

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

January 4, 2012

**Order of Rulemaking  
10 CSR 20-6.010**

**Issue:** The Department is requesting Commission approval of the Order of Rulemaking to amend 10 CSR 20-6.010, Construction and Operating Permits. This Order will modify a permitting exemption within section (1) for discharges resulting from pesticide application. The proposed rule would also clarify an exemption for discharges resulting from hydrant flushing and modify the language in section (3) regarding continuing authorities. The proposed language clarifies when a lower preference continuing authority may be available to the applicant for the operation of a new sewer treatment facility.

**Background:** The proposed rulemaking amendment was published in the *Missouri Register* on August 15, 2011. Comments were made at the November 2, 2011 public hearing. The public comment remained open through November 16, 2011.

Eleven (11) comments were received during the public comment period. The letters containing the comments are attached. The change in pesticide exemption is recommended to go forward. However, changes to hydrant flushing and continuing authorities are not recommended at this time and will be subject to further review and development with stakeholders. The Order reflects the pesticide exemption change only. This proposed amendment will become effective thirty (30) days after publication in the *Code of State Regulations*.

**Recommended Action:** The Department recommends the Commission adopt the Order of Rulemaking amending 10 CSR 20-6.010, Construction and Operating Permits.

**Suggested Motion Language:** The Commission moves to adopt the Order of Rulemaking for 10 CSR 20-6.010 Construction and Operating Permits. The Order is to be filed with JCAR and the Secretary of State.

**List of Attachments:**

Order of Rulemaking Amendment  
Proposed Amendment Published in the August 15, 2011 *Missouri Register*  
Comment Letters



**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**DIVISION 20—Clean Water Commission**  
**Chapter 6—Construction and Operating Permits**

**ORDER OF RULEMAKING**

By the authority vested in the Clean Water Commission under section 644.026, RSMo 2009, the Clean Water Commission amends a rule as follows:

10 CSR 20–6.010 is amended

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 15, 2011 (36 MoReg 1895-1908). Those sections with changes are reprinted here. This proposed amendment will become effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Department of Natural Resources received eleven (11) comments on the proposed rule. The Department decided to withdraw the proposed language on continuing authority and hydrant flushing exemption as a result of the public comments. To address these comments, the department will hold additional stakeholder meetings to discuss continuing authority concerns brought during the public hearing. However, the Department will pursue the removal of pesticide exemption as stated in (1)(B)9. All comments received regarding changes proposed to paragraph (1)(A)9 affecting the exemption for pesticide applications were in support of the changes.

**10 CSR 20-6.010 Construction and Operating Permits**

(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, provided the discharge does not violate any condition of 10 CSR 20-7.031 Water Quality Standards;
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.

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

**U**nder this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

**E**ntirely new rules are printed without any special symbolology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

**A**n important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment, or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

**I**f an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

**A**n agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety (90)-day-count necessary for the filing of the order of rulemaking.

**I**f an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:

**Boldface text indicates new matter.**

*[Bracketed text indicates matter being deleted.]*

**Title 6—DEPARTMENT OF HIGHER EDUCATION  
Division 10—Commissioner of Higher Education  
Chapter 11—Nursing Education Incentive Program**

**PROPOSED RULE**

**6 CSR 10-11.010 Nursing Education Incentive Program**

*PURPOSE: This rule sets forth the criteria to be used by the Department of Higher Education and the State Board of Nursing regarding the awarding of grants to eligible institutions of higher education under the Nursing Education Incentive Program.*

(1) Program Description. The "Nursing Education Incentive Program" is intended to address two (2) growing problems in nursing education.

(A) Missouri institutions have been unable to admit many qualified

applicants to their nursing programs because of a lack of physical or educational capacity. Because of these capacity constraints, students interested in entering nursing programs are unable to access the program of their choice, creating supply problems for the health care industry.

(B) Many areas of Missouri have been determined to be medically underserved. This determination is based upon the income of the population and the ratio of physicians, dentists, and behavioral health clinicians to the total population.

(2) Institutional Criteria for Grant Awards. To be eligible to receive a Nursing Education Incentive Grant, the applicant must meet the following eligibility criteria:

(A) Be a Missouri institution of higher education (sponsoring institution) offering a program of professional nursing—Bachelor of Science in Nursing level or higher;

(B) Be accredited by the Higher Learning Commission of the North Central Association; and

(C) Offer a nursing program or programs that meet the following program criteria:

1. Official National Council Licensure Examination for Registered Nurses (NCLEX-RN) pass rates consistently greater than or equal to eighty percent (80%);

2. Record of consistently meeting requirements for full approval by the Missouri State Board of Nursing;

3. Student graduation rates greater than or equal to eighty percent (80%). Graduation rate shall mean the percent of first time students who complete their program within one hundred fifty percent (150%) of the normal time to completion; and

4. Job placement rates greater than or equal to ninety percent (90%). Job placement rate shall mean the percent of program graduates (less those continuing their education) who have secured employment in the nursing field within six (6) months of graduation.

(3) Required Components of The Grant Proposal. To receive consideration, each proposal must include the following components:

(A) Cover letter of support from the president of the sponsoring institution and the relevant official with direct responsibility for nursing education at the sponsoring institution;

(B) Abstract—Applicants must provide a one (1)-page overview of the project that includes its goals, purpose, and scope; and

(C) Narrative description of the proposal including:

1. Description of the activities that will be undertaken as part of the grant;

2. Description of the capacity and structure the institution has in place to administer the grant activities;

3. Explanation of how the proposal will impact the goals established for the grant program; and

4. The following data/information:

A. Student admissions/progression requirements;

B. For each of the past three (3) years, the number of applicants for admission that met those requirements yet were denied admission due to a lack of capacity;

C. The number of faculty positions that are currently vacant and the duration of any such vacancy;

D. Any evidence that would indicate that additional graduates will serve geographically underserved areas of the state; and

E. Description of the applicant's plan for maintaining the benefits of the initiative following the expiration of the grant;

5. Goals and objectives—Applicants must identify the goals and objectives of the project. Activities, services, and anticipated outcomes should be described and clearly aligned with the objectives of the overall grant program; and

6. Budget summary and narrative—Applicants must provide detail concerning personnel, activities, and services paid for through

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](mailto: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

FTE Preparing Applications	No. of Permit Applications (185*20%)	Annual Salary	FY 2012 (6 Months)	FY 2013	FY 2014	FY 2015	FY 2016
Other Political Subdivisions							
37 - Application Preparers .14 FTE &	37	\$46,248	\$3,291	\$6,581	\$6,779	\$6,982	\$7,192
37 - SOSA Admin. Support .02 FTE	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>
FRINGE			\$1,877	\$3,754	\$3,867	\$3,983	4,103
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 III's in permitting and engineering will need an estimated five (5) hours to review and issue a pesticide discharge permit. Environmental Specialists III's 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>	<b>10 CSR 20-6.010 Construction and Operating Permits</b>
<b>Type of Rulemaking</b>	<b>Rulemaking Amendment</b>

**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>
<b>200 plus commercial (business) pesticide applicators</b>	<b>Environmental Pest Control Management including Contractors and Applicators</b>	<b>\$79,950</b>

**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 X 20%, or, 40, the number of permit application preparers, for example, X 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 X 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 X 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.**



November 16, 2011

Refaat Mefrakis  
Department of Natural Resources  
Division of Environmental Quality  
Water Protection Program  
P.O. Box 176  
Jefferson City, MO 65102

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WATER PROTECTION PROGRAM

RE: PUBLIC COMMENT TO 10 CSR20-6.010 CONSTRUCTION AND OPERATING PERMITS

Dear Mr. Mefrakis:

Thank you for the opportunity to comment during the public hearing portion of the Clean Water Commission (CWC) meeting on November 2, 2011. This letter is to further emphasize that testimony and to assure that my comments are entered into the record.

**Section (1)(B)7.**

During the July 13, 2012 CWC meeting, Floyd Gilzow, Missouri Public Utility Alliance, addressed the Commission regarding concerns about costs of requiring fire departments, water utilities, and others to dechlorinate water discharged from fire hydrants. Currently, these discharges are exempt from NPDES permit regulations and are typically performed to protect public health and safety. This section also includes language that restricts the exemption to unclassified waterbodies and publicly-owned potable water distribution systems. As the CWC is aware, regulation is currently under consideration to greatly reduce the number of unclassified water bodies in the State. Knowing which water bodies are or are not classified would be an additional burden for field staff. I would recommend that the general exemption be left intact, without identifying a specific exemption that adds requirements such as best management practices, dechlorination, or unclassified waterbodies. I would also note that hydrant flushing is not noted in any of the federal pesticide permits or in the decision making guides for permit compliance.

**Section (3)(A)5.**

Language proposed to be deleted requires that an applicant who wishes to utilize a lower preference continuing authority has to submit a statement waiving preferential status from each existing higher preference authority. This statement is not required in the revised language in any section.

**Section (3)(B)4.**

Language added to this section that qualifies an applicant for utilizing a lower preference continuing authority adds a list of reasons that can be utilized to not join a higher preference continuing authority. Section (3)(B)6 sets an "excessive burden" standard for allowing a



development to not join the regional or higher preference authority. Continuing authority decisions should be consistent state-wide, however, no costs are associated with this change in how decisions will be made. Regional and municipal utilities routinely design and construct systems to allow for expansion and growth outside their currently served areas. By utilizing this "excessive burden" test, including 120% of current cost, it is possible that unintended consequences could occur, including a reversal of regionalization. There are a limited number of 208 approved plans in the State, and few systems have regional plans approved by the Clean Water Commission. I would ask that the Commission withdraw this language on continuing authority and direct the Department to hold further meetings with Stakeholders where this topic is specifically listed on the agenda, so municipal officials, regional water and sewer districts, and private utilities could participate in the discussion.

### **Costs**

The Department of Natural Resources maintains that this rulemaking does not require an RIR. However, by including changes to fire hydrant flushing requirements and changes to continuing authority policies, and not including costs for either change, I question whether this decision is accurate. Section 7 of the Rulemaking Report indicates that there is an impact to two sewer authorities in a developing area where connection to a regional facility would not be physically or economically feasible. There is currently case law that requires that municipalities not allow connection to their system unless the rural water or sewer district releases the property from its service area, or the infrastructure, revenue, and the customer must be given back to the district. This is not based on price or serviceability, but merely on location. Without the statement waiving the right of the higher preferred authority to a lesser authority, there could be a financial impact to someone who installs infrastructure expecting to serve an area only to have it taken over later by another entity.

### **Stakeholder Involvement**

Section 11 states that "the proposed change to section (3) was developed by the Department to improve the rule's clarity." I would strongly encourage the Commission to involve stakeholders in this discussion before this clarification is implemented in state regulation.

Thank you for the opportunity to provide further comment to this rulemaking.

Sincerely,



Mary E. West-Calcagno  
Jacobs Engineering Group, Inc.  
Water/Wastewater Market Principal

Cc: Clean Water Commission





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November 14, 2011

Charles Harwood  
Missouri Department of Natural Resources  
Water Protection Program  
P.O. Box 176  
Jefferson City, MO 65102-0176

RE: Proposed Rulemaking 10 CSR 20-6.010 - Construction and Operating Permits

Dear Mr. Harwood:

I am writing on behalf of Missouri American Water to submit comments in regards to the proposed changes to 10 CSR 20-6.010 - Construction and Operating Permits. - and, in particular, the language addressing hydrant flushing activity. In 10 CSR 20-6.010(1) (B) 7, the existing rule exempts water used in construction and maintenance of well and distribution systems for public and private use from NPDES permit requirements. The proposed change would add "hydrant flushing" to the NPDES permit exemption and would impose additional requirements with regard to incorporating dechlorination practices for hydrant flushing activities. Missouri American Water does not believe the impact of this change has been fully considered and, therefore, opposes the proposed change at this time.

As you may know, Missouri American Water is one of many public and private drinking water providers in the state. A critical part of this role includes providing water for fire protection and public safety. As the largest water supplier in the State, Missouri American Water has approximately 42,000 fire hydrants as part of its system. All of these hydrants require maintenance that may include hydrant inspection, exercising the valves, testing flow and hydrant flushing. In fact, the term "hydrant flushing" can have different meanings, because it sometimes is used to describe a formal hydrant flushing program used in conjunction with flushing water mains or alternatively may be used informally to describe any variety of hydrant flow testing. As a



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result, the proposed language on its face is too vague without the term hydrant flushing being defined.

In addition, the Public Drinking Water section of the Department of Natural Resources promulgates rules and standards for potable drinking water providers. In fact, the Public Drinking Water program performs sanitary surveys and inspections of all water systems in Missouri and normally recommends that systems flush twice a year. To the extent the Department believes it is necessary to promulgate new rules as it pertains to how to operate a water system, those rules should be issued under the Public Drinking Water section where the agency already is regulating operation of water systems.

Third, it does not appear that the impact of this rule change has been fully considered. Neither the Rulemaking Report nor the Fiscal Notes reflect that the agency reviewed the impact of the proposed changes. Such a change would require significant increased capital costs for acquiring the equipment, as well as increased operational costs of using dechlorination chemicals for every water system, fire department and water main construction company in the State of Missouri. These costs should be included in the fiscal impact statements that accompany the proposed rule. If the Department wishes to have stakeholder input about the extent of these costs, we would gladly submit cost estimates. Further, the proposed language covers only publicly-owned potable water systems. Missouri American Water is an investor-owned system, as are other potable water systems in the State. To the extent any new language is included; it should address all potable water systems.

In the meantime, we believe the current exemption already covers hydrant flushing activity, Hydrant flushing activity is considered part of the construction and maintenance of water distribution systems, and construction and maintenance activities already are covered by the existing rule. Therefore, our understanding is and has been that this activity already is exempt from NPDES permit requirements under the existing rule.



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If you should have any questions, please don't hesitate to call me.

Sincerely,

Robert Fuerman  
Director, Production

CC: Greg Weeks

Kevin Dunn

Tom Simmons

Cindy Hebenstreit

