

Draft Guidance for Conducting and Developing an Affordability Finding

Requirement:

Section 644.145 RSMo requires the Department of Natural Resources (the Department) to make a “finding of affordability” when “issuing permits under” or “enforcing provisions of” state or federal clean water laws pertaining to any portion of a ~~publicly--owned~~ combined ~~or~~; separate sanitary, ~~or separate~~ or storm sewer systems ~~for publicly_ owned treatment works~~. Attachment 1 hereto contains Section 644.145, RSMo, as established in House Bill 89 (2011) and amended in House Bill 1251 (2012).

The Department will conduct an affordability review and develop a finding in connection with permit functions (new permits, renewals, and modifications) and enforcement actions for publicly-owned combined or separate sanitary treatment works, or separate storm sewer systems (hereinafter, referenced as the “entity”). A permit applicant in a community with three thousand and three hundred (3,300) or more residents may voluntarily certify that the applicable requirements are affordable to implement or may waive the requirement for an affordability finding; however, at no time shall the Department require that any applicant certify, as a condition to approving any permit, administrative or civil action, that a requirement, condition, or penalty is affordable. For communities with less than three thousand and three hundred (3,300) residents, the Department must complete an affordability analysis.

The Department is not required to make an affordability finding when: 1) issuing collection system extension permit; 2) issuing National Pollutant Discharge Elimination System permit renewals that include no new or more stringent~~environmental~~ requirements; or 3) ~~thean eligible~~ permit applicant certifies that the applicable requirements are affordable to implement or otherwise waives the requirement for an affordability finding. A construction permit that does not include new ~~environmental~~ requirements beyond what are already required by an existing compliance schedule is not required to have an affordability finding.

When permit modifications or permit renewals do not impose new or more stringent requirements, the affordability finding may be streamlined~~receive a less detailed review~~ as described below. Municipal storm sewer system permits will be addressed on a case-by-case basis. When new regulations require local governments to spend additional resources to administer storm water controls, the procedure set forth in this guidance in addition to storm sewer system guidance will be used to address the affordability finding for storm sewer system permits. The Department will offer the permittee an opportunity to review a draft affordability finding and the permittee may suggest changes and provide additional supporting information within a reasonable timeframe.

Under Section 644.145, the Department must consider the following criteria as the basis for the finding:

- 1) A community’s financial capability and ability to raise or secure necessary funding.

- 2) Affordability of pollution control options for the individuals or households of the community.
- 3) An evaluation of the overall costs and environmental benefits of the control technologies.
- 4) Ways to reduce economic impacts on distressed populations in the community, including but not limited to, low and fixed income populations, include consideration of: a) allowing adequate time in implementation schedules to mitigate potential adverse impacts on distressed populations resulting from the costs of the improvements and taking into consideration local community economic considerations; and b) allowing for reasonable accommodations for regulated entities when inflexible standards and fines would impose a disproportionate financial hardship in light of the environmental benefits to be gained.
- 5) An assessment of other community investments relating to environmental improvements.
- 6) An assessment of factors set forth in the U.S. Environmental Protection Agency (EPA) guidance, including but not limited to, the *CSO Guidance for Financial Capability Assessment and Schedule Development* that may ease the cost burdens of implementing wet weather control plans, including but not limited to, small system considerations, the attainability of water quality standards, and the development of wet weather standards.
- 7) An assessment of any other relevant local community economic condition.

It is beneficial for Department staff to have input from the entity and staff may request information relevant to or necessary to develop the finding.

[Affordability is defined in Sec. 644-145 with reference to payment of utility bills and is intended to measure the hardship of an individual customer or household in paying the bill. Sec. 644-145 also specifies seven criteria that the Department must consider when making an affordability finding. These criteria relate to a community's financial capability, which is defined as the community's financial capability to make investments necessary to make water quality investments.](#)

Purpose:

This guidance document provides a uniform and consistent approach to conducting affordability reviews that comply with statutory requirements-, provide a meaningful platform to consider the unique challenges facing ~~individual~~ communities/~~systems~~, respond to community needs through the examination of factors impacting immediate and long-term affordability, and explore options to reduce financial impacts while remaining protective of the environment. While there are many objective statistics and formulas that are indicators of affordability, there is no single formula or statistic that can be used as a stand-alone measure of affordability. Objective and subjective factors should be considered together to develop the conclusion and to help communities implement and prioritize cost-effective, affordable approaches in achieving [Missouri Clean Water Law and federal](#) Clean Water Act objectives.

Process:

The Department will use the format described within this document to develop the affordability finding. The finding shall be based on reasonably verifiable data. In most cases, the Department

will request some advance information from the [entity-permittee](#) to assist in the development of the finding. A draft finding will be developed by the Department and shared with the [entity-permittee](#) for review and comment prior to issuing a final finding (typically during the comment period for a permit or during the negotiation process for an enforcement action). A final finding will be issued after considering and incorporating relevant comments and additional information. [If the Department does not make a required finding, then the resulting permit or decision is void. Department findings may be appealed to the Clean Water Commission.](#)

Format for the Affordability Finding:

A draft format to serve as a basis for consistent affordability findings is included as Attachment 2.

Pre-Screening Tool:

The Department has developed a pre-screening tool (in Microsoft Excel) to aid in the development of the finding. This tool will bring back key statistical information [about the community served by the permittee](#) (census data, unemployment data, etc.) that will be used throughout the development of the finding. This information will also help identify distressed communities/populations that may warrant a closer review.

To use the pre-screening tool, open the Excel document to the worksheet (tab) entitled “Comparison Chart”. Select the target community from the drop down list and print the resulting chart (Note: A color printer is desirable to capture the color scale).

The pre-screening tool will return information on:

- Change in Population (20 year trend);
- Poverty Level;
- Unemployment Level;
- Reliance on Food Stamps;
- Median Age;
- Change in Median Age (20 year trend);
- Median Household Income; and
- Change in Median Household Income (20 year trend).

The pre-screening tool compares the values for the selected community to the overall Missouri figure and plots the difference based upon the number of standard deviations away from the statewide figures. The difference is plotted on a color gradient from green to red. Values falling “in the red zone” (greater than one standard deviation away from the statewide figures) will indicate areas of concern. Multiple values in the red zone may indicate that the community is substantially challenged and that it may be difficult for the [entity-community](#) to afford major investments. Staff preparing the affordability finding should consider the statistics individually and as a set. For example, a sharp decline in population paired with an increase in median age

may indicate that younger generations are leaving the community thereby increasing [affordability-financial capability](#) concerns [for the community and affordability concerns for individual ratepayers](#).

Another feature of the tool is individual charts that plot the curve for all Missouri communities and show the statewide figure as well as the deviation. These charts may provide a beneficial visual aid especially when seeking to quantify measures for a distressed population. To access the individual charts, select the target community from the drop down list in the comparison chart (same as above) and open the worksheet (tab) corresponding to the chart for the statistic that is of interest.

Other worksheets (tabs) [within the tool](#) include the raw statistics and the source information.

[The Department will take into account data returned by the pre-screening tool, as well as other information relevant to the affordability finding, consistent with applicable law.](#)

Gathering Data and Developing the Affordability Finding:

- **[Preliminary Information Gathering](#)** – Prior to developing the draft finding, staff may contact the [entity-permittee](#) and request basic information that may include, [but is not limited to](#): A copy of the [entity's-permittee's](#) most recent financial statement; the number of residential connections; the number of commercial connections; current residential rate per 5,000 gallon per month; whether or not the [entity-permittee](#) has a commercial bond rating (and what that rating is); a list of major infrastructure or other investments in environmental projects (include clear indication of project timing and costs, and indicate any possible overlap or complications); and any other relevant local community economic conditions that may impact the [entity's-community's financial](#) ability to [afford-proceed with thea](#) project.

Although the [entity-permittee](#) is not required to submit this information, gathering this material in advance will allow staff to develop a more accurate and meaningful draft finding. If requested information is not made available, a disclaimer should be included in the finding stating that efforts made to obtain such information [from the permittee](#) were unsuccessful; ~~therefore, some level of generalization was necessary in the determination.~~

- **[Basic Information](#)** – Staff should identify the [entity-permittee](#) involved and describe with reasonable specificity the permit or enforcement action for which the finding is being developed. This should typically include a description of any significant new permit requirements, or the requirements being enforced, and a range of anticipated costs related to such requirements, in order to explain the context for the finding and its scope. Location information and a description of any unique geographic boundaries may also be important if the permit covers multiple (or partial) jurisdictions. Normally this information is contained in the permit or relevant enforcement documents. For some statistics, it may be necessary to calculate weighted averages to best represent the customer base. It may also be helpful to

identify the customer base broken down to the number of residential and commercial hookups.

Affordability Finding Statutorily-Required Criteria

- **First Criteria** – Assess the entity's community's financial capability and ability to raise or secure necessary funding.

Staff should first consider whether the entity-permittee has already identified or secured funding (such as a combination of reserves or revenue stream from existing fees, or both; an existing loan; existing bond financing) sufficient to complete the project. If funding has already been secured, the entity-permittee has already demonstrated the ability to raise or secure necessary funding and an appropriate statement should be inserted into the finding document.

In the case of a permit modification that does not require a rate increase, staff should insert an appropriate statement such as “This is a voluntary-request for a permit modification that does not involve any significant costs for the permittee or require changes to the rate structure; therefore, the community's financial capability exists.”

If the entity-permittee has not yet demonstrated an ability to secure funding, staff should gather key data to indicate whether the capacity in the community exists to pursue and secure capital. Such data may include:

- Current User Rate (~~suggest using rate perbased upon~~ 5,000 gallons monthly usage);
- Rate Capacity or Pay-as-you-go Option;
- Municipal Bond Rating (if available);
- Bonding Capacity (*General Obligation Bond capacity allowed by constitution:*
 - *Cities -- up to 20% of taxable tangible property,*
 - *Sewer districts --up to 5% of taxable tangible property*);
- Current Outstanding Debt (suggested source – most recent financial statements); other upcoming bonds or debt as may be identified by the entity;
- Consideration of integrated planning to address the most significant needs of the municipality; and
- Other factors.

If it is determined that the capacity to raise capital exists, staff should when possible, consider whether the entity-permittee will need to obtain voter approval or take other steps to secure the capital. Reasonable time should be built into schedules to allow for the acquisition of funding.

- **Second Criteria** – Assess the affordability of pollution control options for the individuals or households of the community.

Staff should identify the approximate costs of pollution control options and include in the opening section of the [Affordability affordability Findingfinding](#). The most accurate information may come from engineering reports or cost estimates provided by the [entitypermittee](#), if available. If none are available, staff should estimate the costs by utilizing a cost estimate matrix based on design peak flow for various technologies. See document entitled “CAPDEWORKS cost estimate summary.xls”

(Note that this information may also be needed in the assessment of the Third Criteria.)

Staff should consider whether the [entity’s permittee’s](#) existing reserves and rate structure is sufficient to finance the project and/or to service any loans or bonds that may be needed (see the First Criteria).

Staff should consider trends that may indicate stability or instability within the community. From the pre-screening tool, consider the trend in population, median age, and median household income. If the community appears to have a relatively stable or growing population and income and no significant rate increases appear to be eminent, [Staff staff](#) may conclude that the pollution control options are affordable for individuals and households and an appropriate statement should be inserted into the finding document.

If a required project will likely require a rate increase, staff should ~~use~~[consider](#) the “residential indicator” as identified in EPA’s [Combined Sewer Overflows Guidance for Financial Capability Assessment and Schedule Development](#). Regardless of whether the project is for a Combined Sewer Overflow (CSO) community, the framework provided in this guidance is a useful mathematical tool that can be applied to other projects [for consideration by the Department](#). This tool will help to identify the [estimated](#) usage rate or cost per household and provide the basis to identify usage rates and costs as a percentage of median household income. See pages 12 through 19 -

<http://www.epa.gov/npdes/pubs/csofc.pdf>. Note that in some cases the [entity permittee](#) will have already identified new usage rates; while in other cases staff may need to estimate costs. Staff will need to select between usage rates and an estimate of cost on a case-by-case basis.

The Department should be careful not to put too much emphasis solely on the residential indicator as this is a crude snapshot of affordability in time and does not account for what rate increases are necessary over a particular period. The steepness of the increases and the overall magnitude of rate increases matter, particularly in the poor economic times we face.

Other considerations may be warranted. For example, the Fitch bond rating service generally considers rates for combined water or sewer service higher than 2% of median household income (or 1% for an individual water or wastewater utility) to be financially burdensome. See http://www.circleofblue.org/waternews/wp-content/uploads/2010/10/Fitch_water-sewer-criteria.pdf

In cases where the community does not appear to have stable trends in population, age, and income, additional investigation may be warranted to further explore and address affordability concerns.

In the case of a permit modification that does not require a rate increase, staff should insert an appropriate statement such as “This is a ~~voluntary~~ request for a permit modification that does not change the existing pollution control options.”

- **Third Criteria** - An evaluation of the overall costs and environmental benefits of the control technologies.

Staff should identify and describe the net environmental benefits of any required project, including water quality impacts on the receiving stream, and reference any estimated project costs. Staff may use a cost estimate matrix based on design peak flow for various technologies (see document titled “CAPDEWORKS cost estimate summary.xls”). Permit writers may include a cost range for a particular requirement for the purpose of the affordability analysis, compliance schedule timeframe, or prioritization planning. The ~~actual~~estimated cost should be reflected in the facility plans.

In the case of a permit modification that does not change the control technologies, staff should insert an appropriate statement such as “This is a ~~voluntary~~ request for a permit modification that does not change control technologies.”

- **Fourth Criteria** - Ways to reduce economic impacts on distressed populations in the community, including but not limited to, low and fixed income populations, to include consideration of: a) allowing adequate time in implementation schedules to mitigate potential adverse impacts on distressed populations resulting from the costs of the improvements and taking into consideration local community economic considerations; and b) allowing for reasonable accommodations for regulated entities when inflexible standards and fines would impose a disproportionate financial hardship in light of the environmental benefits to be gained.

Staff should use the results of the pre-screening tool to identify distressed populations and trends that indicate instability within a community.

Staff should examine projects and may identify potential suggestions for cost savings in narrative statements, including the incorporation of complementary green infrastructure practices designed to reduce environmental impacts from inflow, infiltration and related sources.

Particularly where medium/high financial burdens will result from the permit or enforcement action, staff should consider the following options that may reduce impacts to distressed populations:

- Adjusting implementation schedules as a possible method of reducing financial burden;
- Supporting new technology and green infrastructure (see *Missouri Guide to Green*

Infrastructure: Integrating Water Quality into Municipal Operations. May 2012)

www.dnr.mo.gov/env/wpp/stormwater/mo-gi-guide.htm;

• Integrated planning and/or phased implementation;

• Variances;

- Developing an Use Attainability Analysis (UAA);
- Developing site specific criteria; or
- Using other innovative solutions that meet applicable legal requirements.

Note: Staff will likely need to evaluate these possibilities as part of the overall decision process, after working through all affordability criteria.

In the case of a permit modification that does not require a rate increase, staff should insert an appropriate statement such as “This is a ~~voluntary~~ request for a permit modification that will not require changes to the rate structure; therefore, there are no new economic impacts to distressed populations.”

- **Fifth Criteria** - An assessment of other community investments and obligations relating to environmental improvements.

Staff should identify any items they are aware of that may impact the entity’s permittee’s ability to raise necessary funding.

Staff should provide the opportunity for the entity-permittee to provide a list of other investments or projects (including the schedule and cost) and explain any connection to the affordability of the wastewater project.

Staff should generate a concluding statement to summarize the other investments and identify possible overlap or complications.

In the case of a permit modification that does not require a rate increase, staff should insert an appropriate statement such as “This is a ~~voluntary~~ request for a permit modification; therefore, other community investments relating to environmental improvements do not impact affordability.”

- **Sixth Criteria** - An assessment of factors set forth in EPA guidance, including but not limited to, the *Combined Sewer Overflows Guidance for Financial Capability Assessment and Schedule Development* that may ease the cost burdens of implementing wet weather control plans, including but not limited to, small system considerations, the attainability of water quality standards, and the development of wet weather standards.

The “Residential Indicator” should have been developed as part of the assessment of the second criteria. An appropriate cross reference should be included in a narrative statement.

Staff should analyze the “Permittee Financial Capability Indicators” as identified in EPA’s *CSO Guidance for Financial Capability Assessment and Schedule Development*. See pages 20 through 41: <http://www.epa.gov/npdes/pubs/csofc.pdf>.

For each item, staff should calculate the statistic for the entity-permittee and log the appropriate score of 1, 2, or 3 for each item, or input “not available” when the information does not exist (i.e., when a permittee n-entity does not have a bond rating, indicate “NA” in lieu of a numeric score). It is important that staff maintain accurate notes, documenting the source of the data and calculations as part of their file/backup material.

- Determine most recent bond rating (if available) (see also the First Criteria¹);
- Calculate the overall debt as a percent of full market property value (debt information should be available on most recent financial statements);
- Compare the unemployment rate to the Missouri average (see pre-screening tool);
- Compare the median household income to the Missouri average (see pre-screening tool);
- Determine property tax revenue as a percentage of full market property value; and
- Determine the property tax collection rate.

Calculate the average score (total the numeric values and divide the sum by the number of entries that have a valid numeric value).

Using the result of the residential indicator (calculated in the Second Criteria) and the average of the permittee financial capability indicators, determine the suggested burden from the “Financial Capability Matrix” by plotting the results on the respective axis.

In the case of a permit modification that does not require a rate increase, staff should insert an appropriate statement such as “This is a voluntary request for a permit modification that is not impacted by factors set forth in EPA guidance.”

- **Seventh Criteria** - An assessment of any other relevant local community economic condition.

Staff should assemble information on any additional economic conditions that may impact the entity’s permittee’s ability to raise necessary funding. This may include other items that staff is aware of or items that the entity-permittee may provide. Example items might include knowledge that a major local employer is ceasing operation, other consent orders, significant population loss, etc.

¹ Permittees have expressed concern that the bond rating criterion is skewed toward a finding of strength in that less than 1% of all bond ratings would fall below the medium burden category. The reason for this is that weaker utilities do not seek bond ratings. Thus, the medium burden level has been set by the guidance at the minimum investment grade bond rating for both Moodys and Standard & Poor.

- **Conclusion** – Staff should develop a narrative conclusion and issue a finding of affordability. The conclusion should consider any significant subjective factors along with the objective measures that are formula driven. The conclusion should reference any extensions to compliance schedules, water quality standards considerations, implementation of innovative technologies, prioritization planning, or other changes in the permit or enforcement documents that impact affordability.