporting the request.

129 10. No manufacturing or processing plant or operating location shall be
130 required to pay more than one operating fee. Operating permits shall be issued
131 for a period not to exceed five years after date of issuance, except that general
132 permits shall be issued for a five-year period, and also except that neither a
133 construction nor an annual permit shall be required for a single residence's waste
134 treatment facilities. Applications for renewal of a site-specific operating permit
135 shall be filed at least one hundred eighty days prior to the expiration of the
136 existing permit. Applications seeking to renew coverage under a general permit
137 shall be submitted at least thirty days prior to the expiration of the general
138 permit, unless the permittee has been notified by the director that an earlier
139 application must be made. General permits may be applied for and issued
140 electronically once made available by the director.

141 11. Every permit issued to municipal or any publicly owned treatment

142 works or facility shall require the permittee to provide the clean water
143 commission with adequate notice of any substantial new introductions of water
144 contaminants or pollutants into such works or facility from any source for which
145 such notice is required by sections 644.006 to 644.141 or any federal water
146 pollution control act. Such permit shall also require the permittee to notify the
147 clean water commission of any substantial change in volume or character of water
148 contaminants or pollutants being introduced into its treatment works or facility
149 by a source which was introducing water contaminants or pollutants into its
150 works at the time of issuance of the permit. Notice must describe the quality and
151 quantity of effluent being introduced or to be introduced into such works or
152 facility by a source which was introducing water contaminants or pollutants into
153 its works at the time of issuance of the permit. Notice must describe the quality
154 and quantity of effluent being introduced or to be introduced into such works or
155 facility and the anticipated impact of such introduction on the quality or quantity
156 of effluent to be released from such works or facility into waters of the state.

157 12. The director or the commission may require the filing or posting of a
158 bond as a condition for the issuance of permits for construction of temporary or
159 future water treatment facilities or facilities that utilize innovative technology for
160 wastewater treatment in an amount determined by the commission to be
161 sufficient to ensure compliance with all provisions of sections 644.006 to 644.141,
162 and any rules or regulations of the commission and any condition as to such
163 construction in the permit. For the purposes of this section, "innovative
164 technology for wastewater treatment" shall mean a completely new and generally
165 unproven technology in the type or method of its application that bench testing
166 or theory suggest has environmental, efficiency, and cost benefits beyond the
167 standard technologies. No bond shall be required for designs approved by any
168 federal agency or environmental regulatory agency of another state. The bond
169 shall be signed by the applicant as principal, and by a corporate surety licensed
170 to do business in the state of Missouri and approved by the commission. The
171 bond shall remain in effect until the terms and conditions of the permit are met
172 and the provisions of sections 644.006 to 644.141 and rules and regulations
173 promulgated pursuant thereto are complied with.

174 13. (1) The department shall issue or deny applications for construction
175 and site-specific operating permits received after January 1, 2001, within one
176 hundred eighty days of the department's receipt of an application. For general
177 construction and operating permit applications received after January 1, 2001,

178 that do not require a public participation process, the department shall issue or
179 deny the permits within sixty days of the department's receipt of an
180 application. For an application seeking coverage under a renewed general permit
181 that does not require an individual public participation process, the director shall
182 issue or deny the permit within sixty days of the director's receipt of the
183 application, or upon issuance of the general permit, whichever is later. In regard
184 to an application seeking coverage under an initial general permit that does not
185 require an individual public participation process, the director shall issue or deny
186 the permit within sixty days of the department's receipt of the application. For
187 an application seeking coverage under a renewed general permit that requires an
188 individual public participation process, the director shall issue or deny the permit
189 within ninety days of the director's receipt of the application, or upon issuance
190 of the general permit, whichever is later. In regard to an application for an
191 initial general permit that requires an individual public participation process, the
192 director shall issue or deny the permit within ninety days of the director's receipt
193 of the application.

194 (2) If the department fails to issue or deny with good cause a construction
195 or operating permit application within the time frames established in subdivision
196 (1) of this subsection, the department shall refund the full amount of the initial
197 application fee within forty-five days of failure to meet the established time
198 frame. If the department fails to refund the application fee within forty-five days,
199 the refund amount shall accrue interest at a rate established pursuant to section
200 32.065.

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

209 (4) No later than December 31, 2001, the commission shall promulgate
210 regulations defining shorter review time periods than the time frames established
211 in subdivision (1) of this subsection, when appropriate, for different classes of
212 construction and operating permits. In no case shall commission regulations
213 adopt permit review times that exceed the time frames established in subdivision

214 (1) of this subsection. The department's failure to comply with the commission's
215 permit review time periods shall result in a refund of said permit fees as set forth
216 in subdivision (2) of this subsection. On a semiannual basis, the department
217 shall submit to the commission a report which describes the different classes of
218 permits and reports on the number of days it took the department to issue each
219 permit from the date of receipt of the application and show averages for each
220 different class of permits.

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

226 (6) Nothing in this subsection shall be interpreted to mean that inaction
227 on a permit application shall be grounds to violate any provisions of sections
228 644.006 to 644.141 or any rules promulgated pursuant to sections 644.006 to
229 644.141.

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

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

241 16. The department shall implement permit shield provisions equivalent
242 to the permit shield provisions implemented by the U.S. Environmental
243 Protection Agency pursuant to the Clean Water Act, Section 402(k), 33 U.S.C.
244 Section 1342(k), and its implementing regulations, for permits issued pursuant
245 to chapter 644.

246 17. Prior to the development of a new general permit or reissuance of a
247 general permit for aquaculture, land disturbance requiring a storm water permit,
248 or reissuance of a general permit under which fifty or more permits were issued
249 under a general permit during the immediately preceding five-year period for a

250 designated category of water contaminant sources, the director shall implement
251 a public participation process complying with the following minimum
252 requirements:

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

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

260 (3) The director shall hold a public informational meeting to provide
261 information on anticipated permit conditions and requirements and to receive
262 informal comments from permittees and other interested persons. The director
263 shall include notice of the public informational meeting with the notice of intent
264 to issue a new general permit or reissue a general permit under subdivision (2)
265 of this subsection. The notice of the public informational meeting, including the
266 date, time and location, shall be posted on the department's website at least
267 thirty days in advance of the public meeting. If the meeting is being held for
268 reissuance of a general permit, notice shall also be made by electronic mail to all
269 permittees holding the current general permit which is expiring. Notice to
270 current permittees shall be made at least twenty days prior to the public meeting;

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

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

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

285 18. Notices required to be made by the department pursuant to subsection

286 17 of this section may be made by electronic mail. The department shall not be
287 required to make notice to any permittee or other person who has not provided
288 a current electronic mail address to the department. In the event the department
289 chooses to make material modifications to the general permit before its
290 expiration, the department shall follow the public participation process described
291 in subsection 17 of this section.

292 19. [The provisions of subsection 17 of this section shall become effective
293 beginning January 1, 2013.] **All applicants for a construction permit or an
294 operating permit shall show, as part of their application, that a lawful
295 and permanent organization recognized by the secretary of state exists
296 which will serve as the continuing authority which is financially
297 responsible for the operation, maintenance, modernization, and closure
298 of the facility for which the application is made. Construction and first
299 time operating permits shall not be issued unless the applicant
300 provides sufficient proof to the department demonstrating that the
301 applicant and continuing authority have sufficient financial resources
302 to operate, maintain, and modernize the facility for the expected
303 lifetime of the facility and to close the facility when it ceases
304 operations. The commission shall promulgate rules to require the
305 submission of detailed financial information by the applicant. Any rule
306 or portion of a rule, as that term is defined in section 536.010 that is
307 created under the authority delegated in this section shall become
308 effective only if it complies with and is subject to all of the provisions
309 of chapter 536, and, if applicable, section 536.028. This section and
310 chapter 536 are nonseverable and if any of the powers vested with the
311 general assembly pursuant to chapter 536, to review, to delay the
312 effective date, or to disapprove and annul a rule are subsequently held
313 unconstitutional, then the grant of rulemaking authority and any rule
314 proposed or adopted after August 28, 2019, shall be invalid and void.**

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