

Missouri Clean Water Commission  
Department of Natural Resources  
Lewis and Clark State Office Building  
LaCharrette/Nightingale Conference Rooms  
1101 Riverside Drive  
Jefferson City, Missouri 65102

November 2, 2011

**Proposed Amendment to  
10 CSR 20-6.010 Construction and Operating Permits  
Public Hearing**

**Issue:** Public Hearing on the Proposed Amendment to 10 CSR 20-6.010 Construction and Operating Permits.

**Background:** This proposed amendment changes one of the current rule's exemptions, allowing the Department to remain consistent with EPA's general permit and guidance. The amendment will require those pesticide applicators discharging to waters of the state to obtain NPDES permits. The general permit will help to prevent the unnecessary or harmful discharge of pollutants into water.

This proposed amendment also clarifies and supports a consistent interpretation of the rule regarding lower preference continuing authority and when it may be utilized. The amendment also addresses the flushing of fire hydrants and publicly owned potable water systems, requiring that best management practices are used.

On August 15, 2011, the proposed amendment to 10 CSR 20-6.010 Construction and Operating Permits was placed on public notice. The public comment period is from August 15, 2011, the date of publication in the *Missouri Register*, through November 16, 2011.

**Recommended Action:** No action is requested. This is an opportunity for staff, and the public, to present and comment on the proposed amendment to 10 CSR 20-6.010 Construction and Operating Permits.

**Suggested Motion Language:** Hearing only.

**List of Attachments:**

Proposed rulemaking for 10 CSR 20-6.010 Construction and Operating Permits published in the *Missouri Register* on August 15, 2011  
Emergency Amendment for 10 CSR 20-6.010 Construction and Operating Permits published in the *Missouri Register* on August 15, 2011



grant funds. This should include:

A. Proposed expenditures for the grant period; and

B. A narrative outlining how funds will be used to accomplish the goals and objectives of the project. Each budget category must be justified in the budget narrative.

(4) Goals and Objectives. Successful proposals must show evidence of their ability to impact the program goals of an increase in faculty resources and/or an increase in student capacity. Grant proposals should focus on one (1) or more of the following areas:

(A) Additional faculty positions;

(B) Development of accelerated graduate nursing programs with focus on expansion of faculty resources;

(C) Scholarships or traineeships for faculty development with commitment to teach in a Missouri school of nursing for a minimum of three (3) years after degree completion;

(D) Creation of faculty salary/benefit packages that are market competitive to recruit and retain highly qualified faculty for theory/clinical teaching;

(E) Expansion of clinical placement through development of new clinical partnerships; and/or

(F) Use of technology resources designed to augment instruction.

(5) Grant Award Amounts and Duration. Proposals are limited to one (1) year in duration, with the potential for extensions of two (2) additional one (1)-year periods. Grants are limited to one hundred fifty thousand dollars (\$150,000) per campus for each year.

(6) Grant Applications Submission Deadlines. The Missouri Department of Higher Education (MDHE) will establish and publicize the filing deadlines for the submission of grant applications. To be considered complete, applications must include all components referenced in section (3) of this rule and be received at the offices of the MDHE by 5:00 p.m. on the deadline date.

*AUTHORITY: sections 335.036 and 335.200 to 335.203, HB 233, First Regular Session, Ninety-sixth General Assembly, 2011. Original rule filed July 12, 2011.*

*PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Higher Education, PO Box 1469, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 20—Clean Water Commission  
Chapter 6—Permits**

**PROPOSED AMENDMENT**

**10 CSR 20-6.010 Construction and Operating Permits.** The department is amending sections (1) and (3).

*PURPOSE: The commission proposes to amend this rule by changing the exemption for the application of pesticides, adding an exemption for hydrant flushing, and clarifying the requirements for continuing authority status.*

(1) Permits—General.

(B) The following are exempt from permit regulations:

1. Nonpoint source discharges;

2. Service connections to wastewater sewer systems;

3. Internal plumbing and piping or other water diversion or retention structures within a manufacturing or industrial plant or mine, which are an integral part of the industrial or manufacturing process or building or mining operation. An operating permit or general permit shall be required, if the piping, plumbing, or structures result in a discharge to waters of the state;

4. Routine maintenance or repairs of any existing sewer system, wastewater treatment facility, or other water contaminant or point source;

5. Single family residences;

6. The discharge of water from an environmental emergency cleanup site under the direction of, or the direct control of, the Missouri Department of Natural Resources or the Environmental Protection Agency (EPA), provided the discharge shall not violate any condition of 10 CSR 20-7.031 Water Quality Standards;

7. Water used in constructing and maintaining a drinking water well and distribution system for public and private use, geologic test holes, exploration drill holes, groundwater monitoring wells, [and] heat pump wells, and water released to an unclassified waterbody during the flushing of fire hydrants and publicly-owned potable water distribution systems provided the flushing is conducted with best management practices, including a dechlorination process if necessary, to prevent a violation of the Missouri Clean Water Law;

8. Small scale pilot projects or demonstration projects for beneficial use, that do not exceed a period of one (1) year, may be exempted by written project approval from the permitting authority. The department may extend the permit exemption for up to one (1) additional year. A permit application shall be submitted at least ninety (90) days prior to end of the demonstration period if the facility intends to continue operation, unless otherwise exempted under this rule or Chapter 6; and

9. The application of pesticides in order to control pests (e.g., any insect, rodent, nematode, fungus, weed, etc.) in a manner that is consistent with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Missouri Pesticide Use Act **unless such application is made directly into or onto waters of the state, in which case the applicator shall obtain a permit.**

(3) Continuing Authorities.

(A) All applicants for construction permits or operating permits shall show, as part of their application, that a permanent organization exists which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application is made. Construction and first-time operating permits shall not be issued unless the applicant provides [such proof to the department and] **documentation to the department to prove that—**

1. A permanent organization exists, which will serve as the continuing authority for the operation, maintenance, modernization, and replacement of the facility;

2. The organization holds legal title to the wastewater treatment facility, collection system and all easements necessary to operate and maintain the entire wastewater system, or if the applicant does not own the facility, provides documentation of their legal authority to operate the wastewater system and a description of the relationship between the applicant and owner;

3. The organization has the necessary authority to accomplish its responsibilities through control of all connections to the collection system either through ordinances or voluntary or mandatory agreement;

4. The organization is able to obtain funding through service charges, rate and fee increases, or loans and grants; and

5. An official document or statement from the continuing authority [has submitted a statement indicating acceptance of] accepting the facility.

(B) Continuing authorities which can be issued permits to collect and/or treat wastewater under this regulation are [listed] described in preferential order in the following paragraphs. An applicant may utilize a lower preference continuing authority by submitting, as part of the application, a statement waiving preferential status from each existing higher preference authority, providing the waiver does not conflict with any area-wide management plan approved under section 208 of the Federal Clean Water Act or any other regional sewage service and treatment plan approved for the higher preference authority by the department]:

1. A municipality or public sewer district which has been designated as the area-wide management authority under Section 208(c)(1) of the Federal Clean Water Act;

2. A municipality, public sewer district, or sewer company regulated by the Public Service Commission (PSC) which currently provides sewage collection and/or treatment services on a regional or watershed basis as outlined in 10 CSR 20-6.010(3)(C) and approved by the Clean Water Commission. Permits shall not be issued to a continuing authority regulated by the PSC until the authority has obtained a certificate of convenience and necessity from the PSC;

3. A municipality, public sewer district, or sewer company regulated by the PSC other than one which qualifies under paragraph (3)(B)1. or 2. of this rule or a public water supply district. Permits shall not be issued to a continuing authority regulated by the PSC until the authority has obtained a certificate of convenience and necessity from the PSC;

4. Any person, or group of persons contractually obligated to collectively act as a wastewater collection and treatment service, or nonprofit company organized under section 393.825, RSMo, and in accordance with subsection 393.847.2, RSMo, with complete control of, and responsibility for, the water contaminant source, point source, or wastewater treatment facility and all property served by it. [The person] Any of these parties may constitute a continuing authority only by showing that the authorities listed under paragraphs (3)(B)1.-3. of this rule are not available, do not have jurisdiction, are forbidden by statute or ordinance from providing service to the person or, if available, have submitted written waivers or pose terms and conditions for providing sewer service that would justify the use of a lower preference authority as [provided for] described in [subsection] paragraph (3)(B)6. of this rule; [and]

5. An association of property owners served by the wastewater treatment facility, provided the applicant shows that—

A. The authorities listed in paragraphs (3)(B)1.-3. of this rule are not available or that any available authorities have submitted written waivers as provided for in subsection (3)(B) or pose terms and conditions for providing sewer service that would create excessive burden as described in paragraph (3)(B)6. of this rule;

B. The association owns the facility and has valid easements for all sewers;

C. The document establishing the association imposes covenants on the land of each property owner which assures the proper operation, maintenance, and modernization of the facility including at a minimum:

(I) The power to regulate the use of the facility;

(II) The power to levy assessments on its members and enforce these assessments by liens on the properties of each owner;

(III) The power to convey the facility to one (1) of the authorities listed in paragraphs (3)(B)1.-3.; and

(IV) The requirement that members connect with the facility and be bound by the rules of the association; and

D. The association is a corporation in good standing registered with the Office of the Missouri Secretary of State./.; and

6. An applicant may utilize a lower preference continuing authority by submitting, as part of the application for a con-

struction or first-time operating permit, the following information: 1) a written statement from the higher authority declining the offer to accept management of the additional wastewater; 2) a drawing or map that is to scale that clearly illustrates that the collection system operated by a higher preference authority is beyond two thousand feet (2000') from the proposed facility; 3) a proposed connection or adoption charge by the higher authority that would increase the applicant's cost of constructing and/or operating an individual system to at least one hundred twenty percent (120%) of the current cost; 4) a proposed service fee on the users of the system by the higher authority that is above two percent (2%) of the median household income of existing homeowners in the service area; or 5) terms for connection or adoption by the higher authority that would require more than two (2) years to achieve full sewer service, provided the service by a lower preference authority does not conflict with any area-wide management plan approved under section 208 of the Federal Clean Water Act or any other regional sewage service and treatment plan approved for the higher preference authority by the Missouri Clean Water Commission.

*AUTHORITY: sections 640.710 and 644.026, RSMo 2000. Original rule filed June 6, 1974, effective June 16, 1974. For intervening history, please consult the Code of State Regulations. Emergency amendment filed July 14, 2011, effective Oct. 31, 2011, expires April 27, 2012. Amended: Filed July 14, 2011.*

*PUBLIC COST: This proposed amendment will cost the Missouri Department of Natural Resources including other agencies and political subdivisions sixty-six thousand six hundred twenty-one dollars (\$66,621) in the aggregate.*

*PRIVATE COST: This proposed amendment will cost private entities seventy-nine thousand nine hundred fifty dollars (\$79,950) in the aggregate.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Natural Resources, Division of Environmental Quality, Water Protection Program, Refaat Mefrakis, PO Box 176, Jefferson City, MO 65102. Comments may be sent with name and address through email to refaat.mefrakis@dnr.mo.gov. Public comments must be received by November 16, 2011. The Missouri Clean Water Commission will hold a public hearing at 9:00 a.m., November 2, 2011, at the Lewis and Clark State Office Building, Nightingale Creek Conference Room, 1 East, 1101 Riverside Drive, Jefferson City, Missouri.*

**FISCAL NOTE  
PUBLIC COST**

**I.**

<b>Rule Number and Name:</b>	10CSR20-6.010 Construction and Operating Permits
<b>Type of Rulemaking:</b>	Proposed Amendment

**II. SUMMARY OF FISCAL IMPACT**

<b>Affected Agency or Political Subdivision</b>	<b>Estimated Cost of Compliance in the Aggregate</b>
<b>Missouri Department of Natural Resources</b>	\$51,102
<b>Estimates for 6 state agencies, including DNR, plus 179 other political subdivisions, such as County Health Departments or Public Airport Authorities, who may apply for a discharge permit to use pesticides, total 185.</b>	Estimated costs for state agencies & political subdivisions \$15,519
<b>Other agencies and political subdivisions list under Assumptions in Part IV.</b>	Total Estimated Cost of Compliance in the Aggregate  Includes DNR plus other state agencies and political subdivisions costs –  \$66,621

**III. WORKSHEET**

Costs Estimated for the Department of Natural Resources	FTE Per Permit	No. of Permits (385*20%)	Annual Salary	FY 2012 (6 Months)	FY 2013	FY 2014	FY 2015	FY 2016
ES III - Review and Issuance .5 FTE*	0.0024	77	\$46,248	\$4,280	\$8,560	\$8,817	\$9,082	\$9,354
ES III - Site Inspection .5 FTE*	0.0038	77	\$46,248	\$6,848	\$13,697	\$14,107	\$14,531	\$14,967
SOSA - Admin. Support - Partial FTE	0.0005	77	\$27,564	\$510	\$1,020	\$1,051	\$1,083	\$1,115
<b>*1 FTE PS TOTAL</b>				<b>\$11,639</b>	<b>\$23,277</b>	<b>\$23,976</b>	<b>\$24,695</b>	<b>\$25,436</b>
FRINGE - 53.09%				\$6,179	\$12,358	\$12,729	\$13,110	\$13,504
EE - \$4,800 est. per each FTE				\$99	\$106	\$108	\$111	\$115
<b>Personal Service Cost + Fringe + EE TOTAL</b>				<b>\$17,917</b>	<b>\$35,741</b>	<b>\$36,812</b>	<b>\$37,917</b>	<b>\$39,054</b>
Indirect - 30.85%				\$5,527	\$11,026	\$11,357	\$11,697	\$12,048
<b>TOTAL</b>				<b>\$23,444</b>	<b>\$46,767</b>	<b>\$48,169</b>	<b>\$49,614</b>	<b>\$51,102</b>

Personal Service amounts are based on the Market Level Pay Rates for each classification

\*.2 of 385 apps = 77 apps per year. The 77 applications will require 1 FTE to review applications, issue application and site inspections.

FTE Calculated = ES III for Review and Issuance = 5 hours Per Application = 5 / 2,080 hours = .0024 FTE

Per Application

FTE Calculated = ES III for Review and Issuance = 77 applications X 5 hours = 385 / 2,080 annual hours = 0.01 Annual FTE

FTE Calculated = ES III for Site Inspections = 8 hours Per Application = 8 / 2,080 hours =

.0038 FTE

FTE Calculated = ES III for Site Inspections = 77 applications X 8 hours = 616 / 2,080 annual hours = 0.3 Annual FTE

FTE Calculated = SOSA for Admin Support = 1 hours Per Application = 1 / 2,080 hours =

.0005 FTE

FTE Calculated = SOSA for Admin Support = 77 applications X 1 hours = 77 / 2,080 annual hours = 0.04

Annual FTE

Costs Estimated for Other Political Subdivisions	FTE Preparing Applica- tions	No. of Permit Applications (185*20%)	Annual Salary	FY 2012 (6 Months)	FY 2013	FY 2014	FY 2015	FY 2016
37 - Application Preparers .14 FTE &	0.0038	37	\$46,248	\$3,291	\$6,581	\$6,779	\$6,982	\$7,192
37 - SOSA Admin. Support .02 FTE	0.0005	37	\$27,564	\$245	\$490	\$505	\$520	\$536
<b>*.16 FTE PS TOTAL</b>				<b>\$3,536</b>	<b>\$7,072</b>	<b>\$7,284</b>	<b>\$7,502</b>	<b>\$7,728</b>
<b>FRINGE</b>				<b>\$1,877</b>	<b>\$3,754</b>	<b>\$3,867</b>	<b>\$3,983</b>	<b>4,103</b>
EE - \$4,800 est. per each FTE				\$15	\$30	\$30	\$30	\$30
<b>PS + Fringe + EE TOTAL</b>				<b>\$5,428</b>	<b>\$10,856</b>	<b>\$11,181</b>	<b>\$11,515</b>	<b>\$11,860</b>
Indirect - 30.85%				\$1,675	\$3,349	\$3,449	\$3,553	\$3,659
<b>TOTAL</b>				<b>\$7,103</b>	<b>\$14,205</b>	<b>\$14,630</b>	<b>\$15,068</b>	<b>\$15,519</b>

Personal services are based on Market Level Pay Rates each of the other Agency staff and Political

Subdivision

\*.2 of 185 applicants = 37 apps per year for .16 Annual FTE per permit

FTE Calculated = Application Preparer = 8 hours Per Application = 8 / 2,080 hours = .0038 FTE per application

FTE Calculated = Application Preparer = 37 applications X 8 hours = 296 hours / 2,080 annual hours = 0.14 Annual FTE

FTE Calculated = Admin Support = 1 hour Per Application = 1 / 2,080 hours = .0005 FTE Per Application

FTE Calculated = Application Preparer = 37 applications X 1 hours = 37 hours / 2,080 annual hours = 0.02 Annual FTE

#### IV. ASSUMPTIONS

The duration of the proposed rule is indefinite. There is no sun-set clause. Costs imposed by the proposed rule are shown on an annual basis. It is assumed that additional years will be consistent with the assumptions used to calculate the annual costs identified in this fiscal note unless the Department would develop an expedited permitting process to reduce the fiscal impact to the Department, other state agencies and political subdivisions. Costs of the expedited process are not available.

The fiscal impact in this rule is due to the modification of the exemption for pesticide applications in section (1) of this rulemaking. *This proposed rule will require entities who apply pesticides on or near waters of the state to apply for a discharge permit.* This fiscal note reflects the Department's costs to review and issue pesticide permit applications which may be received from private sector businesses, including any site inspection costs and, costs to other state agencies and political subdivisions that made prepare and submit pesticide permit applications.

It is anticipated that personnel costs to the Department and to other state agencies and political subdivisions are expected to increase at the 3% inflation rate projected by the Legislative Oversight Committee.

No permit fees are available to offset the costs for permit application review, issuance and inspection of a pesticide applicator permit by the Department. These costs would need to be covered through other sources of state funds. Other state agencies and political subdivisions may not have revenues to offset the costs of preparing pesticide permit applications.

There are an estimated total of eight thousand, six-hundred twenty-four (8,624) potential permit applicators that may apply for discharge permits in the state of Missouri, based on pesticide licenses issued. Because the department will require permits only where extensive applications are being performed, the Department estimates that only 185 public entities and 200 private entities (385 total) will pursue a permit. Permits will be obtained through processes currently in place within the Department. All pesticide applicators must comply with all applicable Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requirements as required under federal and state law.

For the Department and Other State Agencies and Political Subdivisions the FTE employee costs are calculated over a five year period for a general permit. The FY2012 reflects the six (6) months of a fiscal year the rule is effective. Each year reflects the Department's pesticide permit application review, issuance and inspection requirements and, the Other State Agencies and Political Subdivisions costs to prepare and submit pesticide permit applications.

Equipment and expenses are calculated according to a standard code for both the Department and the Other State Agencies and Political Subdivisions. First-year equipment and expense costs, fringe benefit and indirect costs (overhead) are calculated the same for all entities, using Department percentages and costs.

*Missouri Department of Natural Resources –*

A permit review by the Department requires an average of five (5) hours of an Environmental Specialist III's time to review and evaluate technical completeness and accuracy and, one (1) hour of a Senior Office Support Assistant to prepare necessary documentation and enter data.

The number of applications generated as a result of this rulemaking may vary from year to year. The Department assumed that the receipt of discharge applications will be evenly distributed over a five year period, calculating that 20% of the total number state-wide, i.e. three hundred eighty five (385) estimated permit applications, may result in seventy seven (77) applications received in any one year, over a 5 year period.

Regional office Environmental Specialists IIIs in permitting and engineering will need an estimated five (5) hours to review and issue a pesticide discharge permit. Environmental Specialists IIIs in the regional offices will also conduct the site inspections, estimated to take eight (8) hours per visit. A Senior Office Support Assistant (SOSA) will be needed to provide one (1) hour of administrative support.

The regions will inspect each permitted site at least once every five years.

A total of two (2) new Department staff positions are needed annually to review, issue permits, inspect and administer permits based on the expected 385 permit applications that may be received over a five-year period under the following assumptions –

*5 Hours ( Env. Specialists to review and issue) / 2,080 (total annual hours) results in .0024 FTE per permit application*

*8 Hours ( Env. Specialists to site inspect) / 2,080 results in .0038 FTE per permit application*

*1 Hour (Senior Assistant Support to administer) / 2.080 results in .0005 FTE per permit application*

Given the above assumptions, the Department needs one (1) FTE. The additional permitting duties created by this rulemaking will require time from the three professional classifications, however, only one of the classifications (ESIII) requires enough hours to warrant the creation of a new position.

*Other agencies and political subdivisions –*

Based on records kept by the Missouri Department of Agriculture, the department estimates that a total of 185 (one-hundred and eighty-five) permits, may be requested by the following other state agencies and political subdivisions who apply pesticides:

- 1 Missouri Office of Administration\*
- 1 Missouri Department of Conservation\*
- 1 Missouri Department of Natural Resources – Parks and Recreation\*
- 1 Missouri Department of Agriculture\*

- 1 Missouri Department of Transportation\*
- 1 Missouri Department of Corrections\*
- 12 Universities and Colleges
- 50 County Health Departments
- 50 City Public Works
- 12 Public Airport Authorities
- 5 Missouri National Guard and Other Military Branches Operating Bases in Missouri
- 50 City and County Public Parks and Recreation Departments

**Total: 185 permit applications**

*Note: It is assumed each of these state agencies and political subdivisions will be allowed to obtain one (1) permit to cover all of the pesticide applications within their jurisdiction. Estimates for the other state agencies or political subdivisions are estimates only and are not survey-based.*

For the purpose of this public fiscal note the hourly rate for one FTE in the Other State Agencies and Political Subdivision assigned to the technical preparation of the permitting application is assumed equivalent to the pay rate for Department employees at the Environmental Specialist III level and, the hourly rate for a clerical employee to assist with the application is assumed equivalent to the pay rate of a Department employee at the Senior Office Support Assistant (SOSA) level.

For other state agencies and political subdivisions, the department assumes each application requires 8 hours of technical preparation by staff at the level of a Department Environmental Specialist III and 1 hour of processing of the application by a Senior Office Support Assistant.

*Although the number of applications generated as a result of this rulemaking may vary, the assumption is that permit applications are evenly distributed over a five year period. The assumption is that 20% of the estimated one hundred and eighty-five (185) applicants from the Other Public Agencies and Political Subdivisions or, thirty-seven (37) applicants representing 37 agencies, (one permit per agency or political subdivision) may be submitted to the Department on average in any one year.*

Total application preparation for the thirty-seven (37) pesticide permit applications expected to be submitted to the Department by Other Agency and Political Subdivisions on average, in any one year, over a five (5) year period, requires .14 time of one FTE application preparer and, 0.02 of one administrative support staff, or, .16 total FTE time, is based on the following assumptions –

*8 Hours (Env. Specialists to prepare and submit) / 2,080 (total annual hours) results in .0038 FTE per permit application*

*1 Hour (SOSA administrative support) / 2,020 results in .0005 FTE per permit application*

FTEs are calculated as follows based on 8 hours of application preparation and, 1 hour of administrative support; \* 20% of the 185, the Number of Permits, 37 X Hourly (8 hours) results in 37 X 8 Hours preparation per application or, 296 hours / 2,080 = .14 FTE annually and, 37 X 1 Hour administrative support per application or, 37 hours / 2,080 = .02 FTE annually.

A total of thirty-seven (a collective number) application preparers and 37 (a collective number) administrative support staff FTE personnel can be expected to be working to prepare pesticide permit applications during any one year on average, per Other Agency and Political Subdivisions, based on the expected 185 permit applications that may be submitted over a five-year period.

*Costs in the aggregate –*

The cost in the aggregate to the Department or estimated net fiscal Impact is \$50,995 to comply with this rulemaking. This may be considered a multi-year aggregate due to the cyclical nature of the permitting process and to accommodate the cyclical nature of the permits.

The Estimated Net Effect to the Department's Permit Fee Fund is \$23,444 in fiscal year FY2012, 46,767 in FY2013, \$48,169 in FY2014, \$49,614 in FY2015, and \$51,102 in FY2016. FY 2016 reflects the multi-year aggregate cost which will recur every 5 years. Costs would increase in successive years with inflation.

*The cost to the department for staff salaries, expense and equipment and fringe benefits is figured less any permit application fee revenue (0).*

The cost in the aggregate to the Other State Agencies and Political Subdivisions or estimated net fiscal impact is \$ 15,519 to comply with this rulemaking. This may be considered a multi-year aggregate due to the cyclical nature of the permitting process and to accommodate the cyclical nature of the permits.

The Cost to Other State Agencies and Political Subdivisions for the partial fiscal year is FY2012 \$7,103, in FY2013 \$14,205, in FY2014 \$14,630 in FY2015 \$15,068 and, in FY2016 \$15,519. FY 2016 reflects the multiyear aggregate cost which will recur every 5 years. Costs would increase in successive years with inflation.

The total aggregate cost to the Department and to the Other State Agencies and Political Subdivisions is \$66,621.

**FISCAL NOTE****PRIVATE COST****I. RULE NUMBER**

<b>Rule Number and Name</b>	10 CSR 20-6.010 Construction and Operating Permits
<b>Type of Rulemaking</b>	Rulemaking Amendment

**II. SUMMARY OF FISCAL IMPACT**

<b>Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:</b>	<b>Classification by types of the business entities which would likely be affected:</b>	<b>Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:</b>
200 plus commercial (business) pesticide applicators	Environmental Pest Control Management including Contractors and Applicators	\$79,950

**II. Worksheet**

	% FTE for App Preparation	No. of Permit Applications (200*20%)	Annual Salary	FY 2012 (6 Months)	FY 2013	FY 2014	FY 2015	FY 2016
Application Preparers - Partial FTE	.004	40*	\$82,784	\$6,292	\$12,583	\$12,961	\$13,349	\$13,750
Administrative Support - Partial FTE	.0005	40*	\$49,340	\$493	\$987	\$1,016	\$1,047	\$1,078
<b>PARTIAL FTE PS TOTAL</b>				<b>\$6,785</b>	<b>\$13,570</b>	<b>\$13,977</b>	<b>\$13,396</b>	<b>\$14,828</b>
FRINGE - 53.09%				\$3,602	\$7,204	\$7,420	\$7,643	\$7,872
EE = \$4,800 est. per ea. FTE				\$19,200	\$38,400	\$38,400	\$38,400	\$38,400
<b>PS + Fringe + EE TOTAL</b>				<b>\$29,587</b>	<b>\$59,174</b>	<b>\$59,797</b>	<b>\$60,439</b>	<b>\$61,101</b>
Indirect - 30.85%				\$9,128	\$18,255	\$18,448	\$18,646	\$18,850
<b>TOTAL</b>				<b>\$38,715</b>	<b>\$77,430</b>	<b>\$78,245</b>	<b>\$79,085</b>	<b>\$79,950</b>

Personal Service based on Market Level Pay Rate; Env. Specialist (prepare) & Administrative SOSA classes  
 \* 2 of 200 (385 - 185 public entity permit apps) = 40 permit applications  
 Hourly Rate determined by dividing the annual salary \$46,248 by the total hours per year 2,080 = \$22.24 per hour  
 Hourly Application Preparer rate based on the increase from \$22.24 to \$40 = 79%  
 Annual Salary extrapolated for each app preparer; \$46,248 X 1.79% = \$82,784 based on \$40 per hour  
 Hourly FTE based on the number of hours required to prepare each app; 8 hours / 2,080 hours = .0038  
 FTE Calculated = 40 apps prepared X 8 hours required per app = 320 hours working hours per year = .04 FTE  
 Hourly Rate determined by dividing the annual salary \$27,564 by the total hours per year 2,080 = \$13.25 per hour  
 Hourly Administrative Support rate based on the increase from \$13.25 to \$23.72 = 79%  
 Annual Salary extrapolated for each administrative support; \$27,564 X 1.79% = \$49,339.56 based on \$23.72 per hour  
 Hourly FTE based on the number of hours required to prepare each application; 1 hours / 2,080 hours = .0005  
 FTE Calculated = 40 apps prepared X 1 hours required per app = 40 working hours per year = .02 FTE

#### IV. Assumptions

The duration of the proposed rule is indefinite. There is no sun-set clause. Costs imposed by the proposed rule are shown on an annual basis. It is assumed that additional years will be consistent with the assumptions used to calculate the annual costs identified in this fiscal note unless the Department would develop an expedited permitting process to reduce the fiscal impact to the Department, commercial applicators and other state agencies and political subdivisions. Costs of such an expedited process are not available.

The fiscal impact in this rule is due to the modification of the permitting exemption for pesticide applications in section (1) of this rulemaking amendment. *This proposed rule will require entities who apply pesticides on or near waters of the state to apply for a discharge permit.* This fiscal note reflects the costs to the commercial pesticide applicators to prepare applications for pesticide discharge permits and, the administrative costs to applicators who apply for a permit from the Department.

It is anticipated that all costs to the commercial business pesticide applicators are expected to increase at the rate projected by the Legislative Oversight Committee, the 3% inflation rate applied to personnel costs.

All Department permit fees expired on December 31, 2010. Costs to develop a web-based on-line system that may be expected to reduce pesticide permit costs to the private sector are not available.

There are an estimated total of eight thousand, six-hundred twenty-four (8,624) potential permit applicators in the state of Missouri, based on the pesticide licenses issued state-wide. Those applicators using pesticides on or near large tracts of land or water will need to obtain a permit. The department estimates that 200 pesticide applicators meet these criteria. It is expected that businesses will apply for a permit through processes currently in place within the Department of Natural Resources. A pesticide applicator must comply with all applicable Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requirements as required under federal and state law.

The FY2012 reflects the six (6) months of a fiscal year the rule is effective. Each year reflects the private sector personal services costs in the preparation and submittal of applications to the Department for general pesticide discharge permits.

Equipment and expenses are calculated according to a standard code used by the department to determine costs. First-year equipment and expense costs, and the fringe benefit and indirect costs (overhead) are calculated the same for all entities, using Department percentages and costs.

For the purpose of this public fiscal note, the hourly rate for one FTE, for the estimated number of private entities likely affected by the adoption of this rule and assigned to the technical preparation of the permitting application, is assumed equivalent to the pay rate for Department employee at the Environmental Specialist III level. The hourly rate for a clerical employee to assist with the application is assumed equivalent to the pay rate of a Department employee at the Senior Office Assistant Support (SOSA) level.

A permit application prepared by one of the commercial pesticide applicators requires an average of eight (8) hours of an Environmental Specialist III's time to prepare and evaluate for technical completeness and accuracy and, one (1) hour of a Senior Office Support Assistant (SOSA) to

prepare administrative documentation. Of the estimated 8,624 registered pesticide applicators state-wide, subtracting the approximate number of 185 public entities (other state agencies and political subdivisions), results in an estimated 8,439 registered private entities (commercial applicators). Because the rule requires a permit from only those businesses that apply pesticides on 6400 acres of land or more, on 80 or more acres of water, or on 20 or more linear miles of water's edge, the department assumes only 200 of the registered private applicators will need to seek a permit.

The department assumes that 20% percent of the 200 private entities affected will apply for permits each year, or 40 in any one year. Although the number of applications generated as a result of this rulemaking may vary, the assumption is that permit applications may be evenly distributed over a five year period.

The technical application preparation on average in any one year requires one partial (.00385) FTE and 40 hours (.0005 FTE) of administrative support. The partial FTE is based on the number of permit applications expected, 40 per year on average, from commercial business pesticide applicators and, is based on the following assumptions –

*8 Hours ( Env. Specialist level to prepare ) / 2,080 (total annual hours) results in .0038 FTE per permit application*

*1 Hour ( SOSA level administrative support ) / 2,080 results in .0005FTE per permit application*

Given the above assumptions, commercial applicators need only one partial FTE. Because of the minimal increase in work, the department predicts that businesses will support the new work with existing positions. The total FTE are calculated based on the number of permit applications,  $200 \times 20\%$ , or, 40, the number of permit application preparers, for example,  $\times 8$  hours required per app = 320 hours / 2,080 hours = .00385 FTE annually. The amount of administrative support = 1 hour required per app = 40 hours / 2,080 hour = .0005 FTE annually.

The Department recognizes that salaries and wages for environmental work may vary from state to state and from company to company and, that work as environmental specialist is not fully described. Information in this fiscal note is based on an extrapolation of paid professional environmental specialist work needed by business pesticide applicators as follows –

Personal services based on Market Level Pay Rates and merit classes and, extrapolated to reflect private professional environmental work. The Hourly application preparer rate, \$40, is based on the increase from the Department market rate of \$22.24, to \$40 or 79%. The annual salary market rate for professional environmental work is extrapolated, for each app preparer, by multiplying the Department market rate of \$46,248  $\times 1.79\%$ , to equal \$82,784 per year. The Hourly administrative support rate, \$23.72, is based on the increase from the Department market rate of \$13.25, to \$23.72 or 79%. The annual salary market rate for professional environmental work is extrapolated, for administrative support, by multiplying the Department market rate of \$27,564  $\times 1.79\%$  to equal \$49,340 per year.

*Costs in the aggregate –*

The cost in the aggregate to private commercial businesses is \$79,950 to comply with this rulemaking. This aggregate cost may be considered a multi-year aggregate due to the cyclical nature of the permitting process and the permits.

**The cost to the commercial business pesticide applicators for staff salaries, expense and equipment and fringe benefits is figured on the basis of personnel costs.**

**The Costs to commercial business pesticide applicators for the partial fiscal year is \$38,715 in FY2012, \$77,430 in FY2013, \$78,245 in FY2014, \$79,085 in FY2015, and \$79,950 in FY2016. FY 2016 reflects the multiyear aggregate cost which will recur every 5 years. Costs would increase in successive years with inflation.**

at least one (1) hour each time, unless restricted by the attending veterinarian.

3. Water receptacles must be kept clean and sanitized in accordance with this rule and before being used to water a different animal or social grouping of animals.

(E) Cleaning, Sanitization, Housekeeping, and Pest Control.

1. Cleaning of primary enclosures.

A. Excreta and food waste must be removed from primary enclosures daily and from under primary enclosures as often as necessary to prevent an excessive accumulation of feces and food waste, to prevent soiling of the animals contained in the primary enclosures, and to reduce disease hazards, insects, pests, and odors.

B. When steam or water is used to clean the primary enclosure, whether by hosing, flushing, or other methods, animals must be removed unless the enclosure is large enough to ensure the animals would not be harmed, wetted, or distressed in the process.

C. Standing water must be removed from the primary enclosure and adjacent areas.

D. Animals in other primary enclosures must be protected from being contaminated with water and other wastes during the cleaning.

E. The pans under primary enclosures with [grill-type] elevated floors and the ground areas under raised runs [with wire or slatted floors] must be cleaned as often as necessary to prevent accumulation of feces and food waste and to reduce disease hazards, pests, insects, and odors.

F. Any person required to have a license under sections 273.325 to 273.357, RSMo, who houses animals in stacked cages without an impervious barrier between the levels of such cages, except when cleaning such cages, is guilty of a class A misdemeanor.

2. Sanitization of primary enclosures and food and water receptacles.

A. Used primary enclosures and food and water receptacles must be cleaned and sanitized in accordance with this section before they can be used to house, feed, or water another animal, or social grouping of animals.

B. Used primary enclosures and food and water receptacles for animals must be sanitized at least once every two (2) weeks using one (1) of the methods prescribed in this section, and more often if necessary to prevent accumulation of dirt, debris, food waste, excreta, and other disease hazards.

C. Hard surfaces of primary enclosures and food and water receptacles must be sanitized using one (1) of the following methods:

(I) Live steam under pressure;

(II) Washing with hot water (at least one hundred eighty degrees Fahrenheit (180 °F) or eighty-two point two degrees Celsius (82.2 °C)) and soap or detergent, as with a mechanical cage washer; or

(III) Washing all soiled surfaces with appropriate detergent solutions and disinfectants, or by using a combination detergent/disinfectant product that accomplishes the same purpose, with a thorough cleaning of the surfaces to remove organic material, so as to remove all organic material and mineral build-up, and to provide sanitization followed by a clean water rinse.

D. Pens, runs, and outdoor housing areas using material that cannot be sanitized using the methods previously stated, such as gravel, sand, grass, earth, or absorbent bedding, must be sanitized by removing the contaminated material as necessary to prevent odors, diseases, pests, insects, and vermin infestation.

3. Housekeeping for premises. Premises where housing facilities are located, including buildings and surrounding grounds, must be kept clean and in good repair to protect the animals from injury, to facilitate the husbandry practices required in this rule and to reduce or eliminate breeding and living areas from rodents and other pests and vermin. Premises must be kept free of accumulations of trash, junk, waste products, and discarded matter. Weeds, grasses, and bushes must be controlled so as to facilitate cleaning of the

premises and pest control, and to protect the health and well-being of the animals.

4. Pest control. An effective program for the control of insects, external parasites affecting dogs and cats and birds and mammals that are pests, must be established and maintained so as to promote the health and well-being of the animals and reduce contamination by pests in animal areas.

*AUTHORITY: sections 273.344 and 273.346, RSMo 2000. Original rule filed Jan. 13, 1994, effective August 28, 1994. Amended: Filed Nov. 30, 1995, effective July 30, 1996. Emergency amendment filed July 11, 2011, effective July 21, 2011, expires Feb. 23, 2012.*

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 20—Clean Water Commission  
Chapter 6—Permits**

**EMERGENCY AMENDMENT**

**10 CSR 20-6.010 Construction and Operating Permits.** The division is amending subsection (1)(B).

*PURPOSE: This emergency amendment modifies the current exemption for the application of pesticides from the permitting regulations. The application of pesticides must be consistent with federal and state requirements. The removal of this exemption will allow the Department of Natural Resources to issue National Pollution Discharge Elimination System (NPDES) permits when required.*

*EMERGENCY STATEMENT: This amendment provides consistency between the Missouri Code of State Regulations and the U.S. Environmental Protection Agency's (EPA) administration of the National Pollutant Discharge Elimination System (NPDES). Federal NPDES program delegation from EPA requires states to administer permitting requirements in a manner consistent with and no less stringent than the federal guidelines for permitting. In 2009, U.S. Sixth Circuit Court of Appeals' decision (National Cotton Council v. EPA) vacated an EPA 2006 aquatic pesticide rule which had exempted pesticide applications from NPDES permits. The court also granted a two (2)-year stay of the decision to allow time for EPA to develop permit guidance along with a draft permit and requirements for use by both EPA and states. EPA had expected to have a final permit by the end of 2010; however, it was not until April 1, 2011, that EPA finally released a pre-publication version of the final pesticide general permit thereby allowing states to move forward. EPA continues to work to finalize this permit prior to the court-imposed deadline of October 31, 2011. While EPA's permit and guidance is not yet final, the department has chosen to move forward in modifying the exemption at subsection (1)(B) for pesticide application to ensure that it can meet the court's October 31 deadline. After that date, discharges to waters of the U.S. from the application of pesticides will require NPDES permits. If the state's exemption is not modified as of that date, Missouri's permitting program will not be consistent with EPA's program delegation, and pesticide applicators in Missouri may be required to obtain permits through EPA. An amendment to the rule is necessary to prevent an action by EPA that preempts the state's permitting authority. Modifying the exemption allows the department to issue permits that comply with the new federal general pesticides permit regarding pesticide applications either directly to water to control pests or over or near waters where a portion of the pesticides would be deposited into water. The state has a compelling interest in administering a permitting program and is taking steps to preserve that authority. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United State Constitutions. The Clean Water Commission believes this emergency amendment is fair to all interested persons and parties under the circumstances.*

*The commission further finds a compelling governmental interest requiring this emergency action because of the importance of issuing permits that are in compliance with EPA's permitting requirements and with the department's obligation under its federally-delegated NPDES authority. This emergency amendment was filed July 14, 2011, becomes effective October 31, 2011, and expires April 27, 2012.*

(1) Permits—General.

(B) The following are exempt from permit regulations:

1. Nonpoint source discharges;
2. Service connections to wastewater sewer systems;
3. Internal plumbing and piping or other water diversion or retention structures within a manufacturing or industrial plant or mine, which are an integral part of the industrial or manufacturing process or building or mining operation. An operating permit or general permit shall be required<sup>(1)</sup> if the piping, plumbing, or structures result in a discharge to waters of the state;
4. Routine maintenance or repairs of any existing sewer system, wastewater treatment facility, or other water contaminant or point source;
5. Single family residences;
6. The discharge of water from an environmental emergency cleanup site under the direction of, or the direct control of, the Missouri Department of Natural Resources or the Environmental Protection Agency (EPA), provided the discharge shall not violate any condition of 10 CSR 20-7.031 Water Quality Standards;
7. Water used in constructing and maintaining a drinking water well and distribution system for public and private use, geologic test holes, exploration drill holes, ground water monitoring wells, and heat pump wells;
8. Small scale pilot projects or demonstration projects for beneficial use, that do not exceed a period of one (1) year, may be exempted by written project approval from the permitting authority. The department may extend the permit exemption for up to one (1) additional year. A permit application shall be submitted at least ninety (90) days prior to the end of the demonstration period if the facility intends to continue operation, unless otherwise exempted under this rule or Chapter 6; and
9. The application of pesticides in order to control pests (e.g., any insect, rodent, nematode, fungus, weed, etc.) in a manner that is consistent with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Missouri Pesticide Use Act **unless such application is made directly into or onto waters of the state, in which case the applicator shall obtain a permit.**

*AUTHORITY: sections 640.710 and 644.026, RSMo 2000. Original rule filed June 6, 1974, effective June 16, 1974. For intervening history, please consult the Code of State Regulations. Emergency amendment filed July 14, 2011, effective Oct. 31, 2011, expires April 27, 2012. A proposed amendment covering this same material is published in this issue of the Missouri Register.*