

# Continuing Authority for Industrial Dischargers



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# What is Continuing Authority?



## Permittee vs. Owner vs Operator vs. Continuing Authority

“Continuing Authority” A person, as defined in 644.016(15), RSMo, that is either an area-wide management authority or owns and/or operates a point source, treatment facility, or a sewer collection system. The “Continuing Authority” is the entity legally responsible for compliance with the permit. The Continuing Authority can be the owner, the operator or an area-wide management authority.

“Operator” Any individual who operates or determines the method of operating a wastewater treatment system, either directly or by order. It represents a level of certification to run a treatment system

# What is Continuing Authority?



## Permittee vs. Owner vs Operator vs. Continuing Authority

The Continuing Authority can be the owner, the operator, or an area-wide management authority.

“Owner” The owner of the permit, i.e., the owner of the regulated activity or discharge. “Owner” does not necessarily mean the owner of the real property where the activity or discharge is occurring

“Permittee”

“Applicant “

# Hierarchy of Continuing Authorities



Level 1 Authority — A municipality or public sewer district or governmental entity which has been designated as the **area-wide management authority** in accordance with section 208(c)(1) of the Federal Clean Water Act. (Examples: East-West Gateway Council of Governments, Mid-America Regional Council)

Level 2 Authority — A municipality, public sewer district, or governmental entity which currently provides wastewater collection and/or treatment services on a **regional or watershed basis** as outlined in 10 CSR 20-6.010(2)(F). (Example: Boone County Regional Sewer District)

Level 3 Authority — A municipality, public sewer district, or sewer company regulated by the PSC, other than one that qualifies as a Level 2 Authority. Most publicly owned treatment plants in Missouri are a Level 3 Authority.

**Level 4 Authority — Any person, industry, or group of persons contractually obligated to collectively act as a wastewater collection and treatment service...with complete control of and responsibility for the water contaminant source, point source, or wastewater treatment system.**

Level 5 Authority — An association of property owners served by the wastewater treatment facility,

## So what's the issue?



Until recently, the MDNR required applicants for new industrial discharge permits to include evidence that they are the valid continuing authority.

Now, the Department is requiring the industrial dischargers [Level 4] to make a demonstration with each permit renewal application that they are the valid continuing authority, and that a higher authority [Level 1-3] does not claim that authority.

This demonstration could include providing a waiver from a higher authority. This means that the industry applicant may need to contact the higher authority for a waiver.

So even though the department has determined, via the permit, that the industry applicant is the valid continuing authority, a higher authority could claw that back in subsequent permit cycles.

Bottom line, the industry is in the position of proactively reminding the higher continuing authority every five years basically offer them an opportunity to change their minds regarding the discharge.

## So what's the issue?



10 CSR 20-6.010 (2) (C) Applicants for permits other than industrial stormwater permits, industrial no-discharge permits, and construction stormwater permits proposing use of a lower preference continuing authority when the higher-level authority is available **must submit one (1) of the following for the department's review:**

# So what's the issue?



Industrial dischargers [stormwater excepted] proposing use of a lower preference continuing authority when the higher-level authority is available must provide some form of documentation to show that they are still the valid continuing authority. There are 7 options, some of them include:

## So what's the issue?



- A waiver from the existing higher authority
- A written statement or a demonstration of non-response from the higher authority declining to accept management of the wastewater
- A map showing that all parts of the legal boundary of the property to be connected are beyond 2000' from the collection system operated by a higher preference authority
- A proposed **connection or adoption charge** by the higher authority that would equal or exceed what is economically feasible for the applicant, which may be in the range of 120% of the applicant's cost for constructing or operating a wastewater treatment system
- Terms for connection or adoption by the higher authority that would require more than two (2) years to achieve full sewer service



# Questions



Why did the Department change the process? Does the Department think this is sustainable?

# Questions



Is there any move to change this by rulemaking?

# Questions



How is jurisdiction defined? Political, proximity, both?

Facility is within city limits but further than 2000 feet?

Facility is not within city limits but closer than 2000 feet?

## Questions



Scenario – City declares authority over the wastewater and sets a deadline within 2 years by which to start receiving pretreated wastewater. There is a sewer within 2000 feet. The City establishes a reasonable connection fee. But costs for upgrades and operations exceed 120% of the cost to continue operation of existing treatment system.

The answer could depend on how the term “connection or adoption charge” is defined.

# Questions



What all does “connection or adoption charge” include? Does it include?

Connection fees?

Connection costs?

Ongoing sewer use fees?

Capital costs for upgrades to meet pretreatment standard?

O&M to operate pretreatment?

High-strength surcharges?

# Questions



If the higher CA waives authority, is the discharger considered the valid continuing authority? Or is the discharger operating on behalf of the higher authority?

# Questions



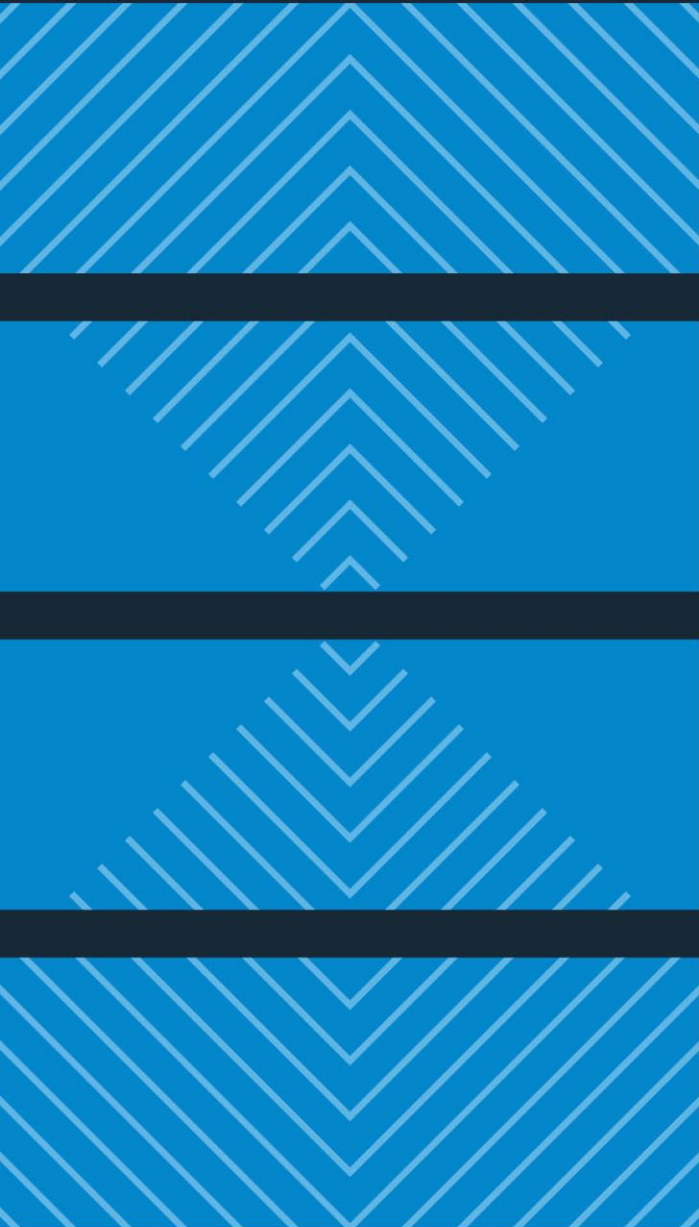
Why can't the Department take care of contacting the higher continuing authority?

# Questions



How many times must the discharger contact the higher continuing authority for a waiver before it is considered non-responsive?





# Thank You.



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