

SECOND REGULAR SESSION

# HOUSE BILL NO. 2185

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES HURST (Sponsor), MILLER, POGUE AND ROSS (Co-sponsors).

6378H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

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

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

Section A. Section 644.051, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 644.051, to read as follows: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

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

18 publicly owned treatment facilities or into publicly owned sewer systems tributary to publicly  
19 owned treatment works.

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

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

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

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

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

32 [However, nothing shall prevent the department from taking action to assure protection of the  
33 environment and human health.] A construction permit may be required where necessary as  
34 determined by the department, including the following:

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

36         (b) To correct noncompliance;

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

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

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

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

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

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

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

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

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

78 6. The director shall promptly notify the applicant in writing of his or her action and if  
79 the permit is denied state the reasons therefor. The applicant may appeal to the commission from  
80 the denial of a permit or from any condition in any permit by filing notice of appeal with the  
81 commission within thirty days of the notice of denial or issuance of the permit. After a final  
82 action is taken on a new or reissued general permit, a potential applicant for the general permit  
83 who can demonstrate that he or she is or may be adversely affected by any permit term or  
84 condition may appeal the terms and conditions of the general permit within thirty days of the  
85 department's issuance of the general permit. In no event shall a permit constitute permission to  
86 violate the law or any standard, rule or regulation promulgated pursuant thereto.

87 7. In any hearing held pursuant to this section that involves a permit, license, or  
88 registration, the burden of proof is on the party specified in section 640.012. Any decision of the

89 commission made pursuant to a hearing held pursuant to this section is subject to judicial review  
90 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. Permits may be modified, reissued, or terminated at the request of the permittee. All  
96 requests shall be in writing and shall contain facts or reasons supporting the request.

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

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

121 12. The director or the commission may require the filing or posting of a bond as a  
122 condition for the issuance of permits for construction of temporary or future water treatment  
123 facilities or facilities that utilize innovative technology for wastewater treatment in an amount  
124 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

161 permit fee plus interest and reasonable attorney's fees as provided in sections 536.085 and  
162 536.087. A refund of the initial application or annual fee does not waive the applicant's  
163 responsibility to pay any annual fees due each year following issuance of a permit.

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

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

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

181 14. The department shall respond to all requests for individual certification under Section  
182 401 of the Federal Clean Water Act within the lesser of sixty days or the allowed response period  
183 established pursuant to applicable federal regulations without request for an extension period  
184 unless such extension is determined by the commission to be necessary to evaluate significant  
185 impacts on water quality standards and the commission establishes a timetable for completion  
186 of such evaluation in a period of no more than one hundred eighty days.

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

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

194 17. Prior to the development of a new general permit or reissuance of a general permit  
195 for aquaculture, land disturbance requiring a storm water permit, or reissuance of a general  
196 permit under which fifty or more permits were issued under a general permit during the

197 immediately preceding five-year period for a designated category of water contaminant sources,  
198 the director shall implement a public participation process complying with the following  
199 minimum requirements:

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

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

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

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

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

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

228 18. Notices required to be made by the department pursuant to subsection 17 of this  
229 section may be made by electronic mail. The department shall not be required to make notice  
230 to any permittee or other person who has not provided a current electronic mail address to the  
231 department. In the event the department chooses to make material modifications to the general

232 permit before its expiration, the department shall follow the public participation process  
233 described in subsection 17 of this section.

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

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