

FIRST REGULAR SESSION

HOUSE BILL NO. 701

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BERKOWITZ, WIGGINS, RANSALL, DAVIS, SHOEMYER,
LUTKEMEYER, BARRY (Co-sponsors), OSTMANN AND COPENHAVER.

Read 1st time February 8, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1495L.011

AN ACT

To repeal section 644.051, RSMo 2000, relating to water pollution, and to enact in lieu thereof one new section relating to the same subject.

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

Section A. Section 644.051, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 644.051, to read as follows: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.

2. It shall be unlawful for any person to build, erect, alter, replace, 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 a permit from the commission, subject to such exceptions as the commission may prescribe by rule or regulation. However, no permit shall be required of any person for any emission into publicly owned treatment facilities or into publicly owned sewer systems tributary

19 to publicly owned treatment works.

20 3. Every proposed water contaminant or point source which, when constructed or
21 installed or established, will be subject to any federal water pollution control act or sections
22 644.006 to 644.141 or regulations promulgated pursuant to the provisions of such act shall make
23 application to the director for a permit at least thirty days prior to the initiation of construction
24 or installation or establishment. Every water contaminant or point source in existence when
25 regulations or sections 644.006 to 644.141 become effective shall make application to the
26 director for a permit within sixty days after the regulations or sections 644.006 to 644.141
27 become effective, whichever shall be earlier. The director shall promptly investigate each
28 application, which investigation shall include such hearings and notice, and consideration of such
29 comments and recommendations as required by sections 644.006 to 644.141 and any federal
30 water pollution control act. If the director determines that the source meets or will meet the
31 requirements of sections 644.006 to 644.141 and the regulations promulgated pursuant thereto,
32 the director shall issue a permit with such conditions as he or she deems necessary to ensure that
33 the source will meet the requirements of sections 644.006 to 644.141 and any federal water
34 pollution control act as it applies to sources in this state. If the director determines that the
35 source does not meet or will not meet the requirements of either act and the regulations pursuant
36 thereto, the director shall deny the permit pursuant to the applicable act and issue any notices
37 required by sections 644.006 to 644.141 and any federal water pollution control act.

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

52 5. The director shall grant or deny the permit within sixty days after all requirements of
53 the Federal Water Pollution Control Act concerning issuance of permits have been satisfied
54 unless the application does not require any permit pursuant to any federal water pollution control

55 act. The director or the commission may require the applicant to provide and maintain such
56 facilities or to conduct such tests and monitor effluents as necessary to determine the nature,
57 extent, quantity or degree of water contaminant discharged or released from the source, establish
58 and maintain records and make reports regarding such determination.

59 6. The director shall promptly notify the applicant in writing of his or her action and if
60 the permit is denied state the reasons therefor. The applicant may appeal to the commission from
61 the denial of a permit or from any condition in any permit by filing notice of appeal with the
62 commission within thirty days of the notice of denial or issuance of the permit. **Any other**
63 **person who demonstrates a specific and legally cognizable interest in the permit decision**
64 **and who demonstrates that the decision will have a direct and substantial impact on such**
65 **interest may appeal the permit decision to the commission.** The commission shall set the
66 matter for hearing not less than thirty days after the notice of appeal is filed. In no event shall
67 a permit constitute permission to violate the law or any standard, rule or regulation promulgated
68 pursuant thereto.

69 7. In any hearing held pursuant to this section the burden of proof is on the applicant for
70 a permit. Any decision of the commission made pursuant to a hearing held pursuant to this
71 section is subject to judicial review as provided in section 644.071.

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

76 9. No manufacturing or processing plant or operating location shall be required to pay
77 more than one operating fee. Operating permits shall be issued for a period not to exceed five
78 years after date of issuance, except that general permits shall be issued for a five-year period, and
79 also except that neither a construction nor an annual permit shall be required for a single
80 residence's waste treatment facilities. Applications for renewal of an operating permit shall be
81 filed at least one hundred eighty days prior to the expiration of the existing permit.

82 10. Every permit issued to municipal or any publicly owned treatment works or facility
83 shall require the permittee to provide the clean water commission with adequate notice of any
84 substantial new introductions of water contaminants or pollutants into such works or facility
85 from any source for which such notice is required by sections 644.006 to 644.141 or any federal
86 water pollution control act. Such permit shall also require the permittee to notify the clean water
87 commission of any substantial change in volume or character of water contaminants or pollutants
88 being introduced into its treatment works or facility by a source which was introducing water
89 contaminants or pollutants into its works at the time of issuance of the permit. Notice must
90 describe the quality and quantity of effluent being introduced or to be introduced into such works

91 or facility by a source which was introducing water contaminants or pollutants into its works at
92 the time of issuance of the permit. Notice must describe the quality and quantity of effluent
93 being introduced or to be introduced into such works or facility and the anticipated impact of
94 such introduction on the quality or quantity of effluent to be released from such works or facility
95 into waters of the state.

96 11. The director or the commission may require the filing or posting of a bond as a
97 condition for the issuance of permits for construction of temporary or future water treatment
98 facilities in an amount determined by the commission to be sufficient to ensure compliance with
99 all provisions of sections 644.006 to 644.141, and any rules or regulations of the commission and
100 any condition as to such construction in the permit. The bond shall be signed by the applicant
101 as principal, and by a corporate surety licensed to do business in the state of Missouri and
102 approved by the commission. The bond shall remain in effect until the terms and conditions of
103 the permit are met and the provisions of sections 644.006 to 644.141 and rules and regulations
104 promulgated pursuant thereto are complied with.

105 12. (1) The department shall issue or deny applications for construction and site-specific
106 operating permits received after January 1, 2001, within one hundred eighty days of the
107 department's receipt of an application. For general construction and operating permit
108 applications received after January 1, 2001, that do not require a public participation process, the
109 department shall issue or deny the requested permits within sixty days of the department's receipt
110 of an application.

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

117 (3) Permit fee disputes may be appealed to the commission within thirty days of the date
118 established in subdivision (2) of this subsection. If the applicant prevails in a permit fee dispute
119 appealed to the commission, the commission may order the director to refund the applicant's
120 permit fee plus interest and reasonable attorney's fees as provided in sections 536.085 and
121 536.087, RSMo. A refund of the initial application or annual fee does not waive the applicant's
122 responsibility to pay any annual fees due each year following issuance of a permit.

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

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

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

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

140 13. The department shall respond to all requests for individual certification under Section
141 401 of the Federal Clean Water Act within the lesser of sixty days or the allowed response period
142 established pursuant to applicable federal regulations without request for an extension period
143 unless such extension is determined by the commission to be necessary to evaluate significant
144 impacts on water quality standards and the commission establishes a timetable for completion
145 of such evaluation in a period of no more than one hundred eighty days.

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