

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

**10 CSR 20-6.020 Public Participation, Hearings and Notice to  
Governmental Agencies**

**WORKING DOCUMENT**

**The Department presents these draft materials for  
stakeholder review and discussion only.  
Subject to the Red Tape Reduction review.**

The Missouri Department of Natural Resources has identified 10 CSR 20-6.020, Public Participation, Hearings and Notice to Governmental Agencies, as a potential rulemaking amendment. This workgroup has been convened for the purpose of informal and voluntary public participation and discussions regarding the development of this rule prior to initiating formal rulemaking.

Under Governor Greitens' leadership, all state agencies are working to reduce regulations and other government processes that unnecessarily burden individuals and businesses while doing little to protect or improve public health, safety, and our natural resources. The Missouri Department of Natural Resources is committed to limiting regulation to what is necessary to protect Missouri's environment, implementing statutory mandates, and maintaining state control of programs. Any further proposed changes to rules discussed on this page are being developed with these goals in mind. We welcome your comments to help ensure that our regulations provide required protections but do not add unnecessary costs.

## **10 CSR 20-6.020 Public Participation, Hearings and Notice to Governmental Agencies**

*PURPOSE: This rule sets forth the procedures which the department will follow in providing opportunity for participation by the public and other governmental agencies during the permit issuing process. This rule clarifies the process. This rule also addresses the procedures for appeals to the Clean Water Commission from departmental actions.*

### **(1) Public Participation.**

(A) The department shall review applications for general permits, operating permits or the renewal of operating permits and other relevant facts to determine whether or not the permits should be issued. When all required and requested information has been received, the department shall prepare the following documents:

1. A draft operating permit containing the following elements:

- A. Terms and conditions of the permit;
- B. Effluent limitations, standards and other limitations;
- C. Applicable compliance schedules; and
- D. Monitoring requirements; and

2. If the draft operating permit is for a major discharger as defined by the Environmental Protection Agency (EPA) or a general permit or if it incorporates any variances or modifications, or if the regional administrator or director finds it is the subject of widespread public interest, the department will prepare a fact sheet. The fact sheet shall include:

- A. A brief explanation of the express statutory or regulatory provisions on which permit requirements are based;
- B. Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable guideline, development documents or standard provisions and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;
- C. Where appropriate, a sketch or detailed description of the location of the discharge described in the application;
- D. A quantitative description of the discharge described in the application and of the activities that lead to the discharge;
- E. Reasons requested variances or modifications do or do not appear justified; and
- F. Name and telephone number of a person who can provide additional information.

(B) A public notice of permit pending will be prepared by the department. There shall be a period of not less than thirty (30) days following the date of the public notice when interested persons may submit their written views on the proposed permit. The department will issue or deny the permit within sixty (60) days after all requirements of the Federal Clean Water Act, the Missouri Clean Water Law and those regulations concerning the issuance of permits have been satisfied.

### **(C) Public Notice for General Permits.**

1. Public notice of newly created, or the reissuance of an existing statewide general permit shall be prepared by the department in accordance with subsections (1)(B) and (D) of this rule.

2. Public notification of the issuance of any general permit to an applicant will not be required, except for the following general permits:

- A. Airports;
- B. Chemical manufacturing;

- C. Fabricated structured metal;
- D. Foundries;
- E. Limestone and rock quarries;
- F. Lubricant manufacturing;
- G. Petroleum storage greater than fifty thousand (50,000) gallons; and
- H. Wood treaters.

3. For issuance of the first general permit for any newly constructed water contaminant source, point source or wastewater treatment facility, public notification shall occur in accordance with subsections (1)(B) and (C) of this rule.

4. Reissuance of general permits to individual facilities shall not require public notification unless the facility was found to have been in significant noncompliance during the time of the previous permit.

5. As new general permits are created, the need for an individual facility public notification process shall be determined and identified in the general permit.

(D) The public notice of permit pending will contain at least the following:

1. Name, address, telephone number of the department and any other places at which interested persons may obtain further information, request copies of the draft permit and the fact sheet and inspect and copy related forms and documents;
2. Name and address of the applicant and address of the discharger if different from the applicant;
3. Brief description of the applicant's activities or operations which result in the discharge or potential discharge described in the application;
4. Name of watercourse to which the applicant will discharge, a description of the location of the discharge and designation of the discharge as new or existing;
5. A statement of the tentative determination to issue a permit;
6. A brief description of the procedures for making final determination, including the thirty (30)-day comment period and any other means by which interested persons may influence or comment upon the making of the determinations; and
7. The name and address of the office processing the application.

(E) Notice will be circulated within the geographical areas of the proposed discharge; the circulation may include any or all of the following:

1. Posting in the post office and public places of the municipality nearest the proposed discharge; and
2. Posting near the entrance to the applicant's premises.

(F) The notice shall be mailed by the department to persons who have notified the department of their interest or who have requested the notice.

(G) The department, upon request, shall add the name of any person or group to a mailing list to receive copies of notices for all applications within the state.

(H) All relevant and material comments received pursuant to the public notice shall be given consideration by the department before making a final decision. When significant water quality concerns are raised during the comment period the department may hold a public meeting to discuss the applications. The department does not have jurisdiction to address questions of zoning, location, property values or other nonwater quality related items.

(2) Notice to Other Governmental Agencies. **Notices to and comments submitted by other governmental agencies shall conform to the stipulations outline in federal regulation 40 CFR 124.59 “Conditions requested by the Corps of Engineers and other government agencies,” January 4, 1989, as published by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.** *[The department shall send a copy of the draft permit and accompanying fact sheet the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the Missouri Department of Conservation and to all affected states.*

*(A) Each affected state shall be given an opportunity to submit written recommendations to the department and to the regional administrator which the department may incorporate into the permit if issued. If the department does not incorporate these recommendations, it shall send a written explanation to the affected states of the reasons for failing to accept them.*

*(B) If the appropriate district engineer of the Corps of Engineers advises the director, in writing, during the public comment period that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the district engineer advises the director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the director shall include the specified conditions of the permit. Review or appeal of a denial of a permit or of conditions specified by the district engineer shall be made through the applicable procedures of the Army Corps of Engineers.]*

(3) Public Access to Information. **Unless otherwise determined to be confidential by the director, the availability of applications, draft permits, and supporting documentation thereof shall be available to the public in accordance with § 610.023, RSMo.**

*[(A) Applications, draft permits, supporting documents and reports upon those documents shall be available to the public, except for those portions determined to be confidential. Information other than effluent data, support documents or reports contained in any issued permit or document in the water pollution control program may be made confidential upon a showing that methods or processes entitled to protection as trade secrets would be revealed if the information were made public. The director shall make the final determination of confidentiality.*

*(B) The department shall provide for public inspection and copying of information relating to these documents.]*

(4) Public Participation Process.

(A) Department of Natural Resources (DNR) Hearing.

1. An opportunity shall be provided for the applicant, any affected state, any affected interstate agency, the regional administrator or any interested agency, person or group of persons to request or petition for a public hearing with respect to the application. Any request for a public hearing shall be filed with the department within the comment period and shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. The department shall hold a public hearing if there is significant technical merit and concern related to the responsibilities of the Missouri Clean Water Law. Instances of doubt shall be resolved in favor of holding the hearing. Any public hearing shall be held in the geographical area of the

proposed discharge or other appropriate area. An appeal filed upon the issuance of a construction permit will be considered as an appeal of the construction permit and the first operating permit.

2. At least thirty (30) days before any hearing, notice of hearing shall be published in at least one (1) newspaper of general circulation in the geographical area of the discharge and mailed to any person or group on request and to all persons, groups and agencies who received a copy of notice or fact sheet for the proposed permit. In any case, notice shall be at least as broad as was the notice of permit pending. The notice shall contain at least the following:

- A. Name, address and telephone number of the department;
- B. Name and address of each applicant whose application will be considered at the hearing and name and address of the discharger if different from the applicant;
- C. A brief statement of the applicant's activities for which the permit is sought;
- D. Name of the watercourse to which permittee will discharge and a short description of the location of each discharge;
- E. A brief reference to the public notice issued for each application, including identification number and date of issuance;
- F. Information regarding the time and location for the hearing;
- G. The purpose of the hearing;
- H. A concise statement of the department's understanding of the issues raised by the persons requesting the hearing;
- I. Address and telephone number of premises at which interested persons may obtain further information, request a copy of each draft permit or each fact sheet or statement of basis, inspect and copy forms and related documents; and
- J. A brief description of the nature of the hearing, including the rules and procedures to be followed.

(B) Clean Water Commission hearings for regulation development, fact finding and other nonjudicatory matters will be held in conformance with Chapter 644, RSMo.

(C) Clean Water Commission hearings on permit issues, abatement orders and other judicatory type matters will be held in conformance with Chapters 536 and 644, RSMo.

(5) Time Limits for Appeals for Abatement Orders, Permit Denials and Variances.

(A) The thirty (30)-day time limit provided for the filing of appeals to the commission as established by section 644.056.3, RSMo for appeals of abatement orders; section 644.051.6, RSMo for appeals from denials of permits; section 644.061.5, RSMo for appeals from the recommendation to grant or deny variances; and 10 CSR 20-6.060(5) for appeals from the denial of water quality certifications shall be computed from the day of service of the notice of the order or issuance or denial of the variance or denial of the permit or water quality certification, as the case may be.

(B) Service of the notice may be accomplished by either hand delivery or certified mail, return receipt requested.

1. Service by hand delivery.

A. Service by hand delivery is accomplished when a copy of the notice is tendered to--

- (I) The applicant or permittee or other affected person or with some person of his/her family over the age of fifteen (15) years and residing in his/her dwelling, house or usual place of abode;
- (II) An officer of a corporate applicant or permittee or other affected person;
- (III) A partner of a partnership applicant or permittee or other affected person;
- (IV) A managing or general agent of the applicant or permittee or other affected person;

(V) A registered agent or any other agent of the applicant or permittee or other affected person authorized by appointment or required by law to receive the notice; and

(VI) Any person in charge of the water contaminant or point source of the applicant or permittee or other affected person.

B. The person who effects service by hand delivery shall state the time, place and manner of service in a signed file memorandum or other writing.

C. The accomplishment of service of notice by hand delivery is not altered by the refusal of the person to be served to receive the notice when this fact is shown on the return.

2. Service by certified mail.

A. Service by certified mail is accomplished by mailing a copy of the notice by certified or registered mail, return receipt requested, to any of the persons listed in parts (5)(B)1.A.(I)-(VI) of this rule.

B. Service by mail is complete on the delivery date shown on the return receipt; or on the date of refusal as shown on the envelope of the returned notice.

(C) The appeals previously referenced in subsection (5)(A) of this rule may be made by the applicant, permittee, person named in the order or any other person with an interest which is or may be adversely affected. The appeal shall be filed with the **Administrative Hearing Commission, 131 W. High St., P.O. Box 1557, Jefferson City, MO 65101** [*commission secretary of the Clean Water Commission, P.O. Box 176, Jefferson City, MO 65102*] and shall be received by the **Administrative Hearing [Clean Water] Commission** prior to expiration of the thirty (30)-day appeal period as computed in subsection (5)(A). The appeal shall be a contested case and shall be conducted under section 644.066, RSMo.

(6) Time Limits for Appeals of Conditions in Issued Permits.

(A) The thirty (30)-day limit provided for the filing of appeals to the commission established by sections 640.010.1 and 644.051.6, RSMo for appeals of conditions in issued permits shall be computed from the day of service of notice.

(B) Service of the notice shall be accomplished by mailing the issued permits, first-class postage prepaid, to the persons listed in parts (5)(B)1.A.(I)-(VI) of this rule.

(C) Three (3) days shall be added to the prescribed thirty (30)-day period for appeals of conditions in issued permits when the service of notice is accomplished by mail.

(D) The appeals referenced previously in subsection (6)(A) of this rule may be made by the applicant, permittee or any other person with an interest which is or may be adversely affected. The appeal shall be filed with the **Administrative Hearing Commission, 131 W. High St., P.O. Box 1557, Jefferson City, MO 65101** [*commission secretary of the Clean Water Commission, P.O. Box 176, Jefferson City, MO 65102*] and shall be received by the **Administrative Hearing [Clean Water] Commission** prior to expiration of the thirty (30)-day appeal period as computed in subsection (5)(A). The appeal shall be a contested case and shall be conducted under section 644.066, RSMo.

(7) Appeals made under sections (5) and (6) of this rule shall **conform to the requirements of the Administrative Hearing Commission regulation 1 CSR 15-3.350, effective March 30, 2017.** [*be--*

(A) *An original filed with the secretary of the commission;*

*(B) Signed by the appellant or appellant's legal counsel;*

*(C) Clearly identified as an appeal;*

*(D) Comprised of the following information:*

*1. Full name, address and telephone number of the appellant and any attorney representing the appellant;*

*2. Reasons why the appellant believes the actions of the department or commission should be reversed or modified, including the identification and copy of the order or decision made by the director or commission which gives rise to the appeal;*

*3. Suitable space in the caption for the commission secretary to affix a case number; and*

*4. Acknowledgment that the matter will automatically be set for hearing.*

*(8) Appeals filed under sections (5) and (6) of this rule may contain a request for stay of the conditions appealed.*

*(9) The commission shall construe the provisions of sections (5)-(7) of this rule liberally if the appellant has prepared the complaint without legal counsel.*

*(10) The secretary of the commission shall serve notice of an appeal filed under sections (5) and (6) on the director and all parties to the appeal by delivery or certified mail.]*

AUTHORITY: section 644.026, RSMo Supp. 1997.\* Original rule filed June 19, 1974, effective June 29, 1974. Rescinded: Filed Oct. 16, 1979, effective July 11, 1980. Readopted: Filed Feb. 4, 1980, effective July 11, 1980. Amended: Filed May 10, 1984, effective Oct. 15, 1984. Amended: Filed Feb. 1, 1988, effective June 13, 1988. Amended: Filed March 1, 1996, effective Nov. 30, 1996. Amended: Filed July 9, 1998, effective March 30, 1999.

\*Original authority 1972, amended 1973, 1987, 1993, 1995.