

MEMORANDUM

DATE:

TO: Water Pollution Control Permitting Staff in Regional Offices and the Water Protection Program

FROM: Leanne Tippett Mosby, Director
Division of Environmental Quality

SUBJECT: Regulatory Requirements in Permits

The legal requirements contained in statute and regulation forms the basis for environmental control activities. Statutes provide the overall framework for regulation, and define what is within our scope and what is outside our scope. To the extent our work implements the law; it is incumbent on us to ensure our practices are consistent with the law. Our permits must be reasonable instruments implementing the requirements of law and regulation to achieve the environmental quality goals set forth by national and state policy makers. Clearly our permits must be backed up by authority for each of the requirements they contain. If there is any question of whether a requirement is based on law, we should raise that question for review. It is our responsibility to get it right.

In addition, our permits must be defensible. A major factor in making this determination is whether the Department has the authority to set certain requirements. Statutes and regulations supply that authority. Guidance, while often useful in its own right, does not provide any authority in and of itself unless it is referenced as applicable in a statute or regulation.

The statutes and rules cannot cover all of the possible needs in permits, and in some cases professional judgment is required to produce a quality product. However, the judgment we exercise must be consistent with the statutes and regulations.

We are sometimes faced with guidance or other informal advice targeted toward specific matters in permits. To the extent any routine or standard approach is our usual action on a specific question, such an approach should be codified in regulation. These requirements are contained in Chapter 536, RSMo and were emphasized in a letter from the Joint Committee on Administrative Rules last year.

Stakeholders in the Water Protection Forum have identified areas where they believe we rely on guidance rather than law in establishing permitting requirements and we are examining those instances to determine what changes need to be made to formalize procedures where needed. We also have situations where we have acted in certain ways in given circumstances, and have established informal traditions that respond to the need present at the time. Again, to the extent these are regular responses to recurring situations, the practices should be embodied in regulations.

When situations of questionable authority come to light, please alert John Madras or me of the circumstances, and we will work through the remedy with you.

Thank you.

LTM:jml

DRAFT