

Missouri Clean Water Commission Meeting  
Department of Natural Resources  
East Elm Street Conference Center  
1730 East Elm Street  
Jefferson City, Missouri

October 18, 2018

**Proposed Amendment of Order of Rulemaking  
10 CSR 20-6.010, Construction and Operating Permits**

**Issue:** The Department has finalized its recommendation on the proposed amendment of 10 CSR 20-6.010, Construction and Operating Permits, and is requesting the Commission adopt the order of rulemaking.

**Background:** Under Executive Order 17-03, all state agencies are working to reduce Red Tape in Missouri. Red tape refers to regulations or other government rules or processes that unnecessarily burden individuals and businesses while doing little to protect or improve public health, safety, and our natural resources. The Department has determined that changes to 10 CSR 20-6.010, Construction and Operating Permits, are necessary and is proposing the rule for amendment after public notice, hearing, and comment.

The Department published the proposed amendment of 10 CSR 20-6.010, Construction and Operating Permits, in the July 16, 2018, *Missouri Register*. The public comment period for the proposed rule was from July 16 to August 23, 2018. A public hearing was held for the proposed rule on August 15, 2018, and changes were made to the proposed rule as a result of comments during the public comment period.

Numerous comments were received on this rule. As a result of comments, changes were made that included updating the exemption for rinsates to include fertilizers as the rule was limited to agricultural rinsates. Also, clarification was requested related to the exemption of internal plumbing changes; specifically the requirement that they do not discharge to waters of the state. Rule language has been reworded to state the exemption applies only to the point where effluent is conveyed to receiving waters. Additionally, as a result of a comment regarding waving preferential status from each existing higher preference authority, the rule language has been updated to clarify that a waiver is from a higher preferential authority if it is available. Clarification was also made to the rule for geohydrological evaluations. Internal references were also updated as a result of comments received on this rule.

**Recommended Action:** The Department recommends the Commission adopt the Order of Rulemaking for 10 CSR 20-6.010, Construction and Operating Permits, as proposed.

**Suggested Motion Language:** The Department suggests the Commission motion to adopt the Order of Rulemaking for 10 CSR 20-6.010, Construction and Operating Permits as proposed.

**List of Attachments:**

- 10 CSR 20-6.010 - Construction and Operating Permits, Order of Rulemaking

**Title 10 – DEPARTMENT OF NATURAL RESOURCES**  
**Division 20 – Clean Water Commission**  
**Chapter 6 – Permits**

**ORDER OF RULEMAKING**

By the authority vested in the Clean Water Commission of the State of Missouri under Section 644.026 and Section 536.023(3), RSMo, the Commission amends a rule as follows:

10 CSR 20-6.010 Construction and Operating Permits is amended

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 16, 2018 (43 MoReg 1618-1629). This proposed amendment will become effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** A public hearing on this proposed amendment was held August 15, 2018, and the public comment period ended August 23, 2018. At the public hearing, Department staff provided testimony on the proposed amendment. Mr. Robert Brundage with Newman, Comley and Ruth, and Mr. Kevin Perry with Regulatory Environmental Group for Missouri (REGFORM) provided comments during the public hearing. The Department received three (3) comment letters during the public comment period, plus Department staff comments.

**PUBLIC COMMENTS:**

**COMMENT #1:** Mr. Robert Brundage, Newman, Comley and Ruth made a comment at the public hearing regarding the Red Tape Reduction work. He characterized the Department's removal of the word "shall" in its rules as camouflage rather than reduced burden, and requested staff make rule language less awkward if there has been more than a thirty percent reduction.

**RESPONSE AND EXPLANATION OF CHANGE:** This general comment relates to multiple proposed rules. Regarding process, the goal of Red Tape Reduction has been to reduce regulatory burdens. The Department's proposed changes were informed by stakeholder engagement, in some cases over multiple years, and have reduced unnecessary requirements. The effort has not centered around a single word choice, although the word "shall" has been removed when deleting duplication with statute, rescinding, reorganizing and re-writing a rule, or revising language to clarify (not camouflage) responsibilities. Staff did review this rule relative to whether intended language was used to reflect the nature of an obligation, not with a focus on a particular word as suggested by this comment. Based on this review changes have been made to the following: Sections (1), (2), (3), (5),(7), (9), (11), and (15) (see attached).

**COMMENT #2:** Department staff commented that the language in 10 CSR 20-6.010(1)(A) should reference section (5) not (4).

RESPONSE AND EXPLANATION OF CHANGE: The rule language has been updated with the correct reference to section (5).

COMMENT #3: Mr. Robert Brundage with Newman, Comley, and Ruth, commented on the proposed change in Section (1)(B), which states: “(B) The following are exempt from this rule.” This subsection says exemptions only apply to “this rule” instead of “permit regulations” as provided in the current regulation. As proposed, this exemption may only apply to discharging facilities and not to non-discharging facilities. There is a rinsate exemption under 6.010(1)(B) but not under the no-discharge regulation 6.015. An unintended consequence could be that a no-discharge permit may be required for rinsate even though exempted under “this rule.” If the language were not changed and continues to refer to “permit regulations,” it would better clarify that the exemption applies to any permit, both discharging and non-discharging facilities.

RESPONSE AND EXPLANATION OF CHANGE: Section (1)(A) requires all facilities to have a permit in accordance with sections (5) and(7) of this rule and with the Missouri Clean Water Law and regulations. The list in section (1)(B) is activities exempted from the permitting requirements in subsection(1)(A). There are multiple rules concerning permits and to clarify the exemptions provided in subsection(1)(B) cover activities that may be discussed in other rules, specifically the other rules in 10 CSR 20-6, the rule language was returned to the existing rule language of “permit regulations”.

COMMENT #4: Mr. Robert Brundage with Newman, Comley, and Ruth, provide comment on the exemption of internal plumbing changes and that the requirement that they do not discharge to waters of the state creates confusion. In his comment, Mr. Brundage explains that the exemption would be limited as it does not allow internal plumbing changes where water that flows through these plumbing changes is eventually discharged to a permitted outfall to waters of the state.

RESPONSE AND EXPLANATION OF CHANGE: The exemption applies to internal piping and plumbing changes that do not have a discharge. At some facilities, there are internal areas that have an emergency spillway or overflow application that can discharge to waters of the state. Changes to these areas would not be exempt. For clarification, the rule language has been reworded to state the exemption applies except to the point where effluent is conveyed to receiving waters.

COMMENT #5: Mr. Stanley Thessen with MFA and Mr. Robert Brundage with Newman, Comley, and Ruth, provided comments on the exemption for the application of rinsates. They noted that it applies to agrichemical rinsates and that the exemption should include fertilizers.

RESPONSE AND EXPLANATION OF CHANGE: The term agrichemical was added to limit the exemption to agrichemical rinsates. As a result of this comment fertilizer was added to the exemption, so that the exemption now applies to fertilizers and pesticide rinsates applied appropriately.

COMMENT #6: Mr. Kevin Perry with REGFORM provided comments supporting the exemption of *de minimis* hydrostatic testing proposed in (1)(B)10, and requests the Clean Water Commission (CWC) adopt it.

RESPONSE: The Department appreciates the support. No change was made as a result of this comment.

COMMENT #7: Department staff noted that there was a grammatical mistake in section (2)(B) and the incorrect reference in subsection (2)(B)2 related to continuing authority. Additionally, a change in rule language was needed to (2)(B)5.C.

RESPONSE AND EXPLANATION OF CHANGE: The grammatical mistake in section (2)(B) was corrected and the reference in section(2)(B)2 was corrected to section (2)(F). The rule language in section (2)(B)5.C. was updated.

COMMENT #8: Mr. Robert Brundage with Newman, Comley, and Ruth, provided comments on subsection (2)(B)5 pertaining to Level 5 authority which are property owners associations. The existing permit language refers to “covenants on the land” and that the proper legal term is covenants “running with the land.”

RESPONSE AND EXPLANATION OF CHANGE: The term “running with the land” has been added and the existing language removed.

COMMENT #9: Mr. Robert Brundage with Newman, Comley, and Ruth, provided comments on the requirement that industries submit a “statement waving preferential status from each existing higher preference authority,” stating that there may not be an existing higher preferential authority. Mr. Brundage also commented that as the rule is written, this requirement seems to require an industry to provide the waiver instead of the higher preferential authority providing the waiver. He suggested rewording it to state, “... submit from each existing higher preference authority a statement waving preferential status....”

RESPONSE AND EXPLANATION OF CHANGE: The rule language has been updated to clarify that a waiver is from the higher preferential authority if it is available. The submittal of the waiver is part of the industry’s permitting application.

COMMENT #10: Department staff commented that the reference in (2)(F) on Level 2 Continuing Authority has an incorrect reference in subsection (2)(F)4 and (2)(F)5.

RESPONSE AND EXPLANATION OF CHANGE: The incorrect reference in (2)(F)4 and (2)(F)5 were corrected to reference (2)(F)2 and (2)(F)1-4.

COMMENT #11: Mr. Robert Brundage with Newman, Comley, and Ruth, commented under the Antidegradation section of the rule (Section 3), that language regarding the appeal process should be included in the rule to provide the permittee notice of their rights. Mr. Brundage also commented that a written determination should be provided on the applicability of the antidegradation review.

RESPONSE AND EXPLANATION OF CHANGE: The language regarding the antidegradation appeal process was removed as it is already incorporated by reference in 10 CSR 20-7.031(3) in the Antidegradation Implementation Procedure. A statement that the Department will provide written determination of antidegradation applicability has been added to the subsection to clarify and to provide consistency with other sections of the rule that state the Department will provide written determinations.

COMMENT #12: Department staff commented on a grammatical mistakes in section (4)(A)2 and section (4)(B)5. Additionally, the reference in (4)(B)2 references the design guides in 10 CSR 20-8, and it should reference the design standards.

RESPONSE AND EXPLANATION OF CHANGE: The rule has been updated to correct section (4)(A)2 and (4)(B)5 and the reference in (4)(B)2 reflects the design standards in 10 CSR 20-8.

COMMENT #13: Department staff commented that the language in 10 CSR 20-6.010(4)(A)5.D. should be clarified to state that Geohydrological evaluations should be conducted for all major modifications of earthen basins.

RESPONSE AND EXPLANATION OF CHANGE: The rule language has been updated to clarify that Geohydrological evaluations will be conducted on major modification of earthen basins.

COMMENT #14: Department staff commented that the reference in (4)(B) is incorrect for projects not requiring engineering reports and/or facility plans are not required for sewer extensions covered under the general permit or for exempted projects.

RESPONSE AND EXPLANATION OF CHANGE: The internal reference to projects exempt from construction permitting has been corrected to (5)(B) and the sewer extension general permit has been corrected to (5)(C).

COMMENT #15: Mr. Robert Brundage with Newman, Comley, and Ruth, provided comments on the exemptions in section (5) noting there may be confusion with subsection (A) which is the activities that require permits, and subsection (B) which are the exemptions. The example he provided was related to Class I Concentrated Animal Feeding Operations (CAFOs) who do not construct an earthen basin - they are exempt from construction permits. However, in subsection (B) it states Class II CAFOs are exempt. He requests that since there is no reference to, or language similar to, the requirements and exemptions described in section 644.051.3, RSMo, that the language be revised to state in subsection (B) that all activities not referenced in subsection (A) are exempt.

RESPONSE: All Class II CAFOs are currently exempt from construction permitting requirements. Class I CAFOs, if constructing an earthen basin, are required to obtain a construction permit, which is what subsection (5)(A)3 is stating. The majority of the exemptions listed in subsection(5)(B) have been identified as activities that would require a construction permit under subsection(A) of the rule in that they are modifications to treatment systems, but the review of such would not provide much in environmental protections. The language and listing of exemptions was discussed in the stakeholder meetings and the language specific to CAFO operations was added for clarification at the request of stakeholders. No changes were made as a result of this comment.

COMMENT #16: Mr. Kevin Perry with REGFORM provided comments in support of the exception of activities that require a construction permit proposed in (5)(B) of this rule, including its subsections and a request that the CWC adopt these exceptions.

RESPONSE: The Department appreciates the support. No changes were made as a result of this comment.

COMMENT #17: Department staff commented on the grammatical errors in the reference to statute in section (5)(B), in the wording in sections (5)(B)2, (5)(E)2, (5)(G), (5)(H)3 and (5)(M). Additionally, an extra “,” was noted in subsection (5)(H)2 and the reference in section (5)(M) to Antidegradation public comment procedures is incorrect.

RESPONSE AND EXPLANATION OF CHANGE: The references in sections (5)(B) and (5)(M) were corrected. Sections (5)(B)2, (5)(E)2, (5)(G),(5)(H), and (5)(M) were corrected.

COMMENT #18: Department staff commented that the references in (7)(B)1.E. to variances, in (7)(D) to general permit applications, and in (7)(E) to signatures were incorrect.

RESPONSE AND EXPLANATION OF CHANGE: The reference in (7)(B)1.E. has been updated to reference section (15), the reference in (7)(D) has been updated to reference the correct subsection of the statute, and the reference in (7)(E) has been corrected to reference (7)(B)2.

COMMENT #19: Mr. Robert Brundage with Newman, Comley, and Ruth, provided comment under the operating permit sections that the operating permits are issued to the owner and the continuing authority. In his comment letter, he stated there is no legal authority to require an owner who has no operational control over the water contaminant or point source to obtain a permit or to be listed on the permit. He states the requirement is inconsistent with the definition of continuing authority and that it is not uncommon for the owner of the real estate or structures on the property to not have any control because it has leased the property to the continuing authority who is operating the facility. Mr. Brundage suggested this subsection should be revised as follows: “The operating permit shall be issued to the continuing authority.”

RESPONSE: Permits are issued to the owners of the permitted activity, based on the information provided in the application. Ownership of real property is not a prerequisite for a permit. The Department does not designate the contracts between the individuals and/or companies. The contract between the entities should designate the responsibilities for maintaining compliance. If an operation should be in noncompliance, the Department has the responsibility to ensure the violations are resolved by the permittee and continuing authority. No changes were made as a result of this comment.

COMMENT #20: Department staff commented that in (8)(A)9, the reference to closure plans in section(11) should be section (12). Additionally it was noted an incorrect reference in subsection (12)(D) referenced the incorrect section of the rule.

RESPONSE AND EXPLANATION OF CHANGE: The rule has been updated to reflect the correct reference to closure plans in section (12).

COMMENT #21: Mr. Robert Brundage with Newman, Comley, and Ruth, provided comment on subsection (10)(B) that there are instances where an owner wants to shut down the business but not permanently eliminate the wastewater treatment facility in the event that it could be restarted in the future, but the rule requires a wastewater treatment facility or point source to be permanently eliminated before the permit can be terminated.

RESPONSE: With regard to termination of an operating permit, the requirement is to eliminate the potential releases from a water contaminant, point source, or wastewater treatment plant, as specified in 644.051.2 and 644.082, RSMo. No changes were made to the rule as a result of this comment.

COMMENT #22: Mr. Robert Brundage with Newman, Comley, and Ruth, provided comment on section (11) regarding the requirement that permittee/transferor/continuing authority and the transferee both sign an application transfer. In his letter, he provided an example that there may

be instances where the current permittee is unable to sign the transfer application and as such the signature of the permittee/transferor should not be required.

RESPONSE: While signatures from both the previous permittee and the transferee is the preferred method, there are many instances where the existing permittee is unable to sign. The transferee or the new permittee needs to apply for a permit, which requires the permittee to demonstrate they are responsible for compliance with the terms and conditions of the permit. No changes were made to the rule as a result of this comment.

COMMENT #23: Department staff commented that the language in 10 CSR 20-6.010(11)(A)2 should reference section (5) not (4).

RESPONSE AND EXPLANATION OF CHANGE: The rule language has been updated with the correct reference to section (5).

COMMENT #24: Mr. Robert Brundage with Newman, Comley, and Ruth, provided a comment related to a closure plan requiring the contemplation of the removal of treatment structures. His comment is that removal of treatment structures should not be required, as they may be assets of value and have future use, and that the only requirement should be to remove any on-site pollutants that would have the potential to be released to waters of the state.

RESPONSE: The requirement of a closure plan does require the contemplation of the removal of treatment structures, but it does not require the removal. Structures can be and often are maintained at a facility, the only requirement is the removal of the potential for any water contaminant or point source, as stated in 644.051.2 and 644.082, RSMo. No changes were made to the rule as a result of this comment.

COMMENT #25: Mr. Robert Brundage with Newman, Comley, and Ruth, provided comment on subsection (13)(D) that states “Any owner/continuing authority authorized by general operating permit...” His comment was what does the “/” mean, does it mean “and” or “or” or “and/or?” He proposed that the term “owner” be deleted.

RESPONSE AND EXPLANATION OF CHANGE: The “/” was present in the existing rule. To clarify, the “/” has been removed and changed to owner and continuing authority.

COMMENT #26: Department staff noted a common was missing and there was an extra word, “to,” in section (13)(C).

RESPONSE AND EXPLANATION OF CHANGE: Section (13)(C) was corrected.

COMMENT #27: Department staff noted in sections (14)(B), (14)(C), and (14)(E) referenced the wrong subsection for effluent limits for hydrostatic testing.

RESPONSE AND EXPLANATION OF CHANGE: Sections (14)(B), (14)(C), and (14)(E) were updated to reference section (14)(A).

COMMENT #28: Department staff noted the word “section” was missing in front of the references to Missouri statutes in section (15).

RESPONSE AND EXPLANATION OF CHANGE: Section (15)(C)2 was updated to add section in front of the references to statute.

## 10 CSR 20-6.010-Construction and Operating Permits

### (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 in accordance with sections (5) and (7) of this rule, the Missouri Clean Water Law and regulations. The department issues these permits 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 collection systems;
  3. Internal plumbing, piping, water diversion, or retention structures that are an integral part of an industrial process, plant or operation, except to the point wastewater is conveyed to receiving water;
  4. Routine maintenance or repairs of any existing collection system, wastewater treatment facility, or other water contaminant or point source;
  5. Onsite systems for single family residences;
  6. The discharge of water from an environmental emergency cleanup site under the direction of, or the direct control of, the department or the Environmental Protection Agency (EPA), provided the discharge does not violate any condition of 10 CSR 20-7.031 Water Quality Standards;
  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. Projects for beneficial use, that do not exceed a period of one (1) year, may be exempted by written project approval from the department. The department may extend the permit exemption for up to one (1) additional year.
  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 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;
  10. Hydrostatic Testing. Persons discharging water used for the hydrostatic testing of new pipelines and storage tanks in the state of Missouri may discharge to waters of the state without first obtaining a permit if the discharge is de minimis (less than one thousand (<1,000) gallons) or meeting the requirements in section(14) of this rule;
  11. Nondischarging earthen basins for domestic wastewater flows of three thousand gallons per day (3,000 gpd) or less; and

12. Agrichemical rinsates and any spilled or recovered fertilizers and pesticides that are field applied at rates compatible with product labeling.

(2)(B) Continuing authorities are listed in preferential order in the following paragraphs. A level three (3), four (4), or five (5) applicant may constitute a continuing authority by showing that the authorities listed under paragraphs (B)1.-2. of this rule are not available; do not have jurisdiction; are forbidden by state statute or local ordinance from providing service to the person; or it has met one of the requirements listed in paragraphs (2)(C)1.-7 of this rule.

1. Level 1 Authority. A municipality or public sewer district or governmental entity 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 governmental entity which currently provides wastewater collection and/or treatment services on a regional or watershed basis as outlined in section (2)(F) of this rule and approved by the Missouri Clean Water Commission;
3. Level 3 Authority. A municipality, public sewer district, or sewer company regulated by the Public Service Commission (PSC) other than one which qualifies under paragraph (2)(B)1. or 2. of this rule or a public water supply district. Permits shall not be applied for by a continuing authority regulated by the PSC until the authority has obtained a certificate of convenience and necessity from the PSC;
4. Level 4 Authority. Any person, industry, or group of persons contractually obligated to collectively act as a wastewater collection and treatment service, or nonprofit company organized under section 393.825, RSMo, with complete control of, and responsibility for the water contaminant source, point source, or wastewater treatment system.
5. Level 5 Authority. An association of property owners served by the wastewater treatment facility, provided the applicant documents that—
  - A. The association is a corporation in good standing registered with the Office of the Missouri Secretary of State.
  - B. The association owns the facility and has valid easements for all sewers;
  - C. The covenants running with the land of each property owner provide the authority with compliance of wastewater treatment systems 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 (2)(B)1.-3.; and
    - (iv) The requirement that members connect with the facility and be bound by the rules of the association.

(2)(D) The Applicants for industries, shall submit a statement waiving preferential status from each existing higher preference authority, if it exists, listed in paragraphs (2)(B)1.,2., or 3. of this rule for collection and treatment of industrial, process, and domestic wastewater as part of a new operating permit application.

(2)(F) Application of Level 2 Authority. If a municipality or public sewer district 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;
  - B. Capital improvements program;
  - C. Process to provide waivers when sewer connection is not available;
  - D. Approach to address permit compliance with facilities in the service area;
  - E. Community financial capability information; and
  - F. Defined service area map.
3. Obtain and maintain authority through ordinances to compel wastewater users and facilities to connect for management of wastewater flows. The ordinance requires the recipient to notify all potential users of service availability and that all users connect to the system within the timeframe provided in the notice of service availability. Submit a copy of the enacted ordinance.
4. Provide a public meeting prior to approval of the plan developed according to paragraph (2)(F)2 of the rule and the draft ordinance. Distribution of information and the publication of the notice of decision making should occur for at least thirty (30) days. Following the public meeting, provide a copy of the transcript, attendance log, recording, or other complete record to the department.
5. Submits a final request to the Missouri Clean Water Commission through the department, containing the fulfillment of paragraphs (2)(F)1.-4. of this rule, incorporating preliminary recommendations provided by the Missouri Clean Water Commission.
6. Staff shall review the plan and present recommendations to the Missouri Clean Water Commission for action.

(3)(B) Public comment. The department shall place a public notice of the antidegradation determination on the department's website and allow the public an opportunity to provide comments for a minimum of thirty (30) days. The antidegradation determination may be revised as a result of comments received.

(3)(C) Notification in writing. A final determination whether the antidegradation is applicable, approved or denied shall be provided in writing to the applicant by the department.

(4)(A) Submit the engineering report and/or facility plan prior to submittal of the Construction Permit Application, including the following, as applicable:

1. A signed Facility Plan or Engineering Report. All facility plans and engineering reports are to be signed and sealed by a Missouri registered professional engineer, and contain the information in accordance with 10 CSR 20-8.
2. Identify the alternative technical manuals and design criteria utilized that are different from the design standards provided in 10 CSR 20-8.110 through 10 CSR 20-8.220.
3. Submit one (1) hard copy and an electronic version (in Portable Document Format (PDF) searchable format or department approved equivalent) for review.
4. For Engineering Reports,
  - A. Submit a plan of the existing and proposed sewers for projects involving new sewer systems and substantial additions to existing systems.
  - B. Submit a plan for projects involving construction or revision of pumping stations.
  - C. Provide the design basis and operating life.
5. For Facility Plans,
  - A. Submit an approved Water Quality Review and Antidegradation evaluation or determination for all new and expanding facilities, in accordance with 10 CSR 20-7.031(3). For non-funded projects, information submitted as part of the Antidegradation Report does not have to be resubmitted with the facility plan.
  - B. Evaluate the feasibility of constructing and operating a facility with no discharge to waters of the state if the report is for a new or modified wastewater treatment facility.
  - C. Evaluate the economics of the project including alternatives to constructing a discharging system, including an evaluation of alternatives of wastewater irrigation or subsurface dispersal and connection to a regional wastewater treatment facility.
  - D. A geohydrological evaluation conducted by the department's Missouri Geological Survey, for all proposed new construction, new or major modification of earthen basins, new outfall locations, wastewater irrigation fields, and subsurface dispersal sites. Include any recommendations provided in the geohydrological evaluation.

(4)(B) Engineering reports and/or facility plans are exempt for the following non-funded projects:

1. Disinfection equipment projects for treatment types promulgated in 10 CSR 20-8.190;
2. Projects exempted from construction permitting under subsection (5)(B) of this rule;
3. Sewer extensions permitted under the general construction permit provided in subsection (5)(C) of this rule;

4. Sewer projects that submit a Missouri registered professional engineer's Sewer Extension Design Certification with the permit application; and
5. Treatment plants and/or sewer extensions by a permittee with their own authority under subsection (6) of this rule, if they are not receiving department funding.

(5)(B) The following activities are exempt from construction permitting when the activities meet the applicable standards in 10 CSR 20-2 through 10 CSR 20-9. Projects exempt from construction permitting may require professional engineering, as defined in section 327.181, RSMo:

1. Construction of a separate storm sewer;
2. Sewer extensions of one thousand feet (1,000') or less, including gravity sewers and/or force mains, with no more than one (1) pump station;

(5)(E) 2. A demonstration project installation is a full scale innovative technology process. All antidegradation, operating permit, and construction permitting requirements apply.

(5)(G) An application for a construction permit shall be made on forms provided by the department and include the following items:

(5)(G)6. Detailed engineering plans and technical specifications signed, sealed, and dated by a Missouri registered professional engineer, which contain the information in accordance with 10 CSR 20-8, or other regulations as applicable;

(5)(H) 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.

1. Applicants who fail to satisfy all department technical comments after two (2) certified comment letters, in a time frame established by the department, may have the application returned as incomplete and shall forfeit the construction permit application fees.
2. The department shall act after receipt of all documents and information necessary for a properly completed application, as listed in subsection (5)(G) of this rule above and including appropriate filing fees, and other supporting documents as necessary, by either, issuing or denying the construction permit.
3. The applicant may submit a written request that additional time is needed prior to the conclusion of the set time frame. The department shall grant reasonable time extensions.

(5)(I) Notification in writing. A final determination whether the construction permit is approved, approved with conditions, or denied with reason, shall be provided in writing to the applicant by the department within one hundred eighty (180) days.

(5)(M) A site specific operating permit application and appropriate modification fee shall be submitted with the construction permit application to allow for public participation prior to the issuance of a construction permit. An operating permit application and modification fee is not required with the construction permit application if-

1. Effluent limits and permit conditions have been established and the public notice and comment procedures were previously completed as part of an operating permit renewal;
2. Effluent limits were established as part of the Antidegradation Review and the required public notice and comment procedures were afforded in accordance with subsection (3)(B) of this rule;
3. No new effluent limits and conditions are needed to be established in the existing operating permit, such as a facility description change; or
4. Applicant is seeking a general permit.

(6)(B) Request Submittal. Authorities requesting supervised program approval may submit a request to the department with the following information regarding the system, treatment plant, capacity, and current procedures. The department shall review the request, supporting documentation, and may ask for additional information if necessary to determine compliance with the Missouri Clean Water Law and these regulations. The department shall inform the permittee in writing of its decision. Approval may be granted for a period of up to five (5) years in the applicant's operating permit.

(6)(B)2. For Collection System Approval, applicants shall submit the following information:

(6)(B)3. For Treatment Plant Approval, applicants shall submit the following information:

(6)(D) Summary Report. A report summarizing the construction activities will be contained in the operating permit application renewal for reauthorization.

(6)(C) Operating Permit. Supervised program approval shall be granted through the applicant's operating permit for a period of up to five (5) years. The operating permit may contain additional reporting requirements including, but not limited to, a summary report for an approved period.

(7)(B) Applications.

1. An application for an operating permit must be submitted 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. Appropriate permit fee according to 10 CSR 20-6.011;
  - C. An antidegradation review for new and expanding discharging facilities;
  - D. A geohydrological evaluation conducted by the department's Missouri Geological Survey for new and expanded facilities;
  - E. If appropriate, a variance petition, with the information detailed in section (15) of this rule; and

- (7) (C) Applications for renewal of site-specific operating permits must be received at least one hundred eighty (180) days either before the expiration date of the 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.
- (7)(D) For facilities seeking coverage under a general operating permit, the application for renewal shall be submitted according to Section 644.051.10, RSMo.
- (7)(E) All reports required by the department shall be submitted and signed by a person designated in paragraph (7)(B)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 (7)(B)2 of this rule and is submitted to the department.
- (8) (A) The following shall be incorporated as terms and conditions of all permits:
1. All discharges and solids disposal shall be consistent with the terms and conditions of the permit;
  2. The permit may be modified or revoked after thirty (30) days' notice for cause including, but not limited to, the following causes:
    - A. A violation of any term or condition of the permit;
    - B. A misrepresentation or failure to fully disclose all relevant facts in obtaining a permit;
    - C. A change in the operation, size, or capacity of the permitted facility; and
    - 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.
  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 department), upon presentation of credentials to, at reasonable times—
    - 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 kept according to the terms and conditions of the permit;
    - B. Have access to, or copy, any records that are kept according to the terms and conditions of the permit;

- C. Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under a permit; and
  - D. Sample or monitor 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 shall give 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 includes 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 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 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, or schedule shall be incorporated into the permit as a condition; and
9. When a continuing authority under paragraph (2)(B)1., 2., or 3. is expected to be available for connection, any operating permit issued to a permittee under this paragraph, located within the service area of the paragraph (2)(B)1., 2., or 3. facility, shall contain the following special condition: Permittee shall cease discharge by connection to a facility with an area-wide management plan according to subsection (2)(B) of this rule within the timeframe allotted by the continuing authority with its notice of its availability. The permittee shall obtain departmental approval for closure according to section (12) of this rule or alternate use of these facilities.

- (9)(G) To a facility which is a new source or a new discharger, if the discharge from the construction or operation of the facility shall—
- (11)(A) Subject to subsection (2)(A), a construction permit and/or operating permit may be transferred upon submission to the department of an application to transfer signed by the existing owner and/or continuing authority and the new owner and/or continuing authority.
1. Until the time the permit is officially transferred, the original permittee remains responsible for complying with the terms and conditions of the existing permit.
  2. To receive a transfer permit, the new owner and/or continuing authority must complete an application according to section (5) and/or section (7) of this rule and demonstrate to the department that the new continuing authority agrees to be responsible for compliance with the permit.
- (11)(B) The department, within thirty (30) days of receipt of the application, shall notify the new applicant of its decision to revoke and reissue or transfer the permit.
- (12)(D) Operating permits under section (7) of this rule or under 10 CSR 20-6.015 are required until all waste, wastewater, wastewater solids/sludges and any solid wastes have been disposed of in accordance with the closure plan approved by the department under subsection (12)(A) of this rule, and any disturbed areas have been properly stabilized.
- (13)(C) The department may require any person authorized by a general operating permit to apply for and obtain a site-specific operating permit. Any interested person may petition the department to take action under this subsection. Cases where a site-specific operating permit may be required, include, but are not limited to, the following:
- (13)(D) Any owner and continuing authority authorized by a general operating permit may request to be excluded from the coverage of the general operating permit by applying for a site-specific permit.
1. When a site-specific operating permit is issued to an owner and continuing authority otherwise subject to a general operating permit, the applicability of the general operating permit is terminated automatically on the effective date of the site-specific permit.
  2. A source excluded from a general operating permit solely because it already has a site-specific permit may request that the site-specific permit be revoked and that it be covered by the general operating permit, if it meets all the requirements for coverage.
- (14)(B) Sampling and testing requirements. One (1) grab sample shall be taken per discharge during the first sixty (60) minutes of the discharge and be analyzed for the pollutants listed in (14)(A) of this rule as well as total discharge volume in gallons per day.

- (14)(C)Exception reporting. If any of the sampling results from the hydrostatic test discharge show any exceedance of (14)(A) limits, provide written notification, including the date of the sample collection, the analytical results, and a statement concerning the modifications in management practices that are being implemented to address the violation within five (5) days of notification of analytical results to the department.
- (14)(E)Any person who irrigates wastewater from a hydrostatic test may do so under this rule if 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 in (14)(A).
- (15)(C)2. In accordance with section 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 sections 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 application for a provisional variance shall include information in accordance with subsection (15)(A) of this rule.
- (15)(C)3.The provisional variance is issued by the department and may be retroactively applied upon permittee request. If a provisional variance is granted, notice shall be given 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. If retroactively granted, the permittee shall submit appropriate modified reports (such as discharge monitoring or those prescribed in a permit) within twenty (20) days of the provisional variance issuance date.
- (15)(C)4. Provisional variances shall not be granted for the following:
- (15)(C)5. A provisional variance may be issued 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.