



Rules of
Department of Natural Resources
Division 60—Public Drinking Water Program
Chapter 6—Variances, Exemptions and Abatement
Orders

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**Title 10—DEPARTMENT OF
NATURAL RESOURCES**

**Division 60—Public Drinking Water
Program**

**Chapter 6—Variances, Exemptions and
Abatement Orders**

**10 CSR 60-6.010 Procedures and Require-
ments for Variances**

PURPOSE: This rule sets forth procedures and requirements for requesting and granting variances.

(1) Conditions of Variance. The department may grant one (1) or more variances to any water system from any maximum contaminant level (MCL) requirement, except for those MCL violations that present an acute, short-term risk to public health, or a specified treatment technique.

(A) A variance from an MCL may be granted upon a finding that, due to characteristics of raw water sources which are reasonably available, the system cannot meet the MCL requirement despite application of the best available technology, treatment techniques or other means, which the department, taking cost into consideration, finds generally available; and the granting of a variance will not result in an unreasonable risk to persons served by the system.

(B) A variance from a specified treatment technique may be granted upon a finding that a public water system applying for this variance has demonstrated that the treatment technique is not necessary to protect persons served by the system because of the nature of the raw water source.

(2) Variance Request. A supplier of water seeking a variance shall submit a written request to the department. Suppliers of water may submit a joint request for a variance when they seek similar variances under similar circumstances. Any written request for a variance shall include the following information:

(A) The nature and duration of the variance requested;

(B) Relevant analytical results of water quality sampling of the system including sampling of raw water relevant to the variance request;

(C) Requests made under provisions of section (1) shall include:

1. Full discussion with supporting data regarding the best available treatment technology and techniques including evidence of the inability of the system to comply, despite the application of the technology and techniques;

2. Economic and legal factors relevant to ability to comply;

3. A proposed compliance schedule, including the date each step toward compliance will be achieved;

4. The date by which the connection of an alternative raw water source or an improvement of an existing raw water source will be initiated;

5. The date by which an arrangement for an alternative raw water source or for an improvement of an existing raw water source will be completed;

6. The date by which final compliance is to be achieved;

7. A plan for the provision of safe drinking water should there be an excessive rise in the contaminant level for which the variance is requested; and

8. A plan for interim control measures during the effective period of variance;

(D) Any request made under the provisions of this rule shall include, as a condition of the variance, a statement that the system will perform monitoring and other reasonable requirements prescribed by the department;

(E) Any other information the applicant believes to be pertinent; and

(F) Other information as the department may require.

(3) Consideration of Variance Request. In considering whether the public water system—

(A) Is unable to comply with a contaminant level requirement because of the nature of the raw water source, the department shall review factors it considers to be relevant, including the following:

1. The availability, effectiveness and reliability of treatment methods for the contaminant for which the variance is requested; and

2. Cost and other economic considerations in implementing treatment, improving the quality of the source of water or using an alternate source; and

(B) Should be granted a variance to a required treatment technique because the treatment is unnecessary to protect the public, the department shall consider the following factors:

1. Quality of the water source including water quality data and pertinent sources of pollution; and

2. Susceptibility of the source to contamination and the source protection measures employed by the public water system.

(4) Disposition of a Request for Variance. If the department determines that a request for

a variance is inadequate or incomplete, it may deny the request.

(A) If the department proposes to grant a variance request submitted pursuant to section (2), it shall notify the applicant of its decision in writing. The notice shall identify the variance, the facility covered and shall specify, as appropriate, the period of time for which the variance will be effective.

(B) For the type of variance specified in section (1), the notice also shall provide that the variance will be terminated when the system comes into compliance with the applicable rule and may be terminated upon a finding by the department that the system has failed to comply with any requirements of a final schedule issued pursuant to 10 CSR 60-6.030.

(C) For the type of variance specified in section (1), the notice shall provide for termination of the variance at any time based upon a finding that the—

1. Nature of a raw water source is that the specified treatment technique required by the variance is necessary to protect persons; or

2. Public water system has failed to comply with monitoring and other requirements prescribed by the department as a condition to the granting of a variance.

AUTHORITY: section 640.120, RSMo (1994). Original rule filed May 4, 1979, effective Sept. 14, 1979. Amended: Filed April 14, 1981, effective Oct. 11, 1981. Amended: Filed June 2, 1988, effective Aug. 31, 1988. Amended: Filed Dec. 4, 1990, effective July 8, 1991. Amended: Filed Feb. 1, 1996, effective Oct. 30, 1996.*

**Original authority 1978, amended 1989, 1992.*

**10 CSR 60-6.020 Procedures and Require-
ments for Exemptions**

PURPOSE: This rule establishes requirements for requesting exemptions to maximum contaminant levels and treatment techniques.

(1) Conditions of Exemption. The department may exempt a public water system from any maximum contaminant level (MCL) requirement, except for those MCL violations that present an acute, short-term risk to public health or any treatment technique requirement, or both, upon a finding that—

(A) Due to compelling factors (which may include economic factors), the public water system is unable to comply with the

contaminant level or treatment technique requirement;

(B) The public water system was in operation on the effective date of the contaminant level or treatment technique requirement; and

(C) The granting of the exemption will not result in an unreasonable risk to persons served by the system.

(2) Exemption Request. A supplier of water seeking an exemption shall submit a written request to the department. Suppliers of water may submit a joint request when they seek similar exemptions under similar circumstances. Any written request for an exemption shall include the following information:

(A) The nature and duration of exemption requested;

(B) Relevant analytical results of water quality sampling of the system;

(C) Explanation of the compelling factors, such as time or economic factors, which prevent the system from achieving compliance;

(D) A proposed compliance schedule including the date when each step toward compliance will be achieved;

(E) Any other information the applicant believes to be pertinent; and

(F) Other information the department may require.

(3) Consideration of an Exemption Request. In considering whether the public water system is unable to comply due to compelling factors, the department shall review the factors it determines relevant including the following:

(A) Construction, installation or modification of treatment equipment or systems;

(B) The time needed to put into operation a new treatment facility replacing an existing system which is not in compliance; and

(C) Economic feasibility of compliance.

(4) Disposition of Exemption Request. If the department determines that a request for an exemption is inadequate or incomplete, it may deny the request.

(A) If the department proposes to grant an exemption request submitted pursuant to sections (1)—(3) respectively, it shall notify the applicant of its decision in writing. The notice shall identify the exemption, the facility covered and shall specify, as appropriate, the termination date of the exemption.

(B) The notice also shall provide that the exemption will be terminated when the system comes into compliance with the applicable regulation and may be terminated upon a finding by the department that the system has failed to comply with any requirements of a

final schedule issued pursuant to 10 CSR 60-6.030.

AUTHORITY: section 640.120, RSMo (Cum. Supp. 1989). Original rule filed May 4, 1979, effective Sept. 14, 1979. Amended: Filed April 14, 1981, effective Oct. 11, 1981. Amended: Filed Dec. 4, 1990, effective July 8, 1991.*

**Original authority 1978, amended 1989.*

10 CSR 60-6.030 Schedules for Variances and Exemptions

PURPOSE: This rule establishes schedules for compliance with these rules.

(1) Compliance and Implementation. For a variance as specified in 10 CSR 60-6.010(1)(A) or an exemption as specified in 10 CSR 60-6.020(1), the department shall provide a schedule for—

(A) Compliance (including increments of progress) by the public water system with each contaminant level requirement covered by the variance or each contaminant level and treatment technique covered by the exemption; and

(B) Implementation by the public water system of the control measures the department may require for each contaminant covered by the variance or exemption.

(2) Schedule for Compliance. A proposed schedule for compliance shall contain the conditions as the department may prescribe and shall specify dates by which steps toward compliance are to be taken, including, where applicable:

(A) The date by which arrangement for an alternative raw water source or improvement of existing raw water source will be completed;

(B) The date of initiating the connection to an alternative raw water source or improving the existing raw water source; and

(C) The date by which final compliance is to be achieved.

(3) Alternative for Compliance. The proposed schedule for compliance for a variance specified in this rule, if the public water system has no access to an alternative raw water source and can effect or anticipate no adequate improvement of the existing raw water source, may specify an indefinite time period for compliance until a new and effective treatment technology is developed. A new compliance schedule shall be prescribed by the department at that time.

(4) Interim Measures. The proposed schedule for implementation of interim control measures during the period of the variance shall specify interim treatment techniques, methods, equipment and dates by which steps toward meeting the interim control measures are to be met.

(5) Final Compliance.

(A) The proposed schedule for compliance for an exemption specified in this rule shall require compliance with each contaminant level and treatment technique twelve (12) months after the date of the issuance of the exemption. The final date for compliance may be extended for a period not to exceed three (3) years after the date of the issuance of the exemption if the public water system establishes that—

1. The system cannot meet the standard without capital improvements which cannot be completed within the period of the exemption;

2. In the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain financial assistance; or

3. The system has entered into an enforceable agreement to become a part of a regional public water system and the system is taking all practicable steps to meet the standard.

(B) In the case of a system which does not serve more than five hundred (500) service connections and which needs financial assistance for the necessary improvements, an exemption granted under this rule may be renewed for one (1) or more additional two (2)-year periods, if the system establishes that it continues to meet the requirements of this section.

(6) Compliance Schedule. This schedule shall be prescribed by the department at the time of the granting of the variance or exemption, subsequent to provision of the opportunity for hearing as required by 10 CSR 60-6.040.

(7) Conditions. The department may prescribe the reasonable conditions as part of any variance or exemption.

(8) The department shall act on any variance or exemption within ninety (90) days after the receipt of the variance or exemption request.

AUTHORITY: section 640.120, RSMo (1994). Original rule filed May 4, 1979, effective Sept. 14, 1979. Amended: Filed April 14, 1981, effective Oct. 11, 1981. Amended: Filed Aug. 4, 1987, effective Jan. 1, 1988. Amended:*



Filed Feb. 1, 1996, effective Oct 30, 1996.

*Original authority 1978, amended 1989, 1992.

10 CSR 60-6.040 Public Hearings on Variance, Variance Schedules, Exemptions and Exemption Schedules

PURPOSE: This rule establishes requirements for public hearings on variances, exemptions, variance schedules and exemption schedules.

(1) Hearing Required. Before a variance, variance schedule, exemption or exemption schedule proposed by the department as required by 10 CSR 60-6.010 and 10 CSR 60-6.020 may take effect, the department shall provide notice and opportunity for public hearing on the variance, variance schedule, exemption or exemption schedule. Any hearing held pursuant to this section shall be held in an area where distribution is made by the supplier of water requesting a variance or exemption. A notice given pursuant to this section may cover the granting of more than one (1) variance, variance schedule, exemption or exemption schedule. A hearing held pursuant to the notice shall include each of the variances, variance schedules, exemptions or exemption schedules covered by the notice. The notice shall include a summary of the proposed variance, variance schedule, exemption or exemption schedule as specified in the notice and that they also may request a public hearing on the proposed variance, variance schedule, exemption or exemption schedule.

(2) Notice of Hearing Required. Public notice of an opportunity for hearing on a variance, variance schedule, exemption or exemption schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed variance, variance schedule, exemption or exemption schedule and shall include at least the following:

(A) Posting of a notice in the principal post office of each community or area served by the public water system and publication of a notice in a newspaper(s) of general circulation in the area served by the public water system; and

(B) Mailing of a notice to other appropriate state or local agencies at the department's discretion.

(3) Submission of Request. Requests for hearing may be submitted by any interested

person. Frivolous or insubstantial requests for hearing may be denied by the department. Requests must be submitted to the department within thirty (30) days after issuance of the public notices provided for in this rule. These requests shall include the following information:

(A) The name, address and telephone number of the individual, organization or other entity requesting a hearing;

(B) A brief statement of the interest of the person making the request in the proposed variance, variance schedule, exemption or exemption schedule and of information that the requesting person intends to submit at the hearing; and

(C) The signature of a responsible official of the organization or other entity.

(4) Conditions of Notice. The department shall give notice in the manner set forth in this rule of any hearing to be held pursuant to a request submitted by an interested person called upon motion of the department. Notice of the hearing shall also be sent to the persons requesting the hearing, if any. Notice of the hearing shall include a statement of the purpose of the hearing, information regarding the time and location for the hearing and the address and telephone number of any office at which interested persons may obtain further information concerning the hearing. Notice shall be given not less than fifteen (15) days prior to the time scheduled for the hearing.

(5) Character of the Hearing. A hearing convened pursuant to section (1) shall not be deemed to be a contested case hearing within the meaning of section 536.010(2), RSMo. The hearing shall be conducted by the director or a hearing officer designated by the director. The hearing shall be conducted in an informal, orderly and expeditious manner. The hearing officer shall have authority to call witnesses, receive oral and written testimony and take other action as may be necessary to assure the fair and efficient conduct of the hearing.

(6) Exception to Hearing Provision. The department may provide that the variance, variance schedule, exemption or exemption schedule shall become effective thirty (30) days after notice of opportunity for hearing is given as required by this rule, or if no timely request for a hearing is submitted, and the department does not determine to hold a public hearing.

(7) Final Disposition. Within sixty (60) days after the termination of any public hearing held as required by this rule, the department shall take into consideration information

obtained during the hearing and other relevant information and confirm, revise or rescind the proposed variance, variance schedule, exemption or exemption schedule as necessary.

*AUTHORITY: section 640.120, RSMo (Cum. Supp. 1989). * Original rule filed May 4, 1979, effective Sept. 14, 1979. Amended: Filed April 14, 1981, effective Oct. 11, 1981.*

*Original authority 1978, amended 1989.

10 CSR 60-6.050 Procedures and Requirements for Abatement Orders

PURPOSE: This rule sets forth procedures for issuing and requirements for complying with abatement orders.

(1) Whenever the department determines that an emergency condition exists that endangers or could be expected to endanger the public health and safety with regard to drinking water systems, the department may issue, without notice or hearing, an abatement order reciting the existence of the condition and requiring the supplier of water to take an action(s) that will lessen or abate the danger.

(2) Any abatement order may be appealed within thirty (30) days after issuance of the order to the circuit court of the county in which the public water system is located or, if the public water system is located in more than one (1) county, to the circuit court of any of the counties.

(3) The abatement order shall become effective immediately upon issuance. Until an appeal is filed and a determination is made by the circuit court, the supplier of water must comply with the abatement order.

(4) The abatement order shall remain in effect until the condition has been corrected to the satisfaction of the department or the order is nullified by a county circuit court.

(A) Any construction or installation of facilities to correct the condition shall be done in accordance with the requirements of 10 CSR 60-3.010 and 10 CSR 60-10.010.

(B) The department reserves the authority to make the final determination of whether or not a condition has been corrected.

(5) Public notification of an abatement order must be issued in accordance with 10 CSR 60-8.010(1).

*AUTHORITY: section 640.130, RSMo (1986). * Original rule filed July 12, 1991, effective Feb. 6, 1992.*

**Original authority 1978, amended 1981.*

10 CSR 60-6.060 Waivers From Baseline Monitoring Requirements

PURPOSE: This rule establishes waiver requirements from testing for asbestos, volatile organic chemicals, synthetic organic chemicals and inorganic chemicals.

(1) Waivers may be granted by the department in accordance with the criteria in sections (2) and (3) of this rule. The department may initiate the evaluation and issue a waiver based on its evaluation of the criteria in sections (2) and (3) of this rule. A public water system may request a waiver in accordance with sections (2) and (3) of this rule at any time if the department has not issued or denied a waiver. The request must be in writing, and the documentation submitted to support a request for a waiver from a public water system must be in a format specified by the department.

(2) Use waivers may be granted if it is determined that there has been no previous use of a contaminant within a given boundary and that the public water supply system is in no danger of contamination from the specified contaminant. Use waivers are based on the use, or absence of use, of a potentially harmful contaminant within a given boundary. The boundary size will be determined by the department and can range from a single water system to statewide. Use waivers obtained for asbestos, synthetic organic chemicals and unregulated chemicals (SOCs) may relieve the system of any sampling requirements. Use waivers will not be granted for volatile organic chemicals listed in 10 CSR 60-4.100(2) or for inorganic chemicals listed in 10 CSR 60-4.030(1) other than asbestos.

(A) Asbestos listed in 10 CSR 60-4.030(1)(B)—Waivers from analysis for asbestos in a water system will be based on the existence of asbestos-cement piping within the water system or asbestos contamination within the source water. If any asbestos-cement piping is present in any part of the treatment/distribution system, or if the source water is known to or suspected to contain asbestos, waivers will not be granted.

(B) SOCs listed in 10 CSR 60-4.040—Waivers from analysis for SOCs in a water system will be based on knowledge of previous use (including transportation, storage or

previous disposal) within a given boundary. If a given SOC has been detected within a water system, a waiver will not be granted to that system.

(C) Unregulated organic chemicals listed in 10 CSR 60-4.110(2)(A)—Waivers from analysis for unregulated organic chemicals in a water system will be based on knowledge of previous use (including transportation, storage or previous disposal) within a given boundary. If a given unregulated organic chemical has been detected within a water system, a waiver will not be granted.

(3) Susceptibility waivers may be granted in the form of reduced monitoring if all of the criteria in subsection (3)(A) are met. For assessing susceptibility, the minimum boundary area will be a radius of one-quarter (1/4) of a mile about groundwater well head(s) or the watershed area(s) of a surface water source and shall be used when examining criteria in paragraphs (3)(A)2. and 3. Susceptibility waivers may be granted for SOCs listed in 10 CSR 60-4.040(1) including polychlorinated biphenyls (PCBs), volatile organic chemicals (VOCs) listed in 10 CSR 60-4.100(2), unregulated chemicals listed in 10 CSR 60-4.110(2)(A) and (B), and inorganic chemicals (IOCs) listed in 10 CSR 60-4.030(1) except for nitrate and nitrite.

(A) Criteria for Susceptibility Waivers.

1. Previous analytical results show no detections.

2. The proximity of the system to a potential point or nonpoint source of contamination (that is, Superfund Amendments and Reauthorization Act (SARA) Title III hazardous waste site) is such that contamination is unlikely.

3. The environmental persistence of the contaminant is such that contamination is unlikely to occur due to the transport time, geographical and geological characteristics.

4. The water source is protected from contamination by being constructed in a manner no less stringent than set forth for non-public wells in the Water Well Construction Code 10 CSR 23-3.010—10 CSR 23-3.100 promulgated pursuant to the Missouri Water Well Drillers Act, section 256.600, RSMo.

5. The nitrate levels have been tested and it has been found that elevated nitrate levels indicating surface water intrusion do not exist.

6. The corrosive nature of the source water and the effectiveness of the systems corrosion control program.

(B) PCBs—Susceptibility waivers may be granted for PCBs if the criteria in subsection (3)(A) are met and there has been no use of PCBs in the equipment used for production,

storage or distribution of water, or sampling has not indicated the presence of PCBs.

*AUTHORITY: section 640.100, RSMo (Cum. Supp. 1992). * Original rule filed March 31, 1992, effective Dec. 3, 1992. Amended: Filed May 4, 1993, effective Jan. 13, 1994.*

**Original authority 1939, amended 1978, 1981, 1982, 1988, 1989, 1992.*