FIRST REGULAR SESSION

HOUSE COMMITTEE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 230

96TH GENERAL ASSEMBLY

1320L.06C D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 247.060, 253.082, 253.090, 260.262, 260.380, 260.475, 260.965, 319.132, 386.850, 414.072, 621.250, 643.020, 643.040, 643.050, 643.060, 643.079, 643.080, 643.130, 643.191, 643.225, 643.232, 643.237, 643.240, 643.242, 643.245, 643.250, 643.253, 643.260, 644.036, 644.051, 644.054, 644.071, 701.033, and 701.332, RSMo, and to enact in lieu thereof fifty new sections relating to natural resources, with penalty provisions and an emergency clause for certain sections.

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

Section A. Sections 247.060, 253.082, 253.090, 260.262, 260.380, 260.475, 260.965, 319.132, 386.850, 414.072, 621.250, 643.020, 643.040, 643.050, 643.060, 643.079, 643.080, 643.130, 643.191, 643.225, 643.232, 643.237, 643.240, 643.242, 643.245, 643.250, 643.253, 643.260, 644.036, 644.051, 644.054, 644.071, 701.033, and 701.332, RSMo, are repealed and fifty new sections enacted in lieu thereof, to be known as sections 37.970, 67.4500, 67.4505, 67.4510, 67.4515, 67.4520, 192.1250, 247.060, 253.082, 253.090, 256.055, 260.262, 260.269, 260.380, 260.475, 260.965, 319.130, 319.132, 414.072, 442.014, 620.2300, 621.250, 640.018, 640.045, 640.116, 640.128, 640.850, 643.020, 643.040, 643.050, 643.060, 643.079, 643.080, 643.130, 643.191, 643.225, 643.232, 643.237, 643.240, 643.242, 643.245, 643.250, 644.036, 644.051, 644.054, 644.071, 644.145, 701.033, 701.058, and 1, to read as follows:

37.970. 1. It shall be the policy of each state department to carry out its mission with full transparency to the public. Any data collected in the course of its duties shall be made available to the public in a timely fashion. Data, reports, and other information resulting from any activities conducted by the department in the course of its duties shall be easily accessible by any member of the public.

EXPLANATION — Matter enclosed in bold-faced brackets **[**thus**]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

2. Each department shall broadly interpret any request for information under section 610.023:

(1) Even if such request for information does not use the words "sunshine request", "open records request", "public records request", or any such similar wording;

(2) Even if the communication is simply an inquiry as to the availability or existence of data or information; and

(3) Regardless of the format in which the communication is made, including electronic mail, facsimile, internet, postal mail, in person, telephone, or any other format.

3. Any failure by a department to release information shall, in addition to any other applicable violation of law, be considered a violation of the department's policy under this section and shall constitute a breach of the public's trust.

4. This section shall not be construed to limit or exceed the requirements of the provisions in chapter 610, nor shall this section require different treatment of a record considered closed or confidential under section 610.021 than what is required under that section.

67.4500. As used in sections 67.4500 to 67.4520, the following terms shall mean:

(1) "Authority", any county drinking water supply lake authority created by sections 67.4500 to 67.4520;

(2) "Conservation storage level", the target elevation established for a drinking water supply lake at the time of design and construction of such lake;

(3) "Costs", the sum total of all reasonable or necessary expenses incidental to the acquisition, construction, expansion, repair, alteration, and improvement of the project, including without limitation the following: the expense of studies and surveys; the cost of all lands, properties, rights, easements, and franchises acquired; land title and mortgage guaranty policies; architectural and engineering services; legal, organizational marketing, or other special services; provisions for working capital; reserves for principal and interest; and all other necessary and incidental expenses, including interest during construction on bonds issued to finance the project and for a period subsequent to the estimated date of completion of the project;

(4) "Project", recreation and tourist facilities and services, including, but not limited to, lakes, parks, recreation centers, restaurants, hunting and fishing reserves, historic sites and attractions, and any other facilities that the authority may desire to undertake, including the related infrastructure buildings and the usual and convenient facilities appertaining to any undertakings, and any extensions or improvements of any facilities, and the acquisition of any property necessary therefore, all as may be related to

the development of a water supply source, recreational and tourist accommodations, and facilities;

(5) "Water commission", a water commission owning a reservoir formed pursuant to sections 393.700 to 393.770;

(6) "Watershed", the area that contributes or may contribute to the surface water of any lake as determined by the authority.

67.4505. 1. There is hereby created within any county of the third classification with a township form of government and with more than seven thousand two hundred but fewer than seven thousand three hundred inhabitants a county drinking water supply lake authority, which shall be a body corporate and politic and a political subdivision of this state.

2. The authority may exercise the powers provided to it under section 67.4520 over the reservoir area encompassing any drinking water supply lake of one thousand five hundred acres or more, as measured at its conservation storage level, and within the lake's watershed.

3. It shall be the purpose of each authority to promote the general welfare and a safe drinking water supply through the construction, operation, and maintenance of a drinking water supply lake.

4. The income of the authority and all property at any time owned by the authority shall be exempt from all taxation or any assessments whatsoever to the state or of any political subdivision, municipality, or other governmental agency thereof.

5. No county in which an authority is organized shall be held liable in connection with the construction, operation, or maintenance of any project or program undertaken pursuant to sections 67.4500 to 67.4520, including any actions taken by the authority in connection with such project or program.

67.4510. A county drinking water supply lake authority shall consist of at least six but not more than thirty members, appointed as follows:

(1) Members of the water commission shall appoint all members to the authority, one-third of the initial members for a six-year term, one-third for a four-year term, and the remaining one-third for a two-year term, until a successor is appointed; provided that, if there is an odd number of members, the last person appointed shall serve a two-year term. Upon the expiration of each term, a successor shall be appointed for a six-year term;

(2) No person shall be appointed to serve on the authority unless he or she is a registered voter in the state for more than five years, a resident in the county where the water commission is located for more than five years, and over the age of twenty-five years.

If any member moves outside such county, the seat shall be deemed vacant and a new member shall be appointed by the county commission to complete the unexpired term.

67.4515. 1. The water commission shall by resolution establish a date and time for the initial meeting of the authority.

2. At the initial meeting, and annually thereafter, the authority shall elect one of its members as chairman and one as vice chairman, and appoint a secretary and a treasurer who may be a member of the authority. If not a member of the authority, the secretary or treasurer shall receive compensation that shall be fixed from time to time by action of the authority. The authority may appoint an executive director who shall not be a member of the authority and who shall serve at its pleasure. If an executive director is appointed, he or she shall receive such compensation as shall be fixed from time to time by action of the authority. The authority may designate the secretary to act in lieu of the executive director. The secretary shall keep a record of the proceedings of the authority and shall be the custodian of all books, documents, and papers filed with the authority, the minute books or journal thereof, and its official seal. The secretary may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that the copies are true and correct copies, and all persons dealing with the authority may rely on such certificates. The authority, by resolution duly adopted, shall fix the powers and duties of its executive director as it may from time to time deem proper and necessary.

3. Each member of the authority shall execute a surety bond in the penal sum of fifty thousand dollars or, in lieu thereof, the chairman of the authority shall execute a blanket bond covering each member and the employees or other officers of the authority, each surety bond to be conditioned upon the faithful performance of the duties of the office or offices covered, to be executed by a surety company authorized to transact business in the state as surety, and to be approved by the attorney general and filed in the office of the secretary of state. The cost of each such bond shall be paid by the authority.

4. No authority member shall participate in any deliberations or decisions concerning issues where the authority member has a direct financial interest in contracts, property, supplies, services, facilities, or equipment purchased, sold, or leased by the authority. Authority members shall additionally be subject to the limitations regarding the conduct of public officials as provided in chapter 105.

67.4520. 1. The authority may:

(1) Acquire, own, construct, lease, and maintain recreational or water quality projects;

(2) Acquire, own, lease, sell, or otherwise dispose of interests in and to real property and improvements situated thereon and in personal property necessary to fulfill the purposes of the authority;

(3) Contract and be contracted with, and to sue and be sued;

(4) Accept gifts, grants, loans, or contributions from the federal government, the state of Missouri, political subdivisions, municipalities, foundations, other public or private agencies, individuals, partnerships, or corporations;

(5) Employ such managerial, engineering, legal, technical, clerical, accounting, advertising, stenographic, and other assistance as it may deem advisable. The authority may also contract with independent contractors for any of the foregoing assistance;

(6) Disburse funds for its lawful activities and fix salaries and wages of its employees;

(7) Fix rates, fees, and charges for the use of any projects and property owned, leased, operated, or managed by the authority;

(8) Adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business may be transacted; however, said bylaws, rules, and regulations shall not exceed the powers granted to the authority by sections 67.4500 to 67.4520;

(9) Either jointly with a similar body, or separately, recommend to the proper departments of the government of the United States, or any state or subdivision thereof, or to any other body, the carrying out of any public improvement;

(10) Provide for membership in any official, industrial, commercial, or trade association, or any other organization concerned with such purposes, for receptions of officials or others as may contribute to the advancement of the authority and development therein, and for such other public relations activities as will promote the same, and such activities shall be considered a public purpose;

(11) Cooperate with municipalities and other political subdivisions as provided in chapter 70;

(12) Enter into any agreement with any other state, agency, authority, commission, municipality, person, corporation, or the United States, to effect any of the provisions contained in sections 67.4500 to 67.4520;

(13) Sell and supply water and construct, own, and operate infrastructure projects in areas within its jurisdiction, including but not limited to roads, bridges, water and sewer systems, and other infrastructure improvements;

(14) Issue revenue bonds in the same manner as provided under section 67.789; and

(15) Adopt tax increment financing within its boundaries in the same manner as provided under section 67.790.

2. The state or any political subdivision or municipal corporation thereof may in its discretion, with or without consideration, transfer or cause to be transferred to the authority or may place in its possession or control, by deed, lease, or other contract or agreement, either for a limited period or in fee, any property wherever situated.

3. The state or any political subdivision may appropriate, allocate, and expend such funds of the state or political subdivision for the benefit of the authority as are reasonable and necessary to carry out the provisions of sections 67.4500 to 67.4520.

4. The authority shall have the authority to exercise all zoning and planning powers that are granted to cities, towns, and villages under chapter 89, except that the authority shall not exercise such powers inside the corporate limits of any city, town, or village which has adopted a city plan under the laws of this state before August 28, 2011.

192.1250. The department of health and senior services shall examine the feasibility of implementing a real-time water quality testing system for measuring the bacterial water quality at state-owned public beaches and shall issue a report of its findings to the general assembly by December 31, 2011.

247.060. 1. The management of the business and affairs of the district is hereby vested in a board of directors, who shall have all the powers conferred upon the district except as herein otherwise provided**[**, who shall serve without pay**]**. It shall be composed of five members, each of whom shall be a voter of the district and shall have resided in said district one whole year immediately prior to his election. A member shall be at least twenty-five years of age and shall not be delinquent in the payment of taxes at the time of his election. Except as provided in subsection 2 of this section, the term of office of a member of the board shall be three years. The remaining members of the board shall appoint a qualified person to fill any vacancy on the board. If no qualified person who lives in the subdistrict for which there is a vacancy is willing to serve on the board, the board may appoint an otherwise qualified person who lives in the district but not in the subdistrict in which the vacancy exists to fill such vacancy.

2. After notification by certified mail that he or she has two consecutive unexcused absences, any member of the board failing to attend the meetings of the board for three consecutive regular meetings, unless excused by the board for reasons satisfactory to the board, shall be deemed to have vacated the seat, and the secretary of the board shall certify that fact to the board. The vacancy shall be filled as other vacancies occurring in the board.

3. The initial members of the board shall be appointed by the circuit court and one shall serve until the immediately following first Tuesday after the first Monday in April, two shall serve until the first Tuesday after the first Monday in April on the second year following their

appointment and the remaining appointees shall serve until the first Tuesday after the first Monday in April on the third year following their appointment. On the expiration of such terms and on the expiration of any subsequent term, elections shall be held as otherwise provided by law, and such elections shall be held in April pursuant to section 247.180.

4. In 2008, 2009, and 2010, directors elected in such years shall serve from the first Tuesday after the first Monday in June until the first Tuesday in April of the third year following the year of their election. All directors elected thereafter shall serve from the first Tuesday in April until the first Tuesday in April of the third year following the year of their election.

5. Each member of the board may receive an attendance fee not to exceed one hundred dollars for attending each regularly called board meeting, or special meeting, but shall not be paid for attending more than two meetings in any calendar month, except that in a county of the first classification, a member shall not be paid for attending more than four meetings in any calendar month. However, no board member shall be paid more than one attendance fee if such member attends more than one board meeting in a calendar week. In addition, the president of the board of directors may receive fifty dollars for attending each regularly or specially called board meeting, but shall not be paid the additional fee for attending more than two meetings in any calendar month. Each member of the board shall be reimbursed for his or her actual expenditures in the performance of his or her duties on behalf of the district.

6. In no event, however, shall a board member receive any attendance fees or additional compensation authorized in subsection 5 of this section until after such board member has completed a minimum of six hours training regarding the responsibilities of the board and its members concerning the basics of water treatment and distribution, budgeting and rates, water utility planning, the funding of capital improvements, the understanding of water utility financial statements, the Missouri sunshine law, and this chapter.

7. The circuit court of the county having jurisdiction over the district shall have jurisdiction over the members of the board of directors to suspend any member from exercising his or her office, whensoever it appears that he or she has abused his or her trust or become disqualified; to remove any member upon proof or conviction of gross misconduct or disqualification for his or her office; or to restrain and prevent any alienation of property of the district by members, in cases where it is threatened, or there is good reason to apprehend that it is intended to be made in fraud of the rights and interests of the district.

8. The jurisdiction conferred by this section shall be exercised as in ordinary cases upon petition, filed by or at the instance of any member of the board, or at the instance of

any ten voters residing in the district who join in the petition, verified by the affidavit of at least one of them. The petition shall be heard in a summary manner after ten days' notice in writing to the member or officer complained of. An appeal shall lie from the judgment of the circuit court as in other causes, and shall be speedily determined; but an appeal does not operate under any condition as a supersedeas of a judgment of suspension or removal from office.

253.082. **1.** Upon a request from the director of the department of natural resources, the commissioner of administration shall draw a warrant payable to the facility head of each of the state parks and historic sites in an amount to be specified by the director of the department of natural resources, but such amount shall not exceed the sum of one thousand five hundred dollars for each such facility. The sum so specified shall be placed in the hands of the facility head as a revolving fund to be used in the payment of the incidental expenses of the facility for which he has been appointed and for the refund of fees paid by the public. All expenditures shall be made in accordance with rules and regulations established by the commissioner of administration.

2. Upon a request from the director of the department of natural resources, the commissioner of administration shall draw a warrant payable to the director of the division of state parks in an amount to be specified by the director of the department of natural resources, but such amount shall not exceed the sum of five hundred dollars. The sum so specified shall be placed in the hands of the director of state parks as a revolving fund to be used in the cash transactions involving the sale of items made by the division of state parks. All transactions shall be made in accordance with rules and regulations established by the commissioner of administration.

253.090. 1. All revenue derived from privileges, conveniences, contracts or otherwise, all moneys received by gifts, bequests or contributions or from county or municipal sources and all moneys received from the operation of concessions, projects or facilities and from resale items shall be paid **[**into the state treasury**]** to the credit of the "State Park Earnings Fund", which is hereby created **in the state treasury. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund**. In the event any state park or any part thereof is taken under the power of eminent domain by the federal government the moneys paid for the taking shall be deposited in the state park earnings fund. The fund shall be used solely for the payment of the expenditures of the department of natural resources in the administration of this law, except that in any fiscal year the department may expend a sum not to exceed fifty percent of the preceding fiscal year's deposits to the state park earnings fund for the purpose of:

(1) Paying the principal and interest of revenue bonds issued;

(2) Providing an interest and sinking fund;

(3) Providing a reasonable reserve fund;

(4) Providing a reasonable fund for depreciation; and

(5) Paying for feasibility reports necessary for the issuing of revenue bonds.

2. **Notwithstanding the provisions of section 33.080 to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund.**

3. A good and sufficient bond conditioned upon the faithful performance of the contract and compliance with this law shall be required of all contractors.

[3.**] 4.** Any person who contracts pursuant to this section with the state shall keep true and accurate records of his or her receipts and disbursements arising out of the performance of the contract and shall permit the department of natural resources and the state auditor to audit such records.

[4. All moneys remaining in the state park revolving fund on July 1, 2000, shall be transferred to the state park earnings fund.**]**

256.055. Upon a request from the director of the department of natural resources, the commissioner of administration shall draw a warrant payable to the director of the division of geology and land survey in an amount to be specified by the director of the department of natural resources, but such amount shall not exceed the sum of five hundred dollars. The sum so specified shall be placed in the hands of the director of the division of geology and land survey as a revolving fund to be used in the cash transactions involving the sale of items made by the division of geology and land survey. All transactions shall be made in accordance with rules and regulations established by the commissioner of administration.

260.262. A person selling lead-acid batteries at retail or offering lead-acid batteries for retail sale in the state shall:

(1) Accept, at the point of transfer, in a quantity at least equal to the number of new lead-acid batteries purchased, used lead-acid batteries from customers, if offered by customers;

(2) Post written notice which must be at least four inches by six inches in size and must contain the universal recycling symbol and the following language:

(a) It is illegal to discard a motor vehicle battery or other lead-acid battery;

(b) Recycle your used batteries; and

(c) State law requires us to accept used motor vehicle batteries, or other lead-acid batteries for recycling, in exchange for new batteries purchased; and

(3) Manage used lead-acid batteries in a manner consistent with the requirements of the state hazardous waste law;

(4) Collect at the time of sale a fee of fifty cents for each lead-acid battery sold. Such fee shall be added to the total cost to the purchaser at retail after all applicable sales taxes on the battery have been computed. The fee imposed, less six percent of fees collected, which shall be retained by the seller as collection costs, shall be paid to the department of revenue in the form and manner required by the department and shall include the total number of batteries sold during the preceding month. The department of revenue shall promulgate rules and regulations necessary to administer the fee collection and enforcement. The terms "sold at retail" and "retail sales" do not include the sale of batteries to a person solely for the purpose of resale, if the subsequent retail sale in this state is to the ultimate consumer and is subject to the fee. However, this fee shall not be paid on batteries sold for use in agricultural operations upon written certification by the purchaser; and

(5) The department of revenue shall administer, collect, and enforce the fee authorized pursuant to this section pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales and use tax imposed pursuant to chapter 144 except as provided in this section. The proceeds of the battery fee, less four percent of the proceeds, which shall be retained by the department of revenue as collection costs, shall be transferred by the department of revenue into the hazardous waste fund, created pursuant to section 260.391. The fee created in subdivision (4) and this subdivision shall be effective October 1, 2005. The provisions of subdivision (4) and this subdivision shall terminate **[**June 30, 2011**] December 31, 2013**.

260.269. Notwithstanding any provision of law to the contrary, the state, including without limitation, any agency or political subdivision thereof, in possession of used tires, scrap tires, or tire shred may transfer possession and ownership of such tires or shred to any in-state private entity to be lawfully disposed of or recycled; provided, such tires or shred are not burned as a fuel except in a permitted facility; and further provided, such tires shall not be disposed of in a landfill; and still further provided, the cost incurred by the state, agency, or political subdivision transferring such tires or shred is less than the cost the state, agency, or political subdivision would have otherwise incurred had it disposed of such tires or shred. The private entity shall pay for the transportation of any tires or tire shred received under this section.

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

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

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

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

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

(8) Collect and maintain such records, perform such monitoring or analyses, and submit such reports on any hazardous waste generated, its transportation and final disposition, as specified in sections 260.350 to 260.430 and rules and regulations adopted pursuant to sections 260.350 to 260.430;

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

(10) Pay annually, on or before January first of each year, effective January 1, 1982, a fee to the state of Missouri to be placed in the hazardous waste fund. The fee shall be five dollars per ton or portion thereof of hazardous waste registered with the department as specified

in subdivision (1) of this subsection for the twelve-month period ending June thirtieth of the previous year. However, the fee shall not exceed fifty-two thousand dollars per generator site per year nor be less than one hundred fifty dollars per generator site per year;

(a) All moneys payable pursuant to the provisions of this subdivision shall be promptly transmitted to the department of revenue, which shall deposit the same in the state treasury to the credit of the hazardous waste fund created in section 260.391;

(b) The hazardous waste management commission shall establish and submit to the department of revenue procedures relating to the collection of the fees authorized by this subdivision. Such procedures shall include, but not be limited to, necessary records identifying the quantities of hazardous waste registered, the form and submission of reports to accompany the payment of fees, the time and manner of payment of fees, which shall not be more often than quarterly.

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

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

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

(2) The department may determine that a specific quantity of a specific hazardous waste requires special management. Upon such determination and after public notice by press release or advertisement thereof, including instructions for handling and delivery, generators exempted pursuant to this subsection shall deliver, but without a manifest or the requirement to use a licensed hazardous waste transporter, such waste to:

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

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

4. Failure to pay the fee, or any portion thereof, prescribed in this section by the due date shall result in the imposition of a penalty equal to fifteen percent of the original fee. The fee

prescribed in this section shall expire December 31, **[**2011**]** **2013**, except that the department shall levy and collect this fee for any hazardous waste generated prior to such date and reported to the department.

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

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

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

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

(4) Cement kiln dust waste;

(5) Waste oil; or

(6) Hazardous waste that is:

(a) Reclaimed or reused for energy and materials;

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

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

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

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

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

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

5. If the fees or any portion of the fees imposed by this section are not paid by the date prescribed for such payment, there shall be imposed interest upon the unpaid amount at the rate

of ten percent per annum from the date prescribed for its payment until payment is actually made, all of which shall be deposited in the hazardous waste fund.

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

7. This fee shall expire December 31, **[**2011**]** **2013**, except that the department shall levy and collect this fee for any hazardous waste generated prior to such date and reported to the department.

260.965. The provisions of sections 260.900 to 260.965 shall expire **[**August 28, 2012**]** **December 31, 2017**.

319.130. 1. On or before April 1, 2012, the board of trustees of the petroleum storage tank insurance fund shall hold one or more public hearings to determine whether to create and fund an underground storage tank operator training program. The board shall consider at a minimum:

(1) Input from the department of natural resources, the department of agriculture, the board's advisory committee, and affected portions of the private sector;

(2) Relevant deadlines, time frames, costs, and benefits, including federal funding consequences for the state's underground storage tank regulatory program if such a training program is not implemented;

(3) Training programs already in existence in other states;

(4) Training programs already being used by tank owners and operators; and

(5) Such other factors as the board deems necessary and prudent.

2. If after completing the requirements of subsection 1 of this section, the board decides by majority vote to create and fund an underground storage tank operator training program, the training program shall at a minimum:

(1) Satisfy the federal requirements for such a program;

(2) Be developed in collaboration with the department of natural resources, the department of agriculture, the board's advisory committee, and affected portions of the private sector;

(3) Be offered at no cost to those who are required to participate;

(4) Specify standards, reporting, and documentation requirements; and

(5) Be established by rule.

3. The board may contract with one or more third parties to carry out the requirements of this section.

4. At any time after the board creates and funds the underground storage tank operator training program under subsection 2 of this section, the board may, by rule, modify or eliminate the program.

5. Any records created or maintained by the board as part of the underground storage tank operator training program created herein shall be public records under chapter 610 and shall be made readily available to the department of natural resources.

6. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly under chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2011, shall be invalid and void.

319.132. 1. The board shall assess a surcharge on all petroleum products within this state which are enumerated by section 414.032. Except as specified by this section, such surcharge shall be administered pursuant to the provisions of subsections 1 to **[**3**] 5** of section 414.102 and subsections 1 and 2 of section 414.152. Such surcharge shall be imposed upon such petroleum products within this state and shall be assessed on each transport load, or the equivalent of an average transport load if moved by other means. All revenue generated by the assessment of such surcharges shall be deposited to the credit of the special trust fund known as the petroleum storage tank insurance fund.

2. Any person who claims to have paid the surcharge in error may file a claim for a refund with the board within three years of the payment. The claim shall be in writing and signed by the person or the person's legal representative. The board's decision on the claim shall be in writing and may be delivered to the person by first class mail. Any person aggrieved by the board's decision may seek judicial review by bringing an action against the board in the circuit court of Cole County pursuant to section 536.150 no later than sixty days following the date the board's decision was mailed. The department of revenue shall not be a party to such proceeding.

3. The board shall assess and annually reassess the financial soundness of the petroleum storage tank insurance fund.

4. (1) The board shall set, in a public meeting with an opportunity for public comment, the rate of the surcharge that is to be assessed on each such transport load or equivalent but such rate shall be no more than sixty dollars per transport load or an equivalent thereof. A transport load shall be deemed to be eight thousand gallons.

(2) The board may increase or decrease the surcharge, up to a maximum of sixty dollars, only after giving at least sixty days' notice of its intention to alter the surcharge; provided however, the board shall not increase the surcharge by more than fifteen dollars in any year. The board must coordinate its actions with the department of revenue to allow adequate time for implementation of the surcharge change.

(3) If the fund's cash balance on the first day of any month exceeds the sum of its liabilities, plus ten percent, the transport load fee shall automatically revert to twenty-five dollars per transport load on the first day of the second month following this event.

(4) Moneys generated by this surcharge shall not be used for any purposes other than those outlined in sections 319.129 through 319.133 and section 319.138. Nothing in this subdivision shall limit the board's authority to contract with the department of natural resources pursuant to section 319.129 to carry out the purposes of the fund as determined by the board.

5. The board shall ensure that the fund retain a balance of at least twelve million dollars but not more than one hundred million dollars. If, at the end of any quarter, the fund balance is above one hundred million dollars, the treasurer shall notify the board thereof. The board shall suspend the collection of fees pursuant to this section beginning on the first day of the first quarter following the receipt of notice. If, at the end of any quarter, the fund balance is below twenty million dollars, the treasurer shall notify the board thereof. The board shall reinstate the collection of fees pursuant to this section beginning on the first day of the first quarter following the receipt of notice.

6. Railroad corporations as defined in section 388.010 and airline companies as defined in section 155.010 shall not be subject to the load fee described in this chapter nor permitted to participate in or make claims against the petroleum storage tank insurance fund created in section 319.129.

414.072. 1. At least every six months, the director shall test and inspect the measuring devices used by any person selling an average of two hundred or more gallons of gasoline, gasoline-alcohol blends, diesel fuel, heating oil, kerosene, or aviation turbine fuel per month at either retail or wholesale in this state, except marine installations, which shall be tested and inspected at least once per year.

2. **The manufacturer's expiration date on motor fuel pump nozzles, hoses, and hose breakaway equipment shall not be the sole factor in requiring the repair or replacement of such devices and equipment nor in the issuance of any fine, penalty, or punishment by the state or any political subdivision. The manufacturer's expiration date on motor fuel pump nozzles, hoses, and hose breakaway equipment shall not impose any new or additional liability on the state, political subdivisions, motor fuel retailers, wholesalers,**

suppliers, and distributors, and the retailers and wholesalers of such devices and equipment.

3. When the director finds that any measuring device does not correctly and accurately register and measure the monetary cost, if applicable, or the volume sold, he shall require the correction, removal, or discontinuance of the same.

[3.**] 4.** Notwithstanding any other law or rule to the contrary, it has been and continues to be the public policy of this state to prohibit gasoline and diesel motor fuel in a retail sale transaction from being dispensed by any measuring device or equipment that is not approved by the department of agriculture or the National Type Evaluation Program (NTEP). **Any automatic volumetric correction device for measuring gasoline, gasoline-alcohol blends, diesel fuel, and diesel fuel-biodiesel blends sold at retail fueling facilities is prohibited by state rule or the automatic adoption or incorporation of national standards or rules unless the device is first specifically authorized and required by state statute.**

442.014. 1. This act shall be known and may be cited as the "Private Landowner Protection Act".

2. As used in this section, unless the context otherwise requires, the following terms mean:

(1) "Conservation easement", a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property;

(2) "Holder", any of the following:

(a) A governmental body empowered to hold an interest in real property under the laws of this state or the United States;

(b) A charitable corporation, charitable association, or charitable trust, the purposes, powers, or intent of which include retaining or protecting the natural, scenic, or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property; or

(c) An individual or other private entity;

(3) "Third-party right of enforcement", a right expressly provided in a conservation easement to enforce any of its items granted to a designated governmental

body, charitable corporation, charitable association, charitable trust, individual, or any other private entity which, although eligible to be a holder, is not a holder.

3. (1) Except as otherwise provided in this section, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements. No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance. Except as provided in subdivision (2) of this subsection, a conservation easement is unlimited in duration unless the instrument creating it provides otherwise.

(2) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

4. (1) An action affecting a conservation easement may be brought by an owner of an interest in real property burdened by the easement; a holder of the easement, a person having a third-party right of enforcement; or a person authorized by other law.

(2) This section does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

5. A conservation easement is valid even though:

(1) It is not appurtenant to an interest in real property;

(2) It can be or has been assigned to another holder;

(3) It is not of a character that has been recognized traditionally at common law;

(4) It imposes a negative burden that would prevent a landowner from performing acts on the land he or she would otherwise be privileged to perform absent the agreed-upon easement;

(5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(6) The benefit does not touch or concern real property; or

(7) There is no privity of estate or of contract.

6. This section applies to any interest created after its effective date which complies with this section, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise. This section applies to any interest created before its effective date if it would have been enforceable had it been created after its effective date unless retroactive application contravenes the constitution or laws of this state or the United States. This section does not alter the terms of any interest created before its effective date, or impose any additional burden or obligation on any grantor or

grantee of such interest, or on their successors or assigns. This section does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other laws of this state.

620.2300. 1. As used in this section, the following terms shall mean:

(1) "Department", the Missouri department of economic development;

(2) "Biomass facility", a biomass renewable energy facility or biomass fuel production facility that will not be a major source for air quality permitting purposes;

(3) "Commission", the Missouri public service commission;

(4) "County average wage", the average wages in each county as determined by the department for the most recently completed full calendar year. However, if the computed county average wage is above the statewide average wage, the statewide average wage shall be deemed the county average wage for such county for the purpose of determining eligibility. The department shall publish the county average wage for each county at least annually. Notwithstanding the provisions of this subdivision to the contrary, for any project that is relocating employees from a Missouri county with a higher county average wage, the company shall obtain the endorsement of the governing body of the community from which jobs are being relocated or the county average wage for their project shall be the county average wage for the county from which the employees are being relocated;

(5) "Full-time employee", an employee of the project facility that is scheduled to work an average of at least thirty-five hours per week for a twelve-month period, and one for which the employer offers health insurance and pays at least fifty percent of such insurance premiums;

(6) "Major source", the same meaning as is provided under 40 CFR 70.2;

(7) "New job", the number of full-time employees located at the project facility that exceeds the project facility base employment less any decrease in the number of full-time employees at related facilities below the related facility base employment. An employee that spends less than fifty percent of the employee's work time at the project facility is still considered to be located at a facility if the employee receives his or her directions and control from that facility, is on the facility's payroll, one hundred percent of the employee's income from such employment is Missouri income, and the employee is paid at or above the state average wage;

(8) "Park", an area consisting of a parcel or tract of land, or any combination of parcels or contiguous land that meet all of the following requirements:

(a) The area consists of at least fifty contiguous acres;

(b) The property within the area is subject to remediation under a clean up program supervised by the Missouri department of natural resources or United States Environmental Protection Agency;

(c) The area contains a manufacturing facility that is closed, undergoing closure, idle, underutilized, or curtailed and that at one time employed at least two hundred employees;

(d) The development plan for the area includes a biomass facility; and

(e) Property located within the area will be used for the development of renewable energy and the demonstration of industrial on-site energy generation;

(9) "Project", a cleanfields renewable energy demonstration project located within a park that will result in the creation of at least fifty new jobs and the retention of at least fifty existing jobs;

(10) "Project application", an application submitted to the department, by an owner of all or a portion of a park, on a form provided by the department, requesting benefits provided under this section;

(11) "Project facility", a biomass facility at which the new jobs will be located. A project facility may include separate buildings that are located within fifty miles of each other or within the same county such that their purpose and operations are interrelated;

(12) "Project facility base employment", the greater of the number of full-time employees located at the project facility on the date of the project application or for the twelve-month period prior to the date of the project application, the average number of full-time employees located at the project facility. In the event the project facility has not been in operation for a full twelve-month period, the average number of full-time employees for the number of months the project facility has been in operation prior to the date of the project application.

2. The owner of a park seeking to establish a project shall submit a project application to the department for certification of such project. The department shall review all project applications received under this section and, in consultation with the department of natural resources, verify satisfaction of the requirements of this section. If the department approves a project application, the department shall forward such application and approval to the commission.

3. Notwithstanding provisions of section 393.1030 to the contrary, upon receipt of an application and approval from the department, the commission shall assign twice credit to any electric power, renewable energy, renewable energy credits, or any successor credit generated from:

(1) Renewable energy resources purchased from the biomass facility located in the park by an electric power supplier;

(2) Electric power generated off-site by utilizing biomass fuel sold by the biomass facility located at the park; or

(3) Electric power generated off-site by renewable energy resources utilizing storage equipment manufactured at the park that increases the quantity of electricity delivered to the electric power supplier.

621.250. 1. All authority to hear appeals granted in chapters 260, 444, 640, 643, and 644, and to the hazardous waste management commission in chapter 260, the land reclamation commission in chapter 444, the safe drinking water commission in chapter 640, the air conservation commission in chapter 643, and the clean water commission in chapter 644 shall be transferred to the administrative hearing commission under this chapter. The authority to render final decisions after hearing on appeals heard by the administrative hearing commission shall remain with the commissions listed in this subsection. The **[**commissions listed in this subsection**] administrative hearing commission** may render **a recommended** final **[**decisions**] decision** after hearing or through stipulation, consent order, agreed settlement or by disposition in the nature of default judgment, judgment on the pleadings, or summary determination, consistent with **the requirements of this subsection and** the rules and procedures of the administrative hearing commission.

2. Except as otherwise provided by law, any person or entity who is a party to, or who is **aggrieved or adversely** affected by, any finding, order, decision, or assessment for which the authority to hear appeals was transferred to the administrative hearing commission in subsection 1 of this section may file a notice of appeal with the administrative hearing commission within thirty days after any such finding, order, decision, or assessment is placed in the United States mail or within thirty days of any such finding, order, decision, or assessment being delivered, whichever is earlier. **Within sixty days after the date on which the notice of appeal is filed** the administrative hearing commission **[**may**] shall** hold hearings **and make a recommended decision based on those hearings** or **[**may**] shall** make **a** recommended **[**decisions**] decision** based on stipulation of the parties, consent order, agreed settlement or by disposition in the nature of default judgment, judgment on the pleadings, or summary determination, in accordance with **the requirements of this subsection and** the rules and procedures of the administrative hearing commission.

3. Any decision by the director of the department of natural resources that may be appealed **[**to the commissions listed**] as provided** in subsection 1 of this section **[**and**]** shall contain a notice of the right of appeal in substantially the following language: "If you were

adversely affected by this decision, you may appeal to have the matter heard by the administrative hearing commission. To appeal, you must file a petition with the administrative hearing commission within thirty days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the administrative hearing commission.". Within fifteen days after the administrative hearing commission renders its recommended decision, it shall transmit the record and a transcript of the proceedings, together with the administrative hearing commission's recommended decision to the commission having authority to issue a final decision. The **final** decision of the commission **shall be issued within ninety days of the date the notice of appeal is filed and** shall be based only on the facts and evidence in the hearing record. The commission may adopt the recommended decision as its final decision. The commission may change a finding of fact or conclusion of law made by the administrative hearing commission, or may vacate or modify the recommended decision issued by the administrative hearing commission, only if the commission states in writing the specific reason for a change made under this subsection.

4. In the event the person filing the appeal prevails in any dispute under this section, interest shall be allowed upon any amount found to have been wrongfully collected or erroneously paid at the rate established by the director of the department of revenue under section 32.065.

5. Appropriations shall be made from the respective funds of the various commissions to cover the administrative hearing commission's costs associated with these appeals.

6. In all matters heard by the administrative hearing commission under this section, the burden of proof shall comply with section 640.012. The hearings shall be conducted by the administrative hearing commission in accordance with the provisions of chapter 536 and its regulations promulgated thereunder.

7. No cause of action or appeal arising out of any finding, order, decision, or assessment of any of the commissions listed in subsection 1 of this section shall accrue in any court unless the party seeking to file such cause of action or appeal shall have filed a notice of appeal and received a final decision in accordance with the provisions of this section.

640.018. 1. In any case where the department has not issued a permit or rendered a permit decision by the expiration of a statutorily-required time frame for any application for a permit under this chapter or chapters 260, 278, 319, 444, 643, or 644, the permit shall be issued as of the first day following the expiration of the required time frame, provided

all necessary information has been submitted for the application and the department has been in possession of all such information for the duration of the required time frame. This subsection shall be considered in addition to, and not in lieu thereof, any other provision of law regarding consequences of failure by the department to issue a permit or permit decision by the expiration of a required time frame.

2. If engineering plans, specifications, and designs prepared by a registered professional engineer are submitted to the department of natural resources as a part of a permit application or permit modification, the permit application or permit modification shall include a statement that the plans, specifications, and designs were prepared in accordance with the applicable requirements and shall be sealed by the registered professional engineer in accordance with section 327.411, as applicable. The department shall use the complete, sealed engineering plans, specifications, and designs as submitted in addition to permit applications and other relevant information, documents, and materials in developing comments on the engineering submittals and in determining whether to issue or deny permits. The review of documents, plans, specifications, and designs sealed by a registered professional engineer for an applicant shall be conducted by a registered professional engineer or an engineering intern on behalf of the department.

3. The department shall designate supervisory registered professional engineers for permitting purposes under this chapter and chapters 260, 278, 319, 444, 643, and 644. Any permit applicant receiving written comments on an engineering submittal may request a determination from the department's supervisory registered professional engineer as to a final disposition of the department's comments regarding engineering submittals in determining a decision on the permit. The department's supervisory engineer shall inform the permit applicant of a preliminary decision within fifteen days after the permit applicant's request for a determination and shall make a final determination within thirty days of such request.

4. Nothing in this section shall be construed to require plans or other submittals to the department pursuant to an application to come under a general permit or an application for a site specific permit to be prepared by a registered professional engineer, unless otherwise required under state or federal law.

640.045. Upon a request from the director of the department of natural resources, the commissioner of administration shall draw a warrant payable to any and all of the directors of the various divisions of the department in amounts to be specified by the director of the department of natural resources, but such amounts shall not exceed the sum of five hundred dollars each. The sum so specified shall be placed in the hands of the

director of the relevant division as a revolving fund to be used in the cash transactions involving the sale of items made by that division. All transactions shall be made in accordance with rules and regulations established by the commissioner of administration.

640.116. 1. Any water system that exclusively serves a charitable or benevolent organization, if the system does not regularly serve an average of one hundred persons or more at least sixty days out of the year and the system does not serve a school or day care facility, shall be exempt from all rules relating to well construction except any rules established under sections 256.600 to 256.640 applying to multifamily wells, unless such wells or pump installations for such wells are determined to present a threat to groundwater or public health.

2. If the system incurs three or more total coliform maximum contaminant level violations in a twelve-month period or one acute maximum contaminant level violation, the system owner shall either provide an alternate source of water, eliminate the source of contamination, or provide treatment that reliably achieves at least ninety-nine and ninety-nine one-hundredths percent treatment of viruses.

3. Notwithstanding this or any other provision of law to the contrary, no facility otherwise described in subsection 1 of this section shall be required to replace, change, upgrade, or otherwise be compelled to alter an existing well constructed prior to August 28, 2011, unless such well is determined to present a threat to groundwater or public health or contains the contaminant levels referred to in subsection 2 of this section.

640.128. If an entity that holds a permit issued under chapter 644 or under sections 640.100 to 640.140 voluntarily reports to the department of natural resources the results of any water quality testing conducted by the entity, and such results indicate a potential risk to public health, the department shall immediately notify the local public health authority and the department of health and senior services.

640.850. The governor shall convene a committee of representatives of the departments of health and senior services, natural resources, economic development, agriculture, and conservation. The committee shall evaluate opportunities for consolidating services with the goal of improving efficiency and reducing cost while optimizing the benefits to the citizens of Missouri. As part of its evaluation, the committee shall specifically consider the transfer of the division of energy from the department of natural resources to the department of economic development and the consolidation of water quality laboratory testing under the department of health and senior services for purposes of meeting water testing requirements of the federal Safe Drinking Water Act

and the Federal Water Pollution Control Act. The committee shall provide recommendations to the governor and general assembly no later than December 31, 2011.

643.020. When used in this chapter and in standards, rules and regulations promulgated under authority of this chapter, the following words and phrases mean:

(1) "AHERA", Asbestos Hazard Emergency Response Act of 1986 (P.L. 99-519);

(2) "Abatement project designer", an individual who designs or plans AHERA asbestos abatement;

(3) "Air cleaning device", any method, process, or equipment which removes, reduces, or renders less obnoxious air contaminants discharged into ambient air;

(4) "Air contaminant", any particulate matter or any gas or vapor or any combination thereof;

(5) "Air contaminant source", any and all sources of air contaminants whether privately or publicly owned or operated;

(6) "Air pollution", the presence in the ambient air of one or more air contaminants in quantities, of characteristics and of a duration which directly and proximately cause or contribute to injury to human, plant, or animal life or health or to property or which unreasonably interferes with the enjoyment of life or use of property;

(7) "Ambient air", all space outside of buildings, stacks, or exterior ducts;

(8) "Area of the state", any geographical area designated by the commission;

(9) "Asbestos", the asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite;

(10) "Asbestos abatement", the encapsulation, enclosure or removal of **[**asbestos containing**] asbestos-containing** materials in or from a building or air contaminant source, or preparation of friable **[**asbestos containing**] asbestos-containing** material prior to demolition;

(11) "Asbestos abatement contractor", any person who by agreement, contractual or otherwise, conducts asbestos abatement projects at a location other than his own place of business;

(12) "Asbestos abatement projects", an activity undertaken to encapsulate, enclose or remove **[**ten**] one hundred sixty** square feet or **[**sixteen**] two hundred sixty** linear feet or **thirty-five cubic feet or** more of **[**friable asbestos containing**] regulated asbestos-containing** materials from buildings and other air contaminant sources, or to demolish buildings and other air contaminant sources containing **[**ten**] one hundred sixty** square feet or **[**sixteen**] two hundred sixty** linear feet or **thirty-five cubic feet or** more **of regulated asbestos-containing materials**;

(13) "Asbestos abatement supervisor", an individual who directs, controls, or supervises others in asbestos abatement projects;

(14) "Asbestos abatement worker", an individual who engages in asbestos abatement projects;

(15) "Asbestos air sampling professional", an individual who by qualifications and experience is proficient in asbestos abatement air monitoring. The individual shall conduct, oversee or be responsible for air monitoring of asbestos abatement projects before, during and after the project has been completed;

(16) "Asbestos air sampling technician", an individual who has been trained by an air sampling professional to do air monitoring. Such individual conducts air monitoring of an asbestos abatement project before, during and after the project has been completed;

(17) "**[**Asbestos containing**] asbestos-containing** material", any material or product which contains more than one percent asbestos**[**, by weight**]**;

(18) "Class A source", either a class A1, A2 or A3 source as defined in this section;

(19) "Class A1 source", any air contaminant source with the potential to emit equal to or greater than one hundred tons per year of an air contaminant;

(20) "Class A2 source", any air contaminant source, which is not a class A1 source, and with the potential, air cleaning devices not considered, to emit equal to or greater than one hundred tons per year of an air contaminant;

(21) "Class A3 source", any air contaminant source which emits or has the potential to emit, ten tons per year or more of any hazardous air pollutant or twenty-five tons of any combination of hazardous air pollutants, or as defined pursuant to section 112 of the federal Clean Air Act, as amended, 42 U.S.C. 7412;

(22) "Class B source", any air contaminant source with the potential, air cleaning devices not considered, to emit equal to or greater than the de minimis amounts of an air contaminant established by the commission, but not a class A source;

(23) "Commission", the air conservation commission of the state of Missouri created in section 643.040;

(24) "Competent person", as defined in the United States Occupational Safety and Health Administration's (OSHA) standard 29 CFR **[**1926.58**] 1926.1101** (b). Such person shall also be a certified asbestos abatement supervisor;

(25) "Conference, conciliation and persuasion", a process of verbal or written communications consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;

(26) "De minimis source", any air contaminant source with a potential to emit an air contaminant, air cleaning devices not considered, less than that established by the commission as de minimis for the air contaminant;

(27) "Department", the department of natural resources of the state of Missouri;

(28) "Director", the director of the department of natural resources;

(29) "Emergency asbestos project", an asbestos project that must be undertaken immediately to prevent imminent, severe, human exposure or to restore essential facility operation;

(30) "Emission", the discharge or release into the atmosphere of one or more air contaminants;

(31) "Emission control regulations", limitations on the emission of air contaminants into the ambient air;

(32) "Friable **[**asbestos containing**]** **asbestos-containing** material", any **[**asbestos containing material which is applied to ceilings, walls, structural members, piping, ductwork or any other part of a building or other air contaminant sources and which, when dry, may be crumbled, pulverized or reduced to powder by hand pressure**]** **material containing more than one percent, as determined by either the method specified in appendix E, section 1 Polarized Light Microscopy in 40 CFR Part 61, Subpart M or EPA/600/R-93/116 Method for the Determination of Asbestos in Bulk Building Materials, asbestos that, when dry, can be crumbled, pulverized or reduced to powder by hand pressure;**

(33) "Grinding", to reduce to powder or small fragments and includes mechanical chipping or drilling;

[(33)**]** **(34)** "Inspector", an individual**[**, under AHERA,**]** who collects and assimilates information used to determine whether **[**asbestos containing**]** **asbestos-containing** material is present in a building or other air contaminant sources;

[(34)**]** **(35)** "Management planner", an individual, under AHERA, who devises and writes plans for asbestos abatement;

[(35)**]** **(36)** "Minor violation", a violation which possesses a small potential to harm the environment or human health or cause pollution, was not knowingly committed, and is not defined by the United States Environmental Protection Agency as other than minor;

[(36)**]** **(37)** "Nonattainment area", any area designated by the governor as a "nonattainment area" as defined in the federal Clean Air Act, as amended, 42 U.S.C. 7501**;**

(38) "Nonfriable asbestos-containing material", any material containing more than one percent asbestos as determined by either the method specified in appendix E, section 1 Polarized Light Microscopy in 40 CFR Part 61, Subpart M or EPA/600/R-93/116 Method

for the Determination of Asbestos in Bulk Building Materials, that, when dry, cannot be crumbled, pulverized or reduced to powder by hand pressure;

[(37)**] (39)** "Person", any individual, partnership, copartnership, firm, company, or public or private corporation, association, joint stock company, trust, estate, political subdivision, or any agency, board, department, or bureau of the state or federal government, or any other legal entity whatever which is recognized by law as the subject of rights and duties;

[(38)**] (40) "Regulated asbestos-containing material" or "RACM":**

(a) Friable asbestos-containing material;

(b) Category I nonfriable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting, or abrading; or

(c) Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations;

(41) "School district", seven-director districts, urban school districts, and metropolitan school districts, as defined in section 160.011;

(42) "Small business", for the purpose of sections 643.010 to **[**643.190**] 643.355**, a small business shall include any business regulated under this chapter, which is not a class A source and which employs less than one hundred people and emits less than fifty tons of any regulated pollutant per year and less than seventy-five tons of all regulated pollutants or as otherwise defined by the commission by rule.

643.040. 1. There is created hereby an air pollution control agency to be known as the "Air Conservation Commission of the State of Missouri", whose domicile for the purposes of sections 643.010 to **[**643.190**] 643.355** is the department of natural resources of the state of Missouri. The commission shall consist of seven members appointed by the governor, with the advice and consent of the senate. No more than four of the members shall belong to the same political party and no two members shall be a resident of and domiciled in the same senatorial district. At the first meeting of the commission and at yearly intervals thereafter, the members shall select from among themselves a chairman and a vice chairman.

2. All members shall be representative of the general interest of the public and shall have an interest in and knowledge of air conservation and the effects and control of air contaminants. At least three of such members shall represent agricultural, industrial and labor interests, respectively. The governor shall not appoint any other person who has a substantial interest as defined in section 105.450 in any business entity regulated under this chapter or any business entity which would be regulated under this chapter if located in Missouri. The commission shall establish rules of procedure which specify when members shall exempt themselves from

participating in discussions and from voting on issues before the commission due to potential conflict of interest.

3. The members' terms of office shall be four years and until their successors are selected and qualified, except that the terms of those first appointed shall be staggered to expire at intervals of one, two and three years after the date of appointment as designated by the governor at the time of appointment. There is no limitation of the number of terms any appointed member may serve. If a vacancy occurs the governor may appoint a member for the remaining portion of the unexpired term created by the vacancy. The governor may remove any appointed member for cause. The members of the commission shall be reimbursed for travel and other expenses actually and necessarily incurred in the performance of their duties.

4. The commission shall hold at least nine regular meetings each year and such additional regular meetings as the chairman deems desirable at a place and time to be fixed by the chairman. Special meetings may be called by three members of the commission upon delivery of written notice to each member of the commission. Reasonable written notice of all meetings shall be given to all members of the commission. Four members of the commission shall constitute a quorum. All powers and duties conferred upon members of the commission shall be exercised personally by the members and not by alternates or representatives. All actions of the commission shall be taken at meetings open to the public, except as provided in chapter 610. Any member absent from four regular commission meetings per calendar year for any cause whatsoever shall be deemed to have resigned and the vacancy shall be filled immediately in accordance with subsection 1 and subsection 3 of this section.

643.050. 1. In addition to any other powers vested in it by law the commission shall have the following powers:

(1) Adopt, promulgate, amend and repeal rules and regulations consistent with the general intent and purposes of sections 643.010 to **[**643.190**] 643.355**, chapter 536, and Titles V and VI of the federal Clean Air Act, as amended, 42 U.S.C. 7661, et seq., including but not limited to:

(a) Regulation of use of equipment known to be a source of air contamination;

(b) Establishment of maximum quantities of air contaminants that may be emitted from any air contaminant source; and

(c) Regulations necessary to enforce the provisions of Title VI of the Clean Air Act, as amended, 42 U.S.C. 7671, et seq., regarding any Class I or Class II substances as defined therein;

(2) After holding public hearings in accordance with section 643.070, establish areas of the state and prescribe air quality standards for such areas giving due recognition to variations,

if any, in the characteristics of different areas of the state which may be deemed by the commission to be relevant;

(3) (a) To require persons engaged in operations which result in air pollution to monitor or test emissions and to file reports containing information relating to rate, period of emission and composition of effluent;

(b) Require submission to the director for approval of plans and specifications for any article, machine, equipment, device, or other contrivance specified by regulation the use of which may cause or control the issuance of air contaminants; but any person responsible for complying with the standards established under sections 643.010 to **[**643.190**] 643.355** shall determine, unless found by the director to be inadequate, the means, methods, processes, equipment and operation to meet the established standards;

(4) Hold hearings upon appeals from orders of the director or from any other actions or determinations of the director hereunder for which provision is made for appeal, and in connection therewith, issue subpoenas requiring the attendance of witnesses and the production of evidence reasonably relating to the hearing;

(5) Enter such order or determination as may be necessary to effectuate the purposes of sections 643.010 to **[**643.190**] 643.355**. In making its orders and determinations hereunder, the commission shall exercise a sound discretion in weighing the equities involved and the advantages and disadvantages to the person involved and to those affected by air contaminants emitted by such person as set out in section 643.030. If any small business, as defined by section 643.020, requests information on what would constitute compliance with the requirements of sections 643.010 to **[**643.190**] 643.355** or any order or determination of the department or commission, the department shall respond with written criteria to inform the small business of the actions necessary for compliance. No enforcement action shall be undertaken by the department or commission until the small business has had a period of time, negotiated with the department, to achieve compliance;

(6) Cause to be instituted in a court of competent jurisdiction legal proceedings to compel compliance with any final order or determination entered by the commission or the director;

(7) Settle or compromise in its discretion, as it may deem advantageous to the state, any suit for recovery of any penalty or for compelling compliance with the provisions of any rule;

(8) Develop such facts and make such investigations as are consistent with the purposes of sections 643.010 to **[**643.190**] 643.355**, and, in connection therewith, to enter or authorize any representative of the department to enter at all reasonable times and upon reasonable notice in or upon any private or public property for the purpose of inspecting or investigating any

condition which the commission or director shall have probable cause to believe to be an air contaminant source **or upon any private or public property having material information relevant to said air contaminant source**. The results of any such investigation shall be reduced to writing, and a copy thereof shall be furnished to the owner or operator of the property. No person shall refuse entry or access, requested for purposes of inspection under this provision, to an authorized representative of the department who presents appropriate credentials, nor obstruct or hamper the representative in carrying out the inspection. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath, shall be issued by any judge having jurisdiction to any such representative for the purpose of enabling him to make such inspection;

(9) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise, with any educational institution, experiment station, or any board, department, or other agency of any political subdivision or state or the federal government;

(10) Classify and identify air contaminants; and

(11) Hold public hearings as required by sections 643.010 to **[**643.190**] 643.355**.

2. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024.

3. The commission shall have the following duties with respect to the prevention, abatement and control of air pollution:

(1) Prepare and develop a general comprehensive plan for the prevention, abatement and control of air pollution;

(2) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of sections 643.010 to **[**643.190**] 643.355**;

(3) Encourage political subdivisions to handle air pollution problems within their respective jurisdictions to the extent possible and practicable and provide assistance to political subdivisions;

(4) Encourage and conduct studies, investigations and research;

(5) Collect and disseminate information and conduct education and training programs;

(6) Advise, consult and cooperate with other agencies of the state, political subdivisions, industries, other states and the federal government, and with interested persons or groups;

(7) Represent the state of Missouri in all matters pertaining to interstate air pollution including the negotiations of interstate compacts or agreements.

4. Nothing contained in sections 643.010 to **[**643.190**] 643.355** shall be deemed to grant to the commission or department any jurisdiction or authority with respect to air pollution

existing solely within commercial and industrial plants, works, or shops or to affect any aspect of employer-employee relationships as to health and safety hazards.

5. Any information relating to secret processes or methods of manufacture or production discovered through any communication required under this section shall be kept confidential.

643.060. In addition to any other powers vested by law, the director shall have the following powers and duties:

(1) Retain, employ, provide for, and compensate, within appropriations available therefor, such consultants, assistants, deputies, clerks, and other employees on a full- or part-time basis as may be necessary to carry out the provisions of sections 643.010 to **[**643.190**] 643.355** and prescribe the times at which they shall be appointed and their powers and duties;

(2) Accept, receive and administer grants or other funds or gifts from public and private agencies including the federal government for the purpose of carrying out any of the functions of sections 643.010 to **[**643.190**] 643.355**. The director shall apply for all available grants and funds authorized and distributed pursuant to Title XI of the federal Clean Air Act, as amended, 29 U.S.C. 1662e, for training, assistance and payments to eligible individuals. The director shall report annually to the governor and the general assembly, the amount of revenue received under Title XI of the Clean Air Act and the distribution of such funds to eligible persons. Funds received by the director pursuant to this section shall be deposited with the state treasurer and held and disbursed by him in accordance with the appropriations of the general assembly. The director is authorized to enter into contracts as he may deem necessary for carrying out the provisions of sections 643.010 to **[**643.190**] 643.355**;

(3) Budget and receive duly appropriated moneys for expenditures to carry out the provisions and purposes of sections 643.010 to **[**643.190**] 643.355**;

(4) Administer and enforce sections 643.010 to **[**643.190**] 643.355**, investigate complaints, issue orders and take all actions necessary to implement sections 643.010 to **[**643.190**] 643.355**;

(5) Receive and act upon reports, plans, specifications and applications submitted under rules promulgated by the commission. Any person aggrieved by any action of the director under this provision shall be entitled to a hearing before the commission as provided in section 643.080. The commission may sustain, reverse, or modify any action of the director taken under this provision, or make such other order as the commission shall deem appropriate under the circumstances.

643.079. 1. Any air contaminant source required to obtain a permit issued under sections 643.010 to **[**643.190**] 643.355** shall pay annually beginning April 1, 1993, a fee as provided herein. For the first year the fee shall be twenty-five dollars per ton of each regulated air

contaminant emitted. Thereafter, the fee shall be set every three years by the commission by rule and shall be at least twenty-five dollars per ton of regulated air contaminant emitted but not more than forty dollars per ton of regulated air contaminant emitted in the previous calendar year. If necessary, the commission may make annual adjustments to the fee by rule. The fee shall be set at an amount consistent with the need to fund the reasonable cost of administering sections 643.010 to **[**643.190**] 643.355**, taking into account other moneys received pursuant to sections 643.010 to **[**643.190**] 643.355**. For the purpose of determining the amount of air contaminant emissions on which the fees authorized under this section are assessed, a facility shall be considered one source under the definition of subsection 2 of section 643.078, except that a facility with multiple operating permits shall pay the emission fees authorized under this section separately for air contaminants emitted under each individual permit.

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

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

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

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

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

4. Each air contaminant source with a permit issued under sections 643.010 to **[**643.190**] 643.355** shall pay the fee for the first four thousand tons of each regulated air contaminant emitted each year but no air contaminant source shall pay fees on total emissions of regulated air contaminants in excess of twelve thousand tons in any calendar year. A permitted air contaminant source which emitted less than one ton of all regulated pollutants shall pay a fee equal to the amount per ton set by the commission. An air contaminant source which pays emission fees to a holder of a certificate of authority issued pursuant to section 643.140 may deduct such fees from any amount due under this section. The fees imposed in this section shall not be applied to carbon oxide emissions. The fees imposed in subsection 1 and this subsection shall not be applied to sulfur dioxide emissions from any Phase I affected unit subject to the

requirements of Title IV, Section 404, of the federal Clean Air Act, as amended, 42 U.S.C. 7651, et seq., any sooner than January 1, 2000. The fees imposed on emissions from Phase I affected units shall be consistent with and shall not exceed the provisions of the federal Clean Air Act, as amended, and the regulations promulgated thereunder. Any such fee on emissions from any Phase I affected unit shall be reduced by the amount of the service fee paid by that Phase I affected unit pursuant to subsection 8 of this section in that year. Any fees that may be imposed on Phase I sources shall follow the procedures set forth in subsection 1 and this subsection and shall not be applied retroactively.

5. Moneys collected under this section shall be transmitted to the director of revenue for deposit in appropriate subaccounts of the natural resources protection fund created in section 640.220. A subaccount shall be maintained for fees paid by air contaminant sources which are required to be permitted under Title V of the federal Clean Air Act, as amended, 42 U.S.C. Section 7661, et seq., and used, upon appropriation, to fund activities by the department to implement the operating permits program authorized by Title V of the federal Clean Air Act, as amended. Another subaccount shall be maintained for fees paid by air contaminant sources which are not required to be permitted under Title V of the federal Clean Air Act as amended, and used, upon appropriation, to fund other air pollution control program activities. Another subaccount shall be maintained for service fees paid under subsection 8 of this section by Phase I affected units which are subject to the requirements of Title IV, Section 404, of the federal Clean Air Act Amendments of 1990, as amended, 42 U.S.C. 7651, and used, upon appropriation, to fund air pollution control program activities. The provisions of section 33.080 to the contrary notwithstanding, moneys in the fund shall not revert to general revenue at the end of each biennium. Interest earned by moneys in the subaccounts shall be retained in the subaccounts. The per-ton fees established under subsection 1 of this section may be adjusted annually, consistent with the need to fund the reasonable costs of the program, but shall not be less than twenty-five dollars per ton of regulated air contaminant nor more than forty dollars per ton of regulated air contaminant. The first adjustment shall apply to moneys payable on April 1, 1994, and shall be based upon the general price level for the twelve-month period ending on August thirty-first of the previous calendar year.

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

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

8. Any Phase I affected unit which is subject to the requirements of Title IV, Section 404, of the federal Clean Air Act, as amended, 42 U.S.C. 7651, shall pay annually beginning April 1, 1993, and terminating December 31, 1999, a service fee for the previous calendar year as provided herein. For the first year, the service fee shall be twenty-five thousand dollars for each Phase I affected generating unit to help fund the administration of sections 643.010 to **[**643.190**] 643.355**. Thereafter, the service fee shall be annually set by the commission by rule, following public hearing, based on an annual allocation prepared by the department showing the details of all costs and expenses upon which such fees are based consistent with the department's reasonable needs to administer and implement sections 643.010 to **[**643.190**] 643.355** and to fulfill its responsibilities with respect to Phase I affected units, but such service fee shall not exceed twenty-five thousand dollars per generating unit. Any such Phase I affected unit which is located on one or more contiguous tracts of land with any Phase II generating unit that pays fees under subsection 1 or subsection 2 of this section shall be exempt from paying service fees under this subsection. A "contiguous tract of land" shall be defined to mean adjacent land, excluding public roads, highways and railroads, which is under the control of or owned by the permit holder and operated as a single enterprise.

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

643.080. 1. The director shall investigate alleged violations of sections 643.010 to **[**643.190**] 643.355** or any rule promulgated hereunder or any term or condition of any permit and may cause to be made such other investigations as he shall deem advisable. The department shall assume the costs of investigation of alleged violations. The identity of the person who filed

the complaint shall be made available consistent with chapter 610 and other provisions, as applicable.

2. If, in the opinion of the director, the investigation yields reasonable grounds to believe that a violation of **[**section 577.200**] sections 643.010 to 643.355** is occurring or has occurred, he shall refer such information to either or both the attorney general or the county prosecutor of the county where the violations are alleged to have occurred.

3. If, in the opinion of the director, the investigation discloses that a violation does exist which would not be a criminal violation, he may by conference, conciliation and persuasion endeavor to eliminate the violation.

4. In case of the failure by conference, conciliation and persuasion to correct or remedy any violation, the director may order abatement, suspend or revoke a permit, whichever action or actions the director deems appropriate. The director shall cause to have issued and served upon the person a written notice of such order together with a copy of the order, which shall specify the provisions of sections 643.010 to **[**643.190**] 643.355** or the rule or the condition of the permit of which the person is alleged to be in violation, and a statement of the manner in, and the extent to which the person is alleged to be in violation. Service may be made upon any person within or without the state by registered mail, return receipt requested. Any person against whom the director issues an order may appeal the order to the commission within thirty days, and the appeal shall stay the enforcement of such order until final determination by the commission. The commission shall set a hearing on a day not less than thirty days after the date of the request. The commission may sustain, reverse, or modify the director's order, or make such other order as the commission deems appropriate under the circumstances. If any order issued by the director is not appealed within the time herein provided, the order becomes final and may be enforced as provided in section 643.151.

5. When the commission schedules a matter for hearing, the petitioner on appeal may appear at the hearing in person or by counsel, and may make oral argument, offer testimony and evidence or cross-examine witnesses.

6. After due consideration of the record, or upon default in appearance of the petitioner on the return day specified in the notice given as provided in subsection 4 of this section, the commission shall issue and enter the final order, or make such final determination as it shall deem appropriate under the circumstances, and it shall immediately notify the petitioner or respondent thereof in writing by certified or registered mail.

7. Any final order or determination or other final action by the commission shall be approved in writing by at least four members of the commission.

643.130. All final orders or determinations of the commission or the director hereunder shall be subject to judicial review pursuant to the provisions of sections 536.100 to 536.140**, except that, the provisions of section 536.110 notwithstanding, all actions seeking judicial review of any final determination of the commission or the director shall be filed in the court of appeals instead of in the circuit court**. No judicial review shall be available hereunder, however, unless and until all administrative remedies are exhausted.

643.191. 1. It is unlawful for any person to knowingly violate any applicable standard, limitation, permit condition or any fee or filing requirement promulgated pursuant to sections 643.010 to **[**643.190**] 643.355** or any rule promulgated thereunder. Any person violating the provisions of this subsection shall, upon conviction thereof, be subject to a fine of not more than ten thousand dollars per day of violation or part thereof.

2. It is unlawful for any person to knowingly make a false statement, representation or certification in any form, in any notice or report required by a permit or to knowingly render inaccurate any monitoring device or method required to be maintained by the permitting authority under sections 643.010 to **[**643.190**] 643.355**. Any person violating the provisions of this subsection shall, upon conviction thereof, be subject to a fine of not more than ten thousand dollars for each instance of violation.

643.225. 1. The provisions of sections 643.225 to 643.250 shall apply to all **[**asbestos abatement**]** projects **subject to 40 CFR Part 61, Subpart M as adopted by 10 CSR 10-6.080**. The commission shall promulgate rules and regulations it deems necessary to implement and administer the provisions of sections 643.225 to 643.250, including requirements, procedures and standards relating to asbestos projects, as well as the authority to require corrective measures to be taken in asbestos abatement**, renovation, or demolition** projects as are deemed necessary to protect public health and the environment. The director shall establish any examinations for certification required by this section and shall hold such examinations at times and places as determined by the director.

2. Except as otherwise provided in sections 643.225 to 643.250, no individual shall engage in an asbestos abatement project, inspection, management plan, abatement project design or asbestos air sampling unless the person has been issued a certificate by the director, or by the commission after appeal, for that purpose.

3. In any application made to the director to obtain such certification as an inspector, management planner, abatement project designer, supervisor, contractor or worker from the department, the applicant shall include his diploma providing proof of successful completion of either a state accredited or United States Environmental Protection Agency (EPA) accredited training course as described in section 643.228. In addition, an applicant for certification as a

management planner shall first be certified as an inspector. All applicants for certification as an inspector, management planner, abatement project designer, supervisor, contractor or worker shall successfully pass a state examination on Missouri state asbestos statutes and rules relating to asbestos. Certification issued hereunder shall expire one year from its effective date. Individuals applying for state certification as an asbestos air sampling professional shall have the following credentials:

(1) A bachelor of science degree in industrial hygiene plus one year of experience in the field; or

(2) A master of science degree in industrial hygiene; or

(3) Certification as an industrial hygienist as designated by the American Board of Industrial Hygiene; or

(4) Three years of practical experience in the field of industrial hygiene, including significant asbestos air monitoring experience and the completion of a forty-hour asbestos course which includes air monitoring instruction (National Institute of Occupational Safety and Health 582 course on air sampling or equivalent). In addition to these qualifications, the individual must also pass the state of Missouri asbestos examination. All asbestos air sampling technicians shall be trained and overseen by an asbestos air sampling professional and shall meet the requirements of training found in OSHA's 29 CFR **[**1926.58**] 1926.1101**. Certification under this section as an **[**AHERA asbestos**]** abatement project designer does not qualify an individual as an architect, engineer or land surveyor, as defined in chapter 327.

4. An application fee of seventy-five dollars shall be assessed for each category, except asbestos abatement worker, to cover administrative costs incurred. An application fee of twenty-five dollars shall be assessed for each asbestos abatement worker to cover administrative costs incurred. A fee of twenty-five dollars shall be assessed per state examination.

5. In order to qualify for renewal of a certificate, an individual shall have successfully completed an annual refresher course from **[**an Environmental Protection Agency or**] a** state of Missouri accredited training program. For each discipline, the refresher course shall review and discuss current federal and state statute and rule developments, state-of-the-art procedures and key aspects of the initial training course, as determined by the state of Missouri. For all categories except inspectors, individuals shall complete a one-day annual refresher training course for recertification. Refresher courses for inspectors shall be at least a half-day in length. Management planners shall attend the inspector refresher course, plus an additional half-day on management planning. All refresher courses shall require an individual to successfully pass an examination upon completion of the course. In the case of significant changes in Missouri state asbestos statutes or rules, an individual shall also be required to take and successfully pass an

updated Missouri state asbestos examination. An individual who has failed the Missouri state asbestos examination may retake it on the next scheduled examination date. If **[**his certification has lapsed for more than twenty-four months, he**] an individual has not successfully completed the annual refresher course within twelve months of the expiration of his or her certification, the individual** shall be required to retake the course in his **or her** specialty area **as** described in this section. Failure to comply with the requirements for renewal of certification in this section will result in decertification. In no event shall certification or recertification constitute permission to violate sections 643.225 to 643.250 or any standard or rule promulgated under sections 643.225 to 643.250.

6. A fee of five dollars shall be paid to the state for renewal of **worker class** certificates to cover administrative costs.

[7. The provisions of subsections 2 through 6 of this section, section 643.228, subdivision (4) of subsection 1 of section 643.230, sections 643.232 and 643.235, subdivisions (1) to (3) of subsection 1 of section 643.237, and subsection 2 of section 643.237 shall not apply to a person that is subject to requirements and applicable standards of the United States Environmental Protection Agency (EPA) and the United States Occupational Safety and Health Administration's (OSHA) 29 Code of Federal Regulations 1926.58 and which engages in asbestos abatement projects as part of normal operations in the facility solely at its own place or places of business. A person shall receive an exemption upon submitting to the director, on a form provided by the department, documentation of the training provided to their employees to meet the requirements of applicable OSHA and EPA rules and regulations and the type of asbestos abatement projects which constitute normal operations performed by the applicant. If the application does not meet the requirements of this subsection and the rules and regulations promulgated by the department, the applicant shall be notified, within one hundred eighty days of the receipt of the application, that his exemption has been revoked. An applicant may appeal the revocation of an exemption to the commission within thirty days of the notice of revocation. This exemption shall not apply to asbestos abatement contractors, to those persons who the commission by rule determines provide a service to the public in its place or places of business as the economic foundation of the facility, or to those persons subject to the requirements of the federal Asbestos Hazard Emergency Response Act of 1986 (P.L. 99-519). A representative of the department shall be permitted to attend, monitor and evaluate any training program provided by the exempted person. Such evaluations may be conducted without prior notice. Refusal to allow such an evaluation is sufficient grounds for loss of exemption status.

8. A fee of two hundred fifty dollars shall be submitted with the application for exemption. This is a one-time fee. Exempted persons shall submit to the director changes in curricula or other significant revisions to the training program as they occur.**]**

643.232. 1. All asbestos abatement contractors prior to engaging in asbestos abatement projects shall:

(1) Register with the department and reregister annually as provided by rule;

(2) Submit an application for registration on a form developed by the department;

(3) Use only those individuals that have been certified or trained in accordance with sections 643.225 to 643.250.

2. During asbestos abatement projects, all contractors shall:

(1) Comply with applicable United States Environmental Protection Agency regulations and guidelines, the standards for worker protection promulgated by the United States Occupational Safety and Health Administration in 29 CFR 1910.1001, 1910.1200 and **[**1926.58**]** **1926.1101**, the provisions of sections 643.225 to 643.250 and the rules and regulations promulgated thereunder. It is not intended that the director shall enforce OSHA requirements but shall have the authority to deny, revoke, or suspend registration on the basis of finding of violation by OSHA;

(2) Ensure that a competent person be on the asbestos abatement project site directing all aspects of the project during the hours that the project is being conducted.

3. A registration fee of one thousand dollars shall be paid by the person to the state prior to registration.

643.237. 1. Any person undertaking an asbestos abatement project of a magnitude greater than or equal to one hundred sixty square feet **[**or**] ,** two hundred sixty linear feet**, or thirty-five cubic feet or regulated demolition project** shall meet the following requirements:

(1) The person shall submit an application for asbestos abatement **or demolition** to the department for review at least **[**twenty**] ten working** days in advance. The application shall be in the form required by the department **and shall include a copy of an asbestos inspection survey which includes but is not limited to sample analysis results, quantities of asbestos materials identified, and documentation the inspection was conducted by a certified asbestos inspector**. Such application shall include the name and address of the applicant, a description of the proposed project and any other information as may be required by the commission and provide proof to the department that all employees engaged in an asbestos abatement project are in compliance with sections 643.225 and 643.228;

(2) Persons undertaking an asbestos abatement project shall notify the department within sixty days of the completion of the project in the form required by the department;

(3) Persons undertaking an emergency asbestos abatement project of this magnitude shall submit a notification to the department within twenty-four hours of the onset of the emergency. An application for permit to abate shall be submitted to the department within seven days of the onset of the emergency;

(4) A fee of one hundred dollars shall be paid for review of each **demolition or** asbestos abatement project notification of this magnitude;

(5) Any person undertaking an asbestos abatement **or demolition** project in the jurisdiction of an authorized local air pollution control agency shall be exempt from an application fee if the authorized local agency also imposes an application fee.

2. **[**Any person undertaking an asbestos abatement project of a magnitude less than one hundred sixty square feet or two hundred sixty linear feet, but greater than ten square feet or sixteen linear feet shall meet the following requirements:

(1) The person shall submit notification to the department for review at least twenty days in advance. The notification shall be in the form required by the department. Such notification shall include the name and address of the applicant, a description of the proposed project and any other information as may be required by the department and provide proof to the department that all employees engaged in an asbestos abatement project are in compliance with sections 643.225 and 643.228. In addition, the person shall post for inspection, at the site, current certificates of all individuals engaged in the asbestos abatement project as well as proof of the person's current registration;

(2) Persons undertaking an asbestos abatement project shall notify the department within sixty days of the completion of the project in the form required by the department;

(3) Persons undertaking an emergency asbestos abatement project of this magnitude shall submit notification to the department within twenty-four hours of the onset of the emergency.

3.**]** Any person who submits an asbestos abatement **or demolition** project notification to the department shall submit actual project dates and times for his project. If the dates and times are revised on this project as submitted to the department, the person is responsible to notify the department at least twenty-four hours prior to the original starting date of the project by telephone and then followup with a written amendment stating the change in date and time. If the person does not comply with this procedure, he shall be held in violation of the notification requirements found in this section. This requirement does not change the reporting requirements for notification, post notification and emergency projects specified in this section.

643.240. 1. Before commencement of an asbestos abatement project, persons shall make all reasonable efforts to minimize the spread of friable asbestos-containing materials to uncontaminated areas.

2. Any asbestos-containing material that will be rendered friable during the process of removal, encapsulation, enclosure or demolition is subject to all applicable federal and state regulations.

3. Analysis of asbestos air samples shall be conducted according to the United States Occupational Safety and Health Administration's (OSHA) standards in 29 CFR **[**1926.58**]** **1926.1101 or the United States Environmental Protection Agency standards in 40 CFR Part 763, Subpart E**.

643.242. 1. Asbestos abatement projects of a magnitude greater than or equal to **[**ten**]** **one hundred sixty** square feet or **[**sixteen**] two hundred sixty** linear feet **or thirty-five cubic feet or all regulated demolition projects** are subject to inspection.

2. The commission shall be authorized to assess a fee of not more than one hundred dollars for each on-site inspection of **an** asbestos abatement **[**projects**] or demolition project**. Such fees would not be assessed for more than three on-site inspections during the period an actual abatement project is in progress. Failure of the asbestos abatement contractor to notify the department of project postponement may result in the assessment of an inspection fee in the event of an on-site visit by the department.

3. Any person undertaking an asbestos abatement project **or regulated demolition project** in the jurisdiction of an authorized local air pollution control agency shall be exempt from an inspection fee if the authorized local agency also imposes an inspection fee.

643.245. 1. All moneys received pursuant to sections 643.225 to **[**643.250**] 643.245** and any other moneys so designated shall be placed in the state treasury and credited to the "Natural Resources Protection Fund -- Air Pollution Asbestos Fee Subaccount", which is hereby created. Such moneys received pursuant to sections 643.225 to **[**643.250**] 643.245** shall, subject to appropriation, be used solely for the purpose of administering this chapter. Any unexpended balance in such fund at the end of any appropriation period shall not be transferred to the general revenue fund of the state treasury and shall be exempt from the provisions of section 33.080.

2. The state treasurer, with the approval of the board of fund commissioners, is authorized to deposit all of the moneys in any of the qualified state depositories. All such deposits shall be secured in such manner and shall be made upon such terms and conditions as are now and may hereafter be approved by law relative to state deposits. Any interest received on such deposits shall be credited to the natural resources protection fund -- air pollution asbestos fee subaccount.

643.250. 1. Any authorized representative of the department may enter at all reasonable times, in or upon public or private property for purposes required under sections 643.225 to

643.250. **In addition to any other remedy provided by law,** refusal to allow such entry shall be grounds for revocation of registration or injunctive relief.

2. Any person who knowingly violates sections 643.225 to 643.250, or any rule promulgated thereunder, shall, upon conviction, be punished by a fine of not less than twenty-five hundred dollars nor more than twenty-five thousand dollars per day of violation, or by imprisonment for not more than one year, or both. Second and successive convictions of any person shall be punished by a fine of not more than fifty thousand dollars per day of violation, or by imprisonment for not more than two years, or both.

3. Any person who violates any provision of sections 643.225 to 643.250 may, in addition to any other penalty provided by law, incur a civil penalty in an amount not to exceed ten thousand dollars for each day of violation. The civil penalty shall be in an amount to constitute an actual and substantial economic deterrent to the violation for which the civil penalty is assessed. **[**Any civil penalty paid shall be placed in the natural resources protection fund -- air pollution asbestos fee subaccount.**]**

4. Notwithstanding the existence or pursuit of any other remedy provided by sections 643.225 to 643.250, the commission may maintain, in the manner provided by chapter 536, an action in the name of the state of Missouri for injunction or other process against any person to restrain or prevent any violation of the provisions of sections 643.225 to 643.250.

644.036. 1. No standard, rule or regulation or any amendment or repeal thereof shall be adopted except after a public hearing to be held after thirty days' prior notice by advertisement of the date, time and place of the hearing and opportunity given to the public to be heard. Notice of the hearings and copies of the proposed standard, rule or regulation or any amendment or repeal thereof shall also be given by regular mail, at least thirty days prior to the scheduled date of the hearing, to any person who has registered with the director for the purpose of receiving notice of such public hearings in accordance with the procedures prescribed by the commission at least forty-five days prior to the scheduled date of the hearing. However, this provision shall not preclude necessary changes during this thirty-day period.

2. At the hearing, opportunity to be heard by the commission with respect to the subject thereof shall be afforded any interested person upon written request to the commission, addressed to the director, not later than seven days prior to the hearing, and may be afforded to other persons if convenient. In addition, any interested persons, whether or not heard, may submit, within seven days subsequent to the hearings, a written statement of their views. The commission may solicit the views, in writing, of persons who may be affected by, or interested in, proposed rules and regulations, or standards. Any person heard or represented at the hearing

or making written request for notice shall be given written notice of the action of the commission with respect to the subject thereof.

3. Any standard, rule or regulation or amendment or repeal thereof shall not be deemed adopted or in force and effect until it has been approved in writing by at least four members of the commission. A standard, rule or regulation or an amendment or repeal thereof shall not become effective until a certified copy thereof has been filed with the secretary of state as provided in chapter 536.

4. Unless prohibited by any federal water pollution control act, any standard, rule or regulation or any amendment or repeal thereof which is adopted by the commission may differ in its terms and provisions as between particular types and conditions of water quality standards or of water contaminants, as between particular classes of water contaminant sources, and as between particular waters of the state.

5. Any listing required by Section 303(d) of the federal Clean Water Act, as amended, 33 U.S.C. 1251, et seq., to be sent to the U.S. Environmental Protection Agency for its approval that will result in any waters of the state being classified as impaired shall be adopted by the commission after a public hearing, or series of hearings, held in accordance with the following procedures. The department of natural resources shall publish in at least six regional newspapers, in advance, a notice by advertisement the availability of a proposed list of impaired waters of the state and such notice shall include at least ninety days' advance notice of the date, time, and place of the public hearing and opportunity given to the public to be heard. Notice of the hearings and copies of the proposed list of impaired waters also shall be posted on the department of natural resources' website and given by regular mail, at least ninety days prior to the scheduled date of the hearing, to any person who has registered with the director for the purpose of receiving notice of such public hearings. The proposed list of impaired waters shall identify the water segment, the uses to be made of such waters, the uses impaired, identify the pollutants causing or expected to cause violations of the applicable water quality standards, and provide a summary of the data relied upon to make the preliminary determination. Contemporaneous with the publication of the notice of public hearing, the department shall make available on its website all data and information it relied upon to prepare the proposed list of impaired waters, including a narrative explanation of how the department determined the water segment was impaired. At any time after the public notice and until seven days after the public hearing, the department shall accept written comments on the proposed list of impaired waters. After the public hearing and after all written comments have been submitted, the department shall prepare a written response to all comments and a revised list of impaired waters. The commission shall adopt a list of impaired waters in a public meeting during which the public

shall be afforded an opportunity to respond to the department's written response to comments and revised list of impaired waters. Notice of the meeting shall include the date, time, and place of the public meeting and shall provide notice that the commission will give interested persons the opportunity to respond to the department's revised list of impaired waters and written responses to comments. At its discretion, the commission may extend public comment periods or hold additional public hearings on the proposed and revised lists of impaired waters. The commission shall not vote to add to the list of impaired waters any waters not recommended by the department in the proposed or revised lists of impaired waters without granting the public at least thirty additional days to comment on the proposed addition. The list of impaired waters adopted by the commission shall not be deemed to be a rule as defined by section 536.010. The listing of any water segment on the list of impaired waters adopted by the commission shall be subject to judicial review by any adversely affected party under section 536.150. **[**The provisions in this subsection shall expire on August 28, 2010.**]**

644.051. 1. It is unlawful for any person:

(1) To cause pollution of any waters of the state or to place or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state;

(2) To discharge any water contaminants into any waters of the state which reduce the quality of such waters below the water quality standards established by the commission;

(3) To violate any pretreatment and toxic material control regulations, or to discharge any water contaminants into any waters of the state which exceed effluent regulations or permit provisions as established by the commission or required by any federal water pollution control act;

(4) To discharge any radiological, chemical, or biological warfare agent or high-level radioactive waste into the waters of the state.

2. It shall be unlawful for any person to build, erect, alter, replace, operate, use or maintain any water contaminant or point source in this state that is subject to standards, rules or regulations promulgated pursuant to the provisions of sections 644.006 to 644.141 unless such person holds a permit from the commission, subject to such exceptions as the commission may prescribe by rule or regulation. However, no permit shall be required of any person for any emission into publicly owned treatment facilities or into publicly owned sewer systems tributary to publicly owned treatment works.

3. Every proposed water contaminant or point source which, when constructed or installed or established, will be subject to any federal water pollution control act or sections 644.006 to 644.141 or regulations promulgated pursuant to the provisions of such act shall make

application to the director for a permit at least thirty days prior to the initiation of construction or installation or establishment. Every water contaminant or point source in existence when regulations or sections 644.006 to 644.141 become effective shall make application to the director for a permit within sixty days after the regulations or sections 644.006 to 644.141 become effective, whichever shall be earlier. The director shall promptly investigate each application, which investigation shall include such hearings and notice, and consideration of such comments and recommendations as required by sections 644.006 to 644.141 and any federal water pollution control act. If the director determines that the source meets or will meet the requirements of sections 644.006 to 644.141 and the regulations promulgated pursuant thereto, the director shall issue a permit with such conditions as he or she deems necessary to ensure that the source will meet the requirements of sections 644.006 to 644.141 and any federal water pollution control act as it applies to sources in this state. If the director determines that the source does not meet or will not meet the requirements of either act and the regulations pursuant thereto, the director shall deny the permit pursuant to the applicable act and issue any notices required by sections 644.006 to 644.141 and any federal water pollution control act.

4. Before issuing a permit to build or enlarge a water contaminant or point source or reissuing any permit, the director shall issue such notices, conduct such hearings, and consider such factors, comments and recommendations as required by sections 644.006 to 644.141 or any federal water pollution control act. The director shall determine if any state or any provisions of any federal water pollution control act the state is required to enforce, any state or federal effluent limitations or regulations, water quality-related effluent limitations, national standards of performance, toxic and pretreatment standards, or water quality standards which apply to the source, or any such standards in the vicinity of the source, are being exceeded, and shall determine the impact on such water quality standards from the source. The director, in order to effectuate the purposes of sections 644.006 to 644.141, shall deny a permit if the source will violate any such acts, regulations, limitations or standards or will appreciably affect the water quality standards or the water quality standards are being substantially exceeded, unless the permit is issued with such conditions as to make the source comply with such requirements within an acceptable time schedule. Prior to the development or renewal of a general permit or permit by rule, for aquaculture, the director shall convene a meeting or meetings of permit holders and applicants to evaluate the impacts of permits and to discuss any terms and conditions that may be necessary to protect waters of the state. Following the discussions, the director shall finalize a draft permit that considers the comments of the meeting participants and post the draft permit on notice for public comment. The director shall concurrently post with the draft permit an explanation of the draft permit and shall identify types of facilities which are subject to the

permit conditions. Affected public or applicants for new general permits, renewed general permits or permits by rule may request a hearing with respect to the new requirements in accordance with this section. If a request for a hearing is received, the commission shall hold a hearing to receive comments on issues of significant technical merit and concerns related to the responsibilities of the Missouri clean water law. The commission shall conduct such hearings in accordance with this section. After consideration of such comments, a final action on the permit shall be rendered. The time between the date of the hearing request and the hearing itself shall not be counted as time elapsed pursuant to subdivision (1) of subsection 13 of this section.

5. The director shall grant or deny the permit within sixty days after all requirements of the Federal Water Pollution Control Act concerning issuance of permits have been satisfied unless the application does not require any permit pursuant to any federal water pollution control act. The director or the commission may require the applicant to provide and maintain such facilities or to conduct such tests and monitor effluents as necessary to determine the nature, extent, quantity or degree of water contaminant discharged or released from the source, establish and maintain records and make reports regarding such determination.

6. The director shall promptly notify the applicant in writing of his or her action and if the permit is denied state the reasons therefor. The applicant may appeal to the commission from the denial of a permit or from any condition in any permit by filing notice of appeal with the commission within thirty days of the notice of denial or issuance of the permit. **After a final action is taken on a new or reissued general permit template, a potential applicant for the general permit who can demonstrate that he or she is or may be adversely affected by any permit term or condition may appeal the terms and conditions of the general permit template within thirty days of the department's issuance of the general permit template.** The commission shall set the matter for hearing not less than thirty days after the notice of appeal is filed. In no event shall a permit constitute permission to violate the law or any standard, rule or regulation promulgated pursuant thereto.

7. In any hearing held pursuant to this section **that involves a permit, license, or registration,** the burden of proof is on the **[**applicant for a permit**] party specified in section 640.012**. Any decision of the commission made pursuant to a hearing held pursuant to this section is subject to judicial review as provided in section 644.071.

8. In any event, no permit issued pursuant to this section shall be issued if properly objected to by the federal government or any agency authorized to object pursuant to any federal water pollution control act unless the application does not require any permit pursuant to any federal water pollution control act.

9. **Permits may be modified, reissued, or terminated at the request of the permittee. All requests shall be in writing and shall contain facts or reasons supporting the request.**

10. Unless a site-specific permit is requested by the applicant, aquaculture facilities shall be governed by a general permit issued pursuant to this section with a fee not to exceed two hundred fifty dollars pursuant to subdivision (5) of subsection 6 of section 644.052. However, any aquaculture facility which materially violates the conditions and requirements of such permit may be required to obtain a site-specific permit.

[10.**] 11.** No manufacturing or processing plant or operating location shall be required to pay more than one operating fee. Operating permits shall be issued for a period not to exceed five years after date of issuance, except that general permits shall be issued for a five-year period, and also except that neither a construction nor an annual permit shall be required for a single residence's waste treatment facilities. Applications for renewal of an operating permit shall be filed at least one hundred eighty days prior to the expiration of the existing permit.

[11.**] 12.** Every permit issued to municipal or any publicly owned treatment works or facility shall require the permittee to provide the clean water commission with adequate notice of any substantial new introductions of water contaminants or pollutants into such works or facility from any source for which such notice is required by sections 644.006 to 644.141 or any federal water pollution control act. Such permit shall also require the permittee to notify the clean water commission of any substantial change in volume or character of water contaminants or pollutants being introduced into its treatment works or facility by a source which was introducing water contaminants or pollutants into its works at the time of issuance of the permit. Notice must describe the quality and quantity of effluent being introduced or to be introduced into such works or facility by a source which was introducing water contaminants or pollutants into its works at the time of issuance of the permit. Notice must describe the quality and quantity of effluent being introduced or to be introduced into such works or facility and the anticipated impact of such introduction on the quality or quantity of effluent to be released from such works or facility into waters of the state.

[12.**] 13.** The director or the commission may require the filing or posting of a bond as a condition for the issuance of permits for construction of temporary or future water treatment facilities or facilities that utilize innovative technology for wastewater treatment in an amount determined by the commission to be sufficient to ensure compliance with all provisions of sections 644.006 to 644.141, and any rules or regulations of the commission and any condition as to such construction in the permit. For the purposes of this section, "innovative technology for wastewater treatment" shall mean a completely new and generally unproven technology in the type or method of its application that bench testing or theory suggest has environmental,

efficiency, and cost benefits beyond the standard technologies. No bond shall be required for designs approved by any federal agency or environmental regulatory agency of another state. The bond shall be signed by the applicant as principal, and by a corporate surety licensed to do business in the state of Missouri and approved by the commission. The bond shall remain in effect until the terms and conditions of the permit are met and the provisions of sections 644.006 to 644.141 and rules and regulations promulgated pursuant thereto are complied with.

[13.**] 14.** (1) The department shall issue or deny applications for construction and site-specific operating permits received after January 1, 2001, within one hundred eighty days of the department's receipt of an application. For general construction and operating permit applications received after January 1, 2001, that do not require a public participation process, the department shall issue or deny the requested permits within sixty days of the department's receipt of an application.

(2) If the department fails to issue or deny with good cause a construction or operating permit application within the time frames established in subdivision (1) of this subsection, the department shall refund the full amount of the initial application fee within forty-five days of failure to meet the established time frame. If the department fails to refund the application fee within forty-five days, the refund amount shall accrue interest at a rate established pursuant to section 32.065.

(3) Permit fee disputes may be appealed to the commission within thirty days of the date established in subdivision (2) of this subsection. If the applicant prevails in a permit fee dispute appealed to the commission, the commission may order the director to refund the applicant's permit fee plus interest and reasonable attorney's fees as provided in sections 536.085 and 536.087. A refund of the initial application or annual fee does not waive the applicant's responsibility to pay any annual fees due each year following issuance of a permit.

(4) No later than December 31, 2001, the commission shall promulgate regulations defining shorter review time periods than the time frames established in subdivision (1) of this subsection, when appropriate, for different classes of construction and operating permits. In no case shall commission regulations adopt permit review times that exceed the time frames established in subdivision (1) of this subsection. The department's failure to comply with the commission's permit review time periods shall result in a refund of said permit fees as set forth in subdivision (2) of this subsection. On a semiannual basis, the department shall submit to the commission a report which describes the different classes of permits and reports on the number of days it took the department to issue each permit from the date of receipt of the application and show averages for each different class of permits.

(5) During the department's technical review of the application, the department may request the applicant submit supplemental or additional information necessary for adequate permit review. The department's technical review letter shall contain a sufficient description of the type of additional information needed to comply with the application requirements.

(6) Nothing in this subsection shall be interpreted to mean that inaction on a permit application shall be grounds to violate any provisions of sections 644.006 to 644.141 or any rules promulgated pursuant to sections 644.006 to 644.141.

[14.**] 15.** The department shall respond to all requests for individual certification under Section 401 of the Federal Clean Water Act within the lesser of sixty days or the allowed response period established pursuant to applicable federal regulations without request for an extension period unless such extension is determined by the commission to be necessary to evaluate significant impacts on water quality standards and the commission establishes a timetable for completion of such evaluation in a period of no more than one hundred eighty days.

[15.**] 16.** All permit fees generated pursuant to this chapter shall not be used for the development or expansion of total maximum daily loads studies on either the Missouri or Mississippi rivers.

17. The department shall implement permit shield provisions equivalent to the permit shield provisions implemented by the U.S. Environmental Protection Agency pursuant to the Clean Water Act Section 402(k), 33 U.S.C. 1342(k), and its implementing regulations, for permits issued pursuant to chapter 644.

644.054. 1. Fees imposed in sections 644.052 and 644.053 shall, except for those fees imposed pursuant to subsection 4 and subsections 6 to 13 of section 644.052, become effective October 1, 1990, and shall expire **[**December 31, 2010**] September 1, 2013**. Fees imposed pursuant to subsection 4 and subsections 6 to 13 of section 644.052 shall become effective August 28, 2000, and shall expire on **[**December 31, 2010**] September 1, 2013**. The clean water commission shall promulgate rules and regulations on the procedures for billing and collection. All sums received through the payment of fees shall be placed in the state treasury and credited to an appropriate subaccount of the natural resources protection fund created in section 640.220. Moneys in the subaccount shall be expended, upon appropriation, solely for the administration of sections 644.006 to 644.141. Fees collected pursuant to subsection 10 of section 644.052 by a city, a public sewer district, a public water district or other publicly owned treatment works are state fees. Five percent of the fee revenue collected shall be retained by the city, public sewer district, public water district or other publicly owned treatment works as reimbursement of billing and collection expenses.

2. The commission may grant a variance pursuant to section 644.061 to reduce fees collected pursuant to section 644.052 for facilities that adopt systems or technologies that reduce the discharge of water contaminants substantially below the levels required by commission rules.

3. Fees imposed in subsections 2 to 6 of section 644.052 shall be due on the date of application and on each anniversary date of permit issuance thereafter until the permit is terminated.

4. The director of the department of natural resources shall conduct a comprehensive review of the fee structure in sections 644.052 and 644.053. The review shall include stakeholder meetings in order to solicit stakeholder input. The director shall submit a report to the general assembly by December 31, 2012, which shall include its findings and a recommended plan for the fee structure. The plan shall also include time lines for permit issuance, provisions for expedited permits, and recommendations for any other improved services provided by the fee funding.

644.071. 1. All final orders or determinations of the commission or the director made pursuant to the provisions of sections 644.006 to 644.141 are subject to judicial review pursuant to the provisions of chapter 536**, except that, the provisions of section 536.110 notwithstanding, all actions seeking judicial review of any final order or determination of the commission or the director shall be filed in the court of appeals instead of in the circuit court**. No judicial review shall be available, however, unless and until all administrative remedies are exhausted.

2. In any suit filed pursuant to section 536.050 concerning the validity of the commission's standards, rules and regulations, the court shall review the record made before the commission to determine the validity and reasonableness of such standards, rules, limitations, and regulations and may hear such additional evidence as it deems necessary.

644.145. 1. When issuing permits under this chapter for discharges from combined or separate sanitary sewer systems or publicly-owned treatment works, or when enforcing provisions of this chapter or the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq. pertaining to any portion of a combined or separate sanitary sewer system or publicly-owned treatment works, the department of natural resources shall make a finding of affordability upon which to base such permits and decisions, to the extent allowable under this chapter and the Federal Water Pollution Control Act.

2. When used in this chapter and in standards, rules and regulations promulgated pursuant to this chapter, the following words and phrases mean:

(1) "Affordability", with respect to payment of a utility bill, a measure of whether an individual customer or household can pay the bill without undue hardship or unreasonable sacrifice in the essential lifestyle or spending patterns of the individual or household, taking into consideration the criteria described in subsection 3 of this section;

(2) "Financial capability", the financial capability of a community to make investments necessary to make water quality-related improvements.

3. The department of natural resources shall adopt procedures by which it will determine whether a permit or decision is affordable. Such determination shall be based upon reasonably available empirical data and shall include an assessment of the affordability of the permit or decision to any private or public person or entity affected by such permit. The determination shall be based upon the following criteria:

(1) A community's financial capability and ability to raise or secure necessary funding;

(2) Affordability of pollution control options for the individuals or households of the community;

(3) An evaluation of the overall costs and environmental benefits of the control technologies;

(4) An inclusion of ways to reduce economic impacts on distressed populations in the community, including but not limited to, low and fixed income populations. This requirement includes but is not limited to:

(a) Allowing adequate time in implementation schedules to mitigate potential adverse impacts on distressed populations resulting from the costs of the improvements and taking into consideration local community economic considerations; and

(b) Allowing for reasonable accommodations for regulated entities when inflexible standards and fines would impose a disproportionate financial hardship in light of the environmental benefits to be gained;

(5) An assessment of other community investments relating to environmental improvements;

(6) An assessment of factors set forth in the United States Environmental Protection Agency's guidance, including but not limited to the "Combined Sewer Overflow—Guidance for Financial Capability Assessment and Schedule Development" that may ease the cost burdens of implementing wet weather control plans, including but not limited to small system considerations, the attainability of water quality standards, and the development of wet weather standards; and

(7) An assessment of any other relevant local community economic condition.

4. Prescriptive formulas and measures used in determining financial capability, affordability, and thresholds for expenditure, such as median household income, should not be considered to be the only indicator of a community's ability to implement control technology and shall be viewed in the context of other economic conditions rather than as a threshold to be achieved.

5. If the department of natural resources fails to make a finding of affordability as indicated in this section, the proposed permit or decision shall be null, void and unenforceable.

6. The department of natural resources' findings under this section may be appealed to the commission pursuant to subsection 6 of section 644.051.

701.033. 1. The department shall have the power and duty to:

(1) Promulgate such rules and regulations as are necessary to carry out the provisions of sections 701.025 to 701.059;

(2) Cause investigations to be made when a violation of any provision of sections 701.025 to 701.059 or the on-site sewage disposal rules promulgated under sections 701.025 to 701.059 is reported to the department;

(3) Enter at reasonable times and determining probable cause that a violation exists, upon private or public property for the purpose of inspecting and investigating conditions relating to the administration and enforcement of sections 701.025 to 701.059 and the on-site sewage disposal rules promulgated under sections 701.025 to 701.059;

(4) Authorize the trial or experimental use of innovative systems for on-site sewage disposal, after consultation with the staff of the Missouri clean water commission, upon such conditions as the department may set**;**

(5) Provide technical assistance, guidance, and oversight to any other administrative authority in the state on the regulation and enforcement of standards for individual on-site sewage disposal systems, at the request of such other administrative authority, or when the department determines that such assistance, guidance, or oversight is necessary to prevent a violation of sections 701.025 to 701.059.

2. No rule or portion of a rule promulgated under the authority of sections 701.025 to 701.059 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024.

701.058. The department of natural resources and the department of health and senior services shall jointly hold stakeholder meetings for the purpose of gathering data and information regarding permits and inspections for on-site sewage disposal systems. The departments shall evaluate the data and information obtained and present their

findings and recommendations in a report to be submitted to the general assembly by December 31, 2011.

Section 1. Notwithstanding any other law or rule to the contrary, only the department of natural resources shall set stage 1 and 2 motor fuel vapor recovery fees, including permit and construction fees, which shall be uniform across the state and which shall not be modified, expanded, or increased by political subdivisions or local enforcement agencies.

[386.850. The Missouri energy task force created by executive order 05-46 shall reconvene at least one time per year for the purpose of reviewing progress made toward meeting the recommendations set forth in the task force's final report as issued under the executive order. The task force shall issue its findings in a status report to the governor and general assembly no later than December thirty-first of each year.**]**

[643.253. As used in sections 643.253 and 643.255, the following terms mean:

(1) "Asbestos", the asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite;

(2) "Asbestos abatement projects", an activity undertaken to encapsulate, enclose or remove ten square feet or sixteen linear feet or more of friable asbestos-containing materials from buildings and other air contaminant sources, or to demolish buildings and other air contaminant sources containing ten square feet or sixteen linear feet or more;

(3) "Friable asbestos-containing material", any material that contains more than one percent asbestos, by weight, which is applied to ceilings, walls, structural members, piping, ductwork or any other part of a building or other air contaminant sources and which, when dry, may be crumbled, pulverized or reduced to powder by hand pressure.**]**

[643.260. As used in sections 643.260 to 643.265, the following terms mean:

(1) "Asbestos", the asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite;

(2) "Asbestos-containing material", any material which contains more than one percent of asbestos by weight;

(3) "Friable asbestos-containing material", any material that contains more than one percent asbestos, by weight, which is applied to ceilings, walls, structural members, piping, ductwork or any other part of a building or other air contaminant sources and which, when dry, may be crumbled, pulverized or reduced to powder by hand pressure;

(4) "Person", any individual, partnership, copartnership, firm, company, or public or private corporation, association, joint stock company, trust, the state, political subdivision, or any agency, board, department or bureau of the state or federal government, or any other legal entity whatever which is recognized by law as the subject of rights and duties;

(5) "School district", seven-director districts, urban school districts and metropolitan school districts, as defined in section 160.011.**]**

[701.332. For purposes of sections 643.225 to 643.250, the term "project" shall exclude any single-family owner-occupied dwellings and vacant public or privately owned residential structures of four dwelling units or less being demolished for the sole purpose of public health, safety or welfare. All vacant structures of four dwelling units or less located in any city not within a county shall be exempt from all geographical and time restrictions for the purpose of demolition pursuant to the National Emissions Standards for Asbestos. Excluded structures that are not located within a city not within a county shall be geographically dispersed. All excluded structures shall be demolished pursuant to a public safety determination by a local or state governmental agency and pose a threat to public safety.**]**

Section B. Because immediate action is necessary to maintain regulatory oversight by the state of Missouri and the need to ensure the creation of jobs through the utilization of alternative energy sources, the repeal and reenactment of sections 260.262, 644.036, and 644.054 and the enactment of section 620.2300 of section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of sections 260.262, 644.036, and 644.054 and the enactment of section 620.2300 of section A of this act shall be in full force and effect upon its passage and approval.

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