
Rules of
Department of Natural Resources
Division 60—Public Drinking Water Program
Chapter 6—Enforcement

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**Title 10—DEPARTMENT OF
NATURAL RESOURCES
Division 60—Public Drinking Water
Program
Chapter 6—Enforcement**

10 CSR 60-6.010 Procedures and Requirements for Variances

PURPOSE: This rule sets forth procedures and requirements for requesting and granting variances for any size of public water system.

(1) Conditions of Variance. The department may grant one (1) or more variances to any 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, and any specified treatment technique.

(A) A variance from an MCL may be granted to a public water system upon a finding that, due to characteristics of raw water sources which are reasonably available, the system cannot meet the MCL requirement—

1. On the condition that the system installs the best available technology, treatment techniques or other means, which the department, taking cost into consideration, finds generally available and based upon an evaluation satisfactory to the department that indicates that alternative sources of water are not reasonably available to the system; and

2. 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. A variance granted under this subsection (1)(B) shall be conditioned on such monitoring and other requirements as the department may prescribe.

(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) Full discussion with supporting data regarding the best available treatment technology and techniques including evidence of the inability of the system to comply;

(D) Economic and legal factors relevant to ability to comply;

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

(F) The date by which the connection with an alternative water source or an improvement of an existing raw water source will be initiated;

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

(H) The date by which final compliance is to be achieved;

(I) 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;

(J) A plan for interim control measures during the effective period of variance;

(K) 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;

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

(M) Other information as the department may require.

(3) Consideration of a Variance Request.

(A) In considering whether the public water system 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 relevant, including the following:

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

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

3. Characteristics of the raw water source(s);

4. Availability of an alternative water source; and

5. Risk to health.

(B) In considering whether the public water system 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.

(A) If the department determines that a request for a variance is inadequate or incomplete, it may deny the request.

(B) If the department proposes to grant a variance request—

1. The department shall provide notice and opportunity for public hearing on the proposed variance as specified in 10 CSR 60-6.040. The notice and hearing may cover more than one proposed variance;

2. The department 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;

3. For a variance from an MCL, 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; and

4. For a variance from a specified treatment technique, the notice shall provide for termination of the variance at any time based upon a finding that—

A. Due to the nature of a raw water source, the specified treatment technique required by the variance is necessary to protect persons; or

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

AUTHORITY: sections 640.100 and 640.120, RSMo Supp. 1998. 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. Amended: Filed July 1, 1999, effective March 30, 2000.*

**Original authority: 640.100, RSMo 1939, amended 1978, 1981, 1982, 1988, 1989, 1992, 1993, 1995, 1996, 1998, 1999; 640.120, RSMo 1978, amended 1989, 1992, 1998.*

10 CSR 60-6.020 Procedures and Requirements 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, including qualification of the public water system as a system serving a disadvantaged community), the public water system is unable to comply with the contaminant level or treatment technique requirement or to implement measures to develop an alternative source of water supply;

(B) The public water system was in operation on the effective date of the contaminant level or treatment technique requirement, or for a public water system that was not in operation by that date, no reasonable alternative source of drinking water is available to the system;

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

(D) Management or restructuring changes (or both) cannot reasonably be made that will result in compliance with sections 640.100–640.140, RSMo or rules promulgated thereunder, or if compliance cannot be achieved, improve the quality of the drinking water.

(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 or lack of an alternative source of water, which prevent the system from achieving compliance;

(D) Consideration of management and restructuring changes, such as—

1. Rate increases, accounting changes, operator certification, and contractual agreements for joint operation with one (1) or more public water systems;

2. Activities to acquire and maintain technical, financial, and managerial capacity; and

3. Ownership changes, physical consolidation with another public water system, or other feasible and appropriate means of consolidation which would result in compliance;

(E) Plans to seek state or federal financial assistance within the period of the exemption to implement management and restructuring changes, and capital improvements as necessary;

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

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

(H) 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;

(C) Economic feasibility of compliance;

(D) Feasibility of management and restructuring changes, and the availability of state or federal financial assistance within the period of the exemption to implement these changes, including:

1. Rate increases, accounting changes, operator certification, and contractual agreements for joint operation with one (1) or more public water systems;

2. Activities to acquire and maintain technical, financial, and managerial capacity; and

3. Ownership changes, physical consolidation with another public water system, or other feasible and appropriate means of consolidation which would result in compliance; and

(E) Availability of an alternative source of water, including the feasibility of partnerships with neighboring public water systems, as identified by the public water system or by the department consistent with the Capacity Development Strategy.

(4) Disposition of Exemption Request.

(A) If the department proposes to grant an exemption request submitted pursuant to sections (1)–(3) of this rule, it shall notify the applicant of its decision in writing. The notice shall identify the exemption, the facil-

ity 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.

(C) If the department determines that a request for an exemption is inadequate or incomplete, it may deny the request.

(D) No exemption shall be granted unless the public water system establishes that it is taking all practicable steps to meet the standard and—

1. The system cannot meet the standard without capital improvements which cannot be completed prior to two (2) years after the effective date of the rule;

2. In the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance or assistance pursuant to 10 CSR 60-13, or any other federal or state program reasonably likely to be available within the period of the exemption; or

3. The system has entered into an enforceable agreement to become a part of a regional public water system.

AUTHORITY: sections 640.100 and 640.120, RSMo Supp. 1998. 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. Amended: Filed July 1, 1999, effective March 30, 2000.*

**Original authority: 640.100, RSMo 1939, amended 1978, 1981, 1982, 1988, 1989, 1992, 1993, 1995, 1996, 1998, 1999; 640.120, RSMo 1978, amended 1989, 1992, 1998.*

10 CSR 60-6.030 Schedules for Variances and Exemptions

PURPOSE: This rule establishes schedules for compliance with conditions of general variances granted under 10 CSR 60-6.010 to any size public water system and exemptions granted under 10 CSR 60-6.020.

(1) Schedules for variances granted under 10 CSR 60-6.010.

(A) Compliance and Implementation. The department shall provide a schedule for—

1. Compliance (including increments of progress) by the public water system with each contaminant level requirement covered by the variance; and

2. Implementation by the public water system of the control measures the department may require for each contaminant covered by the variance.

(B) Schedule for Compliance.

1. 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 water source or improvement of existing raw water source will be completed;

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

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

2. 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 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.

(C) Public Hearing. Before the schedule may take effect, the department shall provide notice and opportunity for a public hearing on the schedule as specified in 10 CSR 60-6.040. The notice and hearing may cover more than one schedule.

(D) 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.

(2) Schedules for Exemptions Granted Under 10 CSR 60-6.020.

(A) The department shall provide, at the time the exemption is granted, a schedule for—

1. Compliance (including increments of progress or measures to develop an alternative source of water supply) by the public water system with each contaminant level requirement or treatment technique requirement with respect to which the exemption was granted; and

2. Implementation by the public water system of the control measures the department may require for each contaminant covered by the exemption during the period ending on the date compliance with such requirement is required.

(B) Before the schedule may take effect, the department shall provide notice and opportunity for a public hearing on the sched-

ule as specified in 10 CSR 60-6.040. The notice and hearing may cover more than one (1) schedule.

(C) Except as provided in subsection (2)(D), the schedule shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as soon as practicable (as the department may reasonably determine) but not later than three (3) years after the compliance date otherwise applicable to the contaminant level or treatment technique requirement.

(D) In the case of a system which does not serve more than three thousand three hundred (3,300) persons and which needs financial assistance for the necessary improvements under the original compliance schedule, an exemption granted under 10 CSR 60-6.020(4)(D)1. or 2. may be renewed for one (1) or more additional two (2)-year periods, but not to exceed a total of six (6) additional years, if the system establishes that it is taking all practicable steps to meet—

1. The requirements of 10 CSR 60-6.020(4)(D)1.-3.; and

2. The established compliance schedule to achieve full compliance with the contaminant level or treatment technique for which the exemption was granted.

(E) Each exemption granted by the department under 10 CSR 60-6.020 shall be conditioned by the department upon compliance by the public water system with the schedule prescribed by the department pursuant to this subsection.

(F) 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:

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

2. The date of initiating the connection to an alternative water source or improving the existing raw water source; and

3. The date by which final compliance is to be achieved.

AUTHORITY: sections 640.100 and 640.120, RSMo Supp. 1998. 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. Amended: Filed July 1, 1999, effective March 30, 2000.*

**Original authority: 640.100, RSMo 1939, amended 1978, 1981, 1982, 1988, 1989, 1992, 1993, 1995, 1996, 1998, 1999; 640.120, RSMo 1978, amended 1989, 1992, 1998.*

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 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 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.*

10 CSR 60-6.070 Administrative Penalty Assessment

PURPOSE: This rule establishes the procedures for issuance of administrative orders and assessment of administrative penalties.

(1) General Provisions.

(A) Pursuant to section 640.131, RSMo, and in addition to any other remedy provided by law, upon determination by the department that a provision of sections 640.100 to 640.140, RSMo, or a standard, limitation, order, rule, or regulation promulgated thereunder or a term or condition of any permit has been violated, the director may issue an order assessing an administrative penalty upon the violator. The amount of the administrative penalty shall be determined according to section (3) of this rule. In no event shall the penalty assessed per day of violation or the total penalty assessed per violation exceed the statutory maximums specified in subsection 640.131.2, RSMo, a summary of which is shown in the following table:

Maximum Administrative Penalty Amounts

PUBLIC WATER SYSTEM SIZE (# of people served)	MAXIMUM PENALTY AMOUNT	
	Amount Per Day Per Violation	Total Amount Per Violation
less than 500	\$100	\$1,000
500 to 9,999	\$250	\$5,000
10,000 or more	\$1,000	\$25,000

(B) An administrative penalty shall not be imposed until the department has sought to resolve the violation(s) through conference, conciliation and persuasion and shall not be imposed for minor violations. If the violation is resolved through conference, conciliation and persuasion, no administrative penalty shall be assessed unless the violation has caused a risk to human health or to the environment, or has caused or has the potential to cause pollution or was knowingly committed.

(C) An order assessing an administrative penalty shall be served upon the supplier of water or appropriate representative of the supplier of water through United States Postal Service certified mail, return receipt requested; a private courier or messenger service which provides verification of delivery; or by hand delivery to the residence or place of business of the supplier of water. An order

assessing an administrative penalty shall be considered served if verified receipt is made by the supplier of water or an appropriate representative of the supplier of water. Rejection of or refusal to accept private courier service, messenger service, hand delivery or certified mail delivery of an order assessing an administrative penalty constitutes service of the order.

(D) The director may at any time withdraw without prejudice any administrative order or administrative penalty.

(E) An order assessing an administrative penalty shall describe the nature of the violation(s), the amount of the administrative penalty, and the basis of the penalty calculation.

(F) The director may suspend a penalty in whole or in part when deemed appropriate. The director shall consider the following factors, as a minimum, in evaluating the appropriateness of suspended penalties: timeliness in response to violation(s), history of past violations, cooperative efforts towards compliance, severity of violation(s), relative risk to human health, and other extenuating circumstances. Penalties suspended under this provision may be reinstated if the violator fails to comply with all provisions of the administrative order or fails to remain in compliance for a period of one (1) year from the final compliance date of the administrative order.

(G) An administrative penalty shall not be increased in those instances where department action, or failure to act, has caused a continuation of the violation that was a basis for the penalty. Sample collection and analysis by the department to verify the quality of the water, regardless of the analytical results, shall not be construed as department action that has caused continuation of the violation. Any administrative penalty shall be assessed within two (2) years following the department's initial discovery of such alleged violation, or from the date the department in the exercise of ordinary diligence should have discovered such alleged violation.

(H) Any final order imposing an administrative penalty is subject to judicial review upon the filing of a petition pursuant to section 536.100, RSMo, by any person subject to the administrative penalty. No judicial review shall be available, however, until all administrative remedies are exhausted.

(I) The director may elect to assess an administrative penalty, or, in lieu thereof, to request that the attorney general or prosecutor file an appropriate legal action seeking a civil penalty in the appropriate circuit court.

(2) Definitions.

(A) Definitions for key words used in this rule may be found in 10 CSR 60-2.015.

(B) Additional definitions specific to this rule are as follows:

1. Conference, conciliation and persuasion. A process of verbal or written communications consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist of one (1) offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;

2. Gravity-based assessment. The degree of seriousness of a violation taking into consideration the risk to human health or the environment posed by violations of sections 640.100 to 640.140, RSMo, and associated rules and permits;

3. Major violation. A violation that poses or may pose a substantial risk to human health or to the environment, or has or may have a substantial adverse effect on the purposes of or procedures for implementing the law and associated rules or permits;

4. Minor violation. A violation that poses a small potential to harm the environment or human health or cause pollution, and was not knowingly committed;

5. Moderate violation. A violation that poses or may pose a significant risk to human health or to the environment, or has or may have a significant adverse effect on the purposes of or procedures for implementing the law and associated rules or permits;

6. Multiple violation penalty. The sum of individual administrative penalties assessed when two (2) or more violations are included in the same complaint or enforcement action;

7. Multi-day violation. A violation that has occurred on or continued for two (2) or more consecutive or nonconsecutive days; and

8. Potential for harm. The extent to which a violation poses a risk to human health or the environment or has a substantial adverse effect on the purposes of or procedures for implementing the law and associated rules or permits.

(3) Determination of Penalties. In determining the amount of the administrative penalty, the department shall take into consideration all relevant circumstances, including, but not limited to, the harm which the violation causes or may cause, the violator's previous com-

pliance record, the nature and persistence of the violation, any corrective actions taken, the number of people served by the water system and any other factors which the department may reasonably deem relevant. The amount of an administrative penalty shall involve the application of a gravity-based assessment under subsection (3)(A) of this rule and may be adjusted within the selected penalty range as specified in subsection (3)(B) of this rule. Determination of the penalty may also involve additional factors for multiple violations (subsection (3)(C) of this rule) and multi-day violations (subsection (3)(D) of this rule). The resulting total penalty amount may be further adjusted as specified under subsection (3)(E) of this rule.

(A) Gravity-Based Assessment. The gravity-based assessment is determined by evaluating the potential for harm posed by the violation and the number of people affected or potentially affected by the violation.

1. Potential for harm. The potential for harm associated with a violation is based on the extent to which the violation poses a risk to human health or the environment or has a substantial adverse effect on the purposes of or procedures for implementing the law and associated rules or permits.

A. The risk of exposure is dependent on both the likelihood that humans or the environment may be exposed to contaminants and the degree of potential exposure. Penalties will reflect the probability the violation either did result in, or could have resulted in, release of contaminants to the environment or introduction of contaminants into a public water system, and the harm which did occur, or would have occurred, if the release to the environment or contamination of the water system had in fact occurred.

B. Violations that have an adverse effect upon the purposes of the law or procedures for implementing the law and associated rules or permits may be grounds for assessment of penalties.

C. The potential for harm shall be evaluated according to the following degrees of severity:

(I) Major. Violations that pose a major potential for harm shall include, but not be limited to, the following: failure to act in an emergency situation; failure to comply with an order issued by the department; failure to meet disinfection requirements; failure to disinfect newly repaired water mains; failure to respond adequately to total water outages; failure to comply with maximum contaminant levels (MCLs) or treatment technique requirements; failure to issue public notice for acute MCL violations; and other

violations that pose a direct impact or immediate threat to public health;

(II) Moderate. Violations that pose a moderate potential for harm shall include, but not be limited to, the following: failure to issue public notice for violations other than acute MCL violations; failure to comply with monitoring requirements; failure to comply with lead and copper regulatory requirements other than treatment technique requirements; failure to maintain required minimum pressure in the water system; failure to obtain a construction permit or a permit to dispense water; failure to meet operator certification requirements; failure to meet construction standards; failure to meet operational requirements; failure to properly operate and maintain the water system; failure to comply with backflow prevention requirements; failure to meet the conditions of a compliance schedule developed under a bilateral compliance agreement, exemption, or variance; violations that do not meet the definition of "minor" violations; and other violations that pose a serious or long-term threat to public health; and

(III) Minor. Violations that pose a minor potential for harm shall include, but not be limited to, the following: failure to maintain records, microbiological sample siting plans, emergency operations plans, or other required documents; failure to meet reporting requirements; failure to pay required fees; and other violations related to the management and administration of the system.

2. Number of people affected. The penalty amount is dependent on the size of the public water system, expressed in terms of the number of people who receive water from the public water system.

3. Gravity-based penalty assessment matrix. The matrix that follows is based on the potential for harm and the number of people affected or potentially affected, and is to be used to determine the gravity-based assessment portion of the administrative penalty. Potential for harm and size of public water system form the axes of the matrix. The matrix has nine cells, each containing a penalty range. For a particular violation, the appropriate penalty range (cell) is selected according to the size of the public water system and by determining the category (major, moderate, or minor) most appropriate for the potential for harm factor. The penalty amount is initially set at the midpoint of the selected penalty range, but may be adjusted within the penalty range, as specified in subsection (3)(B) of this rule, for the circumstances of a particular violation. The values shown in the matrix are expressed in terms of penalty



amount per day of noncompliance for each violation.

Gravity-Based Penalty Assessment Matrix (penalty range per day per violation)

Potential for Harm	Size of Public Water System (number of people served)		
	Less than 500	500 to 9,999	10,000 or more
Major (midpoint)	\$100-\$61 (\$80)	\$250-\$151 (\$200)	\$1,000-\$601 (\$800)
Moderate (midpoint)	\$60-\$20 (\$40)	\$150-\$50 (\$100)	\$600-\$200 (\$400)
Minor	\$0	\$0	\$0

(B) Adjustments to the Penalty Amount Within the Selected Penalty Range. The department may add to or subtract from the amount of the penalty, within the selected penalty range of the matrix, after consideration of the following adjustment factors:

1. Good faith efforts to comply. The department may adjust a penalty amount downward, within the selected penalty range, if the violator adequately demonstrates good faith efforts. Good faith efforts include, but are not limited to, documentation that the violator has reported noncompliance or instituted measures to remedy the violation prior to detection by the department. However, good faith efforts to achieve compliance after agency detection are not grounds for decreasing the penalty amount;

2. Culpability. In cases of heightened culpability that do not meet the standard of criminal activity, the penalty may be increased at the department’s discretion, within the selected range of the matrix. Likewise, in cases where there is a demonstrable absence of culpability, the department may decrease the penalty. Lack of knowledge of the law or any associated rule or permit shall not be a basis for decreased culpability. The following criteria shall be used to determine culpability:

- A. How much control the violator had over the events constituting the violation;
- B. Whether the events constituting the violation were foreseeable;
- C. Whether the violator took reasonable precautions against the events constituting the violation;
- D. Whether the violator knew or should have known of the hazards associated with the conduct; and
- E. Whether the violator knew or should have known of the legal requirement that was violated (this shall be used only to increase a penalty, not to decrease it); and

3. History of noncompliance. When there has been a history of noncompliance

with the law or any associated rule or permit, to a degree deemed significant due to frequency, similarity or seriousness of past violations, and considering the violator’s response to previous enforcement actions, the department may increase the administrative penalty, within the selected penalty range. No downward adjustment is allowed because of this factor.

(C) Multiple Violation Penalty. Penalties for multiple violations may be determined when a violation is independent of or substantially different from any other violation. The director may order a separate administrative penalty for each violation as set forth in this rule.

(D) Multi-Day Penalty. Penalties for multi-day violations may be determined when the director has concluded that a violation(s) has continued or occurred for more than one (1) day. Multi-day penalty assessments shall be determined by using the Gravity-Based Penalty Assessment Matrix in this section to determine the penalty amount per day per violation, and multiplying that amount by the number of days of noncompliance. The director may seek penalties for each day of noncompliance, not to exceed the statutory maximums specified in subsection 640.131.2, RSMo.

(E) Adjustments to Total Penalty Amount. The department may add to or subtract from the total amount of the penalty, not to exceed the statutory maximums specified in subsection 640.131.2, RSMo, after consideration of the following adjustments:

1. Recalculation of penalty amount. If, after issuance of an order by the director, new information about a violation becomes available which indicates that the original penalty calculation may have been incorrect, it may be necessary to recalculate the penalty in light of the new information;

2. Ability to pay. When a violator has adequately documented that payment of all or a portion of the administrative penalty will preclude the violator from achieving compliance or from carrying out important remedial measures, the department may—

- A. Waive or suspend any portion or all of the administrative penalty; or
- B. Negotiate a delayed payment schedule, installment plan or penalty reductions with stipulated penalties. The department may require the supplier of water to submit documents to verify inability to pay, including, but not limited to: federal tax returns and financial statements, annual financial reports, and a list of assets with corresponding fair market values; and

3. Other adjustment factors. This rule allows for other penalty adjustments based on

fairness and equity not mentioned in this rule which may arise on a case-by-case basis.

(4) Payment of Penalty. The proceeds from any administrative penalty assessed in accordance with this rule shall be paid to the county treasurer of the county in which the violation(s) occurred for the use and benefit of the county public schools, in accordance with section 7 of article IX of the *Missouri Constitution*. An administrative penalty shall be paid within sixty (60) days from the date of issuance of the order assessing the penalty, unless appealed per section (5) of this rule. Any person who fails to pay an administrative penalty by the final due date shall be liable to the state for a surcharge of fifteen percent (15%) of the penalty plus ten percent (10%) per annum on any amounts owed. An action may be brought in the appropriate circuit court to collect any unpaid administrative penalty, and for attorney’s fees and costs incurred directly in the collection thereof.

(5) Appeal Process. Any order assessing an administrative penalty shall state that an administrative penalty is being assessed under section 640.131, RSMo, and that the person subject to the penalty may appeal as provided by this section. Any such order which fails to state the law or regulation under which the penalty is being sought, the manner of collection or rights of appeal shall result in the state’s waiving any right to collection of the penalty. Should any person subject to an administrative penalty want to appeal the penalty, that person shall appeal to the Safe Drinking Water Commission within thirty (30) days of the date of issuance of the order assessing the penalty. Any appeal shall stay the due date of such administrative penalty until the appeal is resolved.

(6) Natural Resource Damages. Nothing in this rule shall be construed as satisfying any claims by the state or federal government for natural resource damages.

AUTHORITY: sections 640.100 and 640.131, RSMo Supp. 1998. Original rule filed July 1, 1999, effective March 30, 2000.*

**Original authority: 640.100, RSMo 1939, amended 1978, 1981, 1982, 1988, 1989, 1992, 1993, 1995, 1996, 1998, 1999; 640.131, RSMo 1998.*