

SECOND REGULAR SESSION

# HOUSE BILL NO. 2426

## 101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HOUX.

4524H.011

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To repeal sections 260.373, 260.437, and 260.520, RSMo, and to enact in lieu thereof four new sections relating to the department of natural resources.

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

Section A. Sections 260.373, 260.437, and 260.520, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 260.373, 260.437, 260.520, and 640.095, to read as follows:

260.373. 1. After August 28, 2012, the authority of the commission to promulgate rules under sections 260.350 to 260.391 and 260.393 to 260.433 is subject to the following:

(1) The commission shall not promulgate rules that are stricter than ~~for implement requirements~~, **apply prior to, or apply in any subject area not addressed by** the requirements of Title 40, U.S. Code of Federal Regulations, Parts 260, 261, 262, 264, 265, 268, and 270, as promulgated pursuant to Subtitle C of the Resource Conservation and Recovery Act, as amended;

(2) **The commission shall not implement requirements prior to the requirements of Title 40, U.S. Code of Federal Regulations, Parts 260, 261, 262, 264, 265, 268, and 270, as promulgated under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended;**

(3) Notwithstanding the limitations of ~~subdivision~~ **subdivisions (1) and (2)** of this subsection, where state statutes expressly prescribe standards or requirements that are stricter than or implement requirements prior to any federal requirements, or where state statutes allow the establishment or collection of fees, costs, or taxes, the commission may promulgate rules as necessary to implement such statutes; **and**

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 ~~[(3)]~~ (4) Notwithstanding the limitations of subdivision (1) of this subsection, the  
18 commission may retain, modify, or repeal any current rules pertaining to the following:

19 (a) ~~[Thresholds for determining whether a hazardous waste generator is a large~~  
20 ~~quantity generator, small quantity generator, or conditionally exempt small quantity~~  
21 ~~generator;~~

22 ~~(b)]~~ Descriptions of applicable registration requirements; **and**

23 ~~[(e)]~~ (b) The reporting of hazardous waste activities to the department; provided,  
24 however, that the commission shall promulgate rules, effective beginning with the reporting  
25 period July 1, ~~[2015]~~ 2017 - June 30, ~~[2016]~~ 2018, that allow for the submittal of reporting  
26 data in ~~[an electronic]~~ any format on an annual basis by large quantity generators and  
27 treatment storage and disposal facilities[;

28 ~~(d) Rules requiring hazardous waste generators to display hazard labels (e.g.,~~  
29 ~~Department of Transportation (DOT) labels) on containers and tanks during the time~~  
30 ~~hazardous waste is stored on site;~~

31 ~~(e) The exclusion for hazardous secondary materials used to make zinc fertilizers in~~  
32 ~~40 CFR 261.4; and~~

33 ~~(f) The exclusions for hazardous secondary materials that are burned for fuel or that~~  
34 ~~are recycled].~~

35 2. Nothing in this section shall be construed to repeal any other provision of law, and  
36 the commission and the department shall continue to have the authority to implement and  
37 enforce other statutes, and the rules promulgated pursuant to their authority.

38 3. ~~[No later than December 31, 2013, the department shall identify rules in Title 10,~~  
39 ~~Missouri Code of State Regulations, Division 25, Chapters 3, 4, 5, and 7 that are inconsistent~~  
40 ~~with the provisions of subsection 1 of this section. The department shall thereafter file with~~  
41 ~~the Missouri secretary of state any amendments necessary to ensure that such rules are not~~  
42 ~~inconsistent with the provisions of subsection 1 of this section.] On December 31, ~~[2015]~~~~

43 2017, any rule contained in Title 10, Missouri Code of State Regulations, Division 25,  
44 Chapters 3, 4, 5, ~~[or]~~ 7, 9, and 11, that ~~[remains]~~ is inconsistent with the provisions of  
45 subsection 1 above shall be null and void to the extent that it is inconsistent, **and the least**  
46 **stringent rule shall control. Any such rule that applies in any subject area not addressed**  
47 **by the requirements of Title 40, U.S. Code of Federal Regulations, Parts 260, 261, 262,**  
48 **264, 265, 268, and 270, as promulgated under Subtitle C of the federal Resource**  
49 **Conservation and Recovery Act of 1976, as amended, shall be null and void. The**  
50 **department shall file with the Missouri secretary of state any amendments necessary to**  
51 **ensure that rules are not inconsistent with the provisions of subsection 1 of this section.**

52           4. Nothing in this section shall be construed to effectuate a modification of any  
53 permit. Upon request, the department shall modify as appropriate any permit containing  
54 requirements no longer in effect due to this section.

55           5. The department is prohibited from selectively excluding any rule or portion of a  
56 rule promulgated by the commission from any authorization application package, or program  
57 revision, submitted to the U.S. Environmental Protection Agency under Title 40, U.S. Code  
58 of Federal Regulations, Sections 271.5 or 271.21.

59           6. Any rule or portion of a rule, as that term is defined in section 536.010, that is  
60 created under the authority delegated in this section shall become effective only if it complies  
61 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.  
62 This section and chapter 536 are nonseverable and if any of the powers vested with the  
63 general assembly under chapter 536 to review, to delay the effective date, or to disapprove  
64 and annul a rule are subsequently held unconstitutional, then the grant of rulemaking  
65 authority and any rule proposed or adopted after August 28, 2012, shall be invalid and void.

          260.437. **1.** In addition to any other powers vested in it by law, the commission shall  
2 have the power to adopt, amend or repeal, after due notice and public hearing, standards, rules  
3 and regulations to implement sections 260.435 to ~~260.480~~ **260.482**.

4           **2.** The commission shall not promulgate rules that are stricter than, apply prior  
5 to, or apply in any subject area not addressed by the requirements of Title 40, U.S. Code  
6 of Federal Regulations, Part 300, as promulgated under the federal Comprehensive  
7 Environmental Response, Compensation, and Liability Act of 1980, as amended.

8           **3.** The commission shall file with the Missouri secretary of state any  
9 amendments necessary to ensure that rules are not inconsistent with the provisions of  
10 this section. Any rule contained in the Missouri code of state regulations that is  
11 inconsistent with the provisions of this section shall be null and void to the extent that it  
12 is inconsistent, and the least stringent rule shall control. Any such rule that applies in  
13 any subject area not addressed by the requirements of Title 40, U.S. Code of Federal  
14 Regulations, Part 300, as promulgated under the federal Comprehensive Environmental  
15 Response, Compensation, and Liability Act of 1980, as amended, shall be null and void.

16           **4.** Any rule or portion of a rule, as that term is defined in section 536.010, that is  
17 created under the authority delegated in sections 260.435 to 260.482 shall become  
18 effective only if it complies with and is subject to all of the provisions of chapter 536 and,  
19 if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any  
20 of the powers vested with the general assembly pursuant to chapter 536 to review, to  
21 delay the effective date, or to disapprove and annul a rule are subsequently held  
22 unconstitutional, then the grant of rulemaking authority and any rule proposed or  
23 adopted after August 28, 2022, shall be invalid and void.

260.520. 1. The director may adopt, amend, promulgate or repeal, after due notice and hearing, rules and regulations to implement sections 260.500 to ~~[260.550]~~ **260.552** pursuant to this section and chapter 536. No rule or portion of a rule promulgated under the authority of sections 260.500 to ~~[260.550]~~ **260.552** shall become effective unless it has been promulgated pursuant to the provisions of section 536.024.

2. **The director shall not promulgate rules that are stricter than, apply prior to, or apply in any subject area not addressed by the requirements of Title 40, U.S. Code of Federal Regulations, as promulgated under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.**

3. **The director shall file with the Missouri secretary of state any amendments necessary to ensure that rules are not inconsistent with the provisions of this section. Any rule contained in the Missouri code of state regulations that is inconsistent with the provisions of this section shall be null and void to the extent that it is inconsistent, and the least stringent rule shall control. Any such rule that applies in any subject area not addressed by the requirements of Title 40, U.S. Code of Federal Regulations, Part 300, as promulgated under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, shall be null and void.**

**640.095. In all instances where the department of natural resources has authority to issue fines or penalties and determines that a fine or penalty should be levied, the department shall provide in writing to the alleged violator, together with any claim or demand for a fine or penalty, the factual basis for the violation and a copy of the rules or statutory provisions upon which the department relies for alleging a violation has occurred and determining the appropriate fine or penalty, along with a statement of facts specifying each element of the violation and basis for the fine or penalty, including how the department calculated the fine or penalty, with particularity. This information shall be a complete record so that an alleged violator can understand the alleged violation, the applicability of the rules or statutory provisions, appropriateness of the fine or penalty, and the accuracy of the calculation so that the alleged violator can respond properly to the department. Any statement provided by the department in compliance with this section shall be treated as confidential information and shall not be disclosed to any party except the alleged violator.**

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