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## State NPDES Authority Statutes:

*Missouri*



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# A National Agricultural Law Center Research Publication

## State NPDES Authority Statutes: Missouri

[MO ST 644.026](#)

[MO ST 644.051](#)

*Current through the 2022 legislative session.*

### **§ 644.026. Powers and Duties of Commission – Rules, Procedure.**

#### 1. The commission shall:

- (1) Exercise general supervision of the administration and enforcement of sections 644.006 to 644.141 and all rules and regulations and orders promulgated thereunder;
- (2) Develop comprehensive plans and programs for the prevention, control and abatement of new or existing pollution of the waters of the state;
- (3) Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions and industries in furtherance of the purposes of sections 644.006 to 644.141;
- (4) Accept gifts, contributions, donations, loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions, which funds shall not be expended for other than the purposes for which provided;
- (5) Encourage, participate in, or conduct studies, investigations, and research and demonstrations relating to water pollution and causes, prevention, control and abatement thereof as it may deem advisable and necessary for the discharge of its duties pursuant to sections 644.006 to 644.141;
- (6) Collect and disseminate information relating to water pollution and the prevention, control and abatement thereof;
- (7) After holding public hearings, identify waters of the state and prescribe water quality standards for them, giving due recognition to variations, if any, and the characteristics of different waters of the state which may be deemed by the commission to be relevant insofar as possible pursuant to any federal water pollution control act. These shall be reevaluated and modified as required by any federal water pollution control act;



(8) Adopt, amend, promulgate, or repeal after due notice and hearing rules and regulations to enforce, implement, and effectuate the powers and duties of sections 644.006 to 644.141 and any required of this state by any federal water pollution control act, and as the commission may deem necessary to prevent, control and abate existing or potential pollution. In addition to opportunities to submit written statements or provide testimony at public hearings in support of or in opposition to proposed rulemakings as required by section 536.021, any person who submits written comments or oral testimony on a proposed rule shall, at any public meeting to vote on an order of rulemaking or other commission policy, have the opportunity to respond to the proposed order of rulemaking or department of natural resources' response to comments to the extent that such response is limited to issues raised in oral or written comments made during the public notice comment period or public hearing on the proposed rule;

(9) Issue, modify or revoke orders prohibiting or abating discharges of water contaminants into the waters of the state or adopting other remedial measures to prevent, control or abate pollution;

(10) Administer state and federal grants and loans to municipalities and political subdivisions for the planning and construction of sewage treatment works;

(11) Hold such hearings, issue such notices of hearings and subpoenas requiring the attendance of such witnesses and the production of such evidence, administer such oaths, and take such testimony as the commission deems necessary or as required by any federal water pollution control act. Any of these powers may be exercised on behalf of the commission by any members thereof or a hearing officer designated by it;

(12) Require the prior submission of plans and specifications, or other data including the quantity and types of water contaminants, and inspect the construction of treatment facilities and sewer systems or any part thereof in connection with the issuance of such permits or approval as are required by sections 644.006 to 644.141, except that manholes and polyvinyl chloride (PVC) pipe used for gravity sewers and with a diameter no greater than twenty-seven inches shall not be required to be tested for leakage;

(13) Issue, continue in effect, revoke, modify or deny, under such conditions as it may prescribe, to prevent, control or abate pollution or any violations of sections 644.006 to 644.141 or any federal water pollution control act, permits for the discharge of water contaminants into the waters of this state, and for the installation, modification or operation of treatment facilities, sewer systems or any parts thereof. Such permit conditions, in addition to all other requirements of this subdivision, shall ensure compliance with all effluent regulations or limitations, water quality related effluent limitations, national standards of performance and



toxic and pretreatment effluent standards, and all requirements and time schedules thereunder as established by sections 644.006 to 644.141 and any federal water pollution control act; however, no permit shall be required of any person for any emission into publicly owned treatment facilities or into publicly owned sewer systems tributary to publicly owned treatment works;

(14) Establish permits by rule. Such permits shall only be available for those facilities or classes of facilities that control potential water contaminants that pose a reduced threat to public health or the environment and that are in compliance with commission water quality standards rules, effluent rules or rules establishing permits by rule. Such permits by rule shall have the same legal standing as other permits issued pursuant to this chapter. Nothing in this section shall prohibit the commission from requiring a site-specific permit or a general permit for individual facilities;

(15) Require proper maintenance and operation of treatment facilities and sewer systems and proper disposal of residual waste from all such facilities and systems;

(16) Exercise all incidental powers necessary to carry out the purposes of sections 644.006 to 644.141, assure that the state of Missouri complies with any federal water pollution control act, retains maximum control thereunder and receives all desired federal grants, aid and benefits;

(17) Establish effluent and pretreatment and toxic material control regulations to further the purposes of sections 644.006 to 644.141 and as required to ensure compliance with all effluent limitations, water quality-related effluent limitations, national standards of performance and toxic and pretreatment effluent standards, and all requirements and any time schedules thereunder, as established by any federal water pollution control act for point sources in this state, and where necessary to prevent violation of water quality standards of this state;

(18) Prohibit all discharges of radiological, chemical, or biological warfare agent or high-level radioactive waste into waters of this state;

(19) Require that all publicly owned treatment works or facilities which receive or have received grants or loans from the state or the federal government for construction or improvement make all charges required by sections 644.006 to 644.141 or any federal water pollution control act for use and recovery of capital costs, and the operating authority for such works or facility is hereby authorized to make any such charges;

(20) Represent the state of Missouri in all matters pertaining to interstate water pollution including the negotiation of interstate compacts or agreements;

(21) Develop such facts and make such investigations as are consistent with the purposes of sections 644.006 to 644.141, and, in connection therewith, to enter



or authorize any representative of the commission to enter at all reasonable times and upon reasonable notice in or upon any private or public property for any purpose required by any federal water pollution control act or sections 644.006 to 644.141 for the purpose of developing rules, regulations, limitations, standards, or permit conditions, or inspecting or investigating any records required to be kept by sections 644.006 to 644.141 or any permit issued pursuant to sections 644.006 to 644.141, any condition which the commission or director has probable cause to believe to be a water contaminant source or the site of any suspected violation of sections 644.006 to 644.141, regulations, standards, or limitations, or permits issued pursuant to sections 644.006 to 644.141. The results of any such investigation shall be reduced to writing and shall be furnished to the owner or operator of the property. No person shall refuse entry or access, requested for the purposes of inspection pursuant to this subdivision, to an authorized representative in carrying out the inspection. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath, shall be issued by any judge or associate circuit judge having jurisdiction to any representative for the purpose of enabling him or her to make such inspection. Information obtained pursuant to this section shall be available to the public unless it constitutes trade secrets or confidential information, other than effluent data, of the person from whom it is obtained, except when disclosure is required pursuant to any federal water pollution control act;

(22) Retain, employ, provide for, and compensate, within appropriations available therefor, such consultants, assistants, deputies, clerks and other employees on a full- or part-time basis as may be necessary to carry out the provisions of sections 644.006 to 644.141 and prescribe the times at which they shall be appointed and their powers and duties;

(23) Secure necessary scientific, technical, administrative and operation services, including laboratory facilities, by contract or otherwise, with any educational institution, experiment station, or any board, department, or other agency of any political subdivision of the state or the federal government;

(24) Require persons owning or engaged in operations which do or could discharge water contaminants, or introduce water contaminants or pollutants of a quality and quantity to be established by the commission, into any publicly owned treatment works or facility, to provide and maintain any facilities and conduct any tests and monitoring necessary to establish and maintain records and to file reports containing information relating to measures to prevent, lessen or render any discharge less harmful or relating to rate, period, composition, temperature, and quality and quantity of the effluent, and any other information required by any federal water pollution control act or the director, and to make them public, except as provided in subdivision (21) of this section. The commission shall develop and adopt such procedures for inspection, investigation, testing,



sampling, monitoring and entry respecting water contaminant and point sources as may be required for approval of such a program pursuant to any federal water pollution control act;

(25) Take any action necessary to implement continuing planning processes and areawide waste treatment management as established pursuant to any federal water pollution control act or sections 644.006 to 644.141;

(26) Exercise general supervision of the department as the sole designated state agency with authority to administer the federal Clean Water Act in the state of Missouri, which shall include authority to approve any stream or wetland mitigation used in connection with any Section 401 water quality certification.

2. No rule or portion of a rule promulgated pursuant to this chapter shall become effective unless it has been promulgated pursuant to chapter 536.

**§ 644.051. Prohibited Acts – Permits Required, When, Fee – Bond Required of Permit Holders, When – Permit Application Procedures – Rulemaking – Limitation on Use of Permit Fee Moneys – Permit Shield Provisions.**

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.

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



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

- (1) Facilities greater than one million gallons per day that are authorized through a local supervised program, and are not receiving any department financial assistance;
- (2) All sewer extensions or collection projects that are one thousand feet in length or less with fewer than two lift stations;
- (3) All sewer collection projects that are authorized through a local supervised program; and
- (4) Any other exclusions the commission may promulgate by rule.

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

- (a) Substantial deviation from the commission's design standards;
- (b) To address noncompliance;
- (c) When an unauthorized discharge has occurred or has the potential to occur; or
- (d) To correct a violation of water quality standards.

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

- a. Any point source system designed to hold, convey, contain, store or treat domestic, agricultural or industrial process wastewater shall be designed by a professional engineer registered in Missouri in accordance with the commission's design rules;
- b. Such point source system shall be constructed in accordance with the registered professional engineer's design and plans; and
- c. Such point source system may receive a post-construction site inspection by the department prior to receiving operating permit approval. A site inspection may be performed by the department, upon receipt of a complete operating permit application or submission of an engineer's statement of work complete.

A governmental unit may apply to the department for authorization to operate a local supervised program, and the department may authorize such a program. A local supervised program would



recognize the governmental unit's engineering capacity and ability to conduct engineering work, supervise construction and maintain compliance with relevant operating permit requirements.

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

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

6. The director shall promptly notify the applicant in writing of his or her action and if the permit is denied state the reasons for such denial. As provided by sections 621.250 and 640.013, the applicant may appeal to the administrative hearing commission from the denial of a permit or from any condition in any permit by filing a petition with the administrative hearing commission within thirty days of the notice of denial or issuance of the permit. After a final action is taken on a new or reissued general permit, a potential applicant for the general permit who can demonstrate that he or she is or may be adversely affected by any permit term or condition may appeal the terms and conditions of the general permit within thirty days of the department's issuance of the general permit. In no event shall a permit constitute permission to violate the law or any standard, rule or regulation promulgated pursuant thereto. Once the administrative hearing commission has reviewed the appeal, the administrative hearing commission shall issue a recommended decision to the commission on permit issuance, denial, or any condition of the permit. The commission shall issue its own decision, based on the appeal, for permit issuance, denial, or any condition of the permit. If the commission changes a finding of fact or conclusion of law made by the administrative hearing commission, or modifies or vacates the decision recommended by the administrative hearing commission, it shall issue its own decision, which shall include findings of fact and conclusions of law. The commission shall mail copies of its final decision to the parties to the appeal or their counsel of record. The commission's decision shall be subject to judicial review pursuant to chapter 536, except that





the court of appeals district with territorial jurisdiction coextensive with the county where the point source is to be located shall have original jurisdiction. No judicial review shall be available until and unless all administrative remedies are exhausted.

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

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

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

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

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

12. The director or the commission may require the filing or posting of a bond as a condition for the issuance of permits for construction of temporary or future water treatment facilities or facilities that utilize innovative technology for wastewater treatment in an amount determined by



the commission to be sufficient to ensure compliance with all provisions of sections 644.006 to 644.141, and any rules or regulations of the commission and any condition as to such construction in the permit. For the purposes of this section, “**innovative technology for wastewater treatment**” shall mean a completely new and generally unproven technology in the type or method of its application that bench testing or theory suggest has environmental, efficiency, and cost benefits beyond the standard technologies. No bond shall be required for designs approved by any federal agency or environmental regulatory agency of another state. The bond shall be signed by the applicant as principal, and by a corporate surety licensed to do business in the state of Missouri and approved by the commission. The bond shall remain in effect until the terms and conditions of the permit are met and the provisions of sections 644.006 to 644.141 and rules and regulations promulgated pursuant thereto are complied with.

13.

(1) The department shall issue or deny applications for construction and site-specific operating permits received after January 1, 2001, within one hundred eighty days of the department's receipt of an application. For general construction and operating permit applications received after January 1, 2001, that do not require a public participation process, the department shall issue or deny the permits within sixty days of the department's receipt of an application. For an application seeking coverage under a renewed general permit that does not require an individual public participation process, the director shall issue or deny the permit within sixty days of the director's receipt of the application, or upon issuance of the general permit, whichever is later. In regard to an application seeking coverage under an initial general permit that does not require an individual public participation process, the director shall issue or deny the permit within sixty days of the department's receipt of the application. For an application seeking coverage under a renewed general permit that requires an individual public participation process, the director shall issue or deny the permit within ninety days of the director's receipt of the application, or upon issuance of the general permit, whichever is later. In regard to an application for an initial general permit that requires an individual public participation process, the director shall issue or deny the permit within ninety days of the director's receipt of the application.

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

(3) Permit fee disputes may be appealed to the commission within thirty days of the date established in subdivision (2) of this subsection. If the applicant prevails in a permit fee dispute appealed to the commission, the commission may order the director to refund the applicant's permit fee plus interest and reasonable attorney's fees as provided in sections 536.085 and 536.087. A refund of the initial application or annual fee does



not waive the applicant's responsibility to pay any annual fees due each year following issuance of a permit.

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

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

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

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

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

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

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



- (1) For a new general permit or reissuance of a general permit, a general permit template shall be developed for which comments shall be sought from permittees and other interested persons prior to issuance of the general permit;
- (2) The director shall publish notice of his intent to issue a new general permit or reissue a general permit by posting notice on the department's website at least one hundred eighty days before the proposed effective date of the general permit;
- (3) The director shall hold a public informational meeting to provide information on anticipated permit conditions and requirements and to receive informal comments from permittees and other interested persons. The director shall include notice of the public informational meeting with the notice of intent to issue a new general permit or reissue a general permit under subdivision (2) of this subsection. The notice of the public informational meeting, including the date, time and location, shall be posted on the department's website at least thirty days in advance of the public meeting. If the meeting is being held for reissuance of a general permit, notice shall also be made by electronic mail to all permittees holding the current general permit which is expiring. Notice to current permittees shall be made at least twenty days prior to the public meeting;
- (4) The director shall hold a thirty-day public comment period to receive comments on the general permit template with the thirty-day comment period expiring at least sixty days prior to the effective date of the general permit. Scanned copies of the comments received during the public comment period shall be posted on the department's website within five business days after close of the public comment period;
- (5) A revised draft of a general permit template and the director's response to comments submitted during the public comment period shall be posted on the department's website at least forty-five days prior to issuance of the general permit. At least forty-five days prior to issuance of the general permit the department shall notify all persons who submitted comments to the department that these documents have been posted to the department's website;
- (6) Upon issuance of a new or renewed general permit, the general permit shall be posted to the department's website.

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

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

