

## Chapter 7

### Law and Advocacy

- Level 1 Volunteer Water Quality Monitoring Training Notebook -

One of the goals of the Stream Team program is advocacy, or speaking on behalf of your adopted stream. Other than those positions that are stipulated by law or rule, the Stream Team program must maintain a neutral position on issues. Instead, it is the program's role to provide information and education to help citizens draw their own educated conclusions.

This chapter will provide an understanding of the basic legal system associated with the regulation of water quality. It will guide you to specific web sites and organizations that can help you understand how the rules apply to you and where the public fits into the system. All webpages listed here can be found by searching the primary agency's website.

#### **Advocacy and Volunteers**

##### **What is it?**

Advocacy is the act of pleading for, supporting or recommending a cause or course of action. Volunteers have a unique knowledge of their adopted streams and may provide new information or make suggestions that would result in changing a stream's legal protections, whether at the state or local level. If and when an individual considers becoming an advocate for water resources, they usually have a lot of questions. Individuals may have questions such as:

1. How can I become an advocate?
2. Who has the decision-making authority on my issue? Is it local, state or federal lawmakers?
3. I am only one person. Can my actions really make a difference?
4. Will my advocacy efforts hurt my cause, or will they draw needed attention to the issue?

Water quality monitoring is a small part of what you can do to protect the health of your adopted stream. Advocacy is one important method in which citizens can increase the visibility of stream issues and influence the direction of public policy. The direction of governmental policies can be linked to the level of political engagement in which a citizen becomes involved. Creating this influence is most effective when done at the local level by local citizens. Active citizen involvement can result in a more democratic and effective government, including improved government function, decision legitimacy, citizen receptiveness, and public trust.

You may or may not choose to become involved or promote change through advocacy. If you do, the information presented in this chapter can help you better understand how monitoring and other activities can contribute to or improve the legal system that protects water quality in Missouri, and will help you make decisions on whether advocacy is an activity you want to pursue. Many people are intimidated by the thought of becoming an advocate and rightly so. There is a lot of information out there to process!

#### **Laws and Rules**

##### **In the Beginning**

Protection of human health from pollution is nothing new. Congress first addressed water pollution issues in the *Rivers and Harbors Act of 1899*. But, big changes took place in the late 1960s with a heightened level of concern pertaining to environmental health and its role in human health. Due to this increased environmental awareness, several new laws were passed by Congress, including the *Federal*

*Water Pollution Control Amendments of 1972*. This law was a major expansion of the Act of 1899. This law would later become known as the *Clean Water Act (CWA)* due to additional amendments in 1977. An objective of the CWA is to maintain and restore the chemical, physical, and biological integrity of the Nation's waters. The Environmental Protection Agency (EPA) was established in 1970 as the federal agency responsible for implementing the CWA. As with many federal laws, the CWA allowed states to assume primacy for the enforcement of environmental regulations. For more history of the CWA visit EPA's website, <http://www2.epa.gov/aboutepa>.

In 1974, the Missouri legislature enacted the Missouri Clean Water Law. That year, the Department of Natural Resources was established to unite several existing commissions and divisions that dealt with the environment health. The Division of Environmental Quality (DEQ), Water Protection Program (WPP) works with the public and the Clean Water Commission (CWC) to implement the CWA here in Missouri. The Department's WPP is responsible for watershed management, water quality monitoring, rules, standards, financial assistance opportunities, permits and engineering, and compliance and enforcement for all of our Public Drinking Water and Water Pollution Control efforts and more. For more information on DNR, its duties, or organization chart, reference the Divisions and Programs webpage at <http://dnr.mo.gov/divisions.htm>. The CWC is a six-member board of citizens that are appointed by the governor for a specified term. The commission establishes the rules that govern the day-to-day operation of the state's water pollution control efforts. For more information, visit the CWC factsheet at <http://dnr.mo.gov/env/wpp/cwc/docs/100114-commission-lists.pdf>.

### **Rulemaking**

When laws are passed by the legislature, they provide general direction and policy, but seldom contain specific details on how the law will be enforced. Instead, specific details on implementing the law are described in rules. The process for updating a rule is called a *rulemaking*. During a rulemaking, DNR will propose amendments to the rule, with the help of public participation through stakeholder and commission meetings. Rulemaking procedures incorporate several opportunities for the public to participate in the process, including stakeholder meetings, public hearings, and public comment periods for written comments. Both meeting types are open to all interested citizens of Missouri. Stakeholder meetings tend to be informal while the CWC meetings are formal. To finalize the rulemaking, a proposed rule is brought before the Clean Water Commission for approval and then published in the Code of State Regulations. Interested stakeholders can sign up to receive broadcast email notifications of meetings and more, at <http://dnr.mo.gov/broadcastlists.htm>. Live meetings, videos, and other multimedia can be viewed over the internet at <http://dnr.mo.gov/videos/live.htm>. For more information on the rulemaking process and how to be involved, reference Department Rulemaking Information at <http://dnr.mo.gov/regs/index.html> or the Secretary of State Rulemaking Manual at <http://sos.mo.gov/adrules/manual/manual.asp>.

### **Locating**

Laws and rules are most often referenced by chapter and section number, where chapters are divided into sections and subsections. For example, under Title XL in the *Revised Statutes of the State of Missouri (RSMo)* is the location of *The Missouri Clean Water Law*, RSMo 644. The powers and duties of the Clean Water Commission, particularly related to rules and procedure, can be found in Section 644.026. To obtain copies of Missouri water laws, visit the General Assembly website, <http://www.moga.mo.gov/>, or visit your public library.

Rules are published separately from the laws to which they relate. A rule or set of rules interprets a law and provides specific directions to follow to ensure compliance with that law. Every department of state government has their own set of rules identified by a title number. The Rules for all programs within the Department of Natural Resources are found in Title 10 of the *Missouri Code of State Regulations (CSR)*. Titles are further divided into divisions, chapters and subchapters. As an example, 10 CSR 20-7.031 refers to Title 10 of the CSR, Division 20 for Clean Water Commission, Chapter 7 for Water

Quality and Subchapter 031 for Water Quality Standards. Additionally, Title 10 CSR 20-7.015 is where the Effluent Regulations rule is found and 10 CSR 20-6 is where the rules pertaining to permits are found.

Copies of DNR rules may be obtained from the Office of Secretary of State by visiting their website, <http://www.sos.mo.gov/adrules/csr/current/10csr/10csr.asp>. You may also contact them directly at *Office of Secretary of State, Administrative Rule Division, PO Box 1767, Jefferson City, MO 65101*; or call 573-751-4015 or email [rules@sos.mo.gov](mailto:rules@sos.mo.gov). Both federal laws and state rules related to water quality can also be accessed from the WPP's web site, <http://www.dnr.mo.gov/assistance/laws-regulations.htm>. You may also contact the department directly at *Missouri Department of Natural Resources, Water Protection Program, PO Box 176, Jefferson City, MO 65102-0176*; or call 573-751-1300/1-800-361-4827, fax 573-526-1146, or email [cleanwater@dnr.mo.gov](mailto:cleanwater@dnr.mo.gov). Additional information on laws and regulations can be found on the following websites:

- How a Bill Becomes a Law, <http://www.senate.mo.gov/bill-law.htm>
- Laws & Regulations: Water, <http://water.epa.gov/lawsregs/>

## **National Water Quality Standards**

### **Program Basics**

The Water Quality Standards program under the CWA requires states to implement their own rules in order to protect water quality at the state level, but the states have to adopt statutes and rules that are at least as strict as federal law. First most, State standards must serve the purposes of the CWA (sections 101(a)(2) and 303(c)), which means wherever attainable, the state must provide water quality for protection and propagation of fish, shellfish, and wildlife and for recreation in and on the water while taking into consideration public water supplies, navigation, agriculture and other beneficial uses. This statement sets the basis for water quality protection throughout the nation. Within the WQS program are these basic areas:

- Defining goals for a water body by setting its designated uses (Ex: swimming, fishing, drinking water, aquatic life protection, etc.)
  - Existing uses are those attained on or after November 28, 1975, whether or not they are designated or listed state Water Quality Standards
- Criteria for measuring attainment of those uses (Ex: arsenic, dissolved oxygen, lead, mercury, temperature, etc.)
- Antidegradation policies to protect from further degradation of water quality and;
- General policies needed to protect water quality within the state.

In this way streams are protected according to their designated uses (or water quality goals) – think swimming on the Meramec River. Then, individual criteria are used to determine if water quality is meeting those goals (or attaining the designated use). Several criteria are listed for each designated use – for swimming one criterion would be 206 *E. coli* bacteria per 100 mL of water. Pollutant levels are prohibited in excess that would cause exceedance of criteria – such as 1000 *E. coli* bacteria per 100 mL of water. Alternatively, uses may also be designated if the water quality criteria are not being met, providing the opportunity for water quality goals to be restored. When criteria are not being met, it results in the stream being placed on the impaired waters list, also known as the 303(d) list from Section 303(d) of the CWA. For more information on Water Quality Standards reference:

- Water Quality Standards Regulations and Federally Promulgated Standards  
<http://water.epa.gov/scitech/swguidance/standards/wqsregs.cfm>
- Water Quality Standards Handbook (easy to understand explanations)  
<http://water.epa.gov/scitech/swguidance/standards/handbook/index.cfm>.

- Webcasts (including public participation at the federal and local levels)  
[http://water.epa.gov/learn/training/wacademy/archives.cfm#CP\\_JUMP\\_460174](http://water.epa.gov/learn/training/wacademy/archives.cfm#CP_JUMP_460174).
- National Recommended Water Quality Criteria  
<http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm>

## **State Water Quality Standards**

The best approach for understanding Missouri’s standards is to read the rule itself and ask questions if you have any. Now, reading rule language may not be on a bucket list of books to read, but it will help you determine if advocacy is something you want to pursue. The basis of the rule will be discussed here, but citizens are encouraged to do research to determine their own understanding and involvement as well. Also, streams are the focus of the VWQM program and therefore emphasis in this chapter is on streams alone but lakes and wetlands are also protected by standards.

### **Authority and Responsibilities**

Again, the duty to implement standards is left to the state. In Missouri, the Water Quality Standards program is run by the *Department of Natural Resources, Water Protection Program*. Due to state standards being more in depth than the national program, all inquiries should be brought to DNR instead of other state agencies. Of the many regulatory responsibilities charged to the WPP, a few are listed here. Water quality is protected through several processes, including setting goals, permitting to protect those goals, monitoring and assessing goals to ensure attainment, etc. This water quality based schematic shows how all the different portions of management are integrated.



## Assigning Protection to a Stream, Classifications and Designated Uses– Step 1

Missouri streams are categorized for protection by designated uses and in some cases also by their hydrologic classification; perennial (P), perennial backwaters (P1), intermittent (C), and unclassified (US). Unclassified streams have not yet been assigned a hydrologic classification due to lack of flow data supporting a specific classification. Historically, classifications were based off of drought measurements from the 1930s and 1950s. Any changes to a stream's classification or first time classification must follow guidelines set forth by the department. Individual classifications are listed at [http://dnr.mo.gov/env/wpp/wqstandards/wq\\_classfd\\_wb.htm](http://dnr.mo.gov/env/wpp/wqstandards/wq_classfd_wb.htm).

Missouri's Designated and Beneficial Uses can be explored in depth by visiting: [http://dnr.mo.gov/env/wpp/wqstandards/wq\\_uses.htm](http://dnr.mo.gov/env/wpp/wqstandards/wq_uses.htm).

The categories, from the classifications or designated uses, require some streams to be segmented. Since a stream of the same name may be divided into several segments, they are tracked by a Water Body Identification Number (WBID) in the Missouri Clean Water Information System (MoCWIS). Depending on the designated uses, the stream segments may be listed in different tables. Since unclassified streams do not have designated uses, they are not listed in the tables or in MoCWIS. Most of the standard tables are organized by a designated use however, others include several uses:

- Table C – Waters Designated for Cold-Water Fishery
  - Specific listing of streams protected for cold-water aquatic life
- Table D - Outstanding National Resource Waters
  - Specific listing of streams protected by Scenic Rivers congressional law
- Table E - Outstanding State Resource Waters
  - Specific listing of streams protected for outstanding water quality
- Table F - Metropolitan No-Discharge Streams
  - Specific listing of streams within city limits protected from receiving sewer discharges
- Table G - Lake Classifications and Use Designations
- Table H - Stream Classifications and Use Designations
  - Specific listing of streams protected for blanket uses, those mentioned in sections 101(a)(2) and 303(c) of the Act such as swimming, aquatic life, etc.
- Table I - Biocriteria Reference Location
  - Specific listing of streams used for reference of biological criteria development

As an example, look at Meramec River listings in the standards tables noting the differences between segments; WBID, Water Body Name, Class, Uses, and Table:

### Water Quality Standards Search

County DS:  Water Body ID:  Class:

HUC8:  Water Body Name: Meramec R Uses:

Standards Table: C - Waters Designated for Cold-Water Fishery  
 D - Outstanding National Resource Waters  
 E - Outstanding State Resource Waters Metro Area:

### Search Results

County DS	HUC8	Water Body ID	Water Body Name	Class	Metro Area	Size	Uses	Table	Legal DS	Legal US
Crawford	07140102	1860.00	Meramec R.	P		10.00	AQL, CDF, CLF, GEN, LWW, SCR, WBC A	H	22,38N,5W	6,37N,5W
Crawford	07140102	1861.00	Trib. to Meramec R.	C		0.80	AQL, GEN, LWW, WBC B	H	Mouth	29,38N,5W
Crawford	07140102	1871.00	Meramec R.	P		38.90	AQL, CLF, GEN, LWW, SCR, WBC A	H	7,37N,5W	19,34N,4W
Crawford	07140102	10032.00	Meramec River			8.00		E	1,40N,2W	25,40N,2W
Crawford	07140102	10033.00	Meramec River			3.00		E	25,39N,3W	2,38N,3W
Crawford	07140102	100238.00	Meramec River			10.00		C	22,38N,5W	Hwy. 8

Pay special attention to the legal downstream and upstream of a segment, which specify the most downstream and upstream ends of the WBID. Sometimes entire streams may not be classified, causing sections of a stream not to be listed because unclassified portions are not listed. There are about 85,000 miles of Missouri streams unclassified, mostly headwaters - so it is common for the larger downstream segment of a stream to be classified, while the smaller upstream segment is not. Also, many different streams across the state have the same name so be sure to note which county the stream is listed so you don't get the listings confused. A good example is Turkey Creek:

Callaway	10300102	732.00	Turkey Cr.	C		3.30	AQL, GEN, LWW, WBC B	H	Mouth	3,44N,11W
Cape Girardeau	07140105	1829.00	Turkey Cr.	P		2.00	AQL, GEN, LWW, WBC B	H	Mouth	32,33N,14E
Cape Girardeau	07140105	1830.00	Turkey Cr.	C		2.20	AQL, GEN, LWW, WBC B	H	32,33N,14E	36,33N,13E
Carroll	10300101	361.00	Turkey Cr.	P		4.70	AQL, GEN, LWW, WBC B	H	Mouth	14,53N,25W
Carroll	10300101	362.00	Turkey Cr.	C		3.50	AQL, GEN, LWW, WBC B	H	14,53N,25W	34,54N,25W

Note in the table that Turkey Creek in Carroll County is listed twice as WBID 361 and 362. In this case the difference is classification. Different rules for protection would apply to the two different segments of the same stream. The public search page for classified streams is located at [http://dnr.mo.gov/mocwis\\_public/waterQualityStandardsSearch.do](http://dnr.mo.gov/mocwis_public/waterQualityStandardsSearch.do).

As the saying goes, "A picture is worth a thousand words." DNR has an interactive map that works as a visual of the table listings. The interactive map makes it easy to see the different extents of the listings on a topographical map or aerial image. The map is located on the DNR website at <http://dnr.mo.gov/gis/index.html>. The WBIDs are also used for the purpose of reporting changes during a rulemaking or other listing in reports such as the 303(d) and 305(b). For more information on the water quality standards program in Missouri, visit the WPP website: <http://www.dnr.mo.gov/env/wpp/wqstandards/index.html>.

## **Criteria for Water Quality - Narrative and Numeric**

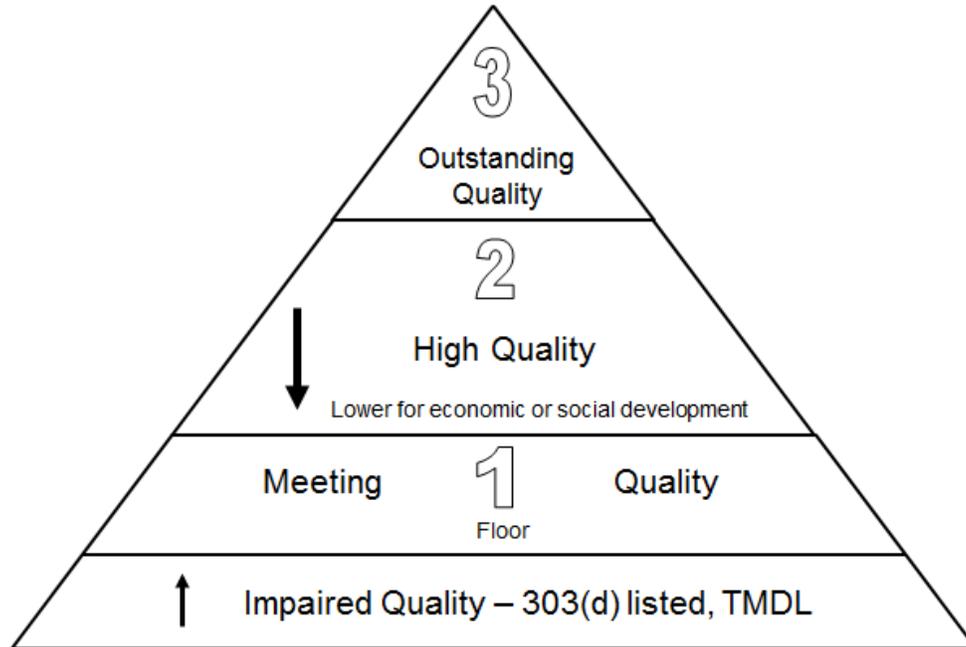
A *standard* provides a means by which DNR can measure whether or not the desired water quality goals have been achieved. This measurement can be made by comparing samples of water from the stream against the set of standards expected to be met for each designated use. These expectations, or criteria, may be expressed numerically or through a narrative.

Narrative criteria are expressed with words, rather than as a value. Narrative criteria are descriptions or “free from” statements (“Waters shall be free from...”). Missouri’s narrative criteria are defined in rule at 10 CSR 20-7.031(3) General criteria. *General criteria are applicable to all waters of the state and are the only criteria in rule to protect unclassified waters.* General criteria are the lowest protection applied to waters in the State. For instance, if a fish kill has occurred, it is probable that one or more numeric standards have been exceeded compared to the single exceedance of general criteria to prevent acute toxicity (death) to aquatic life.

Numeric criteria set specific quantifiable limits on how much of a measured parameter (a pollutant) are allowed to be in the water. Sometimes the parameter being measured is obviously a pollutant that should not be in the water in any quantity (e.g., oil or pesticides). However, it may be an element that exists naturally in stream water, often playing an important role in maintaining a healthy balance in the water’s chemistry. If for any reason the element becomes too plentiful or too scarce, it will disrupt the chemical/physical balance of the stream environment. For example, a certain amount of dissolved oxygen is a critical component of good quality water. If the level of dissolved oxygen in the stream drops below the minimum required amount, aquatic life (such as fish, crayfish and many aquatic insects) will die. Therefore, there is a numeric criterion for dissolved oxygen. *Numeric criteria are applicable only to classified water bodies.* The criteria are defined in length within the rule language, and are listed numerically with the corresponding designated use in Tables A – B, of 10 CSR 20-7.031.

## **Antidegradation Policy**

Antidegradation policy is a very important part of the WQS program. The policy provides the absolute lowest level of protection (or “floor”) for water quality in the State. This is done by requiring that existing water quality attaining existing uses must be maintained and protected. For example, streams with exceptional water quality **MUST** be maintained at all times in order to protect all existing uses. Now, remember that existing uses do **NOT** have to be designated or defined in rule. They only have to be attained on or after November 28, 1975, as stated in the federal regulation. Another way a “floor” for water quality is protected is by prohibiting the lowering of existing water quality except to accommodate important economic and social development. Requirements to meet this exception are extremely stringent and must be proven by the permittee. This diagram summarizes how antidegradation works in Missouri.



More in-depth antidegradation information, including the rule referenced policy document and webcasts, is located at [http://dnr.mo.gov/env/wpp/wqstandards/wq\\_antideg\\_pol.htm](http://dnr.mo.gov/env/wpp/wqstandards/wq_antideg_pol.htm)

### **The 305 (b) Report and 303(d) List – Steps 2 and 3**

The State is required to develop the report and list as a requirement of Sections 305(b) and 303(d) of the CWA. The report is used to summarize water quality issues as well as to determine the progress Missouri has made in meeting the CWA goals. The report references at length the assessments made to waters of the State with assessments of good, threatened, and impaired water quality and whether designated uses are being attained.

The 303(d) list is part of the report and lists of all the impaired waters in the state for which a study of the impairment has NOT been written. Impaired waters are those that do not meet all applicable water quality standards and will not meet standards even if all wastewater discharges receive conventional treatment. When a stream is assessed as impaired, it is placed on the list requiring a study of the impairment to be done to determine how to fix water quality issues. Assessment methodologies used to develop the list are described in rule at 10 CSR 20-7.050. There is a public comment period during the development of the 303(d) list and the assessment methodology. More information can be found at <http://dnr.mo.gov/env/wpp/waterquality/index.html>.

### **Use Attainability Analysis (UAA) – Step 4**

Sometimes the designated uses for a stream are not possible to attain, no matter the efforts put forth to protect, restore, or maintain water quality goals. In these instances, a use attainability analysis (UAA) is conducted to adjust water quality goals via designation of different uses or even removal of designated uses. Take for example an ephemeral stream (a stream that only has water or flow during rain events) with the designated use for swimming – whole-body contact recreation. It is not possible for ephemeral streams to meet standards that are protective of swimming. In this case it would have to be proven the ephemeral stream is not capable of supporting the designated use. This is done through the UAA process. Each designated use has its own UAA process to be followed. Parties requesting the change or removal are responsible for performing the UAA.

Alternatively, a stream usage survey may be done to prove a recreational use as existing, resulting in the designation of that use. For information on Missouri UAAs, processes, public comments on specific waters, and the stream usage survey, visit <http://dnr.mo.gov/env/wpp/wqstandards/uaa/index.html>.

### **Total Maximum Daily Load (TMDL) – Step 5**

Total maximum daily load refers to the maximum amount of a given pollutant a waterbody can absorb before its quality is affected. Every stream on the 303(d) list will have a Total Maximum Daily Load written and a plan for fixing the impairment. A TMDL is a document that identifies an impaired stream, the pollutant(s), a calculation of how much load (i.e., how much pollution) the water body can handle, as well as a plan to remediate the pollution problem. The plan includes allocations of the acceptable load for all sources of the pollutant, both point and nonpoint sources.

The Department uses various factors for scheduling TMDL development and thus prioritizing water bodies on the 303(d) List. Some factors considered in scheduling TMDL development include:

- Risks to human health and the environment
- Data availability
- Public concern/support
- Modeling needs
- Water quality standards revisions
- Permit renewals
- Department initiatives (e.g., Our Missouri Waters, permit synchronization)

TMDLs go through a 45-day Public Notice period for public review and comment.

For more information about TMDLs visit <http://www.dnr.mo.gov/env/wpp/tmdl/index.html>.

### **Permitting Wastewater Discharges – Steps 6 to 8**

Discharging pollutants to a water of the United States is a privilege, not a right. Individuals, municipalities, or industries can only discharge pollutants to waters of the State if they apply for and receive a permit. The permit, which may cover several outfalls, puts specific limits on the quantities of pollutants that can be discharged into state waters. The limits in every permit are established for each pollutant in the discharge, ensuring the pollutant concentration will not cause the impairment of any designated uses. When a permit is being issued or renewed, there is a 30-day public comment period before issuance of the permit. Understand that as long as the limits specified in the permit satisfies the conditions governing the protected stream and the permit remains in good standing, DNR **must** issue the permit. In order to keep their permit in good standing, the permittee must continue to meet the specific pollutant limits stated in their permit (stay in compliance). Water samples are routinely collected from outfalls and tested to determine if discharges are in compliance. If permit limits are not met, the discharge is out of compliance. In these incidents DNR Enforcement and Compliance staff work with the permittee to meet the permit limits. Severe and long-term cases are reported to the Missouri Attorney General's Office for enforcement action. More information on permits can be found at <http://dnr.mo.gov/env/wpp/permits/index.html>. For enforcement actions taken by the State visit <http://dnr.mo.gov/env/wpp/enf/>.

## **Possible Advocacy Actions**

### **Monitoring and Assessing Water Quality**

The Volunteer Monitoring Newsletter has great information and activities volunteers can do to increase protections on streams, help in restoration of impaired streams, and more. One issue of particular interest may be *Volume 13, No. 1, Spring 2001*, which includes explanations of the CWA and how volunteers can make a difference using tools of the Act. Find the issue at

[http://water.epa.gov/type/rsl/monitoring/upload/2004\\_10\\_13\\_monitoring\\_volunteer\\_newsletter\\_volmon13no1.pdf](http://water.epa.gov/type/rsl/monitoring/upload/2004_10_13_monitoring_volunteer_newsletter_volmon13no1.pdf). Additional information for monitoring and assessing water quality by volunteers can be found at <http://water.epa.gov/type/rsl/monitoring/index.cfm>.

Advocates may also increase protections via Water Quality Standards changes. The biggest changes occur during WQS Triennial Reviews conducted once every three years. *By sitting in on the process via stakeholder meetings, advocates are helping to better shape protections in Missouri.*

Many volunteers have a desire to help classify a stream for additional protections, but the process for classifying a stream is very in-depth and hard to accomplish due to lack of flow data on many streams. This is one reason it is so important for volunteers to submit stream flow datasheets each time they monitor. For more information on how streams are classified you may call the Water Protection Program at 573-751-6623, or visit the Water Quality Standards webpage:

<http://www.dnr.mo.gov/env/wpp/wqstandards/index.html>. On this page you will also find link to Rules in Development, Public Notices, the Clean Water Commission and a link to sign up for email updates on this topic.

### **Public Comment Periods**

One of the most direct ways you can make a contribution to new or existing regulatory processes is by making fact-based comments during mandatory public comment periods. By law, the public must be afforded an opportunity to contribute to the regulatory process. This is provided via public meetings, public hearings, and open public comment periods at specific points in the process. The best comments are those based on a thorough understanding of the issue. Often, this comes from a review of the current or proposed rule(s) and includes suggestions on how it can be improved. Comments based on whether or not the applicant can meet required conditions for a permit, or on documented scientific data, have a great impact.

It is important to understand that comments can only be accepted by the program during the specified period of time. Comments received before or after the designated time period often cannot be considered. Also keep in mind that in many cases, written comments must be signed by the author(s) in order to be considered legitimate. E-mails are considered as acceptable comments, as long as the author's name is clearly identified and the e-mail address is traceable. Also note that it is usually acceptable to fax in a comment, which people often do in an attempt to get the comment submitted before the deadline, but you must immediately put the original signed letter in the mail to the program. If the program does not receive the original signed comment letter, the fax cannot be considered an official comment. Always read the public notice announcement carefully to determine how comments need to be conveyed.

### **The Sunshine Law**

Missouri's commitment to openness in government is clearly stated in Section 610.011 of the Sunshine Law. The law sets out the specific instances when a meeting, record, or vote may be closed, while stressing these exceptions are to be strictly interpreted to promote the public policy of openness. But this policy very much affects how much anonymity can be afforded to members of the public who interact with state agencies during public comment periods or when making complaints (Source: *The Missouri Sunshine Law*, 2004, Missouri Attorney General's Office).

Copies of the Missouri Sunshine Law can be obtained by visiting the Attorney General's Office (AGO) website <https://ago.mo.gov/missouri-law/sunshine-law> or by contacting them directly at *Missouri Attorney General's Office, Supreme Court Building, 207 W. High St., P.O. Box 899, Jefferson City, MO 65102, Telephone: (573) 751-3321, Fax: (573) 751-0774.*

### **Freedom of Information Act**

The federal government also has a similar law requiring public governmental bodies to open their meetings and records to the public. It is called the Freedom of Information Act, and a copy of it can be obtained from the University of Missouri-Columbia, Freedom of Information Center. The center's staff will help answer your questions about public access to federal meetings and records. They also have sample request forms available that Missourians can use to request information from a federal or state governmental entity. This information is available at <http://nfoic.org/foi-center>, or *Freedom of Information Center, 101 Reynolds, Missouri School of Journalism, Columbia, MO 65211, Telephone: (573) 882-4856.*

### **Additional Resources**

- *Missouri State Government* – <http://www.mo.gov/>
  - This site has links to websites in all branches of state government
- *General Assembly* – <http://www.moga.mo.gov/>
  - The state constitution and state statutes
- *House of Representatives* – <http://www.house.mo.gov>
- *Senate* – <http://www.senate.mo.gov>
- *Secretary of State* – <http://www.sos.mo.gov/>
  - The Code of State Regulations and the web version of the Blue Book
- *Attorney General* – <http://www.ago.mo.gov/index.htm>
  - Sunshine Law and enforcement actions

### **Conservation Federation of Missouri**

728 West Main

Jefferson City, Missouri 65101-1559

Phone: (573) 634-2322

Toll free: 1-800-575-2322

Fax: 573-634-8205

<http://confedmo.org/>

Their Legislative Report is available at: <http://confedmo.org/category/legislative-reports/>

## **Informed Advocacy**

### **How to Conduct State and Federal File Searches**

**Scott Dye, Missouri Stream Team #714**

#### **I. Why?**

To be a successful advocate you must be informed. If you suspect a water quality problem with your adopted stream, there very well may be. But, the problem's cause might be difficult to assess or the result of a combination of factors. Don't assume conclusions - get the facts! State and federal law provides two excellent opportunities for citizen advocates to access and copy the public information contained in regulatory agency files.

The Federal Freedom of Information Act (FOIA), 5 U.S.C. Section 552, was passed in 1967. FOIA provides access within ten business days upon written notice to public information contained in federal agency files (U.S. Army Corps of Engineers, Environmental Protection Agency, Department of Agriculture, etc.). Missouri's Open Records Law ("Sunshine Law"), RSMo 610.010/610.023 revised, is one of the best in the nation. The "Sunshine Law" provides access within three business days to state agency files (Department of Natural Resources [MDNR], Department of Conservation, Highway and Transportation Department, etc.).

Advocates that are armed with factual, documented information can speak more effectively about water quality issues. The material obtained through file searches can be compelling tools when presenting stream concerns to regulatory personnel, legislators, public officials and the media. The information is also useful in constructing correspondence, verbal testimony and written public comment.

#### **II. What?**

Information that can be accessed through file search includes, but is not restricted to, the following: inspections; field notes; Notices of Violations (NOV's), citizen complaints; citizen correspondence; internal and external agency correspondence; **copies of e-mail**; telephone records; maps; applications; draft, construction and operating permits; engineering reports, drawings and documents; public hearing transcripts and comment; annual reports; etc.

Each agency has its own unique filing system. For example, MDNR files by county, entity name and site.

In general, state and federal agency personnel are very helpful in interpreting their filing system, and assisting with file searches. Do not be intimidated by the system, ask for help. Most agencies fully understand citizen's rights and the importance of open records access to the public, and go out of their way to make files available and provide assistance.

#### **III. How?**

Accessing records through a file search is as easy as A-B-C.

- A.** Determine the scope of your search. Does more than one agency have relevant information? Exactly what are you looking for? Try to be as specific as possible, and limit your request to what you really want. Excessive or unnecessary requests only invite delay.
- B.** Learn the hierarchy of command and responsibility at the target agency. This ensures that you are speaking/corresponding with the appropriate personnel at the appropriate location. In general, file search requests should be sent to Program Directors (PDs), Regional Directors (RDs) and

Division Directors (DDs). A MDNR listing of PDs and RDs is provided for example. If in doubt, simply ask for the custodian of records, or direct your request to the agency's FOIA Unit.

- C. Send a letter of request. Be sure to be specific in your request and indicate the date and estimated time of your arrival to review the files. When you arrive to conduct your file search, you will be met by an agency employee who will assist you in getting started and provide oversight during your review. In some agencies, you will make your own copies. In others, you will flag those documents you request and the agency employee will make copies for you. Agency personnel will be happy to explain their procedures.

#### IV. Fees

Many state and some federal agencies will provide file search assistance and reasonable amounts of copies free of charge. However, some do charge fees for copies, research and clerical oversight. At some agencies, you may provide your own copier and paper, avoiding copy fees. However, it is likely you will be charged for research and clerical oversight. *These fees can be substantial, so you may want to consult with the agency and straighten out costs in advance.* You can request a waiver of fees if applicable. There are several reasons a waiver may be granted including "public interest, non-commercial use or educational institution". One good argument is that other people will also want copies of the documents, and that it is unfair to make the first requester bear the full cost of the initial search for the material.

#### V. Problems

In general, Missouri's state agencies promptly fill information requests. However, if the agency has not acted after one week and reasonable consultation, you should redirect your request to the agency's Director. Seek additional support for your request from your state legislators and the Attorney General's office.

Federal agencies are required to fill your request within ten working days unless they qualify for an additional ten working days in "unusual circumstances." Many federal agencies meet their deadlines, but some are notoriously slow and unresponsive.

Whatever the cause of delay, don't hesitate to inquire about the status of your FOIA request, or about the agency's filing and search procedures in general. If there is no action within four weeks, you can interpret their "non-denial" as an outright denial and you can appeal. Appeal letters are supposed to be handled within twenty working days.

If your request is ignored or conclusively denied you can seek further assistance from the following:

- Your U.S. Representative or Senator
- Your state or local affiliate of the American Civil Liberties Union or at ACLU, 132 W. 43rd Street, New York, NY 10036; phone (212) 944-9800. Considerable helpful information regarding FOIA requests can be accessed online at <http://www.aclu.org/library/foiarcp.ht>.
- Freedom of Information Clearinghouse at P.O. Box 19367, Washington, D.C. 20036; phone (202) 833-3000. FIC is a project of Ralph Nader's Center for the Study of Responsive Law.
- The FOIA Service Center at 1735 I Street N.W., Washington, D.C. 20006; phone (202) 466-6312. The Center primarily assists journalists with FOIA inquiries.

#### VI. Helpful Hints

- *Be courteous* in all contacts with agency personnel. Oftentimes, they can be as frustrated by a persistent violator as you are. Carefully measured righteous indignation can be acceptable, rudeness never is.
- *Use prudent discretion* when using information obtained through a file search. Files often contain sensitive material and internal correspondence. Remember - everyone is entitled to a reasonable expectation of privacy. Just because your neighbor turned in an illegal discharge by Amalgamated

Pollutants, Inc., doesn't necessarily mean he wanted to be mentioned on the front page of your local newspaper.

- *Request in writing to be added to an agency's Public Notification List* (MDNR, Corps, EPA, etc.). You will be notified immediately of any applications or modifications affecting operations within your neighborhood. Again, requests should be directed to agency PDs, RDs and DDs. There is no cost.
- *Get a copy of Missouri 10 CSR Division 20 regulations and study them*, especially 20-6 Permits and 20-7 Water Quality. An understanding of the state's water law will greatly enhance your effectiveness as an advocate for Missouri's streams.

## ADVOCACY: Playing Your Cards Right

By Mary Ann Carr

STEP 1: **Choose your battles wisely.** There are more issues and advocacy needs than any one organization or individual can conquer; therefore, decide what issues are the most important for the resource and are winnable.

STEP 2: **Do your homework.** Before advocating a position on any issue you need to research the topic and answer the following questions.

- a. What scientific data is available to describe the situation?
- b. Who generated this data?
- c. Is there conflicting data and who generated this information?
- d. Whom are all the people or players involved?
- e. What are their agendas (goals, missions, motivations)?
- f. Who are your resources? Ask questions.
- g. What common ground do you share with all players (friends and foes)?
- h. How can you influence the players in the most positive manner possible?
- i. Who is making the decisions that affect this issue? When and how can you appropriately address those individuals?

STEP 3: **Be at the right place at the right time.** Find out what public meetings are being held and find out what public agency reins over the issue. Show up at meetings where the public is invited and write letters to appropriate parties.

STEP 4: **Be understood.** Speak appropriately, professionally and non-emotionally about the issue to appropriate parties either publicly and/or privately. Realize that speaking and being understood are not synonymous. Take the following steps to increase the likelihood of having your viewpoint being truly *comprehended*.

- a. Dress appropriately. The fact is that first impressions generally stick with most people. Play it safe, dress neatly and conservatively.
- b. Be respectful in your manner, even if the individual you address is far from your favorite person.
- c. Always open your speech with a positive comment which connects everyone's common ground.
- d. After stating your common ground, credentials (if applicable), and other relevant information, get to the point.
- e. Offer an alternative to the problems to accommodate a win/win for all parties, if at all possible.
- f. If appropriate, set a time and date to reconvene and continue working on the issue.
- g. Follow up the situation with a letter and/or phone call.
- h. Be positive, but thorough.

STEP 5: **Be seen.** Be involved with the players who affect your issues in other ways. Show the players that you care about all aspects of the issues and that you share their successes. Make a point to show your support when you do agree on issues. Take part in public meetings and events even when there isn't an issue to resolve. This presence will help lend credibility to your concerns when they arise.

STEP 6: **Remember why losers lose.** To assure defeat just pull one or more of the acts listed below.

- a. be rude, yell, scream, swear
- b. let your emotions control you
- c. look sloppy or dress out of the norm
- d. have insufficient information
- e. make inappropriate comments
- f. speak at inappropriate times
- g. send a letter with numerous errors
- h. show up only when there is a problem
- i. cry wolf constantly
- j. get in people's faces
- k. refuse to compromise
- l. associate with far left groups only

STEP 7: **Persevere.** Do not expect changes overnight. Keep up the good work and good things will happen.

**In the confrontation between  
The stream and the rock,  
The stream always wins –  
Not through strength  
But through perseverance. (H. Jackson Brown)**

*May your advocacy persevere like a stream,*

*M.A. Carr*