

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

May 2, 2012

**Finding of Necessity for a Proposed Amendment to
10 CSR 20-7.015, Effluent Regulations**

Issue: Pursuant to Section 536.016, RSMo., staff is requesting the Commission find that an amendment to 10 CSR 20-7.015, Effluent Regulations, is necessary to carry out the purposes of Section 644.026, RSMo.

Background: Missouri Revised Statutes Section 644.026, paragraphs (2), (3), (7) and (8) grant authority to the Clean Water Commission to adopt, promulgate or repeal after notice and hearing, those regulations to enforce, implement and effectuate the responsibilities of Missouri's Clean Water Law. The Finding of Necessity does not commit the Commission to any particular outcome on the rulemaking, but is a legal requirement for the Department to begin the rule making process. Proposed rules will be presented for public hearing and decision before the Commission.

There are a number of reasons that this rule needs to be updated. The Effluent Regulation provides the basis and authority for developing permit limits for wastewater discharges such that water quality standards are maintained according to the receiving water's appropriate uses. Some of the changes are necessary either because of updates to the 10 CSR 20-7.031 Water Quality Standards, changes in federal permitting requirements, or in response to Water Quality Standards decisions made by the U.S. Environmental Protection Agency. Others amendments are needed to simplify and provide clarity for permitting processes that are already standard practice.

There are a number of topics that will be specifically considered. E. coli limits and disinfection requirements need to be updated, particularly with respect to short-term limits and monitoring frequencies as directed by the Clean Water Commission. Language could be added to provide more clarity regarding requirements for whole-effluent toxicity (WET) testing for the protection of aquatic life. Another concept to consider is aligning the current definition of "bypass" with the definition used in federal regulations. This would clarify that bypasses within the treatment plant are not the same as sanitary sewer overflows that can occur in the collection system. Language changes to allow reporting of violations via electronic methods will be considered. Requirements for facilities to monitor their effluent for nutrient pollutants (total nitrogen and total phosphorus) are expected to be developed. Lastly, there are a number less significant rule changes that will be considered related to organization, the updating of references, clarification of authorities to develop permit limits,

and the elimination of certain parts of the rule that contain schedules that are no longer relevant.

There is considerable outside interest from state and federal regulatory agencies, environmental groups, and public/private entities affected by the rulemaking. A subcommittee of the Water Protection Advisory Forum was established and has held a number of scoping meetings regarding the proposed changes. It is the intent of the Department to continue working with affected parties to develop a proposed rule in a manner that allows considerable input and discussion.

Recommended Action: Staff recommends the Commission approve a finding of necessity for an amendment to 10 CSR 20-7.015, Effluent Regulations.

Suggested Motion Language: “The Commission approves the finding of necessity for an amendment to 10 CSR 20-7.015, Effluent Regulations.”

List of Attachments: Rulemaking Report

Affected Rule: Amendment to 10 CSR 20-7.015 *Effluent Regulations*

1. What is the purpose of this rulemaking?

The purpose of the effluent rule is to provide effluent limits for wastewater discharges such that water quality standards will be maintained in ambient waters. A number of rule changes are needed to simplify and provide clarity for permitting processes that are already standard practice. Specific additions are also planned. Short-term *E. coli* limits and monitoring requirements need to be updated to reflect direction given by the Clean Water Commission. These limits are needed to protect people from exposure to pathogens. The rule is also being amended to add a section requiring whole-effluent toxicity (WET) testing to protect aquatic life. WET tests assess the adverse effects and lethality on aquatic life following both acute and chronic exposures to the sum of toxic compounds found in wastewater discharges.

Another purpose of the rulemaking is to align the current definition of “bypass” with the definition used in federal regulations. This will provide a mechanism to make sure that all waters receive secondary treatment unless there is no feasible alternative. Requirements regarding Sanitary Sewer Overflows will be clarified because the current rule confuses these overflows with “bypasses.”

Nutrient pollution is a developing issue, and the agency is working to develop approvable water quality criteria for total nitrogen and phosphorus. The initial strategy to address nutrient issues is to develop a better understanding of the performance of wastewater treatment plants regarding nutrient treatment, so rule language requiring effluent monitoring of these pollutants will be considered.

In addition, a number of references will be corrected and added to the regulation. These references either correct improper or lost citations or will reference specific documents that are instructive in the development of water quality based effluent limits.

There are a number of portions of the rule that can be clarified or improved. Deadlines for implementing phosphorus and disinfection treatment can be removed because the dates are no longer relevant. A section can be added to provide clarify the Department’s authority to develop permit limits. Language that allows reporting of violations via electronic methods will be considered. The rule would benefit from an overall reorganization and appropriate sampling methods and references will be updated.

Lastly, this rulemaking is being undertaken in conjunction with an amendment to 10 CSR 20-7.031 *Water Quality Standards*. There are a number of water quality standards changes being made. These changes may require corresponding changes in the effluent rule to provide appropriate wastewater effluent limits that are protective of these new standards.

2. Why is the rulemaking being proposed now?

These changes are needed now to bring the rule up to date and to align it with 10 CSR 20-7.031 *Water Quality Standards*, which is also open for amendment. Several of the updates are being done to add proper reference or to correct citations that are no longer correct. The rule is also being proposed now to address short-term *E. coli* limits as required by the U.S. Environmental Protection Agency (EPA) and to

incorporate the direction of the Clean Water Commission regarding these limits and monitoring frequencies. Other changes outlined above are necessary so that the Department has the authority and clear regulatory language upon which to base permit limits and decisions.

3. Will the rulemaking incorporate any document by reference, rather than state the language within the rulemaking?

Portions of the federal definition of “bypass” may be incorporated by reference. The rule may also refer to certain technical publications that provide guidance in the development of water quality based effluent limits or permitting procedures. The Revised Statutes of Missouri (RSMo 53.031) requires the department to provide copies of references at no more than the annual cost of reproduction.

4. Is a Regulatory Impact Report required for this rulemaking?

Yes. A Regulatory Impact Report will be prepared as required and will undergo public review for a 60-day period in conjunction with a description of the proposed changes.

5. What authority does DNR have to carry out this rulemaking?

Missouri Revised Statutes Section 644.026, paragraphs (2), (3) and (7) grant authority to the Clean Water Commission to adopt, promulgate or repeal after notice and hearing, those regulations to enforce, implement and effectuate the responsibilities of Missouri’s Clean Water Law.

6. What does the rulemaking require and how does it produce benefits?

The water quality standards are currently being updated in a related rulemaking (10 CSR 20-7.031 – *Water Quality Standards*). In the delegation agreement with the EPA the Department is required to review the State’s water quality standards every three years to ensure that they are functionally equivalent to federal standards and guidance. This review involves the identification of beneficial uses of waters of the state and development of appropriate criteria for their protection. The Effluent Rule (10 CSR 20-7.015) is being updated to provide effluent limits for wastewater discharges such that ambient waters will meet Missouri’s current and new water quality standards.

There are a number of specific pollutants that are being addressed in this rulemaking. *E. coli* limits and disinfection requirements will be updated to protect people from exposure to pathogens. To address the overall toxicity of wastewater that will be discharged to waters of the state a provision will be added that requires WET testing to protect aquatic life. WET tests assess the adverse effects and lethality on aquatic life following both acute and chronic exposures to the sum of toxic compounds found in wastewater discharges.

Aligning the definition of “bypass” with the federal definition will provide a mechanism to make sure that all wastewater receives secondary treatment unless a facility provides a determination that there are no feasible alternatives and, such determination is approved. This change will serve to avoid situations where state regulations are in conflict with federal interpretations.

A requirement for facilities to monitor their effluent for total nitrogen and phosphorus will provide information about the effectiveness of different treatment technologies. This information will be critical to the success as the Department develops a statewide plan to address nutrient pollution.

Allowing electronic reporting of violations will streamline this activity for both permit holders and the Department. Lastly, corrections of improper or lost citations and the addition of specific technical references will serve to make the regulation clearer and more enforceable.

7. Who is most likely affected by the rulemaking?

The most common type of facility affected by this rule is one that treats primarily domestic wastewater, but industrial wastewater treatment facilities may also be affected. It has the potential to affect all facilities that currently have National Pollutant Discharge Elimination System (NPDES) permit within the state. The provisions of this rulemaking may require a few facilities to upgrade their treatment or monitoring to meet newly developed Water Quality Standards, but most facilities will see only minor changes to the way their current permits are issued. Operating permits are written for a 5-year term, so eventually the amended requirements will be required of all permit-holders. There are currently 12,000 active NPDES permits in Missouri. The actual number of facilities affected by this rule has not been determined, but it is expected that over 90 percent of them will be affected in one manner or another.

As a result of aligning the definition of “bypass” with the federal regulation some facilities may need to reconfigure their collection and wastewater treatment systems so that they will provide secondary biological treatment as required by federal regulations. In the event that facilities are not able to provide secondary treatment during high inflow regimes, facilities will likely face the effort and expense of developing a formal analysis to show that there are “no feasible alternatives.” This change will likely affect communities that have aging collection systems or were designed in a manner that allowed blending of partially treated water with water that received full secondary treatment.

In addition to the regulated entities, this rulemaking will affect the Department as it will require refinements to the way in which permits are written. Changes will need to be incorporated into permit guidance and permitting procedure manuals.

8. What impact will the rulemaking have on small businesses?

The Department has not yet completed its identification of all of the impacts that this rulemaking will have, and is not able to determine the number of affected facilities at this time. It is likely that some of the affected facilities meet the definition of small business. Campgrounds, restaurants, resorts, and other enterprises that have discharging water treatment systems are examples of the types of small businesses that may be affected. A small business impact statement will be prepared as part of the rulemaking effort that will detail the scope of the effect this rulemaking will have on small businesses.

9. What are the probable costs for the department or any other public agency in the implementation and enforcement of the rulemaking?

Implementation of this rulemaking will likely see increased demands on Department resources, particularly permitting and enforcement. During the review of operating permits, permit writers will need additional time to include the necessary conditions that assure existing and new water quality standards are maintained. This will likely add to the review time. In addition, new guidance and procedures will need to be developed to address these issues. If violations of these permit conditions arise, additional enforcement efforts will be needed. In particular, aligning Missouri’s definition of “bypass” with federal definitions will likely require the development of enforcement cases including inspections, enforcement actions, and the development of legal settlement agreements. It is difficult to estimate the magnitude of these increased demands because the compliance rates are not predictable.

10. What is the anticipated effect of the rulemaking on state revenue?

This amendment is not expected to affect state revenue collections.

11. Who was/will be involved in developing the rulemaking?

The Department expects to receive considerable public input during the Regulatory Impact Reporting effort. The scope of this rulemaking has broad potential impact. A subcommittee of the Water Protection Advisory Forum has met several times and will continue to meet to further refine this proposed rule. The subcommittee includes people that represent the interests of municipal governments, industry, and engineering firms, as well as attorneys that practice environmental law and environmental advocacy groups. The Department will rely on the Clean Water Forum to provide input as well as information collected during the Regulatory Impact Reporting effort and the formal public hearing process.

12. How has/will the development of the rulemaking been/be shared with interested parties and the public at large?

See Question 11.

13. Who may I contact to either ask questions or provide input on this rulemaking?

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14. What are the expected dates for the comment period and public hearing?

Department staff will engage stakeholders in discussions on these various proposals and keep stakeholders informed of progress. The department will present a Finding of Necessity and a draft proposed rule amendment to the Clean Water Commission on May 2, 2012. The Regulatory Impact Report (RIR) will be published on or before September 1, 2012, in accordance with the CWC directive at the March 9, 2012 meeting.

The expected date for the public hearing is March 6, 2013. The formal comment period for this rule begins with the publication in the Missouri Register December 17, 2012 and ends on March 13, 2013.

Meetings with Stakeholders	April 2, 2012-July 20, 2012
Published Meetings Water Protection Forum	http://www.dnr.mo.gov/env/wpp/
Signed Finding of Necessity	May 2, 2012 CWC Meeting
Interagency Coordination	July 25, 2012- August 27, 2012
RIR Public Noticed	Sept. 1, 2012- October 31, 2012

File with Small Business Regulatory Fairness Board, Joint Committee on Administrative Rules and Secretary of State	Nov. 15, 2012
Publication in the Missouri Register	December 17, 2012
Public Comment Period	December 17, 2012
Public Hearing	March 6, 2013
End of Comment	March 13, 2013
Response to Comment & Adoption	May 1, 2013
Order of Rulemaking Filed with the Joint Committee on Administrative Rules	May 2-10, 2013 File May 10, 2013 (May 12, Sun. = 60 days)
Order of Rulemaking Filed with Secretary of State	June 10 or 11, 2013 must file (June 11 = 90 days)
Order of Rulemaking Published in Missouri Register	July 17, 2013
Rule Published in Code of State Regulations	July 31, 2013
Rule Effective	August 30, 2013

