

FIRST REGULAR SESSION

[PERFECTED]

SENATE BILL NO. 37

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BERNSKOETTER.

0772S.01P

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 266.355, 643.050, 643.079, and 643.245, RSMo, and to enact in lieu thereof three new sections relating to anhydrous ammonia.

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

Section A. Sections 266.355, 643.050, 643.079, and
2 643.245, RSMo, are repealed and three new sections enacted in
3 lieu thereof, to be known as sections 643.050, 643.079, and
4 643.245, to read as follows:

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

3 (1) Adopt, promulgate, amend and repeal rules and
4 regulations consistent with the general intent and purposes
5 of sections 643.010 to 643.355, chapter 536, [and] Titles V
6 and VI of the federal Clean Air Act, as amended, 42 U.S.C.
7 7661, et seq., **and 42 U.S.C. 7412(r) for covered processes**
8 **of agricultural stationary sources that use, store, or sell**
9 **anhydrous ammonia**, including but not limited to:

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

12 (b) Establishment of maximum quantities of air
13 contaminants that may be emitted from any air contaminant
14 source; [and]

15 (c) Regulations necessary to enforce the provisions of
16 Title VI of the Clean Air Act, as amended, 42 U.S.C. 7671,

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

17 et seq., regarding any Class I or Class II substances as
18 defined therein; **and**

19 **(d) Regulations necessary to implement and enforce the**
20 **risk management plans under 42 U.S.C. 7412(r) for**
21 **agricultural facilities that use, store, or sell anhydrous**
22 **ammonia;**

23 (2) After holding public hearings in accordance with
24 section 643.070, establish areas of the state and prescribe
25 air quality standards for such areas giving due recognition
26 to variations, if any, in the characteristics of different
27 areas of the state which may be deemed by the commission to
28 be relevant;

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

33 (b) Require submission to the director for approval of
34 plans and specifications for any article, machine,
35 equipment, device, or other contrivance specified by
36 regulation the use of which may cause or control the
37 issuance of air contaminants; but any person responsible for
38 complying with the standards established under sections
39 643.010 to 643.355 shall determine, unless found by the
40 director to be inadequate, the means, methods, processes,
41 equipment and operation to meet the established standards;

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

48 (5) Enter such order or determination as may be
49 necessary to effectuate the purposes of sections 643.010 to
50 643.355. In making its orders and determinations hereunder,
51 the commission shall exercise a sound discretion in weighing
52 the equities involved and the advantages and disadvantages
53 to the person involved and to those affected by air
54 contaminants emitted by such person as set out in section
55 643.030. If any small business, as defined by section
56 643.020, requests information on what would constitute
57 compliance with the requirements of sections 643.010 to
58 643.355 or any order or determination of the department or
59 commission, the department shall respond with written
60 criteria to inform the small business of the actions
61 necessary for compliance. No enforcement action shall be
62 undertaken by the department or commission until the small
63 business has had a period of time, negotiated with the
64 department, to achieve compliance;

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

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

73 (8) Develop such facts and make such investigations as
74 are consistent with the purposes of sections 643.010 to
75 643.355, and, in connection therewith, to enter or authorize
76 any representative of the department to enter at all
77 reasonable times and upon reasonable notice in or upon any
78 private or public property for the purpose of inspecting or
79 investigating any condition which the commission or director

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

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

101 (10) Classify and identify air contaminants; and

102 (11) Hold public hearings as required by sections
103 643.010 to 643.355.

104 2. No rule or portion of a rule promulgated under the
105 authority of this chapter shall become effective unless it
106 has been promulgated pursuant to the provisions of section
107 536.024.

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

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

113 (2) Encourage voluntary cooperation by persons or
114 affected groups to achieve the purposes of sections 643.010
115 to 643.355;

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

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

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

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

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

131 4. Nothing contained in sections 643.010 to 643.355
132 shall be deemed to grant to the commission or department any
133 jurisdiction or authority with respect to air pollution
134 existing solely within commercial and industrial plants,
135 works, or shops or to affect any aspect of employer-employee
136 relationships as to health and safety hazards.

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

643.079. 1. Any air contaminant source required to
2 obtain a permit issued under sections 643.010 to 643.355

3 shall pay annually beginning April 1, 1993, a fee as
4 provided herein. For the first year the fee shall be twenty-
5 five dollars per ton of each regulated air contaminant
6 emitted. Thereafter, the fee shall be set every three years
7 by the commission by rule and shall be at least twenty-five
8 dollars per ton of regulated air contaminant emitted but not
9 more than forty dollars per ton of regulated air contaminant
10 emitted in the previous calendar year. If necessary, the
11 commission may make annual adjustments to the fee by rule.
12 The fee shall be set at an amount consistent with the need
13 to fund the reasonable cost of administering sections
14 643.010 to 643.355, taking into account other moneys
15 received pursuant to sections 643.010 to 643.355. For the
16 purpose of determining the amount of air contaminant
17 emissions on which the fees authorized under this section
18 are assessed, a facility shall be considered one source
19 under the definition of subsection 2 of section 643.078,
20 except that a facility with multiple operating permits shall
21 pay the emission fees authorized under this section
22 separately for air contaminants emitted under each
23 individual permit.

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

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

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

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

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

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

65 the provisions of the federal Clean Air Act, as amended, and
66 the regulations promulgated thereunder. Any such fee on
67 emissions from any Phase I affected unit shall be reduced by
68 the amount of the service fee paid by that Phase I affected
69 unit pursuant to subsection 8 of this section in that year.
70 Any fees that may be imposed on Phase I sources shall follow
71 the procedures set forth in subsection 1 and this subsection
72 and shall not be applied retroactively.

73 5. Moneys collected under this section shall be
74 transmitted to the director of revenue for deposit in
75 appropriate subaccounts of the natural resources protection
76 fund created in section 640.220. A subaccount shall be
77 maintained for fees paid by air contaminant sources which
78 are required to be permitted under Title V of the federal
79 Clean Air Act, as amended, 42 U.S.C. Section 7661, et seq.,
80 and used, upon appropriation, to fund activities by the
81 department to implement the operating permits program
82 authorized by Title V of the federal Clean Air Act, as
83 amended. Another subaccount shall be maintained for fees
84 paid by air contaminant sources which are not required to be
85 permitted under Title V of the federal Clean Air Act as
86 amended, and used, upon appropriation, to fund other air
87 pollution control program activities. Another subaccount
88 shall be maintained for service fees paid under subsection 8
89 of this section by Phase I affected units which are subject
90 to the requirements of Title IV, Section 404, of the federal
91 Clean Air Act Amendments of 1990, as amended, 42 U.S.C.
92 Section 7651, and used, upon appropriation, to fund air
93 pollution control program activities. The provisions of
94 section 33.080 to the contrary notwithstanding, moneys in
95 the fund shall not revert to general revenue at the end of
96 each biennium. Interest earned by moneys in the subaccounts

97 shall be retained in the subaccounts. The per-ton fees
98 established under subsection 1 of this section may be
99 adjusted annually, consistent with the need to fund the
100 reasonable costs of the program, but shall not be less than
101 twenty-five dollars per ton of regulated air contaminant nor
102 more than forty dollars per ton of regulated air
103 contaminant. The first adjustment shall apply to moneys
104 payable on April 1, 1994, and shall be based upon the
105 general price level for the twelve-month period ending on
106 August thirty-first of the previous calendar year.

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

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

118 8. Any Phase I affected unit which is subject to the
119 requirements of Title IV, Section 404, of the federal Clean
120 Air Act, as amended, 42 U.S.C. Section 7651, shall pay
121 annually beginning April 1, 1993, and terminating December
122 31, 1999, a service fee for the previous calendar year as
123 provided herein. For the first year, the service fee shall
124 be twenty-five thousand dollars for each Phase I affected
125 generating unit to help fund the administration of sections
126 643.010 to 643.355. Thereafter, the service fee shall be
127 annually set by the commission by rule, following public
128 hearing, based on an annual allocation prepared by the

129 department showing the details of all costs and expenses
130 upon which such fees are based consistent with the
131 department's reasonable needs to administer and implement
132 sections 643.010 to 643.355 and to fulfill its
133 responsibilities with respect to Phase I affected units, but
134 such service fee shall not exceed twenty-five thousand
135 dollars per generating unit. Any such Phase I affected unit
136 which is located on one or more contiguous tracts of land
137 with any Phase II generating unit that pays fees under
138 subsection 1 or subsection 2 of this section shall be exempt
139 from paying service fees under this subsection. A
140 "contiguous tract of land" shall be defined to mean adjacent
141 land, excluding public roads, highways and railroads, which
142 is under the control of or owned by the permit holder and
143 operated as a single enterprise.

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

161 assistance from the small business technical assistance
162 program established pursuant to section 643.173.

163 10. Each retail agricultural facility that uses,
164 stores, or sells anhydrous ammonia that is an air
165 contaminant source subject to the risk management plan under
166 42 U.S.C. 7412(r) shall pay an annual registration fee of
167 two hundred dollars. In addition, each retail agricultural
168 facility that uses, stores, or sells anhydrous ammonia shall
169 pay an annual tonnage fee calculated on the number of tons
170 of anhydrous ammonia sold. The initial retail tonnage fee
171 is set at one dollar and twenty-five cents per ton of
172 anhydrous ammonia used or sold. Each distributor or
173 terminal agricultural facility that uses, stores, or sells
174 anhydrous ammonia that is an air contaminant source subject
175 to the risk management plan program 3 under 40 CFR Part 68
176 shall pay an annual registration fee of five thousand
177 dollars and shall not pay a tonnage fee. The annual
178 registration fees and tonnage fee may be periodically
179 revised pursuant to subsection 11 of this section. However,
180 the fees collected shall be used exclusively for the
181 purposes of administering the provisions of 42 U.S.C.
182 7412(r) for such agricultural facilities. Fees paid by
183 agricultural air contaminant sources that use, store, or
184 sell anhydrous ammonia for the purposes of implementing the
185 requirements of 42 U.S.C. 7412(r) shall be deposited into
186 the anhydrous ammonia risk management plan subaccount within
187 the natural resources protection fund created in section
188 643.245. If the funding exceeds the reasonable costs to
189 administer the programs as set forth in this section, the
190 department of natural resources shall reduce fees for all
191 registrants if the fees derived exceed the reasonable cost

192 **of administering the risk management plan under 42 U.S.C.**
193 **7412 (r) .**

194 **11.** Notwithstanding any statutory fee amounts or
195 maximums to the contrary, the department of natural
196 resources may conduct a comprehensive review and propose
197 changes to the fee structure authorized by sections 643.073,
198 643.075, 643.079, 643.225, 643.228, 643.232, 643.237, and
199 643.242 after holding stakeholder meetings in order to
200 solicit stakeholder input from each of the following
201 groups: the asbestos industry, electric utilities, mineral
202 and metallic mining and processing facilities, cement kiln
203 representatives, and any other interested industrial or
204 business entities or interested parties. The department
205 shall submit a proposed fee structure with stakeholder
206 agreement to the air conservation commission. The
207 commission shall review such recommendations at the
208 forthcoming regular or special meeting, but shall not vote
209 on the fee structure until a subsequent meeting. If the
210 commission approves, by vote of two-thirds majority or five
211 of seven commissioners, the fee structure recommendations,
212 the commission shall authorize the department to file a
213 notice of proposed rulemaking containing the recommended fee
214 structure, and after considering public comments, may
215 authorize the department to file the order of rulemaking for
216 such rule with the joint committee on administrative rules
217 pursuant to sections 536.021 and 536.024 no later than
218 December first of the same year. If such rules are not
219 disapproved by the general assembly in the manner set out
220 below, they shall take effect on January first of the
221 following calendar year and the previous fee structure shall
222 expire upon the effective date of the commission-adopted fee
223 structure. Any regulation promulgated under this subsection

224 shall be deemed to be beyond the scope and authority
225 provided in this subsection, or detrimental to permit
226 applicants, if the general assembly, within the first sixty
227 calendar days of the regular session immediately following
228 the filing of such regulation, by concurrent resolution
229 disapproves the regulation by concurrent resolution. If the
230 general assembly so disapproves any regulation filed under
231 this subsection, the commission shall continue to use the
232 previous fee structure. The authority of the commission to
233 further revise the fee structure as provided by this
234 subsection shall expire on August 28, 2024.

643.245. 1. All moneys received pursuant to sections
2 643.225 to 643.245 and any other moneys so designated shall
3 be placed in the state treasury and credited to the "Natural
4 Resources Protection Fund – Air Pollution Asbestos Fee
5 Subaccount", which is hereby created. Such moneys received
6 pursuant to sections 643.225 to 643.245 shall, subject to
7 appropriation, be used solely for the purpose of
8 administering this chapter. Any unexpended balance in such
9 fund at the end of any appropriation period shall not be
10 transferred to the general revenue fund of the state
11 treasury and shall be exempt from the provisions of section
12 33.080.

13 **2. All moneys received pursuant to subsection 10 of**
14 **section 643.079 and any other moneys so designated shall be**
15 **placed in the "Natural Resources Protection Fund - Anhydrous**
16 **Ammonia Risk Management Plan Subaccount", which is hereby**
17 **created. Such moneys received pursuant to subsection 10 of**
18 **section 643.079 shall, subject to appropriation, be used**
19 **solely for the purpose of administering the provisions of**
20 **section 643.079. Any unexpended balance in such fund at the**
21 **end of any appropriation period shall not be transferred to**

22 **the general revenue fund of the state treasury and shall be**
23 **exempt from the provisions of section 33.080.**

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

2 [266.355. Unless provided for by federal
3 law, rule or regulation, the director of the
4 department of agriculture shall promulgate,
5 pursuant to chapter 536, and enforce regulations
6 setting forth minimum general standards covering
7 the design, construction, location,
8 installation, and operation of equipment for
9 storing, handling, transporting by tank truck,
10 tank trailer, tank car and utilizing anhydrous
11 ammonia. The provisions of this section shall
12 not apply to equipment which is in use for
13 storing anhydrous ammonia as of August 28, 2010,
14 and which is found by the department to be in
15 substantial compliance with generally accepted
16 standards of safety regarding life and
17 property. The department shall adopt the
18 minimum general safety standards for the storage
19 and handling of anhydrous ammonia set forth in
20 ANSI Standard K61.1-1999, Safety Requirements
21 for the Storage and Handling of Anhydrous
22 Ammonia; except that, ANSI Standard K61.1-1999
23 shall not be adopted by the department prior to
24 December 1, 2012. For purposes of this section,
25 "ANSI" means the American National Standards
Institute.]

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