

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1177
92ND GENERAL ASSEMBLY

3783S.06T

2004

AN ACT

To repeal sections 640.700, 640.703, 640.710, 640.715, 640.725, 640.730, 640.735, 640.745, 640.750, 640.755, 644.016, and 644.051, RSMo, and to enact in lieu thereof eleven 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 640.700, 640.703, 640.710, 640.715, 640.725, 640.730, 640.735, 640.745, 640.750, 640.755, 644.016, and 644.051, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 640.703, 640.710, 640.715, 640.725, 640.730, 640.735, 640.745, 640.750, 640.755, 644.016, and 644.051, to read as follows:

640.703. For the purposes of sections [640.700] **640.703** to 640.755, the following terms mean:

(1) ["Animal units", shall be defined by rules of the department in effect as of January 30, 1996;

(2) "Animal waste wet handling facility", includes all gravity outfall lines, recycle pump stations, recycle force mains and appurtenances] **"Animal feeding operation" or "AFO", a lot or facility, other than an aquatic animal production facility, where the following conditions are met:**

(a) **Animals, other than aquatic animals, are, have been, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and**

(b) **Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility;**

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

14 (2) "Class I", the same meaning as a large concentrated animal feeding operation
15 as such term is defined in 40 CFR 122.23(b)(4) as of April 14, 2003, except that the quantity
16 referring to chickens in 40 CFR 122.23(b)(4)(x) for the purposes of sections 640.703 to
17 640.758 shall be one hundred thousand;

18 (3) "Class IA", any concentrated animal feeding operation with a capacity of [seven
19 thousand animal units or more] at least seven times the number of animals as defined in
20 subdivision (2) of this section;

21 (4) "Class IB", any concentrated animal feeding operation with a capacity [between three
22 thousand animal units and six thousand nine hundred and ninety-nine animal units inclusive] of
23 at least three times but less than seven times the number of animals as defined in
24 subdivision (2) of this section;

25 (5) "Class IC", any concentrated animal feeding operation with a capacity [between one
26 thousand animal units and two thousand nine hundred and ninety-nine animal units inclusive]
27 of at least one but less than three times the number of animals as defined in subdivision (2)
28 of this section;

29 (6) "Class II", [any] the same meaning as a medium concentrated animal feeding
30 operation [with a capacity of at least three hundred animal units, but less than one thousand
31 animal units] as such term is defined in 40 CFR 122.23(b)(6) as of April 14, 2003, except that
32 the quantity referring to chickens in 40 CFR 122.23(b)(6)(i)(J) for purposes of sections
33 640.703 to 640.758 shall be thirty thousand to ninety-nine thousand nine hundred ninety-
34 nine;

35 (7) "Concentrated animal feeding operation" or "CAFO", an AFO that is defined
36 as a class I CAFO or a class II CAFO, or that is designated as a CAFO in accordance with
37 subsection 2 of section 640.710. Two or more AFOs under common ownership shall be
38 considered a single AFO for the purposes of determining the number of animals at an
39 operation if they adjoin each other or if they use a common area or system for the disposal
40 of wastes;

41 (8) "Department", the department of natural resources;

42 [(8) "Facility", any class IA concentrated animal feeding operation which uses a flush
43 system;]

44 (9) "Flush system", [a] an automated system of moving or removing manure utilizing
45 liquid as the primary agent as opposed to a primarily mechanical or [automatic device] manually
46 operated system such as a pull plug or scraper system;

47 (10) "Sensitive areas", areas in the watershed located within five miles upstream of any
48 stream or river drinking water intake structure, other than those intake structures on the Missouri
49 and Mississippi rivers.

640.710. 1. The [department] **clean water commission** shall promulgate rules
2 regulating the establishment, permitting, design, construction, operation and management of
3 [class I facilities. The department shall have the authority and jurisdiction to regulate the
4 establishment, permitting, design, construction, operation and management of any class I facility]
5 **concentrated animal feeding operations in accordance with the Missouri clean water law,**
6 **sections 644.006 to 644.141, RSMo.** Such rules may require monitoring wells on a site-specific
7 basis when, in the determination of the division of [geology and land survey] **geological survey**
8 **and resource assessment,** class IA concentrated animal feeding operation lagoons are located
9 in hydrologically sensitive areas where the quality of groundwater may be compromised. Such
10 rules and regulations shall be designed to afford a prudent degree of environmental protection
11 while accommodating modern agricultural practices.

12 2. **The department may designate an AFO as a concentrated animal feeding**
13 **operation upon determining that it is a significant contributor of pollutants to waters of**
14 **the state.**

15 (1) **In making such designation, the department shall consider the following factors:**

16 (a) **The size of the AFO and the amount of wastes reaching waters of the state;**

17 (b) **The location of the AFO relative to waters of the state;**

18 (c) **The means of conveyance of animal wastes and process waste into waters of the**
19 **state;**

20 (d) **The slope, vegetation, rainfall, and other factors affecting the likelihood or**
21 **frequency of discharge of animal wastes manure and process waste into waters of the state;**
22 **and**

23 (e) **Other relevant factors.**

24 (2) **No AFO shall be designated under this section unless the department has**
25 **conducted an on-site inspection of the operation and determined that the operation should**
26 **and could be regulated as a concentrated animal feeding operation. In addition, no AFO**
27 **with numbers of animals below a class II concentrated animal feeding operation may be**
28 **designated as a CAFO unless:**

29 (a) **Pollutants are discharged into waters of the state through a manmade ditch,**
30 **flushing system, or other similar manmade device; or**

31 (b) **Pollutants are discharged directly into the waters of the state which originate**
32 **outside of the facility and pass over, across, or through the facility, or otherwise come into**
33 **direct contact with the animals confined in the operation.**

34 3. **Regulatory or local controls imposed at any time by any county, township, or**
35 **other form of local government concerning the establishment, permitting, design,**
36 **construction, operation, and management of any animal feeding operation shall be**

37 **consistent with and not more restrictive than the provisions of sections 640.703 to 640.758.**
38 **Provided however, local governing bodies may impose controls more restrictive than the**
39 **provisions of sections 640.703 to 640.758 if prior to imposing more restrictive controls, the**
40 **local governing body shall seek and receive a recommendation from the respective soil and**
41 **water conservation district board. Such recommendation shall be based on peer-reviewed**
42 **scientific and economic data that clearly documents the geological, environmental, and**
43 **economic impact of the more restrictive controls. The recommendation must be received**
44 **from the respective soil and water conservation district board within one hundred eighty**
45 **days.**

46 **4.** Except as provided in subsections [3 and 4] **5 and 6** of this section, the department
47 shall require at least but not more than the following buffer distances between the nearest
48 confinement building or lagoon and any public building or occupied residence, except a
49 residence which is owned by the concentrated animal feeding operation or a residence from
50 which a written agreement for operation is obtained:

51 (1) For **class IC** concentrated animal feeding operations [with at least one thousand
52 animal units], one thousand feet;

53 (2) For **class IB** concentrated animal feeding operations [with between three thousand
54 and six thousand nine hundred ninety-nine animal units inclusive], two thousand feet; and

55 (3) For **class IA** concentrated animal feeding operations [of seven thousand or more
56 animal units], three thousand feet.

57 [3.] **5.** All concentrated animal feeding operations in existence as of June 25, 1996, shall
58 be exempt from the buffer distances prescribed in subsection [2] **4** of this section. Such
59 distances shall not apply to concentrated animal feeding operations which have received a written
60 agreement which has been signed by all affected property owners within the buffer distance.

61 [4.] **6.** The department may, upon review of the information contained in the site plan
62 including, but not limited to, the prevailing winds, topography and other local environmental
63 factors, authorize a distance which is less than the distance prescribed in subsection [2] **4** of this
64 section. The department's recommendation shall be sent to the governing body of the county in
65 which such site is proposed. The department's authorized buffer distance shall become effective
66 unless the county governing body rejects the department's recommendation by a majority vote
67 at the next meeting of the governing body after the recommendation is received.

68 [5.] **7.** Nothing in this section shall be construed as restricting local controls.

640.715. 1. Prior to filing an application to acquire a construction permit from the
2 department **for a new operation, new lagoon, or for an increase of the capacity to house or**
3 **grow animals at an existing operation**, the owner or operator of any class IA, class IB, or class
4 IC concentrated animal feeding operation shall provide the following information to the

5 department, to 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 subsection [2] 4 of
7 section 640.710 for the size of the proposed facility:

8 (1) The number of animals anticipated at such facility;

9 (2) **A general description** of the waste handling plan and [general] layout of the facility;

10 (3) The location and number of acres of such facility;

11 (4) Name, address, **and** telephone number [and registered agent] **of a contact person**
12 for further information as it relates to subdivisions (1) to (3) of this subsection;

13 (5) Notice that the department will accept written comments from the public for a period
14 of thirty days **after the department places the draft permit on public notice**; and

15 (6) The address of the [regional or] state office of the department.

16

17 The department shall require proof of such notification [upon accepting] **prior to approving** an
18 application for a construction permit. [The department shall accept written comments from the
19 public for thirty days after receipt of application for construction permit.] **Proof of notification**
20 **shall consist of a statement certifying that such notification was accomplished by mailing**
21 **a letter to the department, county governing body, and the last known address as kept by**
22 **the county assessor's office of all adjoining property owners described above.**

23 2. The department shall not issue a permit to a [facility described in subsection 1 of this
24 section] **concentrated animal feeding operation** to engage in any activity regulated by the
25 department unless the applicant is in compliance with sections [640.700] **640.703** to 640.755.

26 3. The department shall issue a permit or respond with a letter of comment to the owner
27 or operator of [such facility] **class IA concentrated animal feeding operation** within forty-five
28 days of receiving a completed permit application and verification of compliance with subsection
29 1 of this section.

640.725. 1. The owner or operator of any [flush system animal waste wet handling
2 facility] **class IA facility that utilizes a flush system** shall employ one or more persons who
3 shall visually inspect the [animal waste wet handling facility and] **gravity outfall lines, recycle**
4 **pump stations, and recycle force mains appurtenant to its animal manure** lagoons for
5 unauthorized [discharge and] **discharges and shall inspect the structural integrity of any lagoon**
6 **whose water level is less than eighteen inches below the emergency spillway** at least every
7 twelve hours with a deviation of not to exceed three hours. The owner or operator [of the
8 facility] shall keep records of each inspection. Such records shall be retained for three years.
9 The department shall provide or approve a form provided by the owner or operator [for each
10 facility] for such inspections.

11 2. All new construction permits for [flush system animal waste wet handling facilities]
12 **class IA facilities that utilize a flush system** shall have an electronic or mechanical shutoff of
13 the system in the event of pipe stoppage. As of July 1, 1997, all existing [flush system animal
14 waste wet handling facilities] **class IA facilities that utilize a flush system** shall have, at a
15 minimum, an electronic or mechanical shutoff of the system in the event of pipe stoppage or
16 backflow.

 640.730. [1.] The owner or operator of every [facility, with a flush system animal waste
2 wet handling facility] **class IA facility that utilizes a flush system** that poses a risk as
3 determined by the department to any public drinking water supply or any aquatic life, or lies
4 within a drainage basin and is within three hundred feet of any adjacent landowner, shall have
5 a failsafe containment structure or earthen dam that will contain, in the event of an unauthorized
6 discharge, a minimum volume equal to the maximum capacity of flushing in any twenty-four
7 hour period from all gravity outfall lines, recycle pump station, and recycle force mains.

8 [2. Construction of such structure or dam, as provided in subsection 1 of this section,
9 shall commence within ninety days of June 25, 1996.]

 640.735. Within twenty-four hours, any unauthorized discharge by a [flush system
2 animal waste wet handling facility] **class IA concentrated animal feeding operation** that has
3 crossed the property line of the facility or any unauthorized discharge by a [flush system animal
4 waste wet handling facility] **class IA concentrated animal feeding operation that utilizes a
5 flush system** of which the failsafe containment structure or earthen dam has failed to contain and
6 has crossed the property line of the facility, or enters waters of the state shall be reported to the
7 department and to all adjoining property owners of the facility [as listed on the site-specific
8 permit] **onto whose property the unauthorized discharge flowed and any affected
9 downstream property owners within one stream mile.**

 640.745. 1. The owner or operator of each class IA concentrated animal feeding
2 operation utilizing flush systems shall remit to the department of natural resources a fee [of ten
3 cents per animal unit permitted] **in dollars determined by multiplying one hundred times the
4 number of animals permitted, divided by the corresponding animal number as defined in
5 40 CFR 122.23(b)(4) as of April 14, 2003**, to be deposited in the fund. The fee is due and
6 payable to the department on the first anniversary of issuance of each owner or operator permit
7 to operate such a facility and for nine years thereafter on the same date. The department of
8 natural resources shall provide forms which such owner or operator shall use to file and pay this
9 fee.

10 2. The fund shall be administered by the department for the purpose of carrying out the
11 provisions of sections [640.700] **640.703** to 640.755, relating to closure of class IA, class IB,
12 class IC and class II concentrated animal feeding operation wastewater lagoons.

13 3. The fund administrators may only expend moneys for animal waste lagoon closure
14 activities on real property which:

15 (1) Has been placed in the control of the state, a county, or municipal government, or an
16 agency thereof, through donation, purchase, tax delinquency, foreclosure, default or settlement,
17 including conveyance by deed in lieu of foreclosure, and pose a threat to human health, the
18 environment, or a threat to groundwater; and

19 (2) The state, county, or municipal government, or an agency thereof, has made
20 reasonable and prudent efforts to sell said property to a qualifying purchaser.

21 4. The fund administrators shall expend no more than one hundred thousand dollars per
22 lagoon for animal waste lagoon closure activities. The fund administrators shall only expend
23 those moneys necessary to achieve a minimum level of closure and still protect human health and
24 the environment. Closure activities shall include lagoon dewatering and removal of animal
25 waste sludge, if any, both of which shall be land applied at a nutrient management application
26 rate [based on the most limiting nutrient as determined by Missouri clean water commission
27 regulation] **designed to minimize phosphorus and nitrogen transport from fields to surface**
28 **waters in compliance with the technical standards for nutrient management established**
29 **by the Natural Resources Conservation Service and approved by the director, or otherwise**
30 **used or disposed of in a manner approved by the director.** After dewatering, lagoons which
31 are located in a drainage basin and are capable of meeting all applicable pond requirements of
32 the Natural Resources Conservation Service (NRCS) with minimal additional expense should
33 be maintained as a pond. Otherwise, the lagoon berms should be breached and graded in such
34 a manner to reasonably conform to the surrounding land contours.

 640.750. The department shall conduct [at least one on-site inspection] **quarterly**
2 **inspections** of each [facility quarterly] **class IA concentrated animal feeding operation that**
3 **utilizes a flush system.**

 640.755. 1. No rule or portion of a rule promulgated under the authority of sections
2 [640.700] **640.703** to 640.755 shall become effective unless it has been promulgated pursuant
3 to the provisions of section 536.024, RSMo.

4 2. Sections 640.700 to 640.755 shall be administered by the clean water commission
5 pursuant to the provisions and requirements of chapter 644, RSMo.

 644.016. When used in sections 644.006 to 644.141 and in standards, rules and
2 regulations promulgated pursuant to sections 644.006 to 644.141, the following words and
3 phrases mean:

4 (1) "Aquaculture facility", a hatchery, fish farm, or other facility used for the production
5 of aquatic animals that is required to have a permit pursuant to the federal Clean Water Act, as
6 amended, 33 U.S.C. 1251 et seq.;

- 7 (2) "Commission", the clean water commission of the state of Missouri created in section
8 644.021;
- 9 (3) "Conference, conciliation and persuasion", a process of verbal or written
10 communications consisting of meetings, reports, correspondence or telephone conferences
11 between authorized representatives of the department and the alleged violator. The process shall,
12 at a minimum, consist of one offer to meet with the alleged violator tendered by the department.
13 During any such meeting, the department and the alleged violator shall negotiate in good faith
14 to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;
- 15 (4) "Department", the department of natural resources;
- 16 (5) "Director", the director of the department of natural resources;
- 17 (6) "Discharge", the causing or permitting of one or more water contaminants to enter
18 the waters of the state;
- 19 (7) "Effluent control regulations", limitations on the discharge of water contaminants;
- 20 (8) "General permit", a permit written with a standard group of conditions and with
21 applicability intended for a designated category of water contaminant sources that have the same
22 or similar operations, discharges and geographical locations, and that require the same or similar
23 monitoring, and that would be more appropriately controlled pursuant to a general permit rather
24 than pursuant to a site-specific permit;
- 25 (9) "Human sewage", human excreta and wastewater, including bath and toilet waste,
26 residential laundry waste, residential kitchen waste, and other similar waste from household or
27 establishment appurtenances;
- 28 (10) "Income" includes retirement benefits, consultant fees, and stock dividends;
- 29 (11) "Minor violation", a violation which possesses a small potential to harm the
30 environment or human health or cause pollution, was not knowingly committed, and is not
31 defined by the United States Environmental Protection Agency as other than minor;
- 32 (12) "Permit by rule", a permit granted by rule, not by a paper certificate, and
33 conditioned by the permit holder's compliance with commission rules;
- 34 (13) "Permit holders or applicants for a permit" shall not include officials or employees
35 who work full time for any department or agency of the state of Missouri;
- 36 (14) "Person", any individual, partnership, copartnership, firm, company, public or
37 private corporation, association, joint stock company, trust, estate, political subdivision, or any
38 agency, board, department, or bureau of the state or federal government, or any other legal entity
39 whatever which is recognized by law as the subject of rights and duties;
- 40 (15) "Point source", any discernible, confined and discrete conveyance, including but not
41 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock,
42 concentrated animal feeding operation, or vessel or other floating craft, from which pollutants

43 are or may be discharged. **Point source does not include agricultural stormwater discharges**
44 **and return flows from irrigated agriculture;**

45 (16) "Pollution", such contamination or other alteration of the physical, chemical or
46 biological properties of any waters of the state, including change in temperature, taste, color,
47 turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or
48 other substance into any waters of the state as will or is reasonably certain to create a nuisance
49 or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to
50 domestic, industrial, agricultural, recreational, or other legitimate beneficial uses, or to wild
51 animals, birds, fish or other aquatic life;

52 (17) "Pretreatment regulations", limitations on the introduction of pollutants or water
53 contaminants into publicly owned treatment works or facilities which the commission determines
54 are not susceptible to treatment by such works or facilities or which would interfere with their
55 operation, except that wastes as determined compatible for treatment pursuant to any federal
56 water pollution control act or guidelines shall be limited or treated pursuant to this chapter only
57 as required by such act or guidelines;

58 (18) "Residential housing development", any land which is divided or proposed to be
59 divided into three or more lots, whether contiguous or not, for the purpose of sale or lease as part
60 of a common promotional plan for residential housing;

61 (19) "Sewer system", pipelines or conduits, pumping stations, and force mains, and all
62 other structures, devices, appurtenances and facilities used for collecting or conducting wastes
63 to an ultimate point for treatment or handling;

64 (20) "Significant portion of his or her income" shall mean ten percent of gross personal
65 income for a calendar year, except that it shall mean fifty percent of gross personal income for
66 a calendar year if the recipient is over sixty years of age, and is receiving such portion pursuant
67 to retirement, pension, or similar arrangement;

68 (21) "Site-specific permit", a permit written for discharges emitted from a single water
69 contaminant source and containing specific conditions, monitoring requirements and effluent
70 limits to control such discharges;

71 (22) "Treatment facilities", any method, process, or equipment which removes, reduces,
72 or renders less obnoxious water contaminants released from any source;

73 (23) "Water contaminant", any particulate matter or solid matter or liquid or any gas or
74 vapor or any combination thereof, or any temperature change which is in or enters any waters of
75 the state either directly or indirectly by surface runoff, by sewer, by subsurface seepage or
76 otherwise, which causes or would cause pollution upon entering waters of the state, or which
77 violates or exceeds any of the standards, regulations or limitations set forth in sections 644.006

78 to 644.141 or any federal water pollution control act, or is included in the definition of pollutant
79 in such federal act;

80 (24) "Water contaminant source", the point or points of discharge from a single tract of
81 property on which is located any installation, operation or condition which includes any point
82 source defined in sections 644.006 to 644.141 and nonpoint source pursuant to any federal water
83 pollution control act, which causes or permits a water contaminant therefrom to enter waters of
84 the state either directly or indirectly;

85 (25) "Water quality standards", specified concentrations and durations of water
86 contaminants which reflect the relationship of the intensity and composition of water
87 contaminants to potential undesirable effects;

88 (26) "Waters of the state", all rivers, streams, lakes and other bodies of surface and
89 subsurface water lying within or forming a part of the boundaries of the state which are not
90 entirely confined and located completely upon lands owned, leased or otherwise controlled by
91 a single person or by two or more persons jointly or as tenants in common and includes waters
92 of the United States lying within the state.

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;

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 any
8 water contaminants into any waters of the state which exceed effluent regulations or permit
9 provisions as established by the commission or required by any federal water pollution control
10 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 build, erect, alter, replace, operate, use or
14 maintain any water contaminant or point source in this state that is subject to standards, rules or
15 regulations promulgated pursuant to the provisions of sections 644.006 to 644.141 unless such
16 person holds a permit from the commission, subject to such exceptions as the commission may
17 prescribe by rule or regulation. However, no permit shall be required of any person for any
18 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. **Notwithstanding the provisions of subsections 1 and 2 of this**
31 **section to the contrary, notices of violation shall not be issued for an accidental or**
32 **unintentional release of water contaminants where the water contaminants are entirely**
33 **confined upon lands owned, leased, or otherwise controlled by a single person, or by two**
34 **or more persons jointly or as tenants in common, and where the released water**
35 **contaminants are removed, cleaned up, or remediated to the extent that any flow of water**
36 **that leaves the property and enters the waters of the state does not exceed any of the**
37 **standards, regulations, or limitations set forth in sections 644.006 to 644.141.** If the director
38 determines that the source meets or will meet the requirements of sections 644.006 to 644.141
39 and the regulations promulgated pursuant thereto, the director shall issue a permit with such
40 conditions as he or she deems necessary to ensure that the source will meet the requirements of
41 sections 644.006 to 644.141 and any federal water pollution control act as it applies to sources
42 in this state. If the director determines that the source does not meet or will not meet the
43 requirements of either act and the regulations pursuant thereto, the director shall deny the permit
44 pursuant to the applicable act and issue any notices required by sections 644.006 to 644.141 and
45 any federal water pollution control act.

46 4. Before issuing a permit to build or enlarge a water contaminant or point source or
47 reissuing any permit, the director shall issue such notices, conduct such hearings, and consider
48 such factors, comments and recommendations as required by sections 644.006 to 644.141 or any
49 federal water pollution control act. The director shall determine if any state or any provisions of
50 any federal water pollution control act the state is required to enforce, any state or federal
51 effluent limitations or regulations, water quality-related effluent limitations, national standards
52 of performance, toxic and pretreatment standards, or water quality standards which apply to the
53 source, or any such standards in the vicinity of the source, are being exceeded, and shall
54 determine the impact on such water quality standards from the source. The director, in order to
55 effectuate the purposes of sections 644.006 to 644.141, shall deny a permit if the source will
56 violate any such acts, regulations, limitations or standards or will appreciably affect the water
57 quality standards or the water quality standards are being substantially exceeded, unless the

58 permit is issued with such conditions as to make the source comply with such requirements
59 within an acceptable time schedule. Prior to the development or renewal of a general permit or
60 permit by rule, for aquaculture, the director shall convene a meeting or meetings of permit
61 holders and applicants to evaluate the impacts of permits and to discuss any terms and conditions
62 that may be necessary to protect waters of the state. Following the discussions, the director shall
63 finalize a draft permit that considers the comments of the meeting participants and post the draft
64 permit on notice for public comment. The director shall concurrently post with the draft permit
65 an explanation of the draft permit and shall identify types of facilities which are subject to the
66 permit conditions. Affected public or applicants for new general permits, renewed general
67 permits or permits by rule may request a hearing with respect to the new requirements in
68 accordance with this section. If a request for a hearing is received, the commission shall hold a
69 hearing to receive comments on issues of significant technical merit and concerns related to the
70 responsibilities of the Missouri clean water law. The commission shall conduct such hearings
71 in accordance with this section. After consideration of such comments, a final action on the
72 permit shall be rendered. The time between the date of the hearing request and the hearing itself
73 shall not be counted as time elapsed pursuant to subdivision (1) of subsection 13 of this section.

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

81 6. The director shall promptly notify the applicant in writing of his or her action and if
82 the permit is denied state the reasons therefor. The applicant may appeal to the commission from
83 the denial of a permit or from any condition in any permit by filing notice of appeal with the
84 commission within thirty days of the notice of denial or issuance of the permit. The commission
85 shall set the matter for hearing not less than thirty days after the notice of appeal is filed. In no
86 event shall a permit constitute permission to violate the law or any standard, rule or regulation
87 promulgated pursuant thereto.

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

91 8. In any event, no permit issued pursuant to this section shall be issued if properly
92 objected to by the federal government or any agency authorized to object pursuant to any federal

93 water pollution control act unless the application does not require any permit pursuant to any
94 federal water pollution control act.

95 9. Unless a site-specific permit is requested by the applicant, aquaculture facilities shall
96 be governed by a general permit issued pursuant to this section with a fee not to exceed two
97 hundred fifty dollars pursuant to subdivision (5) of subsection 6 of section 644.052. However,
98 any aquaculture facility which materially violates the conditions and requirements of such permit
99 may be required to obtain a site-specific permit.

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

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

120 12. The director or the commission may require the filing or posting of a bond as a
121 condition for the issuance of permits for construction of temporary or future water treatment
122 facilities in an amount determined by the commission to be sufficient to ensure compliance with
123 all provisions of sections 644.006 to 644.141, and any rules or regulations of the commission and
124 any condition as to such construction in the permit. The bond shall be signed by the applicant
125 as principal, and by a corporate surety licensed to do business in the state of Missouri and
126 approved by the commission. The bond shall remain in effect until the terms and conditions of
127 the permit are met and the provisions of sections 644.006 to 644.141 and rules and regulations
128 promulgated pursuant thereto are complied with.

129 13. (1) The department shall issue or deny applications for construction and site-specific
130 operating permits received after January 1, 2001, within one hundred eighty days of the
131 department's receipt of an application. For general construction and operating permit applications
132 received after January 1, 2001, that do not require a public participation process, the department
133 shall issue or deny the requested permits within sixty days of the department's receipt of an
134 application.

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

141 (3) Permit fee disputes may be appealed to the commission within thirty days of the date
142 established in subdivision (2) of this subsection. If the applicant prevails in a permit fee dispute
143 appealed to the commission, the commission may order the director to refund the applicant's
144 permit fee plus interest and reasonable attorney's fees as provided in sections 536.085 and
145 536.087, RSMo. A refund of the initial application or annual fee does not waive the applicant's
146 responsibility to pay any annual fees due each year following issuance of a permit.

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

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

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

164 14. The department shall respond to all requests for individual certification under Section
165 401 of the Federal Clean Water Act within the lesser of sixty days or the allowed response period
166 established pursuant to applicable federal regulations without request for an extension period
167 unless such extension is determined by the commission to be necessary to evaluate significant
168 impacts on water quality standards and the commission establishes a timetable for completion
169 of such evaluation in a period of no more than one hundred eighty days.

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

 [640.700. Sections 640.700, 640.725, 640.730, 640.735 and 640.750 shall only
2 apply to class IA facilities as defined by the department rules in effect as of January 30,
3 1996, which use a flush system.]