

FIRST REGULAR SESSION

HOUSE BILL NO. 480

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BAKER.

1378H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 260.395, RSMo, and to enact in lieu thereof one new section relating to hazardous waste facility permits.

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

Section A. Section 260.395, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 260.395, to read as follows:

260.395. 1. After six months from the effective date of the standards, rules and regulations adopted by the commission pursuant to section 260.370, it shall be unlawful for any person to transport any hazardous waste in this state without first obtaining a hazardous waste transporter license. Any person transporting hazardous waste in this state shall file an application for a license pursuant to this subsection which shall:

(1) Be submitted on a form provided for this purpose by the department and shall furnish the department with such equipment identification and data as may be necessary to demonstrate to the satisfaction of the department that equipment engaged in such transportation of hazardous waste, and other equipment as designated in rules and regulations pursuant to sections 260.350 to 260.430, is adequate to provide protection of the health of humans and the environment and to comply with the provisions of any federal hazardous waste management act and sections 260.350 to 260.430 and the standards, rules and regulations adopted pursuant to sections 260.350 to 260.430. If approved by the department, this demonstration of protection may be satisfied by providing certification that the equipment so identified meets and will be operated in accordance with the rules and regulations of the Missouri public service commission and the federal Department of

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 Transportation for the transportation of the types of hazardous materials for which it will be
18 used;

19 (2) Include, as specified by rules and regulations, demonstration of financial
20 responsibility, including, but not limited to, guarantees, liability insurance, posting of bond or
21 any combination thereof which shall be related to the number of units, types and sizes of
22 equipment to be used in the transport of hazardous waste by the applicant;

23 (3) Include, as specified in rules and regulations, a fee payable to the state of Missouri
24 which shall consist of an annual application fee, plus an annual use fee based upon tonnage,
25 mileage or a combination of tonnage and mileage. The fees established pursuant to this
26 subdivision shall be set to generate, as nearly as is practicable, six hundred thousand dollars
27 annually. No fee shall be collected pursuant to this subdivision from railroads that pay a fee
28 pursuant to subsection 18 of this section. Fees collected pursuant to this subdivision shall be
29 deposited in the hazardous waste fund created pursuant to section 260.391.

30 2. If the department determines the application conforms to the provisions of any
31 federal hazardous waste management act and sections 260.350 to 260.430 and the standards,
32 rules and regulations adopted pursuant to sections 260.350 to 260.430, it shall issue the
33 hazardous waste transporter license with such terms and conditions as it deems necessary to
34 protect the health of humans and the environment. The department shall act within ninety
35 days after receipt of the application. If the department denies the license, it shall issue a
36 report to the applicant stating the reason for denial of the license.

37 3. A license may be suspended or revoked whenever the department determines that
38 the equipment is or has been operated in violation of any provision of sections 260.350 to
39 260.430 or any standard, rule or regulation, order, or license term or condition adopted or
40 issued pursuant to sections 260.350 to 260.430, poses a threat to the health of humans or the
41 environment, or is creating a public nuisance.

42 4. Whenever a license is issued, renewed, denied, suspended or revoked by the
43 department, any aggrieved person, by petition filed with the administrative hearing
44 commission within thirty days of the decision, may appeal such decision as provided by
45 sections 621.250 and 640.013. Once the administrative hearing commission has reviewed the
46 appeal, the administrative hearing commission shall issue a recommended decision to the
47 commission on license issuance, renewal, denial, suspension, or revocation. The commission
48 shall issue its own decision, based on the appeal, for license issuance, renewal, denial,
49 suspension, or revocation. If the commission changes a finding of fact or conclusion of law
50 made by the administrative hearing commission, or modifies or vacates the decision
51 recommended by the administrative hearing commission, it shall issue its own decision,
52 which shall include findings of fact and conclusions of law. The commission shall mail
53 copies of its final decision to the parties to the appeal or their counsel of record. The

54 commission's decision shall be subject to judicial review pursuant to chapter 536. No judicial
55 review shall be available until and unless all administrative remedies are exhausted.

56 5. A license shall be issued for a period of one year and shall be renewed upon proper
57 application by the holder and a determination by the department that the applicant is in
58 compliance with all provisions of sections 260.350 to 260.430 and all standards, rules and
59 regulations, orders and license terms and conditions adopted or issued pursuant to sections
60 260.350 to 260.430.

61 6. A license is not required for the transport of any hazardous waste on the premises
62 where it is generated or onto contiguous property owned by the generator thereof, or for those
63 persons exempted in section 260.380. Nothing in this subsection shall be interpreted to
64 preclude the department from inspecting unlicensed hazardous waste transporting equipment
65 and to require that it be adequate to provide protection for the health of humans and the
66 environment.

67 7. After six months from the effective date of the standards, rules and regulations
68 adopted by the commission pursuant to section 260.370, it shall be unlawful for any person to
69 construct, substantially alter or operate, including operations specified in the rules and
70 regulations, a hazardous waste facility without first obtaining a hazardous waste facility
71 permit for such construction, alteration or operation from the department. Such person must
72 submit to the department at least ninety days prior to submitting a permit application a letter
73 of intent to construct, substantially alter or operate any hazardous waste disposal facility. The
74 person must file an application within one hundred eighty days of the filing of a letter of
75 intent unless granted an extension by the commission. The department shall publish such
76 letter of intent as specified in section 493.050 within ten days of receipt of such letter. The
77 letter shall be published once each week for four weeks in the county where the hazardous
78 waste disposal facility is proposed. Once such letter is submitted, all conditions for the permit
79 application evaluation purposes in existence as of the date of submission shall be deemed
80 frozen, in that no subsequent action by any person to change such conditions in an attempt to
81 thwart a fair and impartial decision on the application for a permit shall be allowed as grounds
82 for denial of the permit. Any person before constructing, substantially altering or operating a
83 hazardous waste facility in this state shall file an application for a permit which shall:

84 (1) Be submitted on a form provided for this purpose by the department and shall
85 furnish the department with plans, specifications and such other data as may be necessary to
86 demonstrate to the satisfaction of the department that such facility does or will provide
87 adequate protection of the health of humans and the environment and does or will comply
88 with the provisions of any federal hazardous waste management act and sections 260.350 to
89 260.430 and the standards, rules and regulations adopted pursuant to sections 260.350 to
90 260.430;

91 (2) Include plans, designs, engineering reports and relevant data for construction,
92 alteration or operation of a hazardous waste facility, to be submitted to the department by a
93 registered professional engineer licensed by this state;

94 (3) Include, as specified by rules and regulations, demonstration of financial
95 responsibility, including, but not limited to, guarantees, liability insurance, posting of bond or
96 any combination thereof, which shall be related to type and size of facility;

97 (4) Include such environmental and geologic information, assessments and studies as
98 required by the rules and regulations of the commission;

99 (5) Include a fee payable to the state of Missouri which shall not exceed one thousand
100 dollars, which shall cover the first year of the permit, if issued, but which is not refundable. If
101 the permit is issued for more than one year, a fee equal in amount to the first year's fee shall
102 be paid to the state of Missouri prior to issuance of the permit for each year the permit is to be
103 in effect beyond the first year;

104 (6) The department shall supervise any field work undertaken to collect geologic and
105 engineering data for submission with the application. The state geologist and departmental
106 engineers shall review the geologic and engineering plans, respectively, and attest to their
107 accuracy and adequacy. The applicant shall pay all reasonable costs, as determined by the
108 commission, incurred by the department pursuant to this subsection.

109 8. (1) Prior to issuing or renewing a hazardous waste facility permit, the department
110 shall issue public notice by press release or advertisement and shall notify all record owners
111 of adjoining property by mail directed to the last known address, and the village, town or city,
112 if any, and the county in which the hazardous waste facility is located; and, upon request,
113 shall hold a public hearing after public notice as required in this subsection at a location
114 convenient to the area affected by the issuance of the permit.

115 (2) Prior to issuing or renewing a hazardous waste disposal facility permit the
116 department shall issue public notice by press release and advertisement and shall notify all
117 record owners of property, within one mile of the outer boundaries of the site, by mail
118 directed to the last known address; and shall hold a public hearing after public notice as
119 required in this subsection at a location convenient to the area affected by the issuance of the
120 permit.

121 9. If the department determines that the application conforms to the provisions of any
122 federal hazardous waste management act and sections 260.350 to 260.430 and the standards,
123 rules and regulations adopted pursuant to sections 260.350 to 260.430, it shall issue the
124 hazardous waste facility permit, with such terms and conditions and require such testing and
125 construction supervision as it deems necessary to protect the health of humans or the
126 environment. The department shall act within one hundred eighty days after receipt of the

127 application. If the department denies the permit, it shall issue a report to the applicant stating
128 the reason for denial of a permit.

129 10. A permit may be suspended or revoked whenever the department determines that
130 the hazardous waste facility is, or has been, operated in violation of any provision of sections
131 260.350 to 260.430 or any standard, rule or regulation, order or permit term or condition
132 adopted or issued pursuant to sections 260.350 to 260.430, poses a threat to the health of
133 humans or the environment or is creating a public nuisance.

134 11. Whenever a permit is issued, renewed, denied, suspended or revoked by the
135 department, any aggrieved person, by petition filed with the administrative hearing
136 commission within thirty days of the decision, may appeal such decision as provided by
137 sections 621.250 and 640.013. Once the administrative hearing commission has reviewed the
138 appeal, the administrative hearing commission shall issue a recommended decision to the
139 commission on permit issuance, renewal, denial, suspension, or revocation. The commission
140 shall issue its own decision, based on the appeal, for permit issuance, renewal, denial,
141 suspension, or revocation. If the commission changes a finding of fact or conclusion of law
142 made by the administrative hearing commission, or modifies or vacates the decision
143 recommended by the administrative hearing commission, it shall issue its own decision,
144 which shall include findings of fact and conclusions of law. The commission shall mail
145 copies of its final decision to the parties to the appeal or their counsel of record. The
146 commission's decision shall be subject to judicial review pursuant to chapter 536, except that
147 the court of appeals district with territorial jurisdiction coextensive with the county where the
148 hazardous waste facility is to be located or is located shall have original jurisdiction. No
149 judicial review shall be available until and unless all administrative remedies are exhausted.

150 12. A permit shall be issued for a fixed term, which shall not exceed ten years in the
151 case of any land disposal facility, storage facility, incinerator, or other treatment facility.
152 Nothing in this subsection shall preclude the department from reviewing and modifying a
153 permit at any time during its term. Review of any application for a permit renewal shall
154 consider improvements in the state of control and measurement technology as well as changes
155 in applicable regulations. Each permit issued pursuant to this section shall contain such terms
156 and conditions as the department determines necessary to protect human health and the
157 environment, and upon proper application by the holder and a determination by the
158 department that the applicant is in compliance with all provisions of sections 260.350 to
159 260.430 and all standards, rules and regulations, orders and permit terms and conditions
160 adopted or issued pursuant to sections 260.350 to 260.430.

161 13. A hazardous waste facility permit is not required for:

162 (1) On-site storage of hazardous wastes where such storage is exempted by the
163 commission by rule or regulation; however, such storage must conform to the provisions of

164 any federal hazardous waste management act and sections 260.350 to 260.430 and the
165 applicable standards, rules and regulations adopted pursuant to sections 260.350 to 260.430
166 and any other applicable hazardous materials storage and spill-prevention requirements
167 provided by law; **or**

168 (2) A publicly owned treatment works which has an operating permit pursuant to
169 section 644.051 and is in compliance with that permit[;

170 ~~(3) A resource recovery facility which the department certifies uses hazardous waste
171 as a supplement to, or substitute for, nonwaste material, and that the sole purpose of the
172 facility is manufacture of a product rather than treatment or disposal of hazardous wastes;~~

173 ~~(4) That portion of a facility engaged in hazardous waste resource recovery, when the
174 facility is engaged in both resource recovery and hazardous waste treatment or disposal,
175 provided the owner or operator can demonstrate to the department's satisfaction and the
176 department finds that such portion is not intended and is not used for hazardous waste
177 treatment or disposal].~~

178 14. Facilities exempted pursuant to subsection 13 of this section must comply with
179 the provisions of subdivisions (3) to (7) of **subsection 1** of section 260.390 and such other
180 requirements, to be specified by rules and regulations, as are necessary to comply with any
181 federal hazardous waste management act or regulations hereunder. Generators who use such
182 an exempted facility shall keep records of hazardous wastes transported, except by legal flow
183 through sewer lines, to the facility and submit such records to the department in accordance
184 with the provisions of section 260.380 and the standards, rules and regulations adopted
185 pursuant to sections 260.350 to 260.430. ~~[Any person, before constructing, altering or
186 operating a resource recovery facility in this state shall file an application for a certification.
187 Such application shall include:~~

188 ~~(1) Plans, designs, engineering reports and other relevant information as specified by
189 rule that demonstrate that the facility is designed and will operate in a manner protective of
190 human health and the environment; and~~

191 ~~(2) An application fee of not more than five hundred dollars for a facility that
192 recovers waste generated at the same facility or an application fee of not more than one
193 thousand dollars for a facility that recovers waste generated at off-site sources. Such fees
194 shall be deposited in the hazardous waste fund created in section 260.391. The department
195 shall review such application for conformance with applicable laws, rules and standard
196 engineering principles and practices. The applicant shall pay to the department all reasonable
197 costs, as determined by the commission, incurred by the department pursuant to this
198 subsection. All such funds shall be deposited in the hazardous waste fund created in section
199 260.391.]~~

200 15. The owner or operator of any hazardous waste facility in existence on September
201 28, 1977, who has achieved federal interim status pursuant to 42 U.S.C. Section 6925(e), and
202 who has submitted to the department Part A of the federal facility permit application, may
203 continue to receive and manage hazardous wastes in the manner as specified in the Part A
204 application, and in accordance with federal interim status requirements, until completion of
205 the administrative disposition of a permit application submitted pursuant to sections 260.350
206 to 260.430. The department may at any time require submission of, or the owner or operator
207 may at any time voluntarily submit, a complete application for a permit pursuant to sections
208 260.350 to 260.430 and commission regulations. The authority to operate pursuant to this
209 subsection shall cease one hundred eighty days after the department has notified an owner or
210 operator that an application for permit pursuant to sections 260.350 to 260.430 must be
211 submitted, unless within such time the owner or operator submits a completed application
212 therefor. Upon submission of a complete application, the authority to operate pursuant to this
213 subsection shall continue for such reasonable time as is required to complete the
214 administrative disposition of the permit application. If a facility loses its federal interim
215 status, or the Environmental Protection Agency requires the owner or operator to submit Part
216 B of the federal application, the department shall notify the owner or operator that an
217 application for a permit must be submitted pursuant to this subsection. In addition to
218 compliance with the federal interim status requirements, the commission shall have the
219 authority to adopt regulations requiring persons operating pursuant to this subsection to meet
220 additional state interim status requirements.

221 16. No person, otherwise qualified pursuant to sections 260.350 to 260.430 for a
222 license to transport hazardous wastes or for a permit to construct, substantially alter or operate
223 a hazardous waste facility, shall be denied such license or permit on the basis of a lack of need
224 for such transport service or such facility because of the existence of other services or
225 facilities capable of meeting that need; except that permits for hazardous waste facilities may
226 be denied on determination made by the department that the financial resources of the persons
227 applying are such that the continued operation of the sites in accordance with sections
228 260.350 to 260.430 cannot be reasonably assured or on determination made by the
229 department that the probable volume of business is insufficient to ensure and maintain the
230 solvency of then existing permitted hazardous waste facilities.

231 17. All hazardous waste landfills constructed after October 31, 1980, shall have a
232 leachate collection system. The rules and regulations of the commission shall treat and
233 protect all aquifers to the same level of protection. The provisions of this subsection shall not
234 apply to the disposal of tailings and slag resulting from mining, milling and primary smelting
235 operations.

236 18. Any railroad corporation as defined in section 388.010 that transports any
237 hazardous waste as defined in section 260.360 or any hazardous substance as defined in
238 section 260.500 shall pay an annual fee of three hundred fifty dollars. Fees collected pursuant
239 to this subsection shall be deposited in the hazardous waste fund created in section 260.391.

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