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June 25, 2012

Mr. John Madras, Director
Water Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Re: Construction Permit Waivers and Exemptions

Dear Mr. Madras:

Through Clean Water Fees and Water Protection Forum meetings, there have been wide ranging discussions on how to streamline the permitting process and discover permitting efficiencies. I suggest the Department consider, and the Clean Water Commission adopt, a regulation based upon a concept found in the Missouri Air Conservation Commission's regulations. The Air Conservation Commission regulations afford facilities the opportunity to apply for a pre-construction waiver to allow them to begin construction prior to receiving a construction permit. I enclose herewith a draft water pollution pre-construction permit waiver regulation for the Department and Commission's consideration.

In addition to a pre-construction waiver regulation, the Department and the Clean Water Commission should consider expanding exemptions to the construction permitting requirement.

Sincerely,

NEWMAN, COMLEY & RUTH P.C.

By:


Robert J. Brundage
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RJB:lab
Enclosure

**Proposed Amendment to Clean Water Construction Permitting Regulations:
Allowance of Construction to Commence Prior to Permit Issuance**

Current Regulation:

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 department for the permits required by the Missouri Clean Water Law and these regulations. The department issues these permits in order to enforce the Missouri Clean Water Law and regulations and administer the National Pollutant Discharge Elimination System (NPDES) Program.

Proposed Changes to Regulation:

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 department for the permits required by the Missouri Clean Water Law and these regulations. The department issues these permits in order to enforce the Missouri Clean Water Law and regulations and administer the National Pollutant Discharge Elimination System (NPDES) Program. **Construction may be commenced prior to issuance of a construction permit if the director approves a request for authorization. A request for authorization must include: a signed waiver of any state liability; a complete list of the activities to be undertaken; and, the applicant’s full acceptance and knowledge of all liability associated with the possibility of denial of the permit application. A request will not be granted unless an application for a construction permit has been submitted to the Department.**

Related Air Permitting Regulations

10 CSR 10-6.060 – Construction Permits Required

(1) Applicability

(C) Construction/Operation Prohibited.

No owner or operator shall commence construction or modification of any installation subject to this rule, begin operation after that construction or modification, or begin operation of any installation which has been shut down longer than five (5) years without first obtaining a permit from the permitting authority under this rule. **For sources not subject to review under sections (7), (8), or (9) of this rule, construction may be commenced if authorized by the director. A request for authorization must include: a signed waiver of any state liability; a complete list of the activities to be undertaken; and, the applicant's full acceptance and knowledge of all liability associated with the possibility of denial of the permit application.** A request will not be granted unless an application for permit approval under this rule has been filed. The waiver is not available to sources seeking federally enforceable permit restrictions to avoid review under sections (7)-(9) of this rule.

Current Construction Permit Exemptions in Clean Water Regulations

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 department for the permits required by the Missouri Clean Water Law and these regulations. The department issues these permits in order 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 sewer systems;
3. Internal plumbing and piping or other water diversion or retention structures within a manufacturing or industrial plant or mine, which are an integral part of the industrial or manufacturing process or building or mining operation. An operating permit or general permit shall be required, if the piping, plumbing, or structures result in a discharge to waters of the state;

4. Routine maintenance or repairs of any existing sewer system, wastewater treatment facility, or other water contaminant or point source;

5. Single family residences;

6. The discharge of water from an environmental emergency cleanup site under the direction of, or the direct control of, the Missouri Department of Natural Resources or the Environmental Protection Agency (EPA), provided the discharge shall 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. Small scale pilot projects or demonstration projects for beneficial use, that do not exceed a period of one (1) year, may be exempted by written project approval from the permitting authority. The department may extend the permit exemption for up to one (1) additional year. A permit application shall be submitted at least ninety (90) days prior to the end of the demonstration period if the facility intends to continue operation, unless otherwise exempted under this rule or Chapter 6; and

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.

(C) Nothing shall prevent the department from taking action, including the requirement for issuance of any permits under the Missouri Clean Water Law and regulations, if any of the activities exempted under subsection (1)(B) should cause pollution of waters of the state or otherwise violate the Missouri Clean Water Law or these regulations.