

# SENATE BILL NO. 918

## 101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURLISON.

4340S.01I

ADRIANE D. CROUSE, Secretary

### AN ACT

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

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

Section A. Sections 260.373, 260.437, and 260.520, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 260.373, 260.437, 260.520, and 640.095, to read as follows:

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

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

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

(3) Notwithstanding the limitations of **[subdivision]** **subdivisions (1) and (2)** of this subsection, where state

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

18 statutes expressly prescribe standards or requirements that  
19 are stricter than or implement requirements prior to any  
20 federal requirements, or where state statutes allow the  
21 establishment or collection of fees, costs, or taxes, the  
22 commission may promulgate rules as necessary to implement  
23 such statutes;

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

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

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

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

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

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

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

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

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

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

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

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

          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, 2022, shall be invalid and void.

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.

9 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.

15 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.

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