

SECOND REGULAR SESSION

# HOUSE BILL NO. 1730

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES SCHLOTTACH (Sponsor), KELLY, WASSON, DIXON, MAY,  
DETHROW, WHORTON, KUESSNER AND RUESTMAN (Co-sponsors).

Read 1st time February 9, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4976L.01I

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### AN ACT

To repeal section 644.051, RSMo, and to enact in lieu thereof one new section relating to the department of natural resource's bonding authority.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 644.051, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 644.051, to read as follows:

- 644.051. 1. It is unlawful for any person:
- (1) To cause pollution of any waters of the state or to place or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state;
  - (2) To discharge any water contaminants into any waters of the state which reduce the quality of such waters below the water quality standards established by the commission;
  - (3) To violate any pretreatment and toxic material control regulations, or to discharge any water contaminants into any waters of the state which exceed effluent regulations or permit provisions as established by the commission or required by any federal water pollution control act;
  - (4) To discharge any radiological, chemical, or biological warfare agent or high-level radioactive waste into the waters of the state.
2. It shall be unlawful for any person to build, erect, alter, replace, operate, use or maintain any water contaminant or point source in this state that is subject to standards, rules or

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 regulations promulgated pursuant to the provisions of sections 644.006 to 644.141 unless such  
16 person holds a permit from the commission, subject to such exceptions as the commission may  
17 prescribe by rule or regulation. However, no permit shall be required of any person for any  
18 emission into publicly owned treatment facilities or into publicly owned sewer systems tributary  
19 to publicly owned treatment works.

20         3. Every proposed water contaminant or point source which, when constructed or  
21 installed or established, will be subject to any federal water pollution control act or sections  
22 644.006 to 644.141 or regulations promulgated pursuant to the provisions of such act shall make  
23 application to the director for a permit at least thirty days prior to the initiation of construction  
24 or installation or establishment. Every water contaminant or point source in existence when  
25 regulations or sections 644.006 to 644.141 become effective shall make application to the  
26 director for a permit within sixty days after the regulations or sections 644.006 to 644.141  
27 become effective, whichever shall be earlier. The director shall promptly investigate each  
28 application, which investigation shall include such hearings and notice, and consideration of such  
29 comments and recommendations as required by sections 644.006 to 644.141 and any federal  
30 water pollution control act. If the director determines that the source meets or will meet the  
31 requirements of sections 644.006 to 644.141 and the regulations promulgated pursuant thereto,  
32 the director shall issue a permit with such conditions as he or she deems necessary to ensure that  
33 the source will meet the requirements of sections 644.006 to 644.141 and any federal water  
34 pollution control act as it applies to sources in this state. If the director determines that the  
35 source does not meet or will not meet the requirements of either act and the regulations pursuant  
36 thereto, the director shall deny the permit pursuant to the applicable act and issue any notices  
37 required by sections 644.006 to 644.141 and any federal water pollution control act.

38         4. Before issuing a permit to build or enlarge a water contaminant or point source or  
39 reissuing any permit, the director shall issue such notices, conduct such hearings, and consider  
40 such factors, comments and recommendations as required by sections 644.006 to 644.141 or any  
41 federal water pollution control act. The director shall determine if any state or any provisions  
42 of any federal water pollution control act the state is required to enforce, any state or federal  
43 effluent limitations or regulations, water quality-related effluent limitations, national standards  
44 of performance, toxic and pretreatment standards, or water quality standards which apply to the  
45 source, or any such standards in the vicinity of the source, are being exceeded, and shall  
46 determine the impact on such water quality standards from the source. The director, in order to  
47 effectuate the purposes of sections 644.006 to 644.141, shall deny a permit if the source will  
48 violate any such acts, regulations, limitations or standards or will appreciably affect the water  
49 quality standards or the water quality standards are being substantially exceeded, unless the  
50 permit is issued with such conditions as to make the source comply with such requirements

51 within an acceptable time schedule. Prior to the development or renewal of a general permit or  
52 permit by rule, for aquaculture, the director shall convene a meeting or meetings of permit  
53 holders and applicants to evaluate the impacts of permits and to discuss any terms and conditions  
54 that may be necessary to protect waters of the state. Following the discussions, the director shall  
55 finalize a draft permit that considers the comments of the meeting participants and post the draft  
56 permit on notice for public comment. The director shall concurrently post with the draft permit  
57 an explanation of the draft permit and shall identify types of facilities which are subject to the  
58 permit conditions. Affected public or applicants for new general permits, renewed general  
59 permits or permits by rule may request a hearing with respect to the new requirements in  
60 accordance with this section. If a request for a hearing is received, the commission shall hold  
61 a hearing to receive comments on issues of significant technical merit and concerns related to  
62 the responsibilities of the Missouri clean water law. The commission shall conduct such  
63 hearings in accordance with this section. After consideration of such comments, a final action  
64 on the permit shall be rendered. The time between the date of the hearing request and the  
65 hearing itself shall not be counted as time elapsed pursuant to subdivision (1) of subsection 13  
66 of this section.

67         5. The director shall grant or deny the permit within sixty days after all requirements of  
68 the Federal Water Pollution Control Act concerning issuance of permits have been satisfied  
69 unless the application does not require any permit pursuant to any federal water pollution control  
70 act. The director or the commission may require the applicant to provide and maintain such  
71 facilities or to conduct such tests and monitor effluents as necessary to determine the nature,  
72 extent, quantity or degree of water contaminant discharged or released from the source, establish  
73 and maintain records and make reports regarding such determination.

74         6. The director shall promptly notify the applicant in writing of his or her action and if  
75 the permit is denied state the reasons therefor. The applicant may appeal to the commission from  
76 the denial of a permit or from any condition in any permit by filing notice of appeal with the  
77 commission within thirty days of the notice of denial or issuance of the permit. The commission  
78 shall set the matter for hearing not less than thirty days after the notice of appeal is filed. In no  
79 event shall a permit constitute permission to violate the law or any standard, rule or regulation  
80 promulgated pursuant thereto.

81         7. In any hearing held pursuant to this section the burden of proof is on the applicant for  
82 a permit. Any decision of the commission made pursuant to a hearing held pursuant to this  
83 section is subject to judicial review as provided in section 644.071.

84         8. In any event, no permit issued pursuant to this section shall be issued if properly  
85 objected to by the federal government or any agency authorized to object pursuant to any federal

86 water pollution control act unless the application does not require any permit pursuant to any  
87 federal water pollution control act.

88 9. Unless a site-specific permit is requested by the applicant, aquaculture facilities shall  
89 be governed by a general permit issued pursuant to this section with a fee not to exceed two  
90 hundred fifty dollars pursuant to subdivision (5) of subsection 6 of section 644.052. However,  
91 any aquaculture facility which materially violates the conditions and requirements of such permit  
92 may be required to obtain a site-specific permit.

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

99 11. Every permit issued to municipal or any publicly owned treatment works or facility  
100 shall require the permittee to provide the clean water commission with adequate notice of any  
101 substantial new introductions of water contaminants or pollutants into such works or facility  
102 from any source for which such notice is required by sections 644.006 to 644.141 or any federal  
103 water pollution control act. Such permit shall also require the permittee to notify the clean water  
104 commission of any substantial change in volume or character of water contaminants or pollutants  
105 being introduced into its treatment works or facility by a source which was introducing water  
106 contaminants or pollutants into its works at the time of issuance of the permit. Notice must  
107 describe the quality and quantity of effluent being introduced or to be introduced into such works  
108 or facility by a source which was introducing water contaminants or pollutants into its works at  
109 the time of issuance of the permit. Notice must describe the quality and quantity of effluent  
110 being introduced or to be introduced into such works or facility and the anticipated impact of  
111 such introduction on the quality or quantity of effluent to be released from such works or facility  
112 into waters of the state.

113 12. The director or the commission may require the filing or posting of a bond as a  
114 condition for the issuance of permits for construction of temporary [or] **water treatment**  
115 **facilities**, future water treatment facilities, **or facilities that utilize innovative wastewater**  
116 **treatment technology** in an amount determined by the commission to be sufficient to ensure  
117 compliance with all provisions of sections 644.006 to 644.141, and any rules or regulations of  
118 the commission and any condition as to such construction in the permit. The bond shall be  
119 signed by the applicant as principal, and by a corporate surety licensed to do business in the state  
120 of Missouri and approved by the commission. The bond shall remain in effect until the terms

121 and conditions of the permit are met and the provisions of sections 644.006 to 644.141 and rules  
122 and regulations promulgated pursuant thereto are complied with.

123           13. (1) The department shall issue or deny applications for construction and site-specific  
124 operating permits received after January 1, 2001, within one hundred eighty days of the  
125 department's receipt of an application. For general construction and operating permit  
126 applications received after January 1, 2001, that do not require a public participation process, the  
127 department shall issue or deny the requested permits within sixty days of the department's receipt  
128 of an application.

129           (2) If the department fails to issue or deny with good cause a construction or operating  
130 permit application within the time frames established in subdivision (1) of this subsection, the  
131 department shall refund the full amount of the initial application fee within forty-five days of  
132 failure to meet the established time frame. If the department fails to refund the application fee  
133 within forty-five days, the refund amount shall accrue interest at a rate established pursuant to  
134 section 32.065, RSMo.

135           (3) Permit fee disputes may be appealed to the commission within thirty days of the date  
136 established in subdivision (2) of this subsection. If the applicant prevails in a permit fee dispute  
137 appealed to the commission, the commission may order the director to refund the applicant's  
138 permit fee plus interest and reasonable attorney's fees as provided in sections 536.085 and  
139 536.087, RSMo. A refund of the initial application or annual fee does not waive the applicant's  
140 responsibility to pay any annual fees due each year following issuance of a permit.

141           (4) No later than December 31, 2001, the commission shall promulgate regulations  
142 defining shorter review time periods than the time frames established in subdivision (1) of this  
143 subsection, when appropriate, for different classes of construction and operating permits. In no  
144 case shall commission regulations adopt permit review times that exceed the time frames  
145 established in subdivision (1) of this subsection. The department's failure to comply with the  
146 commission's permit review time periods shall result in a refund of said permit fees as set forth  
147 in subdivision (2) of this subsection. On a semiannual basis, the department shall submit to the  
148 commission a report which describes the different classes of permits and reports on the number  
149 of days it took the department to issue each permit from the date of receipt of the application and  
150 show averages for each different class of permits.

151           (5) During the department's technical review of the application, the department may  
152 request the applicant submit supplemental or additional information necessary for adequate  
153 permit review. The department's technical review letter shall contain a sufficient description of  
154 the type of additional information needed to comply with the application requirements.

155 (6) Nothing in this subsection shall be interpreted to mean that inaction on a permit  
156 application shall be grounds to violate any provisions of sections 644.006 to 644.141 or any rules  
157 promulgated pursuant to sections 644.006 to 644.141.

158 14. The department shall respond to all requests for individual certification under Section  
159 401 of the Federal Clean Water Act within the lesser of sixty days or the allowed response period  
160 established pursuant to applicable federal regulations without request for an extension period  
161 unless such extension is determined by the commission to be necessary to evaluate significant  
162 impacts on water quality standards and the commission establishes a timetable for completion  
163 of such evaluation in a period of no more than one hundred eighty days.

164 15. All permit fees generated pursuant to this chapter shall not be used for the  
165 development or expansion of total maximum daily loads studies on either the Missouri or  
166 Mississippi rivers.

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