

Meyers, Leasue

From: Kate Creef <kate@aqualaw.com>
Sent: Thursday, October 13, 2016 10:36 AM
To: Meyers, Leasue
Cc: Paul Calamita
Subject: AMCA Comments re Constr. & Op. Permit Regulstions (10 CSR 20-6.01)
Attachments: AMCA Comments re Constr and Op Permits (10 CSR 20-6.01).pdf; AMCA Redline of Constr. and Op. Permits (10 CSR 20-6.01).pdf

Ms. Meyers,

Please find attached for the Department's consideration comments from the Association of Missouri Cleanwater Agencies' regarding the Department's potential revisions to the Construction and Operating Permit Regulations (10 CSR 20-6.01). The attached reline proposes specific wording recommendations for the issues summarized in AMCA's comments. Please let me know if you have any questions.

Best Regards,
Kate

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**ASSOCIATION OF
MISSOURI CLEANWATER AGENCIES**

October 13, 2016

By email: leasue.meyers@dnr.mo.gov

Ms. Leasue Meyers
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

RE: Potential Revisions to 10 CSR 20-6.01, *Construction and Operating Permit Regulations*

Dear Ms. Meyers:

I am writing on behalf of the Association of Missouri Cleanwater Agencies ("AMCA") regarding DNR's potential revisions to the Construction and Operating Permit Regulations. AMCA is a Missouri statewide association comprised of owners and operators of public water, sewer, and stormwater utilities. AMCA strives to ensure that Federal and Missouri water quality programs are based on sound science and regulatory policy so that AMCA members can protect public health and the environment in the most affordable and cost-effective manner possible.

AMCA appreciates DNR's efforts to update and improve these regulations, a process which began in 2012. Our general comments below respond to DNR's April 29, 2016 draft and are intended to build off of the statewide dialogue to date. The attached redline proposes specific wording recommendations for the issues summarized below.

Integrated Planning

Integrated Planning regulations should encourage addressing priority community environmental concerns in ways that yield the greatest benefits in return for community investments.

Integrated Planning (“IP”) provides communities and environmental regulators with both an opportunity and challenge to ensure that priority environmental issues are being addressed in a way that maximizes public benefits. For example, in Miami, Florida, local stormwater programs may have prioritized nutrient loading reductions. However, with the recent outbreak of Zika virus transmission through mosquitoes, stormwater program implementation is likely to be revised to minimize mosquito reproduction habitat.

As the Miami example demonstrates, IP will be community-specific and should not be limited by preconceived notions of what a plan should comprise. From that perspective, we find much of the proposed rule language is too prescriptive to provide real flexibility, including too little room to “think outside the box” – to be able to deliver the greatest environmental and community benefits up front. By including numerous mandatory (“shall” and “must”) provisions, the proposed rule will limit IP opportunities.

IP should consider opportunities to protect and improve all of our natural resources, not just water, because there is often a direct link between the quality of our water, air, and land resources. However, the proposed stated objective of IP appears to limit IP efforts by focusing only on water quality (the objective is to “assist municipalities on their critical paths to achieving the human health and water quality objective of the Clean Water Act by identifying efficiencies”). Rather than restricting the use of IP, we strongly encourage DNR to remove the proposed prescriptive language and to promote creative, community-specific IP efforts to improve the quality of our natural resources across the state.

Less regulation will produce far more beneficial results.

Existing regulations already address compliance schedules and implementation plans. The concept of an IP is to add value to these existing regulations by allowing the regulations to work together more efficiently. By

adding another layer of complexity to the existing regulatory framework, this proposal cuts against guidance in EPA's 2012 Integrated Planning Framework memorandum. The IP regulatory provisions should be streamlined as much as possible.

Continuing Authority

This proposal unnecessarily complicates the determination of whether an appropriate continuing authority exists. While it makes good sense to ensure that the applicant is registered and in good standing in Missouri, much of these proposed revisions only serve to bog down the permitting process. Given the recent litigation over this provision and the related bill that passed the Missouri House in 2016, it seems prudent to pursue only limited revisions, if any, that will simplify and/or streamline the process.

Sewer Extension Authority

This proposal appears to include burdensome and duplicative requests for information that should be eliminated or more narrowly tailored. We are particularly concerned by the requirements that the following be submitted in a permit program application: (1) an engineering report discussing the remaining capacity of the facility and system and (2) a current map of the entire system. As to the first requirement, the department has existing facility plans on file for most, if not all, communities which provide facility design flow and peak flow capacity. Additionally, these communities already send the Department annual reports (as well as monthly discharge monitoring reports) addressing their flows. Requiring an engineering report addressing system-wide capacity is unnecessary. One option would be to limit such a requirement to facilities which have experienced inadequate capacity during the prior delegation term. If the Department is seeking some additional information, AMCA would like clarification on what that information is.

The second requirement has the potential to be a large time and cost sink for localities depending on the level of detail the Department requires. AMCA would like the Department to explain with more precision what information it is looking for. For example, there seems to be little purpose to providing maps of established communities that will not be impacted by future development.

Additionally, because many AMCA members are continually updating their mapping, a “current” map could be considered outdated within weeks of submission to the Department. Creating a system-wide map with all of the features that the Department is seeking is burdensome and unnecessary to evaluating whether the utility has available capacity.

These requirements should also reflect local budgeting process realities. Going forward, localities should have sufficient advance notice of new, tailored requirements to appropriately budget for them. For smaller communities without the same modeling resources as larger utilities (i.e., updated hydraulic and process models), the Department should provide acceptable alternative requirements.

Antidegradation

AMCA has been informed that DNR intends to make clear that no antidegradation review is necessary for projects that do not require construction permits. AMCA supports this clarification and the attached redline suggests changes consistent with this position.

Project Completion

These draft regulations establish timeframes for obtaining permits that start from the project’s “completion.” Because full project completion may be delayed as minor (punch list) tasks are wrapped up, AMCA recommends allowing permittees to apply for operating permits when a project is “substantially complete.” This will benefit the public by facilitating prompt utilization of the project rather than holding up its use while non-critical punch list issues are addressed.

“Site-specific” vs. “Individual” Permits

These draft regulations refer to “site-specific” permits instead of “individual” permits. Please explain if there are any legal, regulatory or financial implications from this renaming.

Variance Request Process

AMCA appreciates DNR's efforts to establish a formal variance request process. On the whole, DNR has set forth a clear framework. However, the proposal omits a timeframe for DNR's consideration of a variance request. To promote transparency and certainty for permittees, AMCA suggests DNR have 90 days to consider these requests, as reflected in the proposed redline.

Thank you in advance for your consideration of AMCA's comments. Please let me know if you have any questions.

Sincerely,



F. Paul Calamita
General Counsel

Attachment:

Redline of April 29, 2016 Potential Revisions to 10 CSR 20-6.01

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**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 commission is amending sections (1), (4), (6), (7), (9), (10), (11), (13) and (14); replacing section (2); adding new sections (3), (5), and (15); renumbering section (8), and reserving section (12) for future rulemaking.

Purpose: This amendment clarifies continuing authority requirements, simplifies the list of projects requiring construction permits, removes duplicative language found in other regulations, establishes the process for variances from regulation, requires electronic submittals of certain information, and serves as a general clean-up for consistency and clarity.

(1) Permits—General.

- (A) All persons who build, erect, alter, replace, operate, use, or maintain existing point sources, or intend these actions for a proposed point source, water contaminant sources, or wastewater treatment facilities shall apply to the **Missouri Department of Natural Resources (department)** for the permits required *[by the Missouri Clean Water Law and these regulations]***in accordance with sections (4) and (6) of this rule.** The *[D]***department** issues these permits in order to enforce the Missouri Clean Water Law and regulations and administer the National Pollutant Discharge Elimination System (NPDES) Program.
- (B) The following are exempt from permit regulations:
 - 1. Nonpoint source discharges;
 - 2. Service connections to wastewater *[sewer]***collection** 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 **operating** 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]***collection** 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]***department** or the Environmental Protection Agency (EPA), provided the discharge shall not violate any condition of 10 CSR 20-7.031 Water Quality Standards;

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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;
 8. *[Small scale p]*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]***department**. The *[D]***department** may extend the permit exemption for up to one (1) additional year. A **construction and/or operating** permit application shall be submitted at least ninety (90) days prior to the end of the demonstration period if the facility intends to continue operation, unless other-wise exempted under this rule or Chapter 6 of **10 CSR 20**; 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 *[Rodenti-cide]***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.
- (C) Nothing shall prevent the *[D]***department** from taking action, including the requirement for issuance of any permits under the Missouri Clean Water Law and regulations, if any of the activities exempted under subsection (1)(B) should cause pollution of waters of the state or otherwise violate the Missouri Clean Water Law or these regulations.
- (D) **The department shall make an evaluation of the cost analysis for achieving compliance when issuing permits to any portion of a publicly-owned combined or separate sanitary or storm sewer system, treatment works, or municipal industry utilizing the department’s guidance or other applicant submitted information or analysis. The department is not required to make a cost of compliance finding when:**
1. Issuing sewer extension permit;
 2. Issuing NPDES permit renewals that include no new **or more stringent** environmental requirements;
 3. A construction permit that does not include new environmental requirements beyond what are already required by an existing compliance schedule; or
 4. The permit applicant certifies that the applicable requirements are affordable to implement or otherwise waives the requirement for a cost of compliance finding.
- (E) Permittees may decide to pursue integrated planning to facilitate the use of sustainable and comprehensive solutions, including **but not limited to** green infrastructure that protect human health, improve water quality, manage stormwater as a resource, and support other economic benefits and quality of life attributes. The integrated planning approach does not remove obligations to comply with the federal Clean Water Act or Missouri Clean Water Law, nor does it lower existing regulatory or permitting standards, but rather recognizes the flexibilities for the

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appropriate sequencing and scheduling of work. ~~Permit issuance and implementation of existing permit, total maximum daily load development and implementation, and enforcement requirements and activities shall not be delayed while an integrated plan is being developed.~~

1. Integrated plans may address source water protection efforts ~~that protect surface water supplies,~~ and/or nonpoint source control through proposed trading approaches or other mechanisms. When developing an integrated plan, a permittee must determine and define the scope of the integration effort, ensure the participation of entities that are needed to implement the integrated plan, and identify the role each entity will have in implementing the plan. Although the details of each integrated plan will vary depending on the unique challenges present, an integrated plan shall:

~~A.~~ ~~Incorporate department input on priority settings and other key implementation issues.~~

~~B.~~A. Provide a specific scheduled plan that identifies all of the environmental obligations the community would fulfill during the term of the integrated plan. The timeline should be reasonably attainable by the ~~all~~ municipal departments included within the integrated plan.

~~C.~~B. Include details on the financial capability of the community. Pursuant 644.145, RSMo; financial capability is defined as the capability of a community to make water quality-related improvements. It is important for the integrated plan to include specifics about the community's financial capability such as:
bonding capacity,
i. current bonds,
ii. the maturity dates of current bonds,
iii. bond rating,
iv. sales tax,
v. property tax,
vi. population trends or projections,
vii. rate or revenue models,
viii. rate determination studies used to determine recent rate increases,
data and trends on late payments, and
ix. extraordinary stressors such as those from a natural disaster or a municipal bankruptcy.

~~D.~~C. Include a reasonable alternative²s analysis detailing why treatment options/ practices selected to meet requirements are the most practical options for the community.

~~E.~~D. Include an ~~preliminary~~ engineering ~~evaluation~~ report to support the plan's use of estimated costs for the most practical treatment options/ practices.

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~~F. — Layout the potential rate structure(s) where applicable of all obligations to be met under the integrated plan and ensure that a financial strategy to meet all obligations are in place. Include financial approval/strategy.~~

~~G.E.~~ Include a sufficiently detailed methodology on how the community will meet the items listed within the integrated plan.

~~H.F.~~ Ensure all technology-based requirements are complied with during the course of the integrated plan.

~~I.G.~~ Incorporate green infrastructure where applicable

~~J.H.~~ Include community engagement in order to facilitate support from the residents, stakeholders, and neighboring communities.

~~K.I.~~ Include periodic monitoring and reporting so that progress of work under the plan is known and transparent, and any shortcomings can be readily addressed. ~~Facilities shall report discharge monitoring reports and other department required documentation, including but not limited to operational monitoring reports and annual inflow and infiltration reports electronically through the electronic discharge monitoring system~~

- (F) Permittees shall submit discharge monitoring reports and other department required documentation, including but not limited to permit applications, compliance reports, operational monitoring reports and annual reports through the Department's online electronic reporting application(s).
1. Permittees shall submit the required documentation, as requested by the department, to ensure compliance with the U. S. Environmental Protection Agency's Cross-Media Electronic Reporting Rule (CROMERR), Title 4 of the Code of Federal Regulations (CFR) Part 3, prior to submission of information through the department's online electronic reporting application(s).
 2. Documentation to comply with CROMERR shall be submitted electronically unless electronic submission of this information is not yet supported by the department
 3. Permittees that have already submitted documentation to utilize the department's Electronic Discharge Monitoring Report (eDMR) online application need not submit additional CROMERR related documentation unless requested by the department.
 4. Temporary and permanent non-transferable waivers of electronic reporting requirements may be issued by the department. Temporary and permanent waivers must be received via formal request of the permittee. Waivers may be issued for the following situations:
 - A. For facilities and entities owned or operated by members of religious communities that choose not to

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- use certain modern technologies (e.g., computers, electricity);
 - B. Facilities that commit to terminating their permit within 1 year;
 - C. Computer applications facilitating electronic reporting have not yet been developed by the department; or
 - D. On a case-by-case basis
 - 5. Episodic non-transferable waivers of electronic reporting requirements may be issued by the department without formal request of the permittee for the following situations:
 - A. Emergencies, long lasting-power outages or other catastrophic events beyond the control of the facility which would prevent the electronic submission of reports.
 - 6. Facilities with approved waivers shall submit required reports and other documentation in hard-copy format to the department according to the conditions outlined in the waiver.

[(2) Applications.

- (A) An application for, or for renewal of, a construction permit or operating permit shall be made on forms (see 10 CSR 20-6.090) provided by the Department. The applications may be supplemented with copies of information submitted for other federal or state permits. The application shall include a one inch equals two thousand feet (1" = 2000') scale (or larger) map showing the location of all outfalls, as well as a flowchart indicating each process which contributes to an outfall. Each application must be accompanied by the appropriate permit fee. Alternate scale maps are allowed upon the request of the applicant and approval of the Department of Natural Resources.*
- (B) All applications must be signed as follows:*
 - 1. For a corporation, by an individual having responsibility for the overall operation of the regulated facility or activity, such as the plant manager, or by an individual having overall responsibility for environmental matters at the facility;*
 - 2. For a partnership or sole proprietorship, by a general partner or the proprietor respectively; or*
 - 3. For a municipal, state, federal, or other public facility, by either a principal executive officer or by an individual having overall responsibility for environmental matters at the facility.*
- (C) All other reports required by the Department shall be signed by a person designated in subsection (2)(B) of this rule or a duly authorized representative, if—*
 - 1. The representative so authorized is responsible for the overall operation of the facility from which the discharge occurs; and*
 - 2. The authorization is made in writing by a person designated in subsection (2)(B) of this rule and is submitted to the director.*
- (D) Any changes in the written authorization which occur after the issuance of a permit shall be reported to the Department by submitting a new written*

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authorization which meets the requirements of subsection (2)(C).]

(/3/2) Continuing Authorities.

- (A) All applicants for construction permits or operating permits shall *[show]***describe**, as part of their application, *[that a permanent organization]* **the type of legal entity that** 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 *[D]***department** and the continuing authority has submitted a statement indicating acceptance of the facility.
- (B) Continuing authorities which can be issued permits to collect and/or treat wastewater under this regulation are listed 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 explaining why waivering of preferential status from each existing higher preference authority is appropriate, 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 *[D]***department**:
1. **Level 1 Authority.** 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. **Level 2 Authority.** 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)]***subsection (2)(C) E of this rule** and approved by the **Missouri** 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. **Level 3 Authority.** A municipality, public sewer district, or sewer company regulated by the PSC other than one which qualifies under paragraph *(/3/2)*(B)1. or 2. of this rule or a public water supply district **may constitute a continuing authority only by showing that the authorities listed under paragraphs (2)(B)1.-2. of this rule are not available, do not have jurisdiction, are forbidden by statute or ordinance from providing service to the proposed area or, if available, has submitted a written waiver as specified in subsection (2)(C) of this rule or has met one of the requirements listed in paragraphs (2)(D) 1.-6. of this rule.** 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;

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4. **Level 4 Authority.** Any person, persons, or group of persons contractually obligated to collectively act as a wastewater collection and treatment service, or nonprofit company organized under 393.825, 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 may constitute a continuing authority only by showing that the authorities listed under paragraphs (3/2)(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]proposed area or, if available, [have]has submitted a written waiver[s] as specified in subsection (2)(C) of this rule or has met one of the requirements listed in paragraphs(2)(D)1.-6. [as provided for in subsection (3)(B)]of this rule; and
 5. **Level 5 Authority.** An association of property owners served by the wastewater treatment facility, provided the applicant shows that—
 - A. The authorities listed in paragraphs (3/2)(B)1.-3. of this rule are not available or, **if available, has**[that any available authorities have] submitted a written waiver[s] as specified in subsection (2)(C) of this rule or has met one of the requirements listed in paragraphs (2)(D)1.-6.[as provided for in subsection (3)(B)] 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 **collection system and/or the wastewater treatment** 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 (3/2)(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.
- (C) **An applicant, located in any area-wide management plan approved under section 208 of the Federal Clean Water Act, and proposing to use a lower preference continuing authority must submit, as part of the application for the department’s review, a statement waiving preferential status from the existing higher preference authority.**

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(D) In addition to subsection (2)(C) of this rule, applicants proposing to use a lower preference continuing authority must submit, as part of the application, one of the following for the department's review, provided it does not conflict with any area-wide management plan approved under section 208 of the Federal Clean Water Act or Missouri Clean Water Commission:

1. A written statement or a demonstration of non-response from the higher authority declining the offer to accept management of the additional wastewater;
2. A diagram 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 equal or exceed one hundred twenty percent (120%) of the applicant's cost of constructing or operating the proposed wastewater system;
4. A proposed service fee on the users of the system by the higher authority that is above what is affordable for existing homeowners in that area;
5. Terms for connection or adoption by the higher authority that would require more than two (2) years to achieve full sewer service; or
6. Terms for connection or adoption by the higher authority are not viable or feasible to homeowners in the area.

(C/E) The [D]department will review the planning, design, construction, and designation of watershed or regional [sewage works]domestic and publicly owned wastewater treatment facilities.

1. Where development is insufficient to warrant immediate construction of facilities for the entire watershed or region, interim facilities for a portion of the area shall be authorized as long as the design is compatible with 10 CSR 20-8, Design Guides.
 - A. The [D]department shall condition permits for these interim discharges so they will be eliminated upon the availability of watershed or regional facilities[.]. **Permittees may demonstrate that a connection is not available by submitting a written waiver as provided for in subsection (2)(C) of this rule or by applying one of the provisions in paragraphs (2)(D)1.-6. of this rule.**
 - B. At such time as watershed or regional facilities become available, and to the extent their capacity is sufficient, any existing subregional treatment [works] plants and/or lift stations shall be taken out of service and the tributary waste flows diverted into the watershed or regional facilities.

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2. A Regional Sewage Service and Treatment Plan shall be developed by all affected political jurisdictions and submitted to the [D]department. Staff will review the plan and submit recommendations to the **Missouri Clean Water Commission**. The **Missouri Clean Water Commission** may approve, require changes, deny the plan, and/or hold public hearings related to approval of the plan **as detailed in subsection (2)(H) of this rule.**
- ([D]F) **The Persons for [I]industries, [including electric cooperatives and mining operations, are by definition continuing authorities] must submit as part of the new operating permit application, a statement waiving preferential status from each existing higher preference authority listed in paragraph (2)(B)1. or 2. of this rule for collection and treatment of industrial type wastewater and incidental domestic wastewater associated with their operation[when an authority listed in paragraph (3)(B)1. or 2. is infeasible].**
- ([E]G) Private corporations which are not incorporated under the laws of the state of Missouri shall be represented by a registered agent in the state of Missouri before a construction permit or an operating permit will be issued by the [D]department.
- (H) **Application of Level 2 Authority. If a municipality, public sewer district, or sewer company regulated by the PSC wishes to provide wastewater collection and/or treatment services on a regional or watershed basis as outlined in paragraph (2)(B)2. of this rule, the entity shall-**
1. **Submit a preliminary request to the Missouri Clean Water Commission through the department to obtain higher authority;**
 2. **Develop a plan, which includes, but not limited to:**
 - A. **A discussion of regional treatment service plan;**
 - B. **Capital improvements program;**
 - C. **Process to provide waivers when sewer connection is not available;**
 - D. **Process to address environmental issues and/or concerns in the service area;**
 - E. **Process to address noncompliant facilities in the service area;**
 - F. **Community financial information; and**
 - G. **Defined service area map.**
 3. **Develop and obtain authority within ordinances to compel wastewater users and facilities to connect for management of wastewater flows. The ordinance shall require the recipient to notify all potential users of service availability and that all users shall connect to the system within ninety (90) days of notice of service availability. A copy of the enacted ordinance must be submitted.**

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4. Allow opportunity for public participation to exchange ideas during project development, ~~which. Public participation must be preceded by timely distribution of information and~~ must occur at least thirty (30) days in advance of decision making ~~to allow the recipient to assimilate public views into action.~~ At a minimum, the entity must provide an opportunity for public participation, prior to approval of the plan required in paragraph (2)(H)2. of this rule and draft ordinance, ~~at a public meeting.~~ The entity shall prepare a transcript, recording or other complete record of ~~this public participation proceeding~~ and submit it to the department and make it publicly available at no more than cost to anyone who requests it. ~~A copy of the record should be available for public review.~~
 5. Submit a final request to the Missouri Clean Water Commission through the department, containing the fulfillment of paragraphs (2)(H)1.-4. of this rule, incorporating preliminary recommendations provided by the Missouri Clean Water Commission.
 6. Staff will review the plan and submit staff recommendations to the Missouri Clean Water Commission. The Missouri Clean Water Commission may approve, require changes, deny and/or hold public hearings related to approval of the Level 2 Authority designation.
- (3) Antidegradation. In accordance with 10 CSR 20-7.031(3), all new or expanded discharges requiring construction permits are subject to an antidegradation review.
- (A) To enable the review, applicants shall complete and submit forms supplied by the permitting authority, and other information including:
 1. The Water Quality Review Assistance Antidegradation Review Request form, and the appropriate attachments;
 2. An antidegradation report that details the proposed project;
 3. ~~A geohydrological evaluation conducted by the department's Missouri Geological Survey;~~
 4. ~~A Heritage Review provided by the Missouri Department of Conservation which provides information about species and natural communities of conservation concern, public lands and sensitive resources that could be affected by the proposed discharge; and~~
 - 5.3. Any additional information, plans, specifications, evidence, documentation, technology performance information, modeling, or monitoring data that the permitting authority may require to complete the antidegradation review.
 - (B) The applicant shall submit fees in accordance with 10 CSR 20-6.011(2)(J).
 - (C) For antidegradation projects that result in significant degradation, the applicant must submit information in their antidegradation report that demonstrates that the project will allow important economic and social benefit by identifying the affected community, noting the relevant factors that characterize the social and economic conditions of the

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- affected community, and describing the important social and economic development associated with the project.
- (D) **Preliminary antidegradation determination.** Upon receipt of a complete antidegradation submittal the permitting authority shall proceed with the review and develop a preliminary antidegradation determination.
 - (E) **Appeals.** The discharger may appeal the preliminary antidegradation determination within thirty (30) days **of receipt** to the department director, or their authorized delegate. A decision on the appeal will determine whether the preliminary antidegradation determination is to be upheld, amended, or denied and a final antidegradation determination shall be written. Preliminary antidegradation determinations that are not appealed within thirty (30) days shall be deemed final. The department's final decision on a permit that incorporates antidegradation considerations may also be appealed in accordance with 10 CSR 20-6.020.
 - (F) **Public comment.** The permitting authority shall issue a public notice of the **preliminary** antidegradation determination and allow the public an opportunity to provide comments. The antidegradation determination may be revised as a result of comments received.
 - (G) **Disposition.** Operating permits shall reflect the final antidegradation determination in accordance with 10 CSR 20-7.015(9)(A)5.
- (4) Construction Permits
- (A) **Applicability.** No person shall cause or permit the construction, installation, or modification of any *[sewer]*collection system or of any water contaminant source, point source, or wastewater treatment facility without first receiving a construction permit issued by the *[D]*department *[except for the following]*for the following activities, unless exempted under subsections (1)(B)or (4)(C) of this rule:
 1. *[Construction of a separate storm sewer; and]*New and modified domestic wastewater discharges;
 2. *[Facilities as provided in other 10 CSR 20-6 regulations.]*New and modified surface and subsurface wastewater irrigation;
 3. Any department financed project under 10 CSR 20-4 Grants and Loans;
 4. New and modified earthen basins used for wastewater storage or treatment;
 5. Sewer extensions; and
 6. New and innovative technologies for domestic and publicly owned wastewater treatment, as defined by 10 CSR 20-8.020 or 10 CSR 20-8.140.
 - (B) A construction permit may be required where necessary as determined by the department, including, but not limited to, the following:
 1. Substantial deviation of 10 CSR 20-8 Design Guides;
 2. To address noncompliance;
 3. When an unauthorized discharge has occurred or has the potential to occur; or
 4. When a discharge results in violation of water quality standards established in 10 CSR 20-7.031.

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- (C) The following activities are exempt from construction permitting; however, the activities must meet the appropriate standards in 10 CSR 20-2 through 10 CSR 20-9 ~~and must undergo antidegradation reviews per 10 CSR 20-7.031(3)~~. All engineering work conducted in relation to projects that are exempted from construction permitting shall be done in accordance with the requirements of a professional engineer, as defined in 327.181, RSMo.
1. Construction of a separate storm sewer;
 2. Sewer extensions one thousand feet (1,000') or less, including gravity sewers and/or forcemains, with no more than one (1) pump station;
 3. Class II and smaller Animal Feeding Operations (AFO), as designated in 10 CSR 20-6.300;
 4. Nondomestic discharges of process wastewater;
 5. Stormwater best management practices, as defined in 10 CSR 20-6.200;
 6. Industrial facilities connecting to a publicly owned wastewater treatment facility;
 7. Treatment facilities evaluated and constructed under other department programs;
 8. Systems using common metal salts for phosphorus removal prior to existing liquid-solids separation and tertiary filtration;
 9. Pre-engineered dechlorination equipment;
 10. Sludge processing equipment;
 11. Like for like replacement (e.g., replacing eight-inch (8") pipe with eight-inch (8") pipe at the same location and grade, but material type may be different);
 12. Outfall relocation; and
 13. Minor projects that may change equipment or operations, but do not affect the overall capacity of the treatment, including but not limited to:
 - A. Internal piping changes;
 - B. pH adjustment;
 - C. Addition of storage tanks;
 - D. Bar screens;
 - E. Grit removal equipment;
 - F. Administrative buildings;
 - G. Fences and access roads;
 - H. Flow measuring devices;
 - I. Mixing equipment;
 - J. Addition and/or improvement of sampling equipment;
 - K. Aeration equipment; and
 - L. Polymer addition.
- (D) General Construction Permits for Collection System Sewer Extensions.
1. Persons may apply to the department for a general construction permit for construction of gravity sewer line extensions, lift stations, and force mains. The following shall be submitted to the department:

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- A. Detailed plans and specifications shall be submitted by an engineer and conform to the requirements of 10 CSR 20-8.120 Design of Gravity Sewers and 10 CSR 20-8.130 Sewage Pumping Stations. The plan, specification, and/or report shall be prepared by the engineer or under the engineer's direct supervision and that engineer is a duly licensed Professional Engineer under the laws of the state of Missouri.
 - B. A permit fee in accordance with 10 CSR 20-6.011.
 - C. A written statement from the continuing authority indicating acceptance of the sewer lines and pump stations and the willingness to own, operate, maintain, and modernize the collection system after successful construction. The continuing authority shall meet the requirements of section (2) of this rule. If the owner and continuing authority are the same entity, no separate statement is required.
 - D. A written statement from the receiving wastewater treatment facility accepting the waste from the proposed collection system and providing the remaining capacity of the treatment facility. If the continuing authority and receiving wastewater treatment facility are the same entity, no separate statement is required.
2. Projects **substantially** deviating from 10 CSR 20-8 are not eligible for coverage under the collection system general construction permit.
- (E) Class I Concentrated Animal Feeding Operations (CAFOs).
1. Any Class I CAFO owner or person shall obtain a construction permit for the construction and/or modification of earthen basins. Modifications of earthen basins, includes activities affecting the capacity, integrity of the berm and liner of the basins.
 2. The construction permit application shall be submitted on forms provided by the department and shall include the applicable information, as required in 10 CSR20-8.300(3).
 3. With the construction permit application, the owner or person shall submit their operating permit application, as required in subsection (6)(A) of this rule.
- (F) All activities that are exempted from the construction permit requirement, both domestic and nondomestic facilities, are subject to the following conditions:
1. Any point source system designed to hold, convey, contain, store, or treat domestic, agricultural, or industrial process wastewater shall be designed by a professional engineer registered in Missouri in accordance with the Missouri Clean Water Commission's design rules;

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2. Such point source system shall be constructed in accordance with a Missouri registered professional engineer's design and plans; and
3. Such point source system may receive a post-construction site inspection by the department prior to receiving operating permit approval. A site inspection may be performed by the department, upon receipt of a complete operating permit application and/or submission of an engineer's statement of work complete.

(*[B]*G) A separate **construction permit** application for each *[sewer]***domestic and publicly owned collection** system, water contaminant source, point source, or wastewater treatment facility must be submitted to the *[D]*department. Where there are multiple releases from a single operating location, however, one (1) application may cover all facilities and releases. For continuing authorities listed in paragraphs (*[3/2]*)**(B)1.** or **(2)(B)2.** only one (1) application may be required when the authority operates a *[sewage]***wastewater** treatment *[plant]***facility** and has one (1) or more other noncontinuous storm water-related discharges associated with the *[sewage]***wastewater** treatment *[plant]***facility**.

(H) Demonstration Projects. Demonstration pilot projects are treatment technologies not covered in regulation chapter 8 of 10 CSR 20.

1. **Demonstration pilot project installation, whose discharge is returned to the existing treatment facility and does not exceed a period of one (1) year, are exempt from obtaining a construction permit after obtaining written project approval from the permitting authority.**
 - A. **The project evaluation requirements are identified in 10 CSR 20-8.140. Demonstration project installations are temporary and project requirements are coordinated to ensure water quality is protected.**
 - B. **The applicant may submit a request to extend the approval of the demonstration project by providing justification to the department. The department will review the justification and may approve an extension period for up to one (1) additional year if the department determines that the justification is valid.**
2. **The first three (3) full scale demonstration project installations of a treatment technology can be installed after obtaining a one (1)-year written project approval from the permitting authority.**
 - A. **Full scale demonstration projects in Missouri are not exempt from antidegradation or permit requirements.**
 - B. **The treatment process must be based on reasonable and sound engineering principles, a technical demonstration of performance in treating pollutants of concern in Missouri or locations with a climate similar to Missouri, and the project evaluation requirement specifics outlined in 10 CSR 20-8.140 including review of design criteria.**

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- C. An operating permit modification depends on the nature of the treatment technology and will be determined during project approval.
3. Subsequent installations of treatment technologies not established in 10 CSR 20-8 shall apply for a construction permit and submit documentation of consistent performance as designed for treatment of pollutants of concern without major failure of the process, unit processes, or equipment for twelve (12) consecutive months at three (3) sites in Missouri or locations with a climate similar to Missouri. All installations shall be designed by analogy. All antidegradation, operating permit, and construction permitting requirements apply.
- (C/I) An application for a construction permit must be submitted to the [D]department at least one hundred eighty (180) days in advance of the date on which construction begins. Requests for a shorter time for a review of a wastewater treatment facility may be made but must be accompanied by a detailed statement of the justification for the request. No such statement is required when the application is only for the construction of [sewers]domestic and publicly owned collection systems.
- (D/J) An application for a construction permit shall be made on forms provided by the department. The applications may be supplemented with copies of information submitted for other federal or state permits. A construction permit application shall consist of the following items:
1. *[Unless not required by the Department, an engineering report shall be submitted by an engineer and shall contain the information required by 10 CSR 20-8.020 and 10 CSR 20-8.110–10 CSR 20-8.220. If the report includes a wastewater treatment facility, it shall include consideration of the feasibility of constructing and operating a facility which will have no discharge to waters of the state (see section (12) of this rule). Unless the Department specifies otherwise, this report will be reviewed and necessary changes made before the plans and specifications in paragraph (4)(D)2. will be reviewed;]* **A signed Construction Permit Application Form. All construction permit applications must be signed as follows:**
 - A. For a corporation, by an individual having responsibility for the overall operation of the regulated facility or activity, such as the plant manager, or by a delegated individual having overall responsibility for environmental matters at the facility;
 - B. For a partnership or sole proprietorship, by a general partner or the proprietor respectively; or
 - C. For a municipal, state, federal, or other public facility, by either a principal executive officer or by a delegated individual having overall responsibility for environmental matters at the facility.
 2. Appropriate permit fee as required per 10 CSR 20-6.011;
 3. An electronic copy of the construction permit application with required information listed below, on a compact disc or other

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- removable electronic media, along with one (1) paper copy for projects not seeking **to be** funded through the department or two (2) paper copies for **projects department**—seeking **department** funded projects under 10 CSR 20-4;
4. Water Quality Review and Antidegradation Report for all new and expanding facilities, as required by 10 CSR 20-7.031(3);
 5. An engineering report and/or facility plan for domestic wastewater shall be submitted by a professional engineer, registered in the state of Missouri, and shall contain the information required by 10 CSR 0-8.020 and 10 CSR 20-8.110 through 10 CSR 20-8.220 or, for CAFO's, the engineering report shall contain the information required in 10 CSR 20-8.300(3)(A)1.:
 - A. If the report includes a proposal for a new or modified wastewater treatment facility, it shall include consideration of the feasibility of constructing and operating a facility which will have no discharge to waters of the state.
 - B. Applicants shall provide an economic evaluation of the proposed project including alternatives to constructing a discharging system. The alternatives of land application or subsurface irrigation and connection to a regional wastewater treatment facility shall be included in this evaluation.
 - C. This report will be reviewed and necessary changes made before the plans and specifications described in paragraph (4)(J)6. of this rule will be reviewed by the department.
 - D. Notwithstanding 10 CSR 20-8.020 and 10 CSR 20-8.110 through 10 CSR 20-8.220, facility plans and/or engineering reports are not required for the following projects, unless otherwise required by the department:
 - (i) Disinfection equipment projects for treatment types promulgated in 10 CSR 20-8.190;
 - (ii) Sewer extensions permitted under the general construction permit provided in subsection (4)(D) of this rule; and
 - (iii) Projects for modification of existing wastewater treatment facilities, with a design flow of less than one hundred thousand gallons per day (100,000 gpd).
- [2]6. Detailed engineering plans and technical specifications shall be ~~submitted~~sealed, signed, and dated by an engineer, registered in the state of Missouri and shall contain the information required in 10 CSR 20-8.020 and 10 CSR 20-8.110 ~~through~~10 CSR 20-8.220 or, for CAFO's, as required by 10 CSR 20-8.300(2) through (4) and 10 CSR 20-8.300(3), or other regulations as applicable;

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- [3. *An application form and permit fee;*]
7. **A Summary of Design is required to be submitted along with the construction-permit application, as per 10 CSR 20-8.020(7) or 10 CSR 20-8.110(5), regardless of whether an engineering report or facility plan is required;**
8. **All other reports required by the department shall be signed by a person or a duly authorized representative, if—**
- A. **The representative so authorized is responsible for the overall operation of the facility from which the discharge occurs; and**
- B. **The authorization is made in writing by a person designated in paragraph (4)(J)1. of this rule and is submitted to the director.**
- [4]9. **A one inch equals two thousand feet (1" = 2000') scale map (or larger) showing the location of all outfalls (alternate scale maps are allowed upon the request of the applicant and approval of the [D]department[of Natural Resources]), as well as a flowchart indicating each process which contributes to an outfall;**
10. **A geohydrological evaluation conducted by the department's Missouri Geological Survey, for all proposed new construction, earthen basins, and subsurface and surface wastewater application sites;**
11. **For subsurface systems, a soil morphology analysis shall be submitted conducted by a duly qualified soil scientist;**
- [5]12. **Other information necessary to determine compliance with the Missouri Clean Water Law and these regulations as required by the [D]department; and**
3. **An appropriate operating permit application form and fee for all new construction or any major modifications as specified in subsection (6)(A) of this rule shall be submitted with the construction permit application.**
- [6. *If a construction permit is waived by the Department, or not required, the information in paragraphs (4)(D)1.–5. may be require with application for the operating permit.*]

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(*[E]K*) If an application is incomplete or otherwise deficient, the applicant shall be notified of the deficiency and processing of the application may be discontinued until the applicant has corrected all deficiencies. The *[D]*department will act after receipt of all documents and information necessary for a properly completed application, including appropriate filing fees and other supporting documents as necessary, by either issuing a notice of operating permit pending, issuing the construction permit, or denying the permit. The director in writing, shall give the reasons for a denial to the applicant. Applicants who fail to satisfy all *[D]*department comments after two (2) certified *[D]*department comment letters in a time frame established by the *[D]*department shall have the application returned as incomplete and **shall forfeit the construction permit application fees** *[shall be forfeited]*. The applicant has the right to request that the time frames be extended when additional time is needed. The request must occur within the established time frame, *[it]***and** must be in writing. *[and t]*The *[D]*department will grant reasonable time extensions.

(*[F]L*) A notice of **proposed operating** permit *[pending]*is a statement that the *[D]*department intends to issue an operating permit.

1. The *[D]*department will issue the public notice of a *[pending new]***proposed** operating permit for a **new** wastewater treatment facility **or for major modifications at a wastewater treatment facility** before it issues the construction permit for the wastewater treatment facility. This allows the public an opportunity for comment prior to the construction of a wastewater treatment facility. **The applicant shall apply for the operating permit modification with the construction permit application.**
2. A public notice will not be required prior to the issuance of a construction permit for a *[sewer]***wastewater** collection system or **other upgrades required to meet final effluent limits or conditions included in a compliance schedule established in an operating permit and was previously publicly noticed.** *[If a construction permit for a new wastewater treatment facility is not issued within one (1) year of the date of the notice of permit pending, a new notice of permit pending will be issued.]*
3. **Notification in writing. A final determination, of whether the construction permit should be approved, approved with conditions, or denied, shall be provided in writing to the applicant by the department within one hundred eighty (180) days.**

(*[G]M*) Construction permits shall expire *[one (1)]***up to two (2)** years from the date of issuance unless the permittee applies for an extension. *[The Department shall extend construction permits only one (1) time.]*

1. An applicant for *[this]* extension shall show that there have been no substantial changes in the original project and file for extension thirty (30) days prior to expiration. **If there are changes, the department may require the applicant to apply for a new construction permit.**

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2. When a construction permit is issued for a project for which the construction period is known in advance, **due to the project's scope and complexity**, to require longer than *[one (1)]two (2)* years from the date of issuance, the *[D]*department may issue a permit allowing a period of time greater than *[one (1)]two (2)* years upon a showing by the applicant that the period of time is necessary and that no substantial changes in the project will be made without notifying the *[D]*department. *[If there are changes, the Department may require the applicant to apply for a new construction permit.]*
 3. Construction permits may be issued for a period of less than *[one (1)]two (2)* years when appropriate.
- (H/N) Issuance of a construction permit does not constitute a guarantee by the *[D]*department that the finished water contaminant source, point source, or wastewater treatment facility will meet specified effluent limitations.
- (I/O) The applicant shall provide the *[D]*department with evidence the local planning and zoning agency has been notified of the project and must update the *[D]*department on the status of any action by the local planning and zoning agency.
- (P) **The department shall require that an engineer certify in writing by means of submitting the Statement of Work Completed form that the project has been substantially completed in accordance with its submitted plans and specifications. If the substantially completed project differs from the originally submitted plans and specifications, electronic as-builts of the project shall be submitted. A representative of the department may inspect the completed work in order to determine that the completed work substantially adheres to the submitted engineering plans and technical specifications and to the Missouri Clean Water Law and Missouri Clean Water Commission regulations.**
- (Q) **Operating Permit Issuance After Construction:**
1. For projects that received a construction permit, but a prior public notice of the operating was not required for the operating permit, applicants shall submit a Statement of Work Completed form. The department will issue or deny the permit within sixty (60) days of receipt of the form. No facility shall discharge without a valid operating permit.
 2. For facilities that received a construction permit, and either did not receive a prior public notice or the changes to the facility are beyond the scope of the construction permit, the applicant shall submit an application for modification of the operating permit at least one hundred eighty (180) days before the date the facility expects to begin receiving wastewater. No facility shall discharge without a valid operating permit.
 3. For facilities exempted from construction permitting or not requiring a construction permit, an application for a new or modified operating permit shall be submitted per section (6) of this rule.
- (5) **Supervised Programs.**
- (A) **Sewer Extension Authority.**

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1. **Persons who construct sewers tributary to a wastewater system operated by a continuing authority listed in paragraphs (2)(B) 1., 2., or 3. will be exempt from the construction permit requirements for collection systems if the continuing authority administers a permit program which has been approved by the department. The program solely applies to sanitary and/or combined sewer lines and appurtenances within city limits or a defined boundary under the continuing authority's control.**
 - A. **To obtain approval of its permit program the continuing authority must submit a written request to the department. The request must include an account of the procedures to be followed in approving the construction of collection systems by others and for handling the design of collection systems to be built by its own staff or contractors. At a minimum, the request must include the following:**
 - (i) **Standard technical specifications and typical detail drawing, prepared by a Missouri registered professional engineer, as required by 10 CSR 20-8.110. The standard technical specifications and detail drawings shall meet the requirements of 10 CSR 20-8.020, 10 CSR 20-8.120, and 10 CSR 30-8.130, and all other necessary appurtenances to which all construction will be required to adhere;**
 - (ii) **An engineering report discussing the remaining capacity of the existing receiving collection system, and the available capacity of the wastewater treatment facility serving each area must also be addressed;**
 - (iii) **A current layout map, or maps, of the collection system. The map(s) shall show sewer line material types, sizes, and lengths, manholes, lamp holes, pump stations, force mains, air release valves, and street names;**
 - (iv) **A statement that the continuing authority will engage or employ a sufficient number of Missouri registered professional engineers and other staff qualified to review plans, issue permits, prepare reports, inspect construction, and enforce local and state requirements for each sewer extension;**
 - (v) **A statement that the continuing authority will engage or employ a sufficient number of persons qualified to supervise construction or that the continuing authority has enforceable ordinances which require construction supervision and subsequent certification by a Missouri registered professional engineer; and**

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- (vi) A statement that the continuing authority will maintain permanent plans of all sewer extensions constructed and maintain records of sewer extension approvals and reports.
 - B. The department will review the application for approval and may ask for additional information if necessary to determine compliance with the Missouri Clean Water Law and these regulations.
 - 2. Approval may be granted for a period of up to five (5) years in the applicant's operating permit. The operating permit may contain additional reporting requirements for reporting the number of sewer extensions approved per year, the number of sewer extensions constructed per year, and the remaining capacity of the wastewater treatment plant.
 - 3. Upon submittal of the operating permit renewal application, the applicant must submit a request for reauthorization and a summary of activities undertaken during the previous permit cycle as required by the operating permit.
- (B) Treatment Plant Authority.
- 1. A continuing authority listed under paragraphs (2)(B) 1., 2., or 3. of this rule which operates an existing wastewater treatment facility with a design flow greater than one million gallons per day (1 MGD) may apply for an owner-supervised treatment plant review program in lieu of submitting plans and specifications for expansion or modification of existing treatment facilities.
 - 2. A written request to the department for approval of a supervised program shall include the following information:
 - A. An engineering report showing the existing treatment plant, along with a summary of design discussing the remaining capacity(ies) of the existing wastewater treatment facility(ies);
 - B. Standard specifications and typical appurtenance construction details to which all construction will be required to adhere;
 - C. A statement that the applicant will engage or employ a sufficient number of Missouri registered professional engineers and other staff qualified to review plans, supervise and inspect construction, and enforce local and state requirements for each project; and
 - D. Following completion of the project, as-built plans and specifications prepared by a Missouri registered professional engineer, as required by 10 CSR 20-8.110, shall be available for review by the department.
 - 3. The department will review the application for approval and may ask for additional information if necessary to determine compliance with the Missouri Clean Water Law and these

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- regulations. Approval may be granted for a period of up to five (5) years in the applicant's operating permit.
4. Upon submittal of an operating permit renewal application, the applicant must submit a request for reauthorization and a summary of activities undertaken during the previous permit cycle as required by operating permit.
 5. Modifications to existing wastewater treatment facilities that increase facility capacity, change pollutants of concern, or change receiving stream require submittal and approval of an antidegradation review as required by section (3) of this rule prior to construction commencing.
 6. Applications for operating permit modifications for facilities must be received at least one hundred eighty (180) days the date the facility begins to receive wastewater, unless permission for a later date has been granted by the department.

(15/6) Operating Permits.

(A) Applications.

1. An application for issuance of an operating permit shall be made on forms provided by the department. The applications may be supplemented with copies of information submitted for other federal or state permits. The application shall include:
 - A. A map showing the location of all outfalls, with scale, as well as a flowchart indicating each process which contributes to an outfall;
 - B. Each application must be accompanied by the appropriate permit fee;
 - C. An antidegradation review for new and expanding facilities;
 - D. A geohydrological evaluation conducted by the department's Missouri Geological Survey;
 - E. If appropriate, a variance petition, with the information required in section (15) of this rule; and
 - F. Engineering certification that the project was designed to meet the requirements of 10 CSR 20-8 for projects exempted from construction permitting requirements, Section (4).
2. All applications must be signed as follows:
 - A. For a corporation, by an individual having responsibility for the overall operation of the regulated facility or activity, such as the plant manager, or by an individual having overall responsibility for environmental matters at the facility;
 - B. For a partnership or sole proprietorship, by a general partner or the proprietor respectively; or
 - C. For a municipal, state, federal, or other public facility, by either a principal executive officer or by an individual having overall responsibility for environmental matters at the facility.

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3. **The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted wastewater treatment facility.**
 - A. **Any facility expansions, production increases, or process modifications which will result in a new or substantially different discharge or sludge characteristics must be reported to the department sixty (60) days before the facility or process modification begins. Notification may be accomplished by application for an operating permit modification.**
 - ~~B. If the discharge does not violate effluent limitations specified in the permit, the permittee is to submit a written notice to the department of the changed discharge at least thirty (30) days before such changes.~~
 - ~~C.~~ **The department may require a construction permit and/or permit modification as a result of the proposed changes at the wastewater treatment facility.**
 - ~~D.~~ **C. The department may issue an operating permit to a permittee prior to construction being completed for facilities exempt from construction permitting requirements of section (4) of this rule.**
- (B) Persons who build, erect, alter, replace, operate, use, or maintain any water contaminant source, point source, or waste-water treatment facility which discharges to waters of the state shall obtain an operating permit from the ~~[D]~~department before any discharge occurs. The operating permit shall be issued to the owner/~~[operator]~~**person**. Nondischarging facilities for the treatment or disposal of wastes, wastewater, or residuals shall obtain permits as provided in 10 CSR 20-6.015. Persons who intend to discharge in accordance with section (14) of this rule are permitted by rule and may discharge without additional written approval from the ~~[D]~~department.
- ~~(B)~~C) Applications for an ~~[original]~~ operating permit for a facility that had a valid construction permit and a prior public notice shall be received by the ~~[D]~~department at least ~~[thirty (30)]~~**sixty (60)** days before the facility begins to receive wastewater. Applications shall include the earliest date on which the discharge is scheduled to begin. The ~~[D]~~department will issue or deny the permit within sixty (60) days of receipt of the application. No facility shall discharge without a valid operating permit.
- ~~(C)~~D) Applications for ~~[the]~~**initial new, modification, and/or** renewal of **site-specific** operating permits ~~or for site-specific operating permits for facilities that did not require construction permits~~ must be received at least one hundred eighty (180) days either before the expiration date of the ~~existing~~**present** site- specific operating permit or the date the facility begins to receive wastewater **unless permission for a later date has been granted by the department. The department shall not grant permission for applications to be submitted later than the expiration date of the existing permit.**

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- [(D)] *The Department shall require that an engineer certify in writing that the project has been completed in accordance with its approved plans and specifications. A municipal official who has the responsibility for the operation and maintenance of the completed facility and knowledge of the construction may submit the certification to the Department. A representative of the Department may inspect the completed work in order to determine that the completed work substantially adheres to the approved plans and specifications and to the Missouri Clean Water Law and Clean Water Commission regulations.]*
- (E) **Applications for ~~For general operating permit applications seeking coverage under~~ an initial or renewed general operating permit, that do not require a public participation process, the applicant shall apply sixty (60) days before expiration of the existing general operating permit. For general operating permit applications seeking coverage under an initial or renewed general operating permit that requires a ~~n-~~ **individual** public participation process, the applicant shall apply ninety (90) days prior to the expiration of the ~~general operating existing~~ permit.**
- (F) **All reports required by the department shall be signed by a person designated in paragraph (6)(A)2. of this rule or a duly authorized representative, if—**
1. **The representative so authorized is responsible for the overall operation of the facility from which the discharge occurs; and**
 2. **The authorization is made in writing by a person designated in paragraph (6)(A)2 of this rule and is submitted to the department.**
- [(E)G] *The [D]department shall specify in each operating permit the concentration, weight, or both, of each contaminant which may be released.*
- [(6)] *Sewer Extensions.*
- (A) *Persons who construct sewers tributary to a system operated by one (1) of the continuing authorities listed in paragraphs (3)(B)1. or (3)(B)2. will be exempt from the construction permit requirements for sewers if the continuing authority administers a permit program which has been approved by the Department.*
1. *In order to obtain approval of its permit program the continuing authority must submit a written request. The request must include an account of the procedures to be followed in approving the construction of sewers by others and for handling the design of sewers to be built by its own staff or contractors. The request must include at least the following:*
 - A. *Standard specifications and typical appurtenance construction details to which all construction will be required to adhere;*
 - B. *A showing that the applicant will engage or employ a sufficient number of professional engineers and other staff qualified to review plans, issue permits, prepare reports, inspect construction, and enforce local and state requirements for each sewer extension;*

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- D. The permit may be modified after proper public notice and opportunity for comment when a wasteload allocation study has been completed showing that more stringent limitations are necessary to protect the in-stream water quality;
- 3. The permit may not be modified so as to extend the term of the permit beyond five (5) years after its issuance;
- 4. Permittees shall operate and maintain facilities to comply with the Missouri Clean Water Law and applicable permit conditions and regulations. Operators or supervisors of operations at regulated wastewater treatment facilities shall be certified in accordance with 10 CSR 20-9.020(2) and any other applicable state law or regulation. Operators of other wastewater treatment facilities, water contaminant source, or point sources, upon request of the *[D]*department, shall demonstrate that wastewater treatment equipment and facilities are effectively operated and maintained by competent personnel;
- [5. For the purpose of inspecting, monitoring, or sampling the point source, sludge, water contaminant source, or wastewater treatment facility for compliance with the Clean Water Law and these regulations, authorized representatives of the Department shall be allowed by the permittee, upon presentation of credentials and at reasonable times, to—*
 - A. *Enter upon permittee's premises in which a point source, water contaminant source, or wastewater treatment facility is located or in which any records are required to be kept under terms and conditions of the permit;*
 - B. *Have access to, or copy, any records required to be kept under terms and conditions of the permit;*
 - C. *Inspect any monitoring equipment or method required in the permit;*
 - D. *Inspect any collection, treatment, or discharge facility covered under the permit; and*
 - E. *Sample any wastewater or sludge at any point in the collection system or treatment process;*
- 6. *If the permit is for a discharge from a publicly-owned treatment works, the permittee shall give notice to the Department of any new introduction of pollutants or any substantial change in the character or volume of nondomestic pollutants already being introduced. Notice shall include:*
 - A. *The origin, quality, and quantity of pollutants to be introduced into the publicly-owned treatment works; and*
 - B. *Any anticipated impact on the quality and quantity of the effluent to be discharged or on the quality or quantity of the sludge to be disposed of by the treatment works;]*
- 5. **The permittee, owner, and continuing authority shall allow the department, or an authorized representative (including an authorized contractor acting as a representative of the**

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- department), upon presentation of credentials and other documents as may be required by law, to, **at reasonable times:**
- A. Enter upon the permittee's premises where a regulated wastewater treatment facility or activity is located or conducted, or where records must be kept under the conditions of the permit;
 - B. Have access to and copy, ~~at reasonable times~~, any records that must be kept under the conditions of a permit;
 - C. Inspect ~~at reasonable times~~ any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under a permit; and
 - D. Sample or monitor ~~at reasonable times~~, for the purposes of assuring permit compliance or as otherwise authorized by the Federal Clean Water Act or Missouri Clean Water Law, any substances or parameters at any location.
6. If the permit is for a discharge from a publicly owned treatment works, the permittee must provide adequate notice to the department of the following:
- A. Any new introduction of pollutants into the treatment facility from an indirect discharger which would be subject to Sections 301 or 306 of the Federal Clean Water Act if it were directly discharging those pollutants;
 - B. Any substantial change in the volume or character of pollutants being introduced into that treatment facility at the time of issuance of the permit; and
 - C. For purposes of this subparagraph, adequate notice shall include information on the following:
 - (i) The quality and quantity of influent introduced into the treatment facility, and
 - (ii) Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the treatment facility.
7. If the permit is for a discharge from a publicly-owned treatment works, ~~the permittee shall be able to identify any introduction of pollutants or substances into the facility that alone or in combination will cause disruption of the treatment processes, violation of effluent standards as defined in their operating permit, violation of water quality standards in the receiving stream as defined in 10 CSR 20-7.031, or classification of the residues of the treatment processes as hazardous waste as defined in 10 CSR 25-4.010. In addition,~~ the permittee shall require any industrial user of the treatment ~~[works]~~**facility** to comply with the requirements of 10 CSR 20-6.100;
8. If a toxic effluent standard, prohibition, or schedule of compliance is established under Section 307(a) of the Federal Clean Water Act for a toxic pollutant in the discharge of permittee's facility and the standard is more stringent than the limitations in the permit, then upon notice to the permittee the more stringent standard, prohibition,

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- or schedule shall be incorporated into the permit as one (1) of its conditions;
9. Facility expansions, production increases, or process modifications *[which]***that** will result in a new or substantially different discharge or **new** sludge characteristics must be reported sixty (60) days before the facility or process modification begins. Notification may be accomplished by application for a new **or modified operating** permit, or if the discharge does not violate effluent limitations specified in the permit, by submission of notice to the *[D]*department of the changed discharge; and
 10. When a continuing authority under paragraph *([3]2)(B)1.* or **(2)(B)2.** is expected to be available for connection~~*[within the next five (5) years]*~~, any operating permit issued to a permittee under this paragraph, located within the service area of the paragraph *([3]2)(B)1.* or **(2)(B)2.** facility, shall contain the following special condition: *[The tributary wastewater flow shall be connected to the continuing authority listed in paragraph (3)(B)1. or 2. within ninety (90) days of notice of availability by the continuing authority.]***Permittee will cease discharge by connection to a facility with an area-wide management plan per subsection (2)(B) of this rule within ninety (90) days of notice of its availability.** The permittee shall obtain *[D]*departmental approval for closure **per section (11) of this rule** or alternate use of these facilities
- (B) The permit shall contain effluent limitations and monitoring requirements. Other terms and conditions shall be incorporated into permits if the *[D]*department determines they are necessary to assure compliance with the Clean Water Law, related regulations or policies of the Missouri Clean Water Commission.
- ([9]8)* Prohibitions. No permit shall be issued in the following circumstances:
- (A) Where the terms and conditions of the permit do not comply with applicable guidelines or requirements, the Missouri Clean Water Law and Clean Water Commission regulations or the Federal Clean Water Act and federal regulations;
 - (B) Where the EPA regional administrator has properly objected to the issuance of a permit by the director;
 - (C) Where the permit conditions cannot ensure compliance with the applicable water quality requirements of all other affected states;
 - (D) Where, in the judgment of the secretary of the army acting through the appropriate district engineer, anchorage and navigation would be substantially impaired;
 - (E) For the discharge of any radiological, chemical, or biological warfare agent or high level radioactive waste;
 - (F) For any discharge from a point source inconsistent with a plan or plan amendment approved under Section 208(b) of the Federal Clean Water Act; or
 - (G) To a facility which is a new source or a new discharger, if the discharge from the construction or operation of the facility will—

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1. Cause or contribute to the violation of water quality standards if the point of discharge is located in a segment that was an effluent limitation segment, prior to the introduction of the discharge from the new source or new discharger; or
2. Exceed its pollutant load allocation if the discharge is into a water quality limited segment.

(~~10~~9) Operating Permit Renewal and Expiration Dates.

- (A) *[The first operating permit issued to new sources and new dischargers will be issued for a period of time sufficient only to allow the completion of construction of the facility, but not to exceed five (5) years, but not less than one (1) year. When all construction has been completed, the first]***The Missouri State** operating permit may be issued for a period **up to and** not to exceed five (5) years.
- (B) Whenever a release or a potential for release from a point source, water contaminant source, or wastewater treatment facility is permanently eliminated, the existing operating permit will be terminated upon verification by the ~~[D]~~department.
- (C) Where a person has the permit responsibility for more than one (1) wastewater treatment facility, water contaminant source, or point source involving more than one (1) operating permit, the ~~[D]~~department may combine the billings by issuing all operating permits with the same expiration date. Each facility shall continue to operate under and be governed by the separate provisions of each individual permit.
- (D) When a check used for an application fee is returned to the ~~[D]~~department as nonnegotiable, review of the application shall cease and the applicant be notified. No further action shall be taken on the application until the fees have been resubmitted.*[in the form of a cashier's check or money order payable to the state of Missouri.]*
- (E) Continuation of Expiring Permits.
 1. The terms and conditions of an expired permit are continued automatically pending issuance of a *[new]***renewed operating** permit if—
 - A. The permittee has submitted a timely and sufficient application for a *[new]***renewed operating** permit under this rule; and
 - B. The ~~[D]~~department is unable, through no fault of the permittee, to issue a *[new]***renewed operating** permit before the expiration date of the previous permit.
 2. Permits continued under paragraph (~~10~~9)(E)1. remain fully effective and enforceable.
 3. **The department may request additional information or a revised renewal application, including new sampling data for operating permits that have been expired for more than five (5) years. The request for additional information may be based on changes to the facility since the renewal application was submitted, along with changes in sampling methods and/or method sensitivity, changes to the Missouri Clean Water Law or**

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the Federal Clean Water Act, and new information about the site.

[(11)/10] Permits Transferable.

- (A) Subject to **subsection [(3)/(2)(A)**, a construction permit and/or operating permit may be transferred upon submission to the **[D]department** of an application to transfer signed by the existing owner and/or continuing authority and the new owner and/or continuing authority. Until the time the permit is officially transferred, the original permittee remains responsible for complying with the terms and conditions of the existing permit. To receive a transfer permit, the new owner and/or continuing authority must complete an application and demonstrate to the **[D]department** that the new **[organization]person, persons, or group** is permanent and will serve as the continuing authority for the operation, maintenance, and modernization of the facility. The new owner and/or continuing authority shall be responsible for complying with the terms and conditions of the permit upon transfer.
- (B) The **[D]department**, within thirty (30) days of receipt of the application, shall notify the new applicant of its **[intent]decision** to revoke and reissue or transfer the permit.
- (C) **For facilities with expired construction and/or operating permits that the department is unable to reissue or transfer the operating permit within thirty (30) days of the transfer application, the construction and/or operating permits may be transferred to the new permittee if:**
1. **The current permittee notifies the department at least thirty (30) days in advance of the proposed transfer date;**
 2. **The notice includes a complete application for transfer and a written agreement between the existing and new permittees containing a specific date for transfer of construction and/or operating permit responsibility, coverage, and liability between them; and**
 3. **The department does not notify the existing permittee and the proposed new permittee of its decision to revoke and reissue or transfer the construction and/or operating permit. If no objection is received from the department within thirty (30) days of receipt of the notice, the transfer is effective on the date specified in the agreement.**

[(12)/11] Closure of Treatment Facilities.

- (A) Persons who cease operation or plan to cease operation of waste, wastewater, and sludge handling and treatment facilities shall close the facilities in accordance with a closure plan approved by the **[D]department**.
- (B) **Closure plans shall address wastewater and sludge removal, dewatering activities, removal of treatment structures, removal or leaving in place of solid waste, site grading and site shaping so that ponding shall not occur.**
- (C) **Closure plans shall be submitted to the department no later than ninety (90) days after ceasing operations. The permittee, owner, and/or responsible party shall complete closure activities within the timeframe provided in the closure plan or within one hundred eighty (180) days of**

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receipt of the department's approval letter of the closure plan.

- (~~B~~)D) Operating permits under section (~~5~~)6) of this rule or under 10 CSR 20-6.015 are required until all waste, wastewater, ~~[and]wastewater~~ solids/sludges and any solid wastes have been disposed of in accordance with the closure plan approved by the department under subsection (~~12~~)11)(A) of this rule, and any disturbed areas have been properly stabilized.
- (E) Disturbed areas will be considered stabilized when perennial vegetation, pavement, or structures using permanent materials cover all areas that have been disturbed. ~~Vegetative cover, if used, shall be at least seventy percent (70%) plant density over one hundred percent (100%) of the disturbed area.~~
- (F) Closure activities shall obtain a storm water permit for land disturbance activities that meet the requirements of the land disturbance permit, in accordance with 10 CSR 20-6.200.
- (12) Reserved.
- (13) General Operating Permits.
- (A) The ~~[director]~~department may issue a general operating permit in accordance with the following:
1. The general operating permit shall be written to cover a category of discharges described in the permit except those covered by ~~[individual]~~site-specific permits within a geographic area. The area shall correspond to existing geographic or political boundaries, such as—
 - A. Designated planning areas under Sections 208 and 303 of the Federal Clean Water Act;
 - B. City, county, or state political boundaries, or special sewer districts chartered by the state;
 - C. State highway systems; and
 - D. Any other appropriate division or combination of boundaries; and
 2. The general operating permit shall be written to regulate a category of point sources if the sources all—
 - A. Involve the same or substantially similar types of operations;
 - B. Discharge the same types of wastes/wastewaters;
 - C. Require the same effluent limitations or operating conditions;
 - D. Require the same or similar monitoring; and
 - E. Are controlled more appropriately, in the opinion of the ~~[director]~~department, under a general operating permit than under ~~[individual]~~site-specific permits.
- (B) General operating permits may be issued, modified, revoked, and reissued or terminated in accordance with applicable requirements of this regulation. To be included under a general operating permit, a permittee must submit an application on forms supplied by the ~~[D]~~department.
- (C) The ~~[director]~~department may require any person authorized by a general operating permit to apply for and obtain a ~~[n individual]~~ site-specific operating permit. Any interested person may petition the ~~[director]~~department to take action under this subsection. Cases where a ~~[n~~

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individual] **site-specific** operating permit may be required include, but are not limited to, the following:

1. The discharge(s) is a significant contributor of pollution which impairs the beneficial uses of the receiving stream;
2. The discharger is not in compliance with the conditions of the general operating permit; and
3. A Water Quality Management Plan containing requirements applicable to these point sources is approved.

(D) Any owner/*operator*] **person** authorized by a general **operating** permit may request to be excluded from the coverage of the general **operating** permit by applying for a *n individual*] **site-specific** permit. As indicated in section (2)6 of this rule, the owner/*operator*] **person** shall submit, to the *director*] **department**, an application with reasons supporting the request. The request shall be granted by issuing a *ny individual*] **site-specific** permit if the reasons cited by the owner/*operator*] **person** are adequate to support the request.

1. When a *n individual*] **site-specific** operating permit is issued to an owner/*operator*] **person** otherwise subject to a general operating permit, the applicability of the general **operating** permit to the individual operating permittee is terminated automatically on the effective date of the *individual*] **site-specific** permit.
2. A source excluded from a general **operating** permit solely because it already has a *n individual*] **site-specific** permit may request that the *individual*] **site-specific** permit be revoked and that it be covered by the general **operating** permit. Upon revocation of the *individual*] **site-specific** permit, the general **operating** permit shall apply to the source. The source shall be included under the general **operating** permit only if it meets all the requirements for coverage under the permit.

(E) **The department may require any person applying for a site-specific permit to obtain a general operating permit, unless the person requests coverage under subsection (13)(D) of this rule.**

(14) Permit by Rule. *[The Department shall petition the Clean Water Commission to reopen this rule for public review and comment on a five- (5-) year interval.]*

(A) Hydrostatic Testing. Persons discharging water used for the hydrostatic testing of new petroleum-related oil and gas pipelines and storage tanks in the state of Missouri may discharge to waters of the state without first **applying for and** obtaining a permit if the discharge is *de minimis* (less than one thousand (<1,000) gallons) or the person takes the following steps:

1. Notification. The owner/*operator*] **person** must notify the *D*] **department** in writing of its intent to conduct hydrostatic test discharge(s) under this rule at least thirty (30) days prior to the first such discharge. This requirement may be met by a one- (1-) time annual notification. Notice shall specify the source of water to be used in the hydrotest and shall identify the location(s) of the pipeline(s) and/or tank(s) to be tested.

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2. Filing fee. Persons who intend to discharge in accordance with section (14) of this rule must pay a filing fee *[of twenty-five dollars (\$25)]* **as required by 10 CSR 20-6.011** to the *[D]*department with their notification above.
 3. Discharge limits. The discharge must meet the following limits:
 - A. <10 mg/l total petroleum hydrocarbons.
 - B. <100 mg/l total suspended solids.
 - C. **pH** equal to or between *[6.0 and 9.5]* **6.5 and 9.0** standard pH units.
 4. Sampling and testing requirements. One (1) grab sample shall be taken per discharge during the first sixty (60) minutes of the discharge. The sample shall be analyzed for the pollutants limited by this rule. Sampling and analysis shall be performed in accordance with 10 CSR 20-7.015(9)(*[A/D]*). Total discharge volume shall be documented for each hydrostatic test discharge.
 5. Analytical report. The owner/*[operator]* **person** of the pipeline(s) and/or storage tank(s) on which the hydrostatic tests are performed shall submit an annual report summarizing each discharge, including date, time, test location, analytical results, and total discharge volume, in gallons, by October 28, of each year.
 6. Exception reporting. If any of the sampling results from the hydrostatic test discharge show any *[violations]* **exceedances** of the *[following]* discharge limitations **in paragraph (14)(A)(3)**, written notification shall be made to the *[D]*department within five (5) days of *[notification]* **receipt** of analytical results. Notification shall indicate the date(s) of sample collection, the analytical results, and a statement concerning the revisions or modifications in management practices that are being implemented to address the violation of the limitation that occurred.
 - [A. <10 mg/l total petroleum hydrocarbons.*
 - B. <100 mg/l total suspended solids.*
 - C. pH equal to or between 6.0 and 9.5 standard pH units.]*
 7. General requirement. The hydrostatic testing water shall not contain dyes or have a visible sheen indicating the presence of petroleum products.
 8. Any person who irrigates wastewater from a hydrostatic test may do so under this rule if the notification, filing fee, and annual reporting requirements of paragraphs (*[4]* **14**)(A)1., *[,]*- 2., and **(14)(A)4.** are met and the irrigation does not result in any discharge to waters of the state. The quality of the irrigated wastewater is not required to meet the limits stated in paragraph (*[14]* **12**)(A)*[6]* **3.** of this rule.
 - [9. The quality of wastewater from a hydrostatic test that is discharged directly to the Mississippi or Missouri Rivers must meet the limits stated in paragraph (14)(A)6. of this rule with the exception of pH which shall be within a range between 6 and 10.]*
- (B) The *[D]*department may require a **site-specific** permit for these discharges if it determines that requiring a permit may better protect the quality of waters of the state.

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- (C) The person(s) discharging under this rule may apply for a **site-specific** permit at any time.
 - (D) This rule does not supersede nor eliminate liability for compliance with county and other local ordinances.
 - (E) Persons discharging under this rule are not required to obtain a separate permit to construct and operate an oil-water separator to aid in meeting limits for hydrostatic wastewater.
 - (F) The *[D]*department shall maintain records open to the public on all persons claiming coverage under permit by rule. Appeals of permits in accordance with 10 CSR 20-6.020(6) may be received by the *[D]*department up to thirty (30) days from the date the *[D]*department received notice from the discharger.
- (15) **Variance Request Process.**
- (A) **Applicability. Any person, permittee, or group of permittees seeking a variance shall file a petition for variance with the department. The petition shall include the following:**
 - 1. **The appropriate fee as required in 10 CSR 20-6.011;**
 - 2. **A statement identifying the limitations, rules, standards, requirements, or orders from the department the applicant is seeking a variance from;**
 - 3. **A statement explaining the conditions which are giving rise to the need for a variance;**
 - 4. **The amount of pollutant the applicant is seeking to discharge, if seeking a variance from a permit limitation;**
 - 5. **An assessment of any adverse environmental impacts the variance may produce;**
 - 6. **A statement explaining why compliance with the limitations, rules, standards, requirements, or order imposes an arbitrary or unreasonable hardship;**
 - 7. **A description of the potential methods to achieve or approach compliance with the limitations, rules, standards, requirements, or order;**
 - 8. **The period of time for which the variance is requested;**
and
 - 9. **A statement regarding the current permit status of the applicant(s) and any orders in effect regarding the applicant's activities.**
 - (B) **The department shall review the petition and submit a recommendation to the Missouri Clean Water Commission as to whether the variance should be granted or denied within 90 days.**
 - 1. **The department shall notify the applicant(s) of the recommended action and at the same time shall provide notice to the public prior to the Missouri Clean Water Commission.**
 - 2. **The Missouri Clean Water Commission may approve, require changes, establish conditions, or deny the petition and may hold public hearings on the petition request.**

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3. In any hearing pursuant to this section the burden of proof shall be on the person, permittee, or group of permittees petitioning for a variance.
 4. The Missouri Clean Water Commission may require the filing of a bond or other security as a condition for the issuance of a variance in an amount determined by the commission to be sufficient to ensure compliance with the terms and conditions of the variance. The proof of financial responsibility may be in the form of a surety bond, certificate of deposit (CD), or irrevocable letter of credit and shall be subject to the following:
 - A. The bond shall be signed by the applicant(s) as principal, and by a corporate surety licensed to do business in the state of Missouri; and
 - B. The bond shall remain in effect until the terms and conditions of the variance are met and rules and regulations promulgated pursuant thereto are complied with.
 5. Any decision of the Missouri Clean Water Commission made pursuant to a hearing held pursuant to this section is subject to judicial review as provided in 644.071, RSMo.
- (C) Provisional Variance.
1. A provisional variance is short term, time limited reprieve from limitations, rules, standards, requirements, or order of the director because of conditions beyond the reasonable control of the permittee ~~that would and will~~ result in arbitrary or unreasonable hardship and ~~the compliance~~ costs ~~that would be of compliance are~~ substantial and certain.
 2. In accordance with 644.062, RSMo, any person or permittee may apply for a provisional variance for limitations, rules, standards, requirements, or orders from the department pursuant to 644.006 through 644.141, RSMo. A provisional variance may not be granted under this regulation for limitations, rules, standards, requirements, or orders from the department pursuant to other statutes. The applicant must submit the information required in subsection (13)(A) of this rule with its petition for a provisional variance.
 3. The provisional variance is issued by the department. If a provisional variance is granted, notice shall be published using the same method prescribed for operating permits issued by the department in 10 CSR 20-6.020. The department shall promptly notify the applicant of the decision in writing, and file the decision with the Missouri Clean Water Commission. Granting of a provisional variance is documentation of the department's enforcement discretion. There is no public notice period prior to issuance of a provisional variance.
 4. Provisional variances will not be granted for the following:
 - A. In the department's judgment said variance would endanger public health, cause significant harm to aquatic

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- life or wildlife, result in damage to property, or other demonstrable and measurable harm to downstream interests;
- B. In anticipation of Federal approval of any changes to a state water quality standard;
 - C. From the requirement to obtain a permit for an activity, in accordance with 10 CSR 20-6 and 644, RSMo;
 - D. To allow an activity which would otherwise require a permit to begin before the department issues or denies a permit; or
 - E. To allow a facility to exceed a permit limitation while the department considers an application to modify the permit limitation.
5. A provisional variance may be issued to for up to forty-five (45) days, and may be extended once for up to an additional forty-five (45) days. The appropriate length of the provisional variance shall be determined at the discretion of the department.
- A. The provisional variance may be granted subject to conditions determined necessary by the department. In order to qualify for an extension, the applicant must demonstrate that the conditions under which the previous variance were granted still exist or are substantially similar.
 - B. ~~In no case shall a provisional variance be granted to the same person or permitted entity for more than ninety (90) days within the same calendar year.~~
6. Should a person or facility apply for a third provisional variance for relief from the same limit, rule, standard, requirement or order, subject to the restrictions set forth above, a long term plan to eliminate the need for a provisional variance shall accompany the application for the third variance in order for the application to be considered complete. The plan shall include timelines for changes at the facility to alleviate the need for a variance.
7. If the provisional variance is issued for delay of implementation of limitations, rules, standards, requirements, or orders from the department to correct a violation, 644.062, RSMo, requires the applicant post a performance bond or other security to assure completion of the work covered by the variance. The proof of financial responsibility maybe in the form of a surety bond, CD, or irrevocable letter of credit and shall be subject to the following:
- A. The bond shall be signed by the applicant as principal, and by a corporate surety licensed to do business in the state of Missouri;

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- B. The bond shall remain in effect until the terms and conditions of the variance are met and rules and regulations promulgated pursuant thereto are complied with;**
- C. It must be placed on file with the department;**
- D. It must be made payable to the department; and**
- E. If the bond, CD, or letter of credit is cancelled by the issuing agent, permittee must submit new proof of financial responsibility within thirty (30) days of cancellation, or provisional variance will be cancelled.**