

# NEWMAN, COMLEY & RUTH P.C.

ATTORNEYS AND COUNSELORS AT LAW  
601 MONROE STREET, SUITE 301  
P.O. BOX 537  
JEFFERSON CITY, MISSOURI 65102-0537  
TELEPHONE: (573) 634-2266  
FACSIMILE: (573) 636-3306  
www.ncrpc.com

ROBERT J. BRUNDAGE  
EDWARD C. CLAUSEN  
MARK W. COMLEY  
SHARIE L. HAHN  
JOSHUA L. HILL  
CATHLEEN A. MARTIN

STEPHEN G. NEWMAN  
JOHN A. RUTH  
THOMAS C. SMITH  
NICOLE L. SUBLETT  
ALICIA EMBLEY TURNER

January 17, 2013

Mr. John Rustige  
Water Protection Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102-0176  
[John.Rustige@dnr.mo.gov](mailto:John.Rustige@dnr.mo.gov)

Re: Ad Hoc Committee for 10 CSR 20-6.010

Dear Mr. John:

The purpose of this letter is to summarize some legal research I performed regarding to whom permits should be issued and what information is required to go on public notice.

## Owner or Operator

In the Missouri Clean Water Law, §644.051.2 provides that it is unlawful for “any person to build, erect, alter, replace, operate, use or maintain any water contaminant or point source...unless such person holds a permit . . . .” Similar language is found in the Commission’s regulations at 10 CSR 20-6.010(5)(A) which says “the operating permit shall be issued to the owner/operator.” In the past, I have questioned what “owner/operator” means. Does it mean that both the owner and operator are jointly issued the permit or does it mean that the owner or the operator are issued the permit, but not both?

EPA’s regulations seem to shed some light on this issue. In 40 CFR 122.21(a) titled “Duty to apply,” it says that “Any person who discharges or proposed to discharge pollutants or who owns or operates a ‘sludge-only facility’ . . . must submit a complete application to the director . . . .” Subsection (b) titled “Who applies?” says “When a facility or activity is owned by one person but is operated by another person, it is the operator’s duty to obtain a permit.” The language “owner or operator” is also found in 40 CFR 122.4(i).

In conclusion, it seems that the EPA issues permits to either the owner or the operator, but not both. It also appears EPA issues permits to the operator instead of the owner if the two are different persons/entities.

Since the Missouri Clean Water Law only refers to a person who operates, uses or maintains a point source, why does the Commission’s regulations referred to both operators and

continuing authorities? Where does the authority come from to issue permits to both the operator and the continuing authority?

Contents of Public Notice

EPA's regulation 40 CFR 124.10 is titled "Public Notice of Permit Actions and Public Comment." The contents of the public notice must contain the following minimum information:

1. Name and address of the office processing the permit,
2. Name and address of the permittee,
3. A brief description of the business conducted at the facility or activity described in the permit application or draft permit,
4. Name, address and telephone number of the person from whom interested persons may obtain further information, including copies of the draft permit, statement of basis or fact sheet, and the application,
5. A brief description of the comment procedures,
6. A general description of location of each existing or proposed discharge point and the name of the receiving water and the sludge use and disposal practices and the location of each sludge treatment works treating domestic sewage and the use or disposal sites known at the time of permit application,
7. Any additional information considered necessary or proper.

I have found the enclosed memorandum from EPA dated April 4, 1983 that discusses public notice requirements.

Feel free to share this information with the Ad Hoc Committee

Sincerely,



Robert J. Brundage

RJB:la  
Enclosure