

FIRST REGULAR SESSION

SENATE BILL NO. 40

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURLISON.

0155S.02I

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 260.380, 260.475, 643.079, 644.057, and 644.079, RSMo, and to enact in lieu thereof six 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Section A. Sections 260.380, 260.475, 643.079, 644.057, and 644.079, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 260.380, 260.475, 640.095, 643.079, 644.057, and 644.079, to read as follows:

260.380. 1. After six months from the effective date of the standards, rules and regulations adopted by the commission pursuant to section 260.370, hazardous waste generators located in Missouri shall:

(1) Promptly file and maintain with the department, on registration forms it provides for this purpose, information on hazardous waste generation and management as specified by rules and regulations. Hazardous waste generators shall pay a one hundred dollar registration fee upon initial registration, and a one hundred dollar registration renewal fee annually thereafter to maintain an active registration. Such fees shall be deposited in the hazardous waste fund created in section 260.391;

(2) Containerize and label all hazardous wastes as specified by standards, rules and regulations;

(3) Segregate all hazardous wastes from all nonhazardous wastes and from noncompatible wastes, materials

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 and other potential hazards as specified by standards, rules
19 and regulations;

20 (4) Provide safe storage and handling, including spill
21 protection, as specified by standards, rules and
22 regulations, for all hazardous wastes from the time of their
23 generation to the time of their removal from the site of
24 generation;

25 (5) Unless provided otherwise in the rules and
26 regulations, utilize only a hazardous waste transporter
27 holding a license pursuant to sections 260.350 to 260.430
28 for the removal of all hazardous wastes from the premises
29 where they were generated;

30 (6) Unless provided otherwise in the rules and
31 regulations, provide a separate manifest to the transporter
32 for each load of hazardous waste transported from the
33 premises where it was generated. The generator shall
34 specify the destination of such load on the manifest. The
35 manner in which the manifest shall be completed, signed and
36 filed with the department shall be in accordance with rules
37 and regulations;

38 (7) Utilize for treatment, resource recovery, disposal
39 or storage of all hazardous wastes, only a hazardous waste
40 facility authorized to operate pursuant to sections 260.350
41 to 260.430 or the federal Resource Conservation and Recovery
42 Act, or a state hazardous waste management program
43 authorized pursuant to the federal Resource Conservation and
44 Recovery Act, or any facility exempted from the permit
45 required pursuant to section 260.395;

46 (8) Collect and maintain such records, perform such
47 monitoring or analyses, and submit such reports on any
48 hazardous waste generated, its transportation and final
49 disposition, as specified in sections 260.350 to 260.430 and

50 rules and regulations adopted pursuant to sections 260.350
51 to 260.430;

52 (9) Make available to the department upon request
53 samples of waste and all records relating to hazardous waste
54 generation and management for inspection and copying and
55 allow the department to make unhampered inspections at any
56 reasonable time of hazardous waste generation and management
57 facilities located on the generator's property and hazardous
58 waste generation and management practices carried out on the
59 generator's property;

60 (10) (a) Pay annually, on or before January first of
61 each year, effective January 1, 1982, a fee to the state of
62 Missouri to be placed in the hazardous waste fund. The fee
63 shall be five dollars per ton or portion thereof of
64 hazardous waste registered with the department as specified
65 in subdivision (1) of this subsection for the twelve-month
66 period ending June thirtieth of the previous year. However,
67 the fee shall not exceed fifty-two thousand dollars per
68 generator site per year nor be less than one hundred fifty
69 dollars per generator site per year.

70 (b) All moneys payable pursuant to the provisions of
71 this subdivision shall be promptly transmitted to the
72 department of revenue, which shall deposit the same in the
73 state treasury to the credit of the hazardous waste fund
74 created in section 260.391.

75 (c) The hazardous waste management commission shall
76 establish and submit to the department of revenue procedures
77 relating to the collection of the fees authorized by this
78 subdivision. Such procedures shall include, but not be
79 limited to, necessary records identifying the quantities of
80 hazardous waste registered, the form and submission of
81 reports to accompany the payment of fees, the time and

82 manner of payment of fees, which shall not be more often
83 than quarterly.

84 (d) Notwithstanding any statutory fee amounts or
85 maximums to the contrary, the director of the department of
86 natural resources may conduct a comprehensive review and
87 propose changes to the fee structure set forth in this
88 section. The comprehensive review shall include stakeholder
89 meetings in order to solicit stakeholder input from each of
90 the following groups: cement kiln representatives, chemical
91 companies, large and small hazardous waste generators, and
92 any other interested parties. Upon completion of the
93 comprehensive review, the department shall submit a proposed
94 fee structure with stakeholder agreement to the hazardous
95 waste management commission. The commission shall review
96 such recommendations at the forthcoming regular or special
97 meeting, but shall not vote on the fee structure until a
98 subsequent meeting. If the commission approves, by vote of
99 two-thirds majority or five of seven commissioners, the fee
100 structure recommendations, the commission shall authorize
101 the department to file a notice of proposed rulemaking
102 containing the recommended fee structure, and after
103 considering public comments may authorize the department to
104 file the order of rulemaking for such rule with the joint
105 committee on administrative rules pursuant to sections
106 536.021 and 536.024 no later than December first of the same
107 year. If such rules are not disapproved by the general
108 assembly in the manner set out below, they shall take effect
109 on January first of the following calendar year and the fee
110 structure set out in this section shall expire upon the
111 effective date of the commission-adopted fee structure,
112 contrary to subsection 4 of this section. Any regulation
113 promulgated under this subsection shall be deemed to be

114 beyond the scope and authority provided in this subsection,
115 or detrimental to permit applicants, if the general
116 assembly, within the first sixty calendar days of the
117 regular session immediately following the filing of such
118 regulation disapproves the regulation by concurrent
119 resolution. If the general assembly so disapproves any
120 regulation filed under this subsection, the department and
121 the commission shall not implement the proposed fee
122 structure and shall continue to use the previous fee
123 structure. The authority of the commission to further
124 revise the fee structure as provided by this subsection
125 shall expire on August 28, [2024] **2021**. Any fee, bond, or
126 assessment structure established pursuant to the process in
127 this section shall expire on August 28, [2024] **2021**.

128 2. Missouri treatment, storage, or disposal facilities
129 shall pay annually, on or before January first of each year,
130 a fee to the department equal to two dollars per ton or
131 portion thereof for all hazardous waste received from
132 outside the state. This fee shall be based on the hazardous
133 waste received for the twelve-month period ending June
134 thirtieth of the previous year.

135 3. Exempted from the requirements of this section are
136 individual householders and farmers who generate only small
137 quantities of hazardous waste and any person the commission
138 determines generates only small quantities of hazardous
139 waste on an infrequent basis, except that:

140 (1) Householders, farmers and exempted persons shall
141 manage all hazardous wastes they may generate in a manner so
142 as not to adversely affect the health of humans, or pose a
143 threat to the environment, or create a public nuisance; and

144 (2) The department may determine that a specific
145 quantity of a specific hazardous waste requires special

146 management. Upon such determination and after public notice
147 by press release or advertisement thereof, including
148 instructions for handling and delivery, generators exempted
149 pursuant to this subsection shall deliver, but without a
150 manifest or the requirement to use a licensed hazardous
151 waste transporter, such waste to:

152 (a) Any storage, treatment or disposal site authorized
153 to operate pursuant to sections 260.350 to 260.430 or the
154 federal Resource Conservation and Recovery Act, or a state
155 hazardous waste management program authorized pursuant to
156 the federal Resource Conservation and Recovery Act which the
157 department designates for this purpose; or

158 (b) A collection station or vehicle which the
159 department may arrange for and designate for this purpose.

160 4. Failure to pay the fee, or any portion thereof,
161 prescribed in this section by the due date shall result in
162 the imposition of a penalty equal to fifteen percent of the
163 original fee. The fee prescribed in this section shall
164 expire December 31, 2018, except that the department shall
165 levy and collect this fee for any hazardous waste generated
166 prior to such date and reported to the department.

260.475. 1. Every hazardous waste generator located
2 in Missouri shall pay, in addition to the fees imposed in
3 section 260.380, a fee of twenty-five dollars per ton
4 annually on all hazardous waste which is discharged,
5 deposited, dumped or placed into or on the soil as a final
6 action, and two dollars per ton on all other hazardous waste
7 transported off site. No fee shall be imposed upon any
8 hazardous waste generator who registers less than ten tons
9 of hazardous waste annually pursuant to section 260.380, or
10 upon:

11 (1) Hazardous waste which must be disposed of as
12 provided by a remedial plan for an abandoned or uncontrolled
13 hazardous waste site;

14 (2) Fly ash waste, bottom ash waste, slag waste and
15 flue gas emission control waste generated primarily from the
16 combustion of coal or other fossil fuels;

17 (3) Solid waste from the extraction, beneficiation and
18 processing of ores and minerals, including phosphate rock
19 and overburden from the mining of uranium ore and smelter
20 slag waste from the processing of materials into reclaimed
21 metals;

22 (4) Cement kiln dust waste;

23 (5) Waste oil; or

24 (6) Hazardous waste that is:

25 (a) Reclaimed or reused for energy and materials;

26 (b) Transformed into new products which are not wastes;

27 (c) Destroyed or treated to render the hazardous waste
28 nonhazardous; or

29 (d) Waste discharged to a publicly owned treatment
30 works.

31 2. The fees imposed in this section shall be reported
32 and paid to the department on an annual basis not later than
33 the first of January. The payment shall be accompanied by a
34 return in such form as the department may prescribe.

35 3. All moneys collected or received by the department
36 pursuant to this section shall be transmitted to the
37 department of revenue for deposit in the state treasury to
38 the credit of the hazardous waste fund created pursuant to
39 section 260.391. Following each annual reporting date, the
40 state treasurer shall certify the amount deposited in the
41 fund to the commission.

42 4. If any generator or transporter fails or refuses to
43 pay the fees imposed by this section, or fails or refuses to
44 furnish any information reasonably requested by the
45 department relating to such fees, there shall be imposed, in
46 addition to the fee determined to be owed, a penalty of
47 fifteen percent of the fee shall be deposited in the
48 hazardous waste fund.

49 5. If the fees or any portion of the fees imposed by
50 this section are not paid by the date prescribed for such
51 payment, there shall be imposed interest upon the unpaid
52 amount at the rate of ten percent per annum from the date
53 prescribed for its payment until payment is actually made,
54 all of which shall be deposited in the hazardous waste fund.

55 6. The state treasurer is authorized to deposit all of
56 the moneys in the hazardous waste fund in any of the
57 qualified depositories of the state. All such deposits
58 shall be secured in such a manner and shall be made upon
59 such terms and conditions as are now or may hereafter be
60 provided for by law relative to state deposits. Interest
61 received on such deposits shall be credited to the hazardous
62 waste fund.

63 7. This fee shall expire December 31, 2018, except
64 that the department shall levy and collect this fee for any
65 hazardous waste generated prior to such date and reported to
66 the department.

67 8. Notwithstanding any statutory fee amounts or
68 maximums to the contrary, the director of the department of
69 natural resources may conduct a comprehensive review and
70 propose changes to the fee structure set forth in this
71 section. The comprehensive review shall include stakeholder
72 meetings in order to solicit stakeholder input from each of
73 the following groups: cement kiln representatives, chemical

74 companies, large and small hazardous waste generators, and
75 any other interested parties. Upon completion of the
76 comprehensive review, the department shall submit a proposed
77 fee structure with stakeholder agreement to the hazardous
78 waste management commission. The commission shall review
79 such recommendations at the forthcoming regular or special
80 meeting, but shall not vote on the fee structure until a
81 subsequent meeting. If the commission approves, by vote of
82 two-thirds majority or five of seven commissioners, the fee
83 structure recommendations, the commission shall authorize
84 the department to file a notice of proposed rulemaking
85 containing the recommended fee structure, and after
86 considering public comments may authorize the department to
87 file the order of rulemaking for such rule with the joint
88 committee on administrative rules pursuant to sections
89 536.021 and 536.024 no later than December first of the same
90 year. If such rules are not disapproved by the general
91 assembly in the manner set out below, they shall take effect
92 on January first of the following calendar year and the fee
93 structure set out in this section shall expire upon the
94 effective date of the commission-adopted fee structure,
95 contrary to subsection 7 of this section. Any regulation
96 promulgated under this subsection shall be deemed to be
97 beyond the scope and authority provided in this subsection,
98 or detrimental to permit applicants, if the general
99 assembly, within the first sixty calendar days of the
100 regular session immediately following the filing of such
101 regulation disapproves the regulation by concurrent
102 resolution. If the general assembly so disapproves any
103 regulation filed under this subsection, the department and
104 the commission shall not implement the proposed fee
105 structure and shall continue to use the previous fee

106 structure. The authority of the commission to further
107 revise the fee structure as provided by this subsection
108 shall expire on August 28, [2024] 2021. Any fee, bond, or
109 assessment structure established pursuant to the process in
110 this section shall expire on August 28, [2024] 2021.

640.095. In all instances where the department of
2 natural resources has authority to issue fines or penalties
3 and determines that a fine or penalty should be levied, the
4 department shall provide in writing to the alleged violator,
5 together with any claim or demand for a fine or penalty, the
6 factual basis for the violation and a copy of the rules or
7 statutory provisions upon which the department relies for
8 alleging a violation has occurred and determining the
9 appropriate fine or penalty, along with a statement of facts
10 specifying each element of the violation and basis for the
11 fine or penalty, including how the department calculated the
12 fine or penalty, with particularity. This information
13 shall be a complete record so that an alleged violator can
14 understand the alleged violation, the applicability of the
15 rules or statutory provisions, appropriateness of the fine
16 or penalty, and the accuracy of the calculation so that the
17 alleged violator can respond properly to the department.

643.079. 1. Any air contaminant source required to
2 obtain a permit issued under sections 643.010 to 643.355
3 shall pay annually beginning April 1, 1993, a fee as
4 provided herein. For the first year the fee shall be twenty-
5 five dollars per ton of each regulated air contaminant
6 emitted. Thereafter, the fee shall be set every three years
7 by the commission by rule and shall be at least twenty-five
8 dollars per ton of regulated air contaminant emitted but not
9 more than forty dollars per ton of regulated air contaminant
10 emitted in the previous calendar year. If necessary, the

11 commission may make annual adjustments to the fee by rule.
12 The fee shall be set at an amount consistent with the need
13 to fund the reasonable cost of administering sections
14 643.010 to 643.355, taking into account other moneys
15 received pursuant to sections 643.010 to 643.355. For the
16 purpose of determining the amount of air contaminant
17 emissions on which the fees authorized under this section
18 are assessed, a facility shall be considered one source
19 under the definition of subsection 2 of section 643.078,
20 except that a facility with multiple operating permits shall
21 pay the emission fees authorized under this section
22 separately for air contaminants emitted under each
23 individual permit.

24 2. A source which produces charcoal from wood shall
25 pay an annual emission fee under this subsection in lieu of
26 the fee established in subsection 1 of this section. The
27 fee shall be based upon a maximum fee of twenty-five dollars
28 per ton and applied upon each ton of regulated air
29 contaminant emitted for the first four thousand tons of each
30 contaminant emitted in the amount established by the
31 commission pursuant to subsection 1 of this section, reduced
32 according to the following schedule:

33 (1) For fees payable under this subsection in the
34 years 1993 and 1994, the fee shall be reduced by one hundred
35 percent;

36 (2) For fees payable under this subsection in the
37 years 1995, 1996 and 1997, the fee shall be reduced by
38 eighty percent;

39 (3) For fees payable under this subsection in the
40 years 1998, 1999 and 2000, the fee shall be reduced by sixty
41 percent.

42 3. The fees imposed in subsection 2 of this section
43 shall not be imposed or collected after the year 2000 unless
44 the general assembly reimposes the fee.

45 4. Each air contaminant source with a permit issued
46 under sections 643.010 to 643.355 shall pay the fee for the
47 first four thousand tons of each regulated air contaminant
48 emitted each year but no air contaminant source shall pay
49 fees on total emissions of regulated air contaminants in
50 excess of twelve thousand tons in any calendar year. A
51 permitted air contaminant source which emitted less than one
52 ton of all regulated pollutants shall pay a fee equal to the
53 amount per ton set by the commission. An air contaminant
54 source which pays emission fees to a holder of a certificate
55 of authority issued pursuant to section 643.140 may deduct
56 such fees from any amount due under this section. The fees
57 imposed in this section shall not be applied to carbon oxide
58 emissions. The fees imposed in subsection 1 and this
59 subsection shall not be applied to sulfur dioxide emissions
60 from any Phase I affected unit subject to the requirements
61 of Title IV, Section 404, of the federal Clean Air Act, as
62 amended, 42 U.S.C. Section 7651, et seq., any sooner than
63 January 1, 2000. The fees imposed on emissions from Phase I
64 affected units shall be consistent with and shall not exceed
65 the provisions of the federal Clean Air Act, as amended, and
66 the regulations promulgated thereunder. Any such fee on
67 emissions from any Phase I affected unit shall be reduced by
68 the amount of the service fee paid by that Phase I affected
69 unit pursuant to subsection 8 of this section in that year.
70 Any fees that may be imposed on Phase I sources shall follow
71 the procedures set forth in subsection 1 and this subsection
72 and shall not be applied retroactively.

73 5. Moneys collected under this section shall be
74 transmitted to the director of revenue for deposit in
75 appropriate subaccounts of the natural resources protection
76 fund created in section 640.220. A subaccount shall be
77 maintained for fees paid by air contaminant sources which
78 are required to be permitted under Title V of the federal
79 Clean Air Act, as amended, 42 U.S.C. Section 7661, et seq.,
80 and used, upon appropriation, to fund activities by the
81 department to implement the operating permits program
82 authorized by Title V of the federal Clean Air Act, as
83 amended. Another subaccount shall be maintained for fees
84 paid by air contaminant sources which are not required to be
85 permitted under Title V of the federal Clean Air Act as
86 amended, and used, upon appropriation, to fund other air
87 pollution control program activities. Another subaccount
88 shall be maintained for service fees paid under subsection 8
89 of this section by Phase I affected units which are subject
90 to the requirements of Title IV, Section 404, of the federal
91 Clean Air Act Amendments of 1990, as amended, 42 U.S.C.
92 Section 7651, and used, upon appropriation, to fund air
93 pollution control program activities. The provisions of
94 section 33.080 to the contrary notwithstanding, moneys in
95 the fund shall not revert to general revenue at the end of
96 each biennium. Interest earned by moneys in the subaccounts
97 shall be retained in the subaccounts. The per-ton fees
98 established under subsection 1 of this section may be
99 adjusted annually, consistent with the need to fund the
100 reasonable costs of the program, but shall not be less than
101 twenty-five dollars per ton of regulated air contaminant nor
102 more than forty dollars per ton of regulated air
103 contaminant. The first adjustment shall apply to moneys
104 payable on April 1, 1994, and shall be based upon the

105 general price level for the twelve-month period ending on
106 August thirty-first of the previous calendar year.

107 6. The department may initiate a civil action in
108 circuit court against any air contaminant source which has
109 not remitted the appropriate fees within thirty days. In
110 any judgment against the source, the department shall be
111 awarded interest at a rate determined pursuant to section
112 408.030 and reasonable attorney's fees. In any judgment
113 against the department, the source shall be awarded
114 reasonable attorney's fees.

115 7. The department shall not suspend or revoke a permit
116 for an air contaminant source solely because the source has
117 not submitted the fees pursuant to this section.

118 8. Any Phase I affected unit which is subject to the
119 requirements of Title IV, Section 404, of the federal Clean
120 Air Act, as amended, 42 U.S.C. Section 7651, shall pay
121 annually beginning April 1, 1993, and terminating December
122 31, 1999, a service fee for the previous calendar year as
123 provided herein. For the first year, the service fee shall
124 be twenty-five thousand dollars for each Phase I affected
125 generating unit to help fund the administration of sections
126 643.010 to 643.355. Thereafter, the service fee shall be
127 annually set by the commission by rule, following public
128 hearing, based on an annual allocation prepared by the
129 department showing the details of all costs and expenses
130 upon which such fees are based consistent with the
131 department's reasonable needs to administer and implement
132 sections 643.010 to 643.355 and to fulfill its
133 responsibilities with respect to Phase I affected units, but
134 such service fee shall not exceed twenty-five thousand
135 dollars per generating unit. Any such Phase I affected unit
136 which is located on one or more contiguous tracts of land

137 with any Phase II generating unit that pays fees under
138 subsection 1 or subsection 2 of this section shall be exempt
139 from paying service fees under this subsection. A
140 "contiguous tract of land" shall be defined to mean adjacent
141 land, excluding public roads, highways and railroads, which
142 is under the control of or owned by the permit holder and
143 operated as a single enterprise.

144 9. The department of natural resources shall determine
145 the fees due pursuant to this section by the state of
146 Missouri and its departments, agencies and institutions,
147 including two- and four-year institutions of higher
148 education. The director of the department of natural
149 resources shall forward the various totals due to the joint
150 committee on capital improvements and the directors of the
151 individual departments, agencies and institutions. The
152 departments, as part of the budget process, shall annually
153 request by specific line item appropriation funds to pay
154 said fees and capital funding for projects determined to
155 significantly improve air quality. If the general assembly
156 fails to appropriate funds for emissions fees as
157 specifically requested, the departments, agencies and
158 institutions shall pay said fees from other sources of
159 revenue or funds available. The state of Missouri and its
160 departments, agencies and institutions may receive
161 assistance from the small business technical assistance
162 program established pursuant to section 643.173.

163 10. Notwithstanding any statutory fee amounts or
164 maximums to the contrary, the department of natural
165 resources may conduct a comprehensive review and propose
166 changes to the fee structure authorized by sections 643.073,
167 643.075, 643.079, 643.225, 643.228, 643.232, 643.237, and
168 643.242 after holding stakeholder meetings in order to

169 solicit stakeholder input from each of the following
170 groups: the asbestos industry, electric utilities, mineral
171 and metallic mining and processing facilities, cement kiln
172 representatives, and any other interested industrial or
173 business entities or interested parties. The department
174 shall submit a proposed fee structure with stakeholder
175 agreement to the air conservation commission. The
176 commission shall review such recommendations at the
177 forthcoming regular or special meeting, but shall not vote
178 on the fee structure until a subsequent meeting. If the
179 commission approves, by vote of two-thirds majority or five
180 of seven commissioners, the fee structure recommendations,
181 the commission shall authorize the department to file a
182 notice of proposed rulemaking containing the recommended fee
183 structure, and after considering public comments, may
184 authorize the department to file the order of rulemaking for
185 such rule with the joint committee on administrative rules
186 pursuant to sections 536.021 and 536.024 no later than
187 December first of the same year. If such rules are not
188 disapproved by the general assembly in the manner set out
189 below, they shall take effect on January first of the
190 following calendar year and the previous fee structure shall
191 expire upon the effective date of the commission-adopted fee
192 structure. Any regulation promulgated under this subsection
193 shall be deemed to be beyond the scope and authority
194 provided in this subsection, or detrimental to permit
195 applicants, if the general assembly, within the first sixty
196 calendar days of the regular session immediately following
197 the filing of such regulation, by concurrent resolution
198 disapproves the regulation by concurrent resolution. If the
199 general assembly so disapproves any regulation filed under
200 this subsection, the commission shall continue to use the

201 previous fee structure. The authority of the commission to
202 further revise the fee structure as provided by this
203 subsection shall expire on August 28, [2024] **2021**.

644.057. Notwithstanding any statutory fee amounts or
2 maximums to the contrary, the director of the department of
3 natural resources may conduct a comprehensive review and
4 propose changes to the clean water fee structure set forth
5 in sections 644.052, 644.053, and 644.061. The
6 comprehensive review shall include stakeholder meetings in
7 order to solicit stakeholder input from each of the
8 following groups: agriculture, industry, municipalities,
9 public and private wastewater facilities, and the
10 development community. Upon completion of the comprehensive
11 review, the department shall submit a proposed fee structure
12 with stakeholder agreement to the clean water commission.
13 The commission shall review such recommendations at the
14 forthcoming regular or special meeting, but shall not vote
15 on the fee structure until a subsequent meeting. In no case
16 shall the clean water commission adopt or recommend any
17 clean water fee in excess of five thousand dollars. If the
18 commission approves, by vote of two-thirds majority or five
19 of seven commissioners, the fee structure recommendations,
20 the commission shall authorize the department to file a
21 notice of proposed rulemaking containing the recommended fee
22 structure, and after considering public comments, may
23 authorize the department to file the order of rulemaking for
24 such rule with the joint committee on administrative rules
25 pursuant to sections 536.021 and 536.024 no later than
26 December first of the same year. If such rules are not
27 disapproved by the general assembly in the manner set out
28 below, they shall take effect on January first of the
29 following calendar year and the fee structures set forth in

30 sections 644.052, 644.053, and 644.061 shall expire upon the
31 effective date of the commission-adopted fee structure,
32 contrary to section 644.054. Any regulation promulgated
33 under this subsection shall be deemed to be beyond the scope
34 and authority provided in this subsection, or detrimental to
35 permit applicants, if the general assembly, within the first
36 sixty calendar days of the regular session immediately
37 following the filing of such regulation disapproves the
38 regulation by concurrent resolution. If the general
39 assembly so disapproves any regulation filed under this
40 subsection, the department and the commission shall not
41 implement the proposed fee structure and shall continue to
42 use the previous fee structure. The authority of the
43 commission to further revise the fee structure provided by
44 this section shall expire on August 28, [2024] **2021**. Any
45 fee, bond, or assessment structure established pursuant to
46 the process in this section shall expire on August 28,
47 [2024] **2021**.

644.079. 1. In addition to any other remedy provided
2 by law, upon a determination by the director that a
3 provision of sections 644.006 to 644.141 or a standard,
4 limitation, order, rule or regulation promulgated pursuant
5 thereto, or a term or condition of any permit has been
6 violated, the director may issue an order assessing an
7 administrative penalty upon the violator under this
8 section. An administrative penalty shall not be imposed
9 until the director has sought to resolve the violations
10 through conference, conciliation and persuasion and shall
11 not be imposed for minor violations of sections 644.006 to
12 644.141 or minor violations of any standard, limitation,
13 order, rule or regulation promulgated pursuant to sections
14 644.006 to 644.141 or minor violations of any term or

15 condition of a permit issued pursuant to sections 644.006 to
16 644.141. **Any administrative penalty sought to resolve**
17 **violations through conference, conciliation, and persuasion**
18 **shall be communicated to the alleged violator in writing**
19 **together with any penalty calculation prepared in accordance**
20 **with any commission administrative penalty rule.** If the
21 violation is resolved through conference, conciliation and
22 persuasion, no administrative penalty shall be assessed
23 unless the violation has caused, or has the potential to
24 cause, a risk to human health or to the environment, or has
25 caused or has potential to cause pollution, or was knowingly
26 committed, or is defined by the United States Environmental
27 Protection Agency as other than minor. Any order assessing
28 an administrative penalty shall state that an administrative
29 penalty is being assessed under this section and that the
30 person subject to the penalty may appeal as provided by this
31 section. Any such order that fails to state the statute
32 under which the penalty is being sought, the manner of
33 collection or rights of appeal shall result in the state's
34 waiving any right to collection of the penalty.

35 2. The commission shall promulgate rules and
36 regulations for the assessment of administrative penalties.
37 **Such rules and regulations shall require the department to**
38 **document how any administrative penalty sought to resolve**
39 **the violations through conference, conciliation, and**
40 **persuasion was calculated and provide such calculation and**
41 **justification in writing to the alleged violator.** The
42 amount of the administrative penalty assessed per day of
43 violation for each violation under this section shall not
44 exceed the amount of the civil penalty specified in section
45 644.076. Such rules shall reflect the criteria used for the
46 administrative penalty matrix as provided for in the

47 Resource Conservation and Recovery Act, 42 U.S.C. 6928(a),
48 Section 3008(a), and the harm or potential harm which the
49 violation causes, or may cause, the violator's previous
50 compliance record, and any other factors which the
51 department may reasonably deem relevant. An administrative
52 penalty shall be paid within sixty days from the date of
53 issuance of the order assessing the penalty. Any person
54 subject to an administrative penalty may appeal to the
55 commission. Any appeal will stay the due date of such
56 administrative penalty until the appeal is resolved. Any
57 person who fails to pay an administrative penalty by the
58 final due date shall be liable to the state for a surcharge
59 of fifteen percent of the penalty plus ten percent per annum
60 on any amounts owed. Any administrative or civil penalty
61 paid pursuant to sections 644.006 to 644.141 shall be
62 handled in accordance with Section 7 of Article IX of the
63 State Constitution. An action may be brought in the
64 appropriate circuit court to collect any unpaid
65 administrative penalty, and for attorney's fees and costs
66 incurred directly in the collection thereof.

67 3. An administrative penalty shall not be increased in
68 those instances where department action, or failure to act,
69 has caused a continuation of the violation that was a basis
70 for the penalty. Any administrative penalty must be
71 assessed within two years following the department's initial
72 discovery of such alleged violation, or from the date the
73 department in the exercise of ordinary diligence should have
74 discovered such alleged violation.

75 4. Any final order imposing an administrative penalty
76 is subject to judicial review upon the filing of a petition
77 pursuant to section 536.100 by any person subject to the
78 administrative penalty.

79 5. The state may elect to assess an administrative
80 penalty, or, in lieu thereof, to request that the attorney
81 general or prosecutor file an appropriate legal action
82 seeking a civil penalty in the appropriate circuit court.

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