

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director

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MEMORANDUM

DATE: JUL 7 2011

TO: Regional Office Directors
Refaat Mefrakis, Chief, NPDES Permits and Engineering Section
Kevin Mohammadi, Chief, Compliance and Enforcement Section
Byron Shaw, Chief, SRF Engineering Unit

FROM: John Madras, Director 
Water Protection Program

SUBJECT: Revised Application Tracking and Statutory Deadlines for Permit Issuance

With the passage of House Bill 89 (HB89), upon approval by Governor Nixon, application tracking will now be a vital part of our daily business of processing applications for both National Pollutant Discharge Elimination System (NPDES) and non-NPDES permits. This is due to HB89 containing a new statute, RSMo §640.018.1, which will require the Department to issue permits on the day following their statutory required time frame for application processing if a decision has not been previously reached. RSMo §640.018.1 states:

In any case where the department has not issued a permit or rendered decision by the expiration of a statutorily required time frame for any application for a permit under this chapter or chapters 260, 278, 319, 444, 643, or 644, the permit shall be issued as of the first day following the expiration of the required time frame, provided all necessary information has been submitted for the application and the department has been in possession of all such information for the duration of the required time frame. This subsection shall be considered in addition to, and not in lieu thereof, any other provision of law regarding consequences of failure by the department to issue a permit or permit decision by the expiration of a required time frame.

This section of HB89 is included in the bill's emergency clause, which means it goes into effect as soon as the bill is signed into law, rather than August 28 which would be the regular effective date.

Statutory deadlines for permit decisions are contained in RSMo §644.051. More specifically, RSMo §644.051.10, states:

*No manufacturing or processing plant or operating location shall be required to pay more than one operating fee. Operating permits shall be issued for a period not to exceed five years after date of issuance, except that general permits shall be issued for a five-year period, and also except that neither a construction nor an annual permit shall be required for a single residence's waste treatment facilities. Applications for renewal of an operating permit shall be filed at least **one hundred eighty days** prior to the expiration of the existing permit.*



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RSMO §644.051.13(1), states:

*The department shall issue or deny applications for construction and site-specific operating permits received after January 1, 2001, within **one hundred eighty days** of the department's receipt of an application. For general construction and operating permit applications received after January 1, 2001, that do not require a public participation process, the department shall issue or deny the requested permits within **sixty days** of the department's receipt of an application.*

Basically, the two cited statutes mean that if a permit requires Public Notice, then the application processing timeframe is 180 days. If the permit does not require a Public Notice, then the application processing timeframe is 60 days.

Upon expiration of the time limit, the permit must be issued, so an action to deny a permit must be completed before the clock runs out. Permit denials are signed at the Division level. After the deadline, permits can be issued with whatever conditions may be appropriate, but the permits must be issued nevertheless. Please also review expired and other permits related to enforcement cases, as these may need to be issued or denied as well.

The Application Tracking Information page in MoCWIS informs the user the Application Status, Application Processing End Date, Application Processing Steps, Days Left for Permit, and the ability to start and stop the Statutory Clock. Therefore, using the Application Tracking Information page to its full extent is necessary for application tracking and ultimately the permit issuance process. Department staff must use Application Tracking Information page including the population of Processing Steps and using the Statutory Clock section of this page. It is also important to ensure that draft operating permits have the correct Application ID in MoCWIS.

Since the previous June 8, 2011, Memorandum regarding this issue, the provided reports have been reformatted to more accurately display the desired data. The reports are now correct and include all applications in MoCWIS that are either near or exceeded the statutory deadline. There are four reports that will automatically be sent out on the last day of the calendar month to staff listed on the report. If there are other staff members that should receive the reports but are not currently on the list, please contact Michael Abbott to have them added. The reports are as follows:

- 180 Day Application Types with less than 60 days. This report provides a list of 180 day type applications that have less than 60 days remaining for processing.
- 180 Day Application Types Exceeding Statutory Time Frame. This report provides a list of 180 day type applications that have exceeded the 180 day statutory time frame.
- 60 Day Application Types with less than 30 days. This report provides a list of 60 day type applications that have less than 30 days remaining for processing.
- 60 Day Application Types Exceeding Statutory Time Frame. This report provides a list of 60 day type applications that have exceeded the 60 day statutory time frame.

If Department staff notice any application for an operating permits that has been issued, I ask that you process the application, in MoCWIS, at your earliest convenience.

Additionally, Department staff can access the MoCWIS Permit Type Reference Table to determine statutory timeframes for the different permit types. To access this table, users will need to login to MoCWIS and in the Main Menu Options under Administrations click the Reference Codes hyperlink. This will bring the user to the Code Table Administration page, from this page the user will need to click code table #9 [Permit Type Ref Table].

Questions have been raised

It will be important to determine if a permit should be issued or denied. This essentially means that we will need to determine the following (among other significant issues): (1) what constitutes an incomplete application, (2) when is it appropriate to return the incomplete application and to withdraw the application from MoCWIS, and (3) are there alternatives to denying an application? Additionally, we will need to make determinations on what actions occur when a permit application is denied (i.e., do application denials indicate operating permit terminations, or how does this affect ongoing discharges)?

The 180 day time frame is applicable to operating permit renewals and general permit renewals that require a Public Notice. The 180 day time frame is applicable to construction permit applications that require a draft operating permit to be placed onto Public Notice and includes the issuance of the actual construction permit. When construction of the facility is completed and the permittee applies for the operating permit for their facility, the application falls under the 60 day application processing time frame unless an additional Public Notice is required.

RSMo §640.018.1 neither removes or modifies Public Notice requirements for Missouri State Operating Permits, nor removes statutory application time frame for applications received prior to 180 days of the existing permit's expiration date. Additionally, this statute does not indicate that the statutory clock is to be stopped during the Public Notice period. The rationale for having a longer time frame for permits requiring Public Notice is part of the 180 day time frame.

Other important concerns and questions include how to address the conflict between the statutes regarding renewal applications for general operating permits. The statutes do not provide a difference between site-specific operating permits and general operating permit renewals and the 180 day statutory deadline. However, as we all are aware of, the statutes do require that permits that do not require a Public Notice are only allowed 60 days for the application to be processed.

For operating permit renewal applications submitted prior to the 180 day period before their operating permit expires, Department staff can issue an operating permit prior to the expiration date, but establish an effective date one day after the existing operating permit's expiration date.

An official EPA objection to an operating permit issuance constitutes stopping the statutory clock. When a permittee requests an extension to the Public Notice, the statutory clock can be stopped for the specified additional time. When information is requested from a permittee in order to proceed with permit issuance and said information is considered needed in order to have a complete application, the statutory clock can be stopped.

If issuance or denial of a permit is pending due to Water Quality, Effluent Regulation, Fee, and/or other concerns based on regulation or statute, the statutory clock can not be stopped.

The Department's Water Pollution Permit Manual contains application review processes in Chapter 4. More specifically, Chapter 4.3 includes common omissions and application errors that can stop the clock. MoCWIS Procedure Manual chapter 1 subject "Stopping the Statutory Clock" also gives excellent instructions on when to stop the clock. In addition to stopping the Statutory Clock based on the permit applications, there are times during the issuance process that the clock can be stopped.

Staff can stop the Statutory Clock when a permit is sent out for review (e.g., pre-Public Notice review).

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For applications received prior to the signing of HB89, the clock starts the day the bill is signed by Governor Nixon. Meaning if the bill is signed on July 10, 2011, the clock for applications received prior to July 10, 2011, start on July 10, 2011. This determination only effects RSMo §640.018.1 and does not effect current procedures and policies regarding the proper handling of application fees.

At this point we need to focus our energies on any permits that have already exhausted their statutory time frames. As of the drafting of this revised memorandum, the reports indicate: 302 applications (180 day types); and 1003 application (60 day types) that have exceeded their respective statutory deadlines. However, it is believed that a majority of these applications now have issued permits and have not been properly processed many due to a known bug in MoCWIS, so the number is expected to decrease significantly. Additionally, the reports indicate that there are: 96 applications (180 day types) that have less than 60 days remaining for processing; and there are 146 applications (60 day types) that have less than 30 days remaining.

With regards to the 60 day type applications we are aware that this is one-half the processing time, so this number is expected to be high. The less than 30 days for 60 day application types was determined appropriate because the reports would be generated and emailed monthly.

While this is a rather abrupt change in permitting, we will strive to meet the new requirement. There will likely be other changes we initiate to facilitate meeting this, and I welcome any suggestions you may offer.

We appreciate your attention to this new requirement. If there are any questions, please contact Michael Abbott of the Water Protection Program.

JM:mal

c: Paul Jeffery, Regional Office Coordinator