

SECOND REGULAR SESSION

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 918

101ST GENERAL ASSEMBLY

4340S.04C

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,
2 are repealed and four new sections enacted in lieu thereof, to
3 be known as sections 260.373, 260.437, 260.520, and 640.095, to
4 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 mandatory obligations outside of** the requirements
7 of Title 40, U.S. Code of Federal Regulations, Parts 260,
8 261, 262, 264, 265, 268, and 270, as promulgated pursuant to
9 Subtitle C of the Resource Conservation and Recovery Act, as
10 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**
14 **promulgated pursuant to Subtitle C of the Resource**
15 **Conservation and Recovery Act, as amended;**

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

16 (3) Notwithstanding the limitations of [subdivision]
17 **subdivisions** (1) **and** (2) of this subsection, where state
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 mandatory**
68 **obligations outside of the requirements of Title 40, U.S.**
69 **Code of Federal Regulations, Parts 260, 261, 262, 264, 265,**
70 **268, and 270, as promulgated pursuant to Subtitle C of the**
71 **Resource Conservation and Recovery Act, as amended, shall be**
72 **null and void. The department shall file with the Missouri**
73 **secretary of state any amendments necessary to ensure that**
74 **rules are not inconsistent with the provisions of subsection**
75 **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.**

**2. Except as provided in sections 260.565 to 260.573,
7 the commission shall not promulgate rules that are stricter
8 than, apply prior to, or apply mandatory obligations outside
9 of the requirements of Title 40, U.S. Code of Federal
10 Regulations, Part 300, as promulgated pursuant to the
11 Comprehensive Environmental Response, Compensation, and
12 Liability Act, as amended.**

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

25 4. Any rule or portion of a rule, as that term is
26 defined in section 536.010, that is created under the
27 authority delegated in sections 260.435 to 260.482 shall
28 become effective only if it complies with and is subject to
29 all of the provisions of chapter 536 and, if applicable,
30 section 536.028. This section and chapter 536 are
31 nonseverable and if any of the powers vested with the
32 general assembly pursuant to chapter 536 to review, to delay
33 the effective date, or to disapprove and annul a rule are
34 subsequently held unconstitutional, then the grant of
35 rulemaking authority and any rule proposed or adopted after
36 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. Except as provided in sections 260.565 to 260.573,
10 the director shall not promulgate rules that are stricter
11 than, apply prior to, or apply mandatory obligations outside
12 of the requirements of Title 40, U.S. Code of Federal
13 Regulations, as promulgated pursuant to the Comprehensive
14 Environmental Response, Compensation, and Liability Act, as
15 amended.

16 3. The director shall file with the Missouri secretary
17 of state any amendments necessary to ensure that rules are
18 not inconsistent with the provisions of this section. Any
19 rule contained in the Missouri code of state regulations
20 that is inconsistent with the provisions of this section
21 shall be null and void to the extent that it is
22 inconsistent, and the least stringent rule shall control.
23 Any such rule that applies mandatory obligations outside of
24 the requirements of Title 40, U.S. Code of Federal
25 Regulations, Part 300, as promulgated pursuant to the
26 Comprehensive Environmental Response, Compensation, and
27 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 penalties and
3 determines that a penalty should be levied, the department
4 shall provide in writing to the alleged violator, together
5 with any claim or demand for a penalty, the factual basis
6 for the violation and a copy of the rules or statutory
7 provisions upon which the department relies for alleging a
8 violation has occurred and determining the appropriate
9 penalty, along with a statement of facts specifying each
10 element of the violation and basis for the penalty,
11 including how the department calculated the penalty, with
12 particularity. This information shall be a complete record
13 so that an alleged violator can understand the alleged

14 violation, the applicability of the rules or statutory
15 provisions, appropriateness of the penalty, and the accuracy
16 of the calculation so that the alleged violator can respond
17 properly to the department. Any statement provided by the
18 department in compliance with this section shall be treated
19 as confidential information and shall not be disclosed to
20 any party except the alleged violator.

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