

FIRST REGULAR SESSION

SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 40

101ST GENERAL ASSEMBLY

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0155S.05C

ADRIANE D. CROUSE, Secretary

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## AN ACT

To repeal sections 260.373, 260.380, 260.437, 260.475, 260.520, 643.079, 644.057, and 644.079, RSMo, and to enact in lieu thereof nine new sections relating to the department of natural resources.

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

Section A. Sections 260.373, 260.380, 260.437, 260.475, 2  
260.520, 643.079, 644.057, and 644.079, RSMo, are repealed and  
3 nine new sections enacted in lieu thereof, to be known as  
4 sections 260.373, 260.380, 260.437, 260.475, 260.520, 640.095,  
5 643.079, 644.057, and 644.079, to read as follows:

260.373. 1. After August 28, 2012, the authority of  
2 the commission to promulgate rules under sections 260.350 to  
3 260.391 and 260.393 to 260.433 is subject to the following:

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

11 (2) **The commission shall not implement requirements**  
12 **prior to the requirements of Title 40, U.S. Code of Federal**  
13 **Regulations, Parts 260, 261, 262, 264, 265, 268, and 270, as**

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

14 **promulgated pursuant to Subtitle C of the Resource**  
15 **Conservation and Recovery Act, as amended;**

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

23 [(3)] (4) Notwithstanding the limitations of  
24 subdivision (1) of this subsection, the commission may  
25 retain, modify, or repeal any current rules pertaining to  
26 the following:

27 (a) [Thresholds for determining whether a hazardous  
28 waste generator is a large quantity generator, small  
29 quantity generator, or conditionally exempt small quantity  
30 generator;

31 (b)] Descriptions of applicable registration  
32 requirements; and

33 [(c)] (b) The reporting of hazardous waste activities  
34 to the department; provided, however, that the commission  
35 shall promulgate rules, effective beginning with the  
36 reporting period July 1, [2015] 2017 - June 30, [2016] 2018,  
37 that allow for the submittal of reporting data in [an  
38 electronic] any format on an annual basis by large quantity  
39 generators and treatment storage and disposal facilities[;

40 (d) Rules requiring hazardous waste generators to  
41 display hazard labels (e.g., Department of Transportation  
42 (DOT) labels) on containers and tanks during the time  
43 hazardous waste is stored on-site;

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

46 (f) The exclusions for hazardous secondary materials  
47 that are burned for fuel or that are recycled].

48 2. Nothing in this section shall be construed to  
49 repeal any other provision of law, and the commission and  
50 the department shall continue to have the authority to  
51 implement and enforce other statutes, and the rules  
52 promulgated pursuant to their authority.

53 3. No later than December 31, 2013, the department  
54 shall identify rules in Title 10, Missouri Code of State  
55 Regulations, Division 25, Chapters 3, 4, 5, and 7 that are  
56 inconsistent with the provisions of subsection 1 of this  
57 section. The department shall thereafter file with the  
58 Missouri secretary of state any amendments necessary to  
59 ensure that such rules are not inconsistent with the  
60 provisions of subsection 1 of this section. On December 31,  
61 [2015] **2017**, any rule contained in Title 10, Missouri Code  
62 of State Regulations, Division 25, Chapters 3, 4, 5, [or] 7,  
63 **9, and 11**, that [remains] **is** inconsistent with the  
64 provisions of subsection 1 above shall be null and void to  
65 the extent that it is inconsistent, **and the least stringent**  
66 **rule shall control. Any such rule that applies in any**  
67 **subject area not addressed by the requirements of Title 40,**  
68 **U.S. Code of Federal Regulations, Parts 260, 261, 262, 264,**  
69 **265, 268, and 270, as promulgated pursuant to Subtitle C of**  
70 **the Resource Conservation and Recovery Act, as amended,**  
71 **shall be null and void. The department shall file with the**  
72 **Missouri secretary of state any amendments necessary to**  
73 **ensure that rules are not inconsistent with the provisions**  
74 **of subsection 1 of this section.**

75 4. Nothing in this section shall be construed to  
76 effectuate a modification of any permit. Upon request, the

77 department shall modify as appropriate any permit containing  
78 requirements no longer in effect due to this section.

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

85         6. Any rule or portion of a rule, as that term is  
86 defined in section 536.010, that is created under the  
87 authority delegated in this section shall become effective  
88 only if it complies with and is subject to all of the  
89 provisions of chapter 536 and, if applicable, section  
90 536.028. This section and chapter 536 are nonseverable and  
91 if any of the powers vested with the general assembly under  
92 chapter 536 to review, to delay the effective date, or to  
93 disapprove and annul a rule are subsequently held  
94 unconstitutional, then the grant of rulemaking authority and  
95 any rule proposed or adopted after August 28, 2012, shall be  
96 invalid and void.

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

5         (1) Promptly file and maintain with the department, on  
6 registration forms it provides for this purpose, information  
7 on hazardous waste generation and management as specified by  
8 rules and regulations. Hazardous waste generators shall pay  
9 a one hundred dollar registration fee upon initial  
10 registration, and a one hundred dollar registration renewal  
11 fee annually thereafter to maintain an active registration.

12 Such fees shall be deposited in the hazardous waste fund  
13 created in section 260.391;

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

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

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.

260.437. 1. In addition to any other powers vested in  
2 it by law, the commission shall have the power to adopt,  
3 amend or repeal, after due notice and public hearing,

4 standards, rules and regulations to implement sections  
5 260.435 to [260.480] 260.482.

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

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

24       4. Any rule or portion of a rule, as that term is  
25 defined in section 536.010, that is created under the  
26 authority delegated in sections 260.435 to 260.482 shall  
27 become effective only if it complies with and is subject to  
28 all of the provisions of chapter 536 and, if applicable,  
29 section 536.028. This section and chapter 536 are  
30 nonseverable and if any of the powers vested with the  
31 general assembly pursuant to chapter 536 to review, to delay  
32 the effective date, or to disapprove and annul a rule are  
33 subsequently held unconstitutional, then the grant of  
34 rulemaking authority and any rule proposed or adopted after  
35 August 28, 2021, shall be invalid and void.

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.

260.520. **1.** The director may adopt, amend, promulgate  
2 or repeal, after due notice and hearing, rules and  
3 regulations to implement sections 260.500 to [260.550]  
4 **260.552** pursuant to this section and chapter 536. No rule  
5 or portion of a rule promulgated under the authority of  
6 sections 260.500 to [260.550] **260.552** shall become effective  
7 unless it has been promulgated pursuant to the provisions of  
8 section 536.024.

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

**3. The director shall file with the Missouri secretary  
16 of state any amendments necessary to ensure that rules are  
17 not inconsistent with the provisions of this section. Any  
18 rule contained in the Missouri code of state regulations**

19 that is inconsistent with the provisions of this section  
20 shall be null and void to the extent that it is  
21 inconsistent, and the least stringent rule shall control.  
22 Any such rule that applies in any subject area not addressed  
23 by the requirements of Title 40, U.S. Code of Federal  
24 Regulations, Part 300, as promulgated pursuant to the  
25 Comprehensive Environmental Response, Compensation, and  
26 Liability Act, as amended, shall be null and void.

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.  
18 Any statement provided by the department in compliance with  
19 this section shall be treated as confidential information  
20 and shall not be disclosed to any party except the alleged  
21 violator.

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, 2024.

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. Any**  
21 **statement provided by the department in compliance with this**  
22 **section shall be treated as confidential information and**  
23 **shall not be disclosed to any party except the alleged**  
24 **violator.** If the violation is resolved through conference,  
25 conciliation and persuasion, no administrative penalty shall  
26 be assessed unless the violation has caused, or has the  
27 potential to cause, a risk to human health or to the  
28 environment, or has caused or has potential to cause  
29 pollution, or was knowingly committed, or is defined by the  
30 United States Environmental Protection Agency as other than  
31 minor. Any order assessing an administrative penalty shall  
32 state that an administrative penalty is being assessed under  
33 this section and that the person subject to the penalty may  
34 appeal as provided by this section. Any such order that  
35 fails to state the statute under which the penalty is being  
36 sought, the manner of collection or rights of appeal shall  
37 result in the state's waiving any right to collection of the  
38 penalty.

39 2. The commission shall promulgate rules and  
40 regulations for the assessment of administrative penalties.  
41 **Such rules and regulations shall require the department to**



42 **document how any administrative penalty sought to resolve**  
43 **the violations through conference, conciliation, and**  
44 **persuasion was calculated and provide such calculation and**  
45 **justification in writing to the alleged violator. Any**  
46 **statement provided by the department in compliance with this**  
47 **section shall be treated as confidential information and**  
48 **shall not be disclosed to any party except the alleged**  
49 **violator.** The amount of the administrative penalty assessed  
50 per day of violation for each violation under this section  
51 shall not exceed the amount of the civil penalty specified  
52 in section 644.076. Such rules shall reflect the criteria  
53 used for the administrative penalty matrix as provided for  
54 in the Resource Conservation and Recovery Act, 42 U.S.C.  
55 6928(a), Section 3008(a), and the harm or potential harm  
56 which the violation causes, or may cause, the violator's  
57 previous compliance record, and any other factors which the  
58 department may reasonably deem relevant. An administrative  
59 penalty shall be paid within sixty days from the date of  
60 issuance of the order assessing the penalty. Any person  
61 subject to an administrative penalty may appeal to the  
62 commission. Any appeal will stay the due date of such  
63 administrative penalty until the appeal is resolved. Any  
64 person who fails to pay an administrative penalty by the  
65 final due date shall be liable to the state for a surcharge  
66 of fifteen percent of the penalty plus ten percent per annum  
67 on any amounts owed. Any administrative or civil penalty  
68 paid pursuant to sections 644.006 to 644.141 shall be  
69 handled in accordance with Section 7 of Article IX of the  
70 State Constitution. An action may be brought in the  
71 appropriate circuit court to collect any unpaid  
72 administrative penalty, and for attorney's fees and costs  
73 incurred directly in the collection thereof.

74           3. An administrative penalty shall not be increased in  
75 those instances where department action, or failure to act,  
76 has caused a continuation of the violation that was a basis  
77 for the penalty. Any administrative penalty must be  
78 assessed within two years following the department's initial  
79 discovery of such alleged violation, or from the date the  
80 department in the exercise of ordinary diligence should have  
81 discovered such alleged violation.

82           4. Any final order imposing an administrative penalty  
83 is subject to judicial review upon the filing of a petition  
84 pursuant to section 536.100 by any person subject to the  
85 administrative penalty.

86           5. The state may elect to assess an administrative  
87 penalty, or, in lieu thereof, to request that the attorney  
88 general or prosecutor file an appropriate legal action  
89 seeking a civil penalty in the appropriate circuit court.

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