

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2109
95TH GENERAL ASSEMBLY

Reported from the Committee on Agriculture, Food Production and Outdoor Resources, April 15, 2010, with recommendation that the Senate Committee Substitute do pass.

4911S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 644.036, 644.052, and 644.054, RSMo, and to enact in lieu thereof three new sections relating to the Missouri clean water law.

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

Section A. Sections 644.036, 644.052, and 644.054, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 644.036,
3 644.052, and 644.054, to read as follows:

644.036. 1. No standard, rule or regulation or any amendment or repeal
2 thereof shall be adopted except after a public hearing to be held after thirty days'
3 prior notice by advertisement of the date, time and place of the hearing and
4 opportunity given to the public to be heard. Notice of the hearings and copies of
5 the proposed standard, rule or regulation or any amendment or repeal thereof
6 shall also be given by regular mail, at least thirty days prior to the scheduled
7 date of the hearing, to any person who has registered with the director for the
8 purpose of receiving notice of such public hearings in accordance with the
9 procedures prescribed by the commission at least forty-five days prior to the
10 scheduled date of the hearing. However, this provision shall not preclude
11 necessary changes during this thirty-day period.

12 2. At the hearing, opportunity to be heard by the commission with respect
13 to the subject thereof shall be afforded any interested person upon written
14 request to the commission, addressed to the director, not later than seven days
15 prior to the hearing, and may be afforded to other persons if convenient. In
16 addition, any interested persons, whether or not heard, may submit, within seven
17 days subsequent to the hearings, a written statement of their views. The

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 commission may solicit the views, in writing, of persons who may be affected by,
19 or interested in, proposed rules and regulations, or standards. Any person heard
20 or represented at the hearing or making written request for notice shall be given
21 written notice of the action of the commission with respect to the subject thereof.

22 3. Any standard, rule or regulation or amendment or repeal thereof shall
23 not be deemed adopted or in force and effect until it has been approved in writing
24 by at least four members of the commission. A standard, rule or regulation or an
25 amendment or repeal thereof shall not become effective until a certified copy
26 thereof has been filed with the secretary of state as provided in chapter 536,
27 RSMo.

28 4. Unless prohibited by any federal water pollution control act, any
29 standard, rule or regulation or any amendment or repeal thereof which is adopted
30 by the commission may differ in its terms and provisions as between particular
31 types and conditions of water quality standards or of water contaminants, as
32 between particular classes of water contaminant sources, and as between
33 particular waters of the state.

34 5. Any listing required by Section 303(d) of the federal Clean Water Act,
35 as amended, 33 U.S.C. 1251, et seq., to be sent to the U.S. Environmental
36 Protection Agency for its approval that will result in any waters of the state being
37 classified as impaired shall be adopted by the commission after a public hearing,
38 or series of hearings, held in accordance with the following procedures. The
39 department of natural resources shall publish in at least six regional newspapers,
40 in advance, a notice by advertisement the availability of a proposed list of
41 impaired waters of the state and such notice shall include at least ninety days'
42 advance notice of the date, time, and place of the public hearing and opportunity
43 given to the public to be heard. Notice of the hearings and copies of the proposed
44 list of impaired waters also shall be posted on the department of natural
45 resources' website and given by regular mail, at least ninety days prior to the
46 scheduled date of the hearing, to any person who has registered with the director
47 for the purpose of receiving notice of such public hearings. The proposed list of
48 impaired waters shall identify the water segment, the uses to be made of such
49 waters, the uses impaired, identify the pollutants causing or expected to cause
50 violations of the applicable water quality standards, and provide a summary of
51 the data relied upon to make the preliminary determination. Contemporaneous
52 with the publication of the notice of public hearing, the department shall make
53 available on its website all data and information it relied upon to prepare the

54 proposed list of impaired waters, including a narrative explanation of how the
55 department determined the water segment was impaired. At any time after the
56 public notice and until seven days after the public hearing, the department shall
57 accept written comments on the proposed list of impaired waters. After the
58 public hearing and after all written comments have been submitted, the
59 department shall prepare a written response to all comments and a revised list
60 of impaired waters. The commission shall adopt a list of impaired waters in a
61 public meeting during which the public shall be afforded an opportunity to
62 respond to the department's written response to comments and revised list of
63 impaired waters.

64 Notice of the meeting shall include the date, time, and place of the public meeting
65 and shall provide notice that the commission will give interested persons the
66 opportunity to respond to the department's revised list of impaired waters and
67 written responses to comments. At its discretion, the commission may extend
68 public comment periods or hold additional public hearings on the proposed and
69 revised lists of impaired waters. The commission shall not vote to add to the list
70 of impaired waters any waters not recommended by the department in the
71 proposed or revised lists of impaired waters without granting the public at least
72 thirty additional days to comment on the proposed addition. The list of impaired
73 waters adopted by the commission shall not be deemed to be a rule as defined by
74 section 536.010, RSMo. The listing of any water segment on the list of impaired
75 waters adopted by the commission shall be subject to judicial review by any
76 adversely affected party under section 536.150, RSMo. The provisions in this
77 subsection shall expire on August 28, [2010] **2012**.

644.052. 1. Persons with operating permits or permits by rule issued
2 pursuant to this chapter shall pay fees pursuant to subsections 2 to 8 and 12 to
3 13 of this section. Persons with a sewer service connection to public sewer
4 systems owned or operated by a city, public sewer district, public water district
5 or other publicly owned treatment works shall pay a permit fee pursuant to
6 subsections 10 and 11 of this section.

7 2. A privately owned treatment works or an industry which treats only
8 human sewage shall annually pay a fee based upon the design flow of the facility
9 as follows:

10 (1) One hundred dollars if the design flow is less than five thousand
11 gallons per day;

12 (2) One hundred fifty dollars if the design flow is equal to or greater than

13 five thousand gallons per day but less than six thousand gallons per day;

14 (3) One hundred seventy-five dollars if the design flow is equal to or
15 greater than six thousand gallons per day but less than seven thousand gallons
16 per day;

17 (4) Two hundred dollars if the design flow is equal to or greater than
18 seven thousand gallons per day but less than eight thousand gallons per day;

19 (5) Two hundred twenty-five dollars if the design flow is equal to or
20 greater than eight thousand gallons per day but less than nine thousand gallons
21 per day;

22 (6) Two hundred fifty dollars if the design flow is equal to or greater than
23 nine thousand gallons per day but less than ten thousand gallons per day;

24 (7) Three hundred seventy-five dollars if the design flow is equal to or
25 greater than ten thousand gallons per day but less than eleven thousand gallons
26 per day;

27 (8) Four hundred dollars if the design flow is equal to or greater than
28 eleven thousand gallons per day but less than twelve thousand gallons per day;

29 (9) Four hundred fifty dollars if the design flow is equal to or greater than
30 twelve thousand gallons per day but less than thirteen thousand gallons per day;

31 (10) Five hundred dollars if the design flow is equal to or greater than
32 thirteen thousand gallons per day but less than fourteen thousand gallons per
33 day;

34 (11) Five hundred fifty dollars if the design flow is equal to or greater
35 than fourteen thousand gallons per day but less than fifteen thousand gallons per
36 day;

37 (12) Six hundred dollars if the design flow is equal to or greater than
38 fifteen thousand gallons per day but less than sixteen thousand gallons per day;

39 (13) Six hundred fifty dollars if the design flow is equal to or greater than
40 sixteen thousand gallons per day but less than seventeen thousand gallons per
41 day;

42 (14) Eight hundred dollars if the design flow is equal to or greater than
43 seventeen thousand gallons per day but less than twenty thousand gallons per
44 day;

45 (15) One thousand dollars if the design flow is equal to or greater than
46 twenty thousand gallons per day but less than twenty-three thousand gallons per
47 day;

48 (16) Two thousand dollars if the design flow is equal to or greater than

49 twenty-three thousand gallons per day but less than twenty-five thousand gallons
50 per day;

51 (17) Two thousand five hundred dollars if the design flow is equal to or
52 greater than twenty-five thousand gallons per day but less than thirty thousand
53 gallons per day;

54 (18) Three thousand dollars if the design flow is equal to or greater than
55 thirty thousand gallons per day but less than one million gallons per day; or

56 (19) Three thousand five hundred dollars if the design flow is equal to or
57 greater than one million gallons per day.

58 3. Persons who produce industrial process wastewater which requires
59 treatment and who apply for or possess a site-specific permit shall [annually]
60 pay:

61 (1) Five thousand dollars **annually** if the industry is a class IA animal
62 feeding operation as defined by the commission; or

63 (2) For facilities issued operating permits based upon categorical
64 standards pursuant to the Federal Clean Water Act and regulations
65 implementing such act:

66 (a) Three thousand five hundred dollars **annually** if the design flow is
67 less than one million gallons per day; or

68 (b) Five thousand dollars **annually** if the design flow is equal to or
69 greater than one million gallons per day;

70 (3) **One hundred fifty dollars every five years if the industry is**
71 **a class IB animal feeding operation as defined by the commission; or**

72 (4) **One hundred fifty dollars every five years if the industry is**
73 **a class IC or smaller animal feeding operation as defined by the**
74 **commission.**

75 4. Persons who apply for or possess a site-specific permit solely for
76 industrial storm water shall pay an annual fee of:

77 (1) One thousand three hundred fifty dollars if the design flow is less than
78 one million gallons per day; or

79 (2) Two thousand three hundred fifty dollars if the design flow is equal
80 to or greater than one million gallons per day.

81 5. Persons who produce industrial process wastewater who are not
82 included in subsection 2 or 3 of this section shall annually pay:

83 (1) One thousand five hundred dollars if the design flow is less than one
84 million gallons per day; or

85 (2) Two thousand five hundred dollars if the design flow is equal to or
86 greater than one million gallons per day.

87 6. Persons who apply for or possess a general permit shall pay:

88 (1) Three hundred dollars for the discharge of storm water from a land
89 disturbance site;

90 (2) Fifty dollars annually for the operation of a chemical fertilizer or
91 pesticide facility;

92 (3) One hundred fifty dollars for the operation of an animal feeding
93 operation or a concentrated animal feeding operation;

94 (4) One hundred fifty dollars annually for new permits for the discharge
95 of process water or storm water potentially contaminated by activities not
96 included in subdivisions (1) to (3) of this subsection. Persons paying fees
97 pursuant to this subdivision with existing general permits on August 27, 2000,
98 and persons paying fees pursuant to this subdivision who receive renewed general
99 permits on the same facility after August 27, 2000, shall pay sixty dollars
100 annually;

101 (5) Up to two hundred fifty dollars annually for the operation of an
102 aquaculture facility.

103 7. Requests for modifications to state operating permits on entities that
104 charge a service connection fee pursuant to subsection 10 of this section shall be
105 accompanied by a two hundred dollar fee. The department may waive the fee if
106 it is determined that the necessary modification was either initiated by the
107 department or caused by an error made by the department.

108 8. Requests for state operating permit modifications other than those
109 described in subsection 7 of this section shall be accompanied by a fee equal to
110 twenty-five percent of the annual operating fee assessed for the facility pursuant
111 to this section. The department may waive the fee if it is determined that the
112 necessary modification was either initiated by the department or caused by an
113 error made by the department.

114 9. Persons requesting water quality certifications in accordance with
115 Section 401 of the Federal Clean Water Act shall pay a fee of seventy-five dollars
116 and shall submit the standard application form for a Section 404 permit as
117 administered by the U.S. Army Corps of Engineers or similar information
118 required for other federal licenses and permits, except that the fee is waived for
119 water quality certifications issued and accepted for activities authorized pursuant
120 to a general permit or nationwide permit by the U.S. Army Corps of Engineers.

121 10. Persons with a direct or indirect sewer service connection to a public
122 sewer system owned or operated by a city, public sewer district, public water
123 district, or other publicly owned treatment works shall pay an annual fee per
124 water service connection as provided in this subsection. Customers served by
125 multiple water service connections shall pay such fee for each water service
126 connection, except that no single facility served by multiple connections shall pay
127 more than a total of seven hundred dollars per year. The fees provided for in this
128 subsection shall be collected by the agency billing such customer for sewer service
129 and remitted to the department. The fees may be collected in monthly, quarterly
130 or annual increments, and shall be remitted to the department no less frequently
131 than annually. The fees collected shall not exceed the amounts specified in this
132 subsection and, except as provided in subsection 11 of this section, shall be
133 collected at the specified amounts unless adjusted by the commission in
134 rules. The annual fees shall not exceed:

135 (1) For sewer systems that serve more than thirty-five thousand
136 customers, forty cents per residential customer as defined by the provider of said
137 sewer service until such time as the commission promulgates rules defining the
138 billing procedure;

139 (2) For sewer systems that serve equal to or less than thirty-five thousand
140 but more than twenty thousand customers, fifty cents per residential customer
141 as defined by the provider of said sewer service until such time as the commission
142 promulgates rules defining the billing procedure;

143 (3) For sewer systems that serve equal to or less than twenty thousand
144 but more than seven thousand customers, sixty cents per residential customer as
145 defined by the provider of said sewer service until such time as the commission
146 promulgates rules defining the billing procedure;

147 (4) For sewer systems that serve equal to or less than seven thousand but
148 more than one thousand customers, seventy cents per residential customer as
149 defined by the provider of said sewer service until such time as the commission
150 promulgates rules defining the billing procedure;

151 (5) For sewer systems that serve equal to or less than one thousand
152 customers, eighty cents per residential customer as defined by the provider of
153 said sewer service until such time as the commission promulgates rules defining
154 the billing procedure;

155 (6) Three dollars for commercial or industrial customers not served by a
156 public water system as defined in chapter 640, RSMo;

157 (7) Three dollars per water service connection for all other customers with
158 water service connections of less than or equal to one inch excluding taps for fire
159 suppression and irrigation systems;

160 (8) Ten dollars per water service connection for all other customers with
161 water service connections of more than one inch but less than or equal to four
162 inches, excluding taps for fire suppression and irrigation systems;

163 (9) Twenty-five dollars per water service connection for all other
164 customers with water service connections of more than four inches, excluding taps
165 for fire suppression and irrigation systems.

166 11. Customers served by any district formed pursuant to the provisions
167 of section 30(a) of article VI of the Missouri Constitution shall pay the fees set
168 forth in subsection 10 of this section according to the following schedule:

169 (1) From August 28, 2000, through September 30, 2001, customers of any
170 such district shall pay fifty percent of such fees; and

171 (2) Beginning October 1, 2001, customers of any such districts shall pay
172 one hundred percent of such fees.

173 12. Persons submitting a notice of intent to operate pursuant to a permit
174 by rule shall pay a filing fee of twenty-five dollars.

175 13. For any general permit issued to a state agency for highway
176 construction pursuant to subdivision (1) of subsection 6 of this section, a single
177 fee may cover all sites subject to the permit.

644.054. 1. Fees imposed in sections 644.052 and 644.053 shall, except
2 for those fees imposed pursuant to subsection 4 and subsections 6 to 13 of section
3 644.052, become effective October 1, 1990, and shall expire December 31, [2010]
4 **2012**. Fees imposed pursuant to subsection 4 and subsections 6 to 13 of section
5 644.052 shall become effective August 28, 2000, and shall expire on December 31,
6 [2010] **2012**. The clean water commission shall promulgate rules and regulations
7 on the procedures for billing and collection. All sums received through the
8 payment of fees shall be placed in the state treasury and credited to an
9 appropriate subaccount of the natural resources protection fund created in section
10 640.220, RSMo. Moneys in the subaccount shall be expended, upon appropriation,
11 solely for the administration of sections 644.006 to 644.141. Fees collected
12 pursuant to subsection 10 of section 644.052 by a city, a public sewer district, a
13 public water district or other publicly owned treatment works are state fees. Five
14 percent of the fee revenue collected shall be retained by the city, public sewer
15 district, public water district or other publicly owned treatment works as

16 reimbursement of billing and collection expenses.

17 2. The commission may grant a variance pursuant to section 644.061 to
18 reduce fees collected pursuant to section 644.052 for facilities that adopt systems
19 or technologies that reduce the discharge of water contaminants substantially
20 below the levels required by commission rules.

21 3. Fees imposed in subsections 2 to 6 of section 644.052 shall be due on
22 the date of application and on each anniversary date of permit issuance thereafter
23 until the permit is terminated.

24 [4. There shall be convened a joint committee appointed by the president
25 pro tem of the senate and the speaker of the house of representatives to consider
26 proposals for restructuring the fees imposed in sections 644.052 and 644.053. The
27 committee shall review storm water programs, the state's implementation of the
28 federal clean water program, storm water, and related state clean water
29 responsibilities, and evaluate the costs to the state for maintaining the
30 programs. The committee shall prepare and submit a report, including
31 recommendations on funding the state clean water program, and storm water
32 programs, to the governor, the house of representatives, and the senate no later
33 than December 31, 2008.]

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