

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 225**  
98TH GENERAL ASSEMBLY

---

Reported from the Committee on Commerce, Consumer, Protection, Energy and the Environment, April 9, 2015, with recommendation that the Senate Committee Substitute do pass.

0375S.04C

ADRIANE D. CROUSE, Secretary.

---

**AN ACT**

To repeal sections 260.235, 260.395, 444.600, 444.773, 621.250, 640.115, 643.075, 643.078, 644.051, and 644.056, RSMo, and to enact in lieu thereof eleven new sections relating to the department of natural resources permit decision appeal procedures.

---

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

Section A. Sections 260.235, 260.395, 444.600, 444.773, 621.250, 640.115, 643.075, 643.078, 644.051, and 644.056, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 260.235, 260.395, 444.600, 444.773, 444.980, 621.250, 640.115, 643.075, 643.078, 644.051, and 644.056, to read as follows:

260.235. Any person aggrieved by a forfeiture of any financial assurance instrument, civil or administrative penalty or denial, suspension or revocation of a permit required by section 260.205 or a modification to a permit issued under section 260.205 or any disapproval of the plan required by section 260.220, may appeal such decision as provided in [section] **sections 621.250**[, subject to judicial review as provided by law] **and 640.013 by filing a petition with the administrative hearing commission within thirty days of the decision.** The notice of the department shall be effected by certified mail and shall set forth the reasons for such forfeiture, disapproval, denial, suspension, civil penalty or revocation. The department may seek an injunction in the circuit court in which the facility is located requiring the facility for which the transfer of ownership has been denied, or the permit or modification of the permit has been denied, suspended or revoked, to cease operations from the date ordered by

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

14 the court until such time as the appeal is resolved or obtain a performance bond  
15 in the amount and manner as prescribed by rule. The department's action  
16 seeking an injunction shall be based on the seriousness of the threat to the  
17 environment which continued operation of the facility poses. A bond may be  
18 required in order to stay the effect of the department's action until the appeal is  
19 resolved, in which case such bond shall remain in place until the appeal is  
20 resolved. If the department's decision is upheld, the bond shall be forfeited and  
21 placed in a separate subaccount of the solid waste management fund. **Once the  
22 administrative hearing commission has reviewed the appeal, the  
23 administrative hearing commission shall make a final decision on the  
24 forfeiture of any financial assurance instrument, civil or administrative  
25 penalty, denial, suspension, revocation, or modification of a permit or  
26 disapproval of the plan required by section 260.220. The administrative  
27 hearing commission shall mail copies of its final decision to the parties  
28 to the appeal or their counsel of record. The commission's decision  
29 shall be subject to judicial review pursuant to chapter 536, except that  
30 the court of appeals district with territorial jurisdiction coextensive  
31 with the county where the solid waste processing facility or disposal  
32 area is located or is to be located shall have original jurisdiction. No  
33 judicial review shall be available until and unless all administrative  
34 remedies are exhausted.**

260.395. 1. After six months from the effective date of the standards,  
2 rules and regulations adopted by the commission pursuant to section 260.370, it  
3 shall be unlawful for any person to transport any hazardous waste in this state  
4 without first obtaining a hazardous waste transporter license. Any person  
5 transporting hazardous waste in this state shall file an application for a license  
6 pursuant to this subsection which shall:

7 (1) Be submitted on a form provided for this purpose by the department  
8 and shall furnish the department with such equipment identification and data as  
9 may be necessary to demonstrate to the satisfaction of the department that  
10 equipment engaged in such transportation of hazardous waste, and other  
11 equipment as designated in rules and regulations pursuant to sections 260.350  
12 to 260.430, is adequate to provide protection of the health of humans and the  
13 environment and to comply with the provisions of any federal hazardous waste  
14 management act and sections 260.350 to 260.430 and the standards, rules and  
15 regulations adopted pursuant to sections 260.350 to 260.430. If approved by the

16 department, this demonstration of protection may be satisfied by providing  
17 certification that the equipment so identified meets and will be operated in  
18 accordance with the rules and regulations of the Missouri public service  
19 commission and the federal Department of Transportation for the transportation  
20 of the types of hazardous materials for which it will be used;

21 (2) Include, as specified by rules and regulations, demonstration of  
22 financial responsibility, including, but not limited to, guarantees, liability  
23 insurance, posting of bond or any combination thereof which shall be related to  
24 the number of units, types and sizes of equipment to be used in the transport of  
25 hazardous waste by the applicant;

26 (3) Include, as specified in rules and regulations, a fee payable to the  
27 state of Missouri which shall consist of an annual application fee, plus an annual  
28 use fee based upon tonnage, mileage or a combination of tonnage and  
29 mileage. The fees established pursuant to this subdivision shall be set to  
30 generate, as nearly as is practicable, six hundred thousand dollars annually. No  
31 fee shall be collected pursuant to this subdivision from railroads that pay a fee  
32 pursuant to subsection 18 of this section. Fees collected pursuant to this  
33 subdivision shall be deposited in the hazardous waste fund created pursuant to  
34 section 260.391.

35 2. If the department determines the application conforms to the provisions  
36 of any federal hazardous waste management act and sections 260.350 to 260.430  
37 and the standards, rules and regulations adopted pursuant to sections 260.350  
38 to 260.430, it shall issue the hazardous waste transporter license with such terms  
39 and conditions as it deems necessary to protect the health of humans and the  
40 environment. The department shall act within ninety days after receipt of the  
41 application. If the department denies the license, it shall issue a report to the  
42 applicant stating the reason for denial of the license.

43 3. A license may be suspended or revoked whenever the department  
44 determines that the equipment is or has been operated in violation of any  
45 provision of sections 260.350 to 260.430 or any standard, rule or regulation, order,  
46 or license term or condition adopted or issued pursuant to sections 260.350 to  
47 260.430, poses a threat to the health of humans or the environment, or is creating  
48 a public nuisance.

49 4. Whenever a license is issued, renewed, denied, suspended or revoked  
50 by the department, any aggrieved person, by petition filed with the [department]  
51 **administrative hearing commission** within thirty days of the decision, may

52 appeal such decision [and shall be entitled to a hearing as provided in section  
53 260.400] **as provided by sections 621.250 and 640.013. Once the**  
54 **administrative hearing commission has reviewed the appeal, the**  
55 **administrative hearing commission shall issue a recommended decision**  
56 **to the commission on license issuance, renewal, denial, suspension, or**  
57 **revocation. The commission shall issue its own decision, based on the**  
58 **appeal, for license issuance, renewal, denial, suspension, or revocation.**  
59 **If the commission changes a finding of fact or conclusion of law made**  
60 **by the administrative hearing commission, or modifies or vacates the**  
61 **decision recommended by the administrative hearing commission, it**  
62 **shall issue its own decision, which shall include findings of fact and**  
63 **conclusions of law. The commission shall mail copies of its final**  
64 **decision to the parties to the appeal or their counsel of record. The**  
65 **commission's decision shall be subject to judicial review pursuant to**  
66 **chapter 536. No judicial review shall be available until and unless all**  
67 **administrative remedies are exhausted.**

68         5. A license shall be issued for a period of one year and shall be renewed  
69 upon proper application by the holder and a determination by the department  
70 that the applicant is in compliance with all provisions of sections 260.350 to  
71 260.430 and all standards, rules and regulations, orders and license terms and  
72 conditions adopted or issued pursuant to sections 260.350 to 260.430.

73         6. A license is not required for the transport of any hazardous waste on  
74 the premises where it is generated or onto contiguous property owned by the  
75 generator thereof, or for those persons exempted in section 260.380. Nothing in  
76 this subsection shall be interpreted to preclude the department from inspecting  
77 unlicensed hazardous waste transporting equipment and to require that it be  
78 adequate to provide protection for the health of humans and the environment.

79         7. After six months from the effective date of the standards, rules and  
80 regulations adopted by the commission pursuant to section 260.370, it shall be  
81 unlawful for any person to construct, substantially alter or operate, including  
82 operations specified in the rules and regulations, a hazardous waste facility  
83 without first obtaining a hazardous waste facility permit for such construction,  
84 alteration or operation from the department. Such person must submit to the  
85 department at least ninety days prior to submitting a permit application a letter  
86 of intent to construct, substantially alter or operate any hazardous waste disposal  
87 facility. The person must file an application within one hundred eighty days of

88 the filing of a letter of intent unless granted an extension by the  
89 commission. The department shall publish such letter of intent as specified in  
90 section 493.050 within ten days of receipt of such letter. The letter shall be  
91 published once each week for four weeks in the county where the hazardous waste  
92 disposal facility is proposed. Once such letter is submitted, all conditions for the  
93 permit application evaluation purposes in existence as of the date of submission  
94 shall be deemed frozen, in that no subsequent action by any person to change  
95 such conditions in an attempt to thwart a fair and impartial decision on the  
96 application for a permit shall be allowed as grounds for denial of the permit. Any  
97 person before constructing, substantially altering or operating a hazardous waste  
98 facility in this state shall file an application for a permit which shall:

99 (1) Be submitted on a form provided for this purpose by the department  
100 and shall furnish the department with plans, specifications and such other data  
101 as may be necessary to demonstrate to the satisfaction of the department that  
102 such facility does or will provide adequate protection of the health of humans and  
103 the environment and does or will comply with the provisions of any federal  
104 hazardous waste management act and sections 260.350 to 260.430 and the  
105 standards, rules and regulations adopted pursuant to sections 260.350 to 260.430;

106 (2) Include plans, designs, engineering reports and relevant data for  
107 construction, alteration or operation of a hazardous waste facility, to be submitted  
108 to the department by a registered professional engineer licensed by this state;

109 (3) Include, as specified by rules and regulations, demonstration of  
110 financial responsibility, including, but not limited to, guarantees, liability  
111 insurance, posting of bond or any combination thereof, which shall be related to  
112 type and size of facility;

113 (4) Include such environmental and geologic information, assessments and  
114 studies as required by the rules and regulations of the commission;

115 (5) Include a fee payable to the state of Missouri which shall not exceed  
116 one thousand dollars, which shall cover the first year of the permit, if issued, but  
117 which is not refundable. If the permit is issued for more than one year, a fee  
118 equal in amount to the first year's fee shall be paid to the state of Missouri prior  
119 to issuance of the permit for each year the permit is to be in effect beyond the  
120 first year;

121 (6) The department shall supervise any field work undertaken to collect  
122 geologic and engineering data for submission with the application. The state  
123 geologist and departmental engineers shall review the geologic and engineering

124 plans, respectively, and attest to their accuracy and adequacy. The applicant  
125 shall pay all reasonable costs, as determined by the commission, incurred by the  
126 department pursuant to this subsection.

127           8. (1) Prior to issuing or renewing a hazardous waste facility permit, the  
128 department shall issue public notice by press release or advertisement and shall  
129 notify all record owners of adjoining property by mail directed to the last known  
130 address, and the village, town or city, if any, and the county in which the  
131 hazardous waste facility is located; and, upon request, shall hold a public hearing  
132 after public notice as required in this subsection at a location convenient to the  
133 area affected by the issuance of the permit.

134           (2) Prior to issuing or renewing a hazardous waste disposal facility permit  
135 the department shall issue public notice by press release and advertisement and  
136 shall notify all record owners of property, within one mile of the outer boundaries  
137 of the site, by mail directed to the last known address; and shall hold a public  
138 hearing after public notice as required in this subsection at a location convenient  
139 to the area affected by the issuance of the permit.

140           9. If the department determines that the application conforms to the  
141 provisions of any federal hazardous waste management act and sections 260.350  
142 to 260.430 and the standards, rules and regulations adopted pursuant to sections  
143 260.350 to 260.430, it shall issue the hazardous waste facility permit, with such  
144 terms and conditions and require such testing and construction supervision as it  
145 deems necessary to protect the health of humans or the environment. The  
146 department shall act within one hundred and eighty days after receipt of the  
147 application. If the department denies the permit, it shall issue a report to the  
148 applicant stating the reason for denial of a permit.

149           10. A permit may be suspended or revoked whenever the department  
150 determines that the hazardous waste facility is, or has been, operated in violation  
151 of any provision of sections 260.350 to 260.430 or any standard, rule or  
152 regulation, order or permit term or condition adopted or issued pursuant to  
153 sections 260.350 to 260.430, poses a threat to the health of humans or the  
154 environment or is creating a public nuisance.

155           11. Whenever a permit is issued, renewed, denied, suspended or revoked  
156 by the department, any aggrieved person, by petition filed with the [department]  
157 **administrative hearing commission** within thirty days of the decision, may  
158 appeal such decision [and shall be entitled to a hearing as provided in section  
159 260.400] **as provided by sections 621.250 and 640.013. Once the**

160 **administrative hearing commission has reviewed the appeal, the**  
161 **administrative hearing commission shall issue a recommended decision**  
162 **to the commission on permit issuance, renewal, denial, suspension, or**  
163 **revocation. The commission shall issue its own decision, based on the**  
164 **appeal, for permit issuance, renewal, denial, suspension, or revocation.**  
165 **If the commission changes a finding of fact or conclusion of law made**  
166 **by the administrative hearing commission, or modifies or vacates the**  
167 **decision recommended by the administrative hearing commission, it**  
168 **shall issue its own decision, which shall include findings of fact and**  
169 **conclusions of law. The commission shall mail copies of its final**  
170 **decision to the parties to the appeal or their counsel of record. The**  
171 **commission's decision shall be subject to judicial review pursuant to**  
172 **chapter 536, except that the court of appeals district with territorial**  
173 **jurisdiction coextensive with the county where the hazardous waste**  
174 **facility is to be located or is located, shall have original jurisdiction. No**  
175 **judicial review shall be available until and unless all administrative**  
176 **remedies are exhausted.**

177       12. A permit shall be issued for a fixed term, which shall not exceed ten  
178 years in the case of any land disposal facility, storage facility, incinerator, or  
179 other treatment facility. Nothing in this subsection shall preclude the  
180 department from reviewing and modifying a permit at any time during its  
181 term. Review of any application for a permit renewal shall consider  
182 improvements in the state of control and measurement technology as well as  
183 changes in applicable regulations. Each permit issued pursuant to this section  
184 shall contain such terms and conditions as the department determines necessary  
185 to protect human health and the environment, and upon proper application by the  
186 holder and a determination by the department that the applicant is in compliance  
187 with all provisions of sections 260.350 to 260.430 and all standards, rules and  
188 regulations, orders and permit terms and conditions adopted or issued pursuant  
189 to sections 260.350 to 260.430.

190       13. A hazardous waste facility permit is not required for:

191       (1) On-site storage of hazardous wastes where such storage is exempted  
192 by the commission by rule or regulation; however, such storage must conform to  
193 the provisions of any federal hazardous waste management act and sections  
194 260.350 to 260.430 and the applicable standards, rules and regulations adopted  
195 pursuant to sections 260.350 to 260.430 and any other applicable hazardous

196 materials storage and spill-prevention requirements provided by law;

197 (2) A publicly owned treatment works which has an operating permit  
198 pursuant to section 644.051 and is in compliance with that permit;

199 (3) A resource recovery facility which the department certifies uses  
200 hazardous waste as a supplement to, or substitute for, nonwaste material, and  
201 that the sole purpose of the facility is manufacture of a product rather than  
202 treatment or disposal of hazardous wastes;

203 (4) That portion of a facility engaged in hazardous waste resource  
204 recovery, when the facility is engaged in both resource recovery and hazardous  
205 waste treatment or disposal, provided the owner or operator can demonstrate to  
206 the department's satisfaction and the department finds that such portion is not  
207 intended and is not used for hazardous waste treatment or disposal.

208 14. Facilities exempted pursuant to subsection 13 of this section must  
209 comply with the provisions of subdivisions (3) to (7) of section 260.390 and such  
210 other requirements, to be specified by rules and regulations, as are necessary to  
211 comply with any federal hazardous waste management act or regulations  
212 hereunder. Generators who use such an exempted facility shall keep records of  
213 hazardous wastes transported, except by legal flow through sewer lines, to the  
214 facility and submit such records to the department in accordance with the  
215 provisions of section 260.380 and the standards, rules and regulations adopted  
216 pursuant to sections 260.350 to 260.430. Any person, before constructing,  
217 altering or operating a resource recovery facility in this state shall file an  
218 application for a certification. Such application shall include:

219 (1) Plans, designs, engineering reports and other relevant information as  
220 specified by rule that demonstrate that the facility is designed and will operate  
221 in a manner protective of human health and the environment; and

222 (2) An application fee of not more than five hundred dollars for a facility  
223 that recovers waste generated at the same facility or an application fee of not  
224 more than one thousand dollars for a facility that recovers waste generated at  
225 off-site sources. Such fees shall be deposited in the hazardous waste fund created  
226 in section 260.391. The department shall review such application for conformance  
227 with applicable laws, rules and standard engineering principles and  
228 practices. The applicant shall pay to the department all reasonable costs, as  
229 determined by the commission, incurred by the department pursuant to this  
230 subsection. All such funds shall be deposited in the hazardous waste fund  
231 created in section 260.391.

232           15. The owner or operator of any hazardous waste facility in existence on  
233 September 28, 1977, who has achieved federal interim status pursuant to 42  
234 U.S.C. 6925(e), and who has submitted to the department Part A of the federal  
235 facility permit application, may continue to receive and manage hazardous wastes  
236 in the manner as specified in the Part A application, and in accordance with  
237 federal interim status requirements, until completion of the administrative  
238 disposition of a permit application submitted pursuant to sections 260.350 to  
239 260.430. The department may at any time require submission of, or the owner  
240 or operator may at any time voluntarily submit, a complete application for a  
241 permit pursuant to sections 260.350 to 260.430 and commission regulations. The  
242 authority to operate pursuant to this subsection shall cease one hundred eighty  
243 days after the department has notified an owner or operator that an application  
244 for permit pursuant to sections 260.350 to 260.430 must be submitted, unless  
245 within such time the owner or operator submits a completed application  
246 therefor. Upon submission of a complete application, the authority to operate  
247 pursuant to this subsection shall continue for such reasonable time as is required  
248 to complete the administrative disposition of the permit application. If a facility  
249 loses its federal interim status, or the Environmental Protection Agency requires  
250 the owner or operator to submit Part B of the federal application, the department  
251 shall notify the owner or operator that an application for a permit must be  
252 submitted pursuant to this subsection. In addition to compliance with the federal  
253 interim status requirements, the commission shall have the authority to adopt  
254 regulations requiring persons operating pursuant to this subsection to meet  
255 additional state interim status requirements.

256           16. No person, otherwise qualified pursuant to sections 260.350 to 260.430  
257 for a license to transport hazardous wastes or for a permit to construct,  
258 substantially alter or operate a hazardous waste facility, shall be denied such  
259 license or permit on the basis of a lack of need for such transport service or such  
260 facility because of the existence of other services or facilities capable of meeting  
261 that need; except that permits for hazardous waste facilities may be denied on  
262 determination made by the department that the financial resources of the persons  
263 applying are such that the continued operation of the sites in accordance with  
264 sections 260.350 to 260.430 cannot be reasonably assured or on determination  
265 made by the department that the probable volume of business is insufficient to  
266 ensure and maintain the solvency of then existing permitted hazardous waste  
267 facilities.

268           17. All hazardous waste landfills constructed after October 31, 1980, shall  
269 have a leachate collection system. The rules and regulations of the commission  
270 shall treat and protect all aquifers to the same level of protection. The provisions  
271 of this subsection shall not apply to the disposal of tailings and slag resulting  
272 from mining, milling and primary smelting operations.

273           18. Any railroad corporation as defined in section 388.010 that transports  
274 any hazardous waste as defined in section 260.360 or any hazardous substance  
275 as defined in section 260.500 shall pay an annual fee of three hundred fifty  
276 dollars. Fees collected pursuant to this subsection shall be deposited in the  
277 hazardous waste fund created in section 260.391.

444.600. 1. All applications for a permit shall be filed with the director  
2 who shall promptly investigate the application and make a [recommendation to  
3 the commission] **decision** within thirty days after the application is received as  
4 to whether the permit should be issued or denied. If the director is not satisfied  
5 with the information supplied by the applicant, he **or she** shall recommend  
6 denial of the permit. The director shall promptly notify the applicant of this  
7 action and at the same time publish a notice of the [recommendation] **decision**  
8 in any newspaper with general circulation in the counties where the land is  
9 located, and shall send notice to those persons registered with the director  
10 pursuant to section 444.720. **The director's decision shall be deemed to be**  
11 **the decision of the director of the department of natural resources and**  
12 **shall be subject to appeal to the administrative hearing commission as**  
13 **provided by sections 621.250 and 640.013.**

14           2. [If the recommendation of the director is to deny the permit, a hearing  
15 as provided in sections 444.500 to 444.755 shall be held by the commission if  
16 requested by the applicant within thirty days of the date of notice of the  
17 recommendation of the director.

18           3. If the recommendation of the director is for issuance of the permit, the  
19 commission may issue or deny the permit without a hearing provided the matter  
20 is passed upon at a public meeting no sooner than thirty days from the date of  
21 notice of the recommendation of the director, except that upon petition of any  
22 person aggrieved by the granting of the permit, a hearing shall be held as  
23 provided in section 444.680.

24           4. If the commission denies a permit, the applicant may petition the  
25 commission, within thirty days of notice of its action, for a hearing. If no petition  
26 is filed within the thirty day period, the decision of the commission is final and

27 the applicant shall have no right of court review.

28           5. In any hearing held pursuant to this section the burden of proof shall  
29 be on the applicant for a permit. Any decision of the commission made pursuant  
30 to a hearing held under this section is subject to judicial review as provided in  
31 section 444.700.] **Whenever a strip mine operator permit provided under**  
32 **section 444.540 is issued, denied, suspended, or revoked by the**  
33 **department of natural resources, any aggrieved person, by petition**  
34 **filed with the administrative hearing commission within thirty days of**  
35 **the decision, may appeal such decision as provided by sections 621.250**  
36 **and 640.013. For purposes of an appeal, the administrative hearing**  
37 **commission may consider, based on competent and substantial**  
38 **scientific evidence on the record, whether an interested party's health,**  
39 **safety, or livelihood will be unduly impaired by the issuance, denial,**  
40 **suspension, or revocation of the permit. The administrative hearing**  
41 **commission may also consider, based on competent and substantial**  
42 **scientific evidence on the record, whether the operator has**  
43 **demonstrated, during the five-year period immediately preceding the**  
44 **date of the permit application, a pattern of noncompliance at other**  
45 **locations in Missouri that suggests a reasonable likelihood of future**  
46 **acts of noncompliance. In determining whether a reasonable likelihood**  
47 **of noncompliance will exist in the future, the administrative hearing**  
48 **commission may look to past acts of noncompliance in Missouri, but**  
49 **only to the extent they suggest a reasonable likelihood of future acts of**  
50 **noncompliance. Such past acts of noncompliance in Missouri, in and of**  
51 **themselves, are an insufficient basis to suggest a reasonable likelihood**  
52 **of future acts of noncompliance. In addition, such past acts shall not**  
53 **be used as a basis to suggest a reasonable likelihood of future acts of**  
54 **noncompliance unless the noncompliance has caused or has the**  
55 **potential to cause, a risk to human health or to the environment, or has**  
56 **caused or has potential to cause pollution, or was knowingly**  
57 **committed, or is defined by the United States Environmental Protection**  
58 **Agency as other than minor. If a hearing petitioner demonstrates or**  
59 **the administrative hearing commission finds either present acts of**  
60 **noncompliance or a reasonable likelihood that the permit seeker or the**  
61 **operations of associated persons or corporations in Missouri will be in**  
62 **noncompliance in the future, such a showing will satisfy the**  
63 **noncompliance requirement in this subsection. In addition, such basis**

64 **must be developed by multiple noncompliances of any environmental**  
65 **law administered by the Missouri department of natural resources at**  
66 **any single facility in Missouri that resulted in harm to the environment**  
67 **or impaired the health, safety, or livelihood of persons outside the**  
68 **facility. For any permit seeker that has not been in business in**  
69 **Missouri for the past five years, the administrative hearing commission**  
70 **may review the record of noncompliance in any state where the**  
71 **applicant has conducted business during the past five years. Once the**  
72 **administrative hearing commission has reviewed the appeal, the**  
73 **administrative hearing commission shall issue a recommended decision**  
74 **to the commission on permit issuance, denial, suspension, or**  
75 **revocation. The commission shall issue its own decision, based on the**  
76 **appeal, for permit issuance, denial, suspension, or revocation. If the**  
77 **commission changes a finding of fact or conclusion of law made by the**  
78 **administrative hearing commission, or modifies or vacates the decision**  
79 **recommended by the administrative hearing commission, it shall issue**  
80 **its own decision, which shall include findings of fact and conclusions**  
81 **of law. The commission shall mail copies of its final decision to the**  
82 **parties to the appeal or their counsel of record. The commission's**  
83 **decision shall be subject to judicial review pursuant to chapter 536,**  
84 **except that the court of appeals district with territorial jurisdiction**  
85 **coextensive with the county where the mine is located or is to be**  
86 **located shall have original jurisdiction. No judicial review shall be**  
87 **available until and unless all administrative remedies are exhausted.**

444.773. 1. All applications for a permit shall be filed with the director,  
2 who shall promptly investigate the application and make a decision within six  
3 weeks after completion of the process provided in subsection 10 of section 444.772  
4 to issue or deny the permit. If the director determines that the application has  
5 not fully complied with the provisions of section 444.772 or any rule or regulation  
6 promulgated pursuant to that section, the director may seek additional  
7 information from the applicant before making a decision to issue or deny the  
8 permit. The director shall consider any public comments when making the  
9 decision to issue or deny the permit. In issuing a permit, the director may impose  
10 reasonable conditions consistent with the provisions of sections 444.760 to  
11 444.790.

12 [2.] The director's decision shall be deemed to be the decision of the  
13 director of the department of natural resources and shall be subject to appeal to

14 the administrative hearing commission as provided by sections 640.013 and  
15 621.250.

16 **[3.] 2. Whenever a surface mining operation permit provided**  
17 **under section 444.772 is issued, denied, suspended, or revoked by the**  
18 **department of natural resources, any aggrieved person, by petition**  
19 **filed with the administrative hearing commission within thirty days of**  
20 **the decision, may appeal such decision as provided by sections 621.250**  
21 **and 640.013.** For purposes of an appeal, the administrative hearing commission  
22 may consider, based on competent and substantial scientific evidence on the  
23 record, whether an interested party's health, safety or livelihood will be unduly  
24 impaired by the issuance, **denial, suspension, or revocation** of the  
25 permit. The administrative hearing commission may also consider, based on  
26 competent and substantial scientific evidence on the record, whether the operator  
27 has demonstrated, during the five-year period immediately preceding the date of  
28 the permit application, a pattern of noncompliance at other locations in Missouri  
29 that suggests a reasonable likelihood of future acts of noncompliance. In  
30 determining whether a reasonable likelihood of noncompliance will exist in the  
31 future, the administrative hearing commission may look to past acts of  
32 noncompliance in Missouri, but only to the extent they suggest a reasonable  
33 likelihood of future acts of noncompliance. Such past acts of noncompliance in  
34 Missouri, in and of themselves, are an insufficient basis to suggest a reasonable  
35 likelihood of future acts of noncompliance. In addition, such past acts shall not  
36 be used as a basis to suggest a reasonable likelihood of future acts of  
37 noncompliance unless the noncompliance has caused or has the potential to cause,  
38 a risk to human health or to the environment, or has caused or has potential to  
39 cause pollution, or was knowingly committed, or is defined by the United States  
40 Environmental Protection Agency as other than minor. If a hearing petitioner  
41 **demonstrates** or the administrative hearing commission **[demonstrates] finds**  
42 either present acts of noncompliance or a reasonable likelihood that the permit  
43 seeker or the operations of associated persons or corporations in Missouri will be  
44 in noncompliance in the future, such a showing will satisfy the noncompliance  
45 requirement in this subsection. In addition, such basis must be developed by  
46 multiple noncompliances of any environmental law administered by the Missouri  
47 department of natural resources at any single facility in Missouri that resulted  
48 in harm to the environment or impaired the health, safety or livelihood of persons  
49 outside the facility. For any permit seeker that has not been in business in

50 Missouri for the past five years, the administrative hearing commission may  
51 review the record of noncompliance in any state where the applicant has  
52 conducted business during the past five years. [Once] The administrative  
53 hearing commission [has reviewed the appeal, the administrative hearing  
54 commission] shall [make a recommendation] **issue a recommended decision**  
55 to the commission on permit issuance [or], denial, **suspension, or revocation.**

56 [4.] The commission shall issue its own decision, based on the appeal, for  
57 permit issuance [or] denial, **suspension, or revocation.** If the commission  
58 changes a finding of fact or conclusion of law made by the administrative hearing  
59 commission, or modifies or vacates the decision recommended by the  
60 administrative hearing commission, it shall issue its own decision, which shall  
61 include findings of fact and conclusions of law. The commission shall mail copies  
62 of its final decision to the parties to the appeal or their counsel of record. The  
63 commission's decision shall be subject to judicial review pursuant to chapter 536,  
64 except that the court of appeals district with territorial jurisdiction coextensive  
65 with the county where the mine **is located or** is to be located shall have original  
66 jurisdiction. No judicial review shall be available until and unless all  
67 administrative remedies are exhausted.

444.980. **Whenever a surface coal mining operation permit**  
2 **provided under section 444.815 or a coal exploration operation permit**  
3 **provided under section 444.845 is issued, denied, suspended, or revoked**  
4 **by the department of natural resources, any aggrieved person, by**  
5 **petition filed with the administrative hearing commission within thirty**  
6 **days of the decision, may appeal such decision as provided by sections**  
7 **621.250 and 640.013. For purposes of an appeal, the administrative**  
8 **hearing commission may consider, based on competent and substantial**  
9 **scientific evidence on the record, whether an interested party's health,**  
10 **safety, or livelihood will be unduly impaired by the issuance, denial,**  
11 **suspension, or revocation of the permit. The administrative hearing**  
12 **commission may also consider, based on competent and substantial**  
13 **scientific evidence on the record, whether the operator has**  
14 **demonstrated, during the five-year period immediately preceding the**  
15 **date of the permit application, a pattern of noncompliance at other**  
16 **locations in Missouri that suggests a reasonable likelihood of future**  
17 **acts of noncompliance. In determining whether a reasonable likelihood**  
18 **of noncompliance will exist in the future, the administrative hearing**

19 commission may look to past acts of noncompliance in Missouri, but  
20 only to the extent they suggest a reasonable likelihood of future acts of  
21 noncompliance. Such past acts of noncompliance in Missouri, in and of  
22 themselves, are an insufficient basis to suggest a reasonable likelihood  
23 of future acts of noncompliance. In addition, such past acts shall not  
24 be used as a basis to suggest a reasonable likelihood of future acts of  
25 noncompliance unless the noncompliance has caused or has the  
26 potential to cause, a risk to human health or to the environment, or has  
27 caused or has potential to cause pollution, or was knowingly  
28 committed, or is defined by the United States Environmental Protection  
29 Agency as other than minor. If a hearing petitioner demonstrates or  
30 the administrative hearing commission finds either present acts of  
31 noncompliance or a reasonable likelihood that the permit seeker or the  
32 operations of associated persons or corporations in Missouri will be in  
33 noncompliance in the future, such a showing will satisfy the  
34 noncompliance requirement in this subsection. In addition, such basis  
35 must be developed by multiple noncompliances of any environmental  
36 law administered by the Missouri department of natural resources at  
37 any single facility in Missouri that resulted in harm to the environment  
38 or impaired the health, safety, or livelihood of persons outside the  
39 facility. For any permit seeker that has not been in business in  
40 Missouri for the past five years, the administrative hearing commission  
41 may review the record of noncompliance in any state where the  
42 applicant has conducted business during the past five years. Once the  
43 administrative hearing commission has reviewed the appeal, the  
44 administrative hearing commission shall issue a recommended decision  
45 to the commission on permit issuance, denial, suspension, or  
46 revocation. The commission shall issue its own decision, based on the  
47 appeal, for permit issuance, denial, suspension, or revocation. If the  
48 commission changes a finding of fact or conclusion of law made by the  
49 administrative hearing commission, or modifies or vacates the decision  
50 recommended by the administrative hearing commission, it shall issue  
51 its own decision, which shall include findings of fact and conclusions  
52 of law. The commission shall mail copies of its final decision to the  
53 parties to the appeal or their counsel of record. The commission's  
54 decision shall be subject to judicial review pursuant to chapter 536,  
55 except that the court of appeals district with territorial jurisdiction

56 **coextensive with the county where the mine is located or is to be**  
57 **located shall have original jurisdiction. No judicial review shall be**  
58 **available until and unless all administrative remedies are exhausted.**

621.250. 1. All authority to hear contested case administrative appeals  
2 granted in chapters 236, 256, 260, 444, 640, 643, and 644, and to the hazardous  
3 waste management commission in chapter 260, the [land reclamation] **Missouri**  
4 **mining** commission in chapter 444, the safe drinking water commission in  
5 chapter 640, the air conservation commission in chapter 643, and the clean water  
6 commission in chapter 644 shall be transferred to the administrative hearing  
7 commission under this chapter. The authority to render final decisions after  
8 hearing on appeals heard by the administrative hearing commission shall remain  
9 with the commissions listed in this subsection. For appeals pursuant to chapter  
10 236, chapter 256, section 260.235, or section 260.249, the administrative hearing  
11 commission shall render a final decision rather than a recommended  
12 decision. The administrative hearing commission may render its recommended  
13 or final decision after hearing or through stipulation, consent order, agreed  
14 settlement or by disposition in the nature of default judgment, judgment on the  
15 pleadings, or summary determination, consistent with the requirements of this  
16 subsection and the rules and procedures of the administrative hearing  
17 commission.

18 2. Except as otherwise provided by law, any person or entity who is a  
19 party to, or who is aggrieved or adversely affected by, any finding, order, decision,  
20 or assessment for which the authority to hear appeals was transferred to the  
21 administrative hearing commission in subsection 1 of this section may file a  
22 notice of appeal with the administrative hearing commission within thirty days  
23 after any such finding, order, decision, or assessment is placed in the United  
24 States mail or within thirty days of any such finding, order, decision, or  
25 assessment being delivered, whichever is earlier. Within ninety days after the  
26 date on which the notice of appeal is filed the administrative hearing commission  
27 may hold hearings, and within one hundred twenty days after the date on which  
28 the notice of appeal is filed shall make a recommended decision, or a final  
29 decision where applicable, in accordance with the requirements of this section and  
30 the rules and procedures of the administrative hearing commission; provided,  
31 however, that the dates by which the administrative hearing commission is  
32 required to hold hearings and make a recommended decision may be extended at  
33 the sole discretion of the permittee as either petitioner or intervenor in the

34 appeal.

35           3. Any decision by the director of the department of natural resources that  
36 may be appealed as provided in subsection 1 of this section shall contain a notice  
37 of the right of appeal in substantially the following language: "If you were  
38 adversely affected by this decision, you may be entitled to pursue an appeal  
39 before the administrative hearing commission. To appeal, you must file a petition  
40 with the administrative hearing commission within thirty days after the date this  
41 decision was mailed or the date it was delivered, whichever date was earlier. If  
42 any such petition is sent by registered mail or certified mail, it will be deemed  
43 filed on the date it is mailed; if it is sent by any method other than registered  
44 mail or certified mail, it will be deemed filed on the date it is received by the  
45 administrative hearing commission.". Within fifteen days after the  
46 administrative hearing commission renders a recommended decision, it shall  
47 transmit the record and a transcript of the proceedings, together with the  
48 administrative hearing commission's recommended decision to the commission  
49 having authority to issue a final decision. The final decision of the commission  
50 shall be issued within one hundred eighty days of the date the notice of appeal  
51 in subsection 2 of this section is filed and shall be based only on the facts and  
52 evidence in the hearing record; provided, however, that the date by which the  
53 commission is required to issue a final decision may be extended at the sole  
54 discretion of the permittee as either petitioner or intervenor in the appeal. The  
55 commission may adopt the recommended decision as its final decision. The  
56 commission may change a finding of fact or conclusion of law made by the  
57 administrative hearing commission, or may vacate or modify the recommended  
58 decision issued by the administrative hearing commission, only if the commission  
59 states in writing the specific reason for a change made under this subsection.

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

64           5. Appropriations shall be made from the respective funds of the  
65 department of natural resources to cover the administrative hearing commission's  
66 costs associated with these appeals.

67           6. In all matters heard by the administrative hearing commission under  
68 this section, the burden of proof shall comply with section 640.012. The hearings  
69 shall be conducted by the administrative hearing commission in accordance with

70 the provisions of chapter 536 and its regulations promulgated thereunder.

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

640.115. 1. Every municipal corporation, private corporation, company,  
2 partnership, federal establishment, state establishment or individual supplying  
3 or authorized to supply drinking water to the public within the state shall file  
4 with the department of natural resources a certified copy of the plans and surveys  
5 of the waterworks with a description of the methods of purification, treatment  
6 technology and source from which the supply of water is derived, and no source  
7 of supply shall be used without a written permit of approval issued to the  
8 continuing operating authority by the department of natural resources, or water  
9 dispensed to the public without first obtaining such written permit of  
10 approval. Prior to a change of permittee, the current permittee shall notify the  
11 department of the proposed change and the department shall perform a permit  
12 review.

13 2. Construction, extension or alteration of a public water system shall be  
14 in accordance with the rules and regulations of the safe drinking water  
15 commission.

16 3. Permit applicants shall show, as part of their application, that a  
17 permanent organization exists which will serve as the continuing operating  
18 authority for the management, operation, replacement, maintenance and  
19 modernization of the facility. Such continuing operating authority for all  
20 community water systems and nontransient, noncommunity water systems  
21 commencing operation after October 1, 1999, shall be required to have and  
22 maintain the managerial, technical and financial capacity, as determined by the  
23 department, to comply with sections 640.100 to 640.140.

24 4. Any community water system or nontransient, noncommunity water  
25 system against which an administrative order has been issued for significant  
26 noncompliance with the federal Safe Drinking Water Act, as amended, sections  
27 640.100 to 640.140 or any rule or regulation promulgated thereunder shall be  
28 required to show that a permanent organization exists that serves as the  
29 continuing operating authority for the facility and that such continuing operating  
30 authority has the managerial, technical and financial capacity to comply with

31 sections 640.100 to 640.140 and regulations promulgated thereunder. If the  
32 water system cannot show to the department's satisfaction that such continuing  
33 operating authority exists, or if the water system is not making substantial  
34 progress toward compliance, the water system's permit may be revoked. The  
35 continuing operating authority may [reapply for a permit in accordance with rules  
36 promulgated by the commission] **appeal such decision to the administrative  
37 hearing commission as provided by sections 621.250 and 640.013.**

38 **5. Whenever a permit is issued, denied, suspended, or revoked by**  
39 **the department, any aggrieved person, by petition filed with the**  
40 **administrative hearing commission within thirty days of the decision,**  
41 **may appeal such decision as provided by sections 621.250 and**  
42 **640.013. Once the administrative hearing commission has reviewed the**  
43 **appeal, the administrative hearing commission shall issue a**  
44 **recommended decision to the commission on permit issuance, denial,**  
45 **suspension, or revocation. The commission shall issue its own decision,**  
46 **based on the appeal, for permit issuance, denial, suspension, or**  
47 **revocation. If the commission changes a finding of fact or conclusion**  
48 **of law made by the administrative hearing commission, or modifies or**  
49 **vacates the decision recommended by the administrative hearing**  
50 **commission, it shall issue its own decision, which shall include findings**  
51 **of fact and conclusions of law. The commission shall mail copies of its**  
52 **final decision to the parties to the appeal or their counsel of**  
53 **record. The commission's decision shall be subject to judicial review**  
54 **pursuant to chapter 536, except that the court of appeals district with**  
55 **territorial jurisdiction coextensive with the county where the**  
56 **waterworks is located, or is to be located, shall have original**  
57 **jurisdiction. No judicial review shall be available until and unless all**  
58 **administrative remedies are exhausted.**

643.075. 1. It shall be unlawful for any person to commence construction  
2 of any air contaminant source in this state, without a permit [therefor], if such  
3 source is of a class fixed by regulation of the commission which requires a permit  
4 [therefor].

5 2. Every source required to obtain a construction permit shall make  
6 application [therefor] to the department [and shall submit therewith] **that**  
7 **includes** such plans and specifications as prescribed by rule. The director shall  
8 promptly investigate each application, and if he **or she** determines that the

9 source meets and will meet the requirements of sections 643.010 to 643.190 and  
10 the rules promulgated pursuant thereto, he **or she** shall issue a construction  
11 permit with such conditions as he deems necessary to ensure that the source will  
12 meet the requirements of sections 643.010 to 643.190 and the rules. An  
13 application submitted for the construction or modification and operation of any  
14 regulated air contaminant source shall receive a unified construction and  
15 operating permit review process under section 643.078, unless the applicant  
16 requests in writing that the construction and operating permits be reviewed  
17 separately. If the director determines that the source does not meet or will not  
18 meet the requirements of sections 643.010 to 643.190 and the rules promulgated  
19 pursuant thereto, he **or she** shall deny the construction permit.

20 3. Before issuing a construction permit to build or modify an air  
21 contaminant source the director shall determine if the ambient air quality  
22 standards in the vicinity of the source are being exceeded and shall determine the  
23 impact on the ambient air quality standards from the source. The director, in  
24 order to effectuate the purposes of sections 643.010 to 643.190, may deny a  
25 construction permit if the source will appreciably affect the air quality or the air  
26 quality standards are being substantially exceeded.

27 4. The director may require the applicant as a condition to the issuance  
28 of the construction permit to provide and maintain such facilities or to conduct  
29 such tests as are necessary to determine the nature, extent, quantity or degree  
30 of air contaminants discharged into the ambient air from the proposed source.

31 5. The director shall act within thirty days after a request for approval  
32 of an application for a construction permit. The director shall render a decision  
33 to approve or deny a construction permit within ninety days of receipt of a  
34 complete application for a class B source and within one hundred eighty-four days  
35 of receipt of a complete application for a class A source. The director shall  
36 promptly notify the applicant in writing of his action and if the construction  
37 permit is denied state the reasons [therefor] **for such denial**.

38 6. **As provided by sections 621.250 and 640.013**, any aggrieved  
39 person may appeal any permit decision made under this section, including failure  
40 to render a decision within the time period established in this section. A notice  
41 of appeal shall be filed with the **administrative hearing** commission within  
42 thirty days of the director's action or within thirty days from the date by which  
43 the decision should have been rendered if the director has failed to act. **Once**  
44 **the administrative hearing commission has reviewed the appeal, the**

45 **administrative hearing commission shall issue a recommended decision**  
46 **to the commission on permit issuance, renewal, denial, suspension, or**  
47 **revocation, or any condition of the permit. The commission shall issue**  
48 **its own decision, based on the appeal, for permit issuance, renewal,**  
49 **denial, suspension, or revocation, or any condition of the permit. If the**  
50 **commission changes a finding of fact or conclusion of law made by the**  
51 **administrative hearing commission, or modifies or vacates the decision**  
52 **recommended by the administrative hearing commission, it shall issue**  
53 **its own decision, which shall include findings of fact and conclusions**  
54 **of law. The commission shall mail copies of its final decision to the**  
55 **parties to the appeal or their counsel of record. The commission's**  
56 **decision shall be subject to judicial review pursuant to chapter 536,**  
57 **except that the court of appeals district with territorial jurisdiction**  
58 **coextensive with the county where the air contaminant source is**  
59 **located or is to be located, shall have original jurisdiction. No judicial**  
60 **review shall be available until and unless all administrative remedies**  
61 **are exhausted.**

62       7. (1) There shall be a one hundred-dollar filing fee payable to the state  
63 of Missouri with each application before a construction permit shall be issued. No  
64 manufacturing or processing plant or operating location or other air contaminant  
65 source shall be required to pay more than one filing fee with a construction  
66 permit application. The provisions of this section shall not apply nor require the  
67 issuance of a permit wherein the proposed construction is that of a private  
68 residence.

69       (2) Upon completion of the department's evaluation of the application, but  
70 before receiving a construction permit, the applicant shall reimburse the  
71 department for all reasonable costs incurred by the department whether or not  
72 a construction permit is issued by the department or withdrawn by the applicant.  
73 If the department fails to approve or deny a construction permit within the time  
74 period specified in this section, the applicant shall not be required to reimburse  
75 the department for the review of the construction permit application. The  
76 commission shall, by rule, set the hourly charge, not to exceed the actual cost  
77 thereof and not to exceed fifty dollars per hour, for review of each construction  
78 permit application. The commission may exempt any person from payment of the  
79 hourly fees under this subdivision, or may reduce such fees, upon an appeal filed  
80 with the commission by such person stating that the fee will create an

81 unreasonable economic hardship upon such person. The commission may conduct  
82 a closed meeting and have closed records, as defined in section 610.010, for the  
83 purpose of gathering information from the person filing an appeal for the  
84 exemption. Information obtained in this meeting may be held confidential by the  
85 commission upon the request of the person filing the appeal for exemption. If the  
86 fees or any portion of the fees imposed by this section are not paid within ninety  
87 days from the date of billing there shall be imposed interest upon the unpaid  
88 amount at the rate of ten percent per annum from the date of billing until  
89 payment is actually made. A construction permit application for a portable  
90 facility may include any site at which the portable facility is expected to be used;  
91 however, a separate site permit application shall be required when the portable  
92 facility is used or expected to be used at any site which is not included in a  
93 previously approved construction permit application. Upon receipt of the  
94 application, the applicant shall be notified by the department of hourly fees and  
95 requirements put forth in this subdivision.

96 (3) Applicants who withdraw their application before the department  
97 completes its evaluation shall reimburse the department for costs incurred in the  
98 evaluation.

99 (4) All moneys received pursuant to this section and section 643.073 and  
100 any other moneys so designated shall be placed in the state treasury and credited  
101 to the natural resources protection fund air pollution permit fee subaccount,  
102 created in section 640.220, and shall be expended for the administration of this  
103 section and sections 643.073 and 643.078 and for no other purpose, and shall be  
104 used to supplement state general revenue and federal funds appropriated to the  
105 department. After appropriation, the moneys received pursuant to this section  
106 and in such fund subaccount shall be expended for the administration of this  
107 section and for no other purpose. Any unexpended balance in such fund  
108 subaccount at the end of any appropriation period shall not be transferred to the  
109 general revenue fund of the state treasury and shall be exempt from the  
110 provisions of section 33.080. Any interest received on such deposits shall be  
111 credited to the fund subaccount.

112 8. Any person who obtains a valid permit from a city or county pursuant  
113 to the authority granted in section 643.140 shall be deemed to have met the  
114 requirements of this section and shall not be liable to the department for  
115 construction permit fees imposed pursuant to subsection 7 of this section.

643.078. 1. It shall be unlawful for any person to operate any regulated

2 air contaminant source after August 28, 1992, without an operating permit except  
3 as otherwise provided in sections 643.010 to 643.190.

4       2. At the option of the permit applicant, a single operating permit shall  
5 be issued for a facility having multiple air contaminant sources located on one or  
6 more contiguous tracts of land, excluding public roads, highways and railroads,  
7 under the control of or owned by the permit holder and operated as a single  
8 enterprise.

9       3. Any person who wishes to construct or modify and operate any  
10 regulated air contaminant source shall submit an application to the department  
11 for the unified review of a construction permit application under section 643.075  
12 and an operating permit application under this section, unless the applicant  
13 requests in writing that the construction and operating permit applications be  
14 reviewed separately. The director shall complete any unified review within one  
15 hundred and eighty days of receipt of the request for a class B source. For a class  
16 A source, the unified review shall be completed within the time period established  
17 in section 502 of the federal Clean Air Act, as amended, 42 U.S.C. 7661.

18       4. As soon as the review process is completed for the construction and  
19 operating permits and, if the applicant complies with all applicable requirements  
20 of sections 643.010 to 643.190 and all rules adopted thereunder, the construction  
21 permit shall be issued to the applicant. The operating permit shall be retained  
22 by the department until validated.

23       5. Within one hundred and eighty days of commencing operations, the  
24 holder of a construction permit shall submit to the director such information as  
25 is necessary to demonstrate compliance with the provisions of sections 643.010  
26 to 643.190 and the terms and conditions of the construction permit. The  
27 operating permit retained by the department shall be validated and forwarded to  
28 the applicant if the applicant is in compliance with the terms and conditions of  
29 the construction permit and the terms and conditions of the operating  
30 permit. The holder of a construction permit may request a waiver of the one  
31 hundred and eighty day time period and the director may grant such request by  
32 mutual agreement.

33       6. If the director determines that an air contaminant source does not meet  
34 the terms and conditions of the construction permit and that the operation of the  
35 source will result in emissions which exceed the limits established in the  
36 construction permit, he shall not validate the operating permit. If the source  
37 corrects the deficiency, the director shall then validate the operating permit. If

38 the source is unable to correct the deficiency, then the director and the applicant  
39 may, by mutual agreement, add such terms and conditions to the operating  
40 permit which are deemed appropriate, so long as the emissions from the air  
41 contaminant source do not exceed the limits established in the construction  
42 permit, and the director shall validate the operating permit. The director may  
43 add terms and conditions to the operating permit which allow the source to  
44 exceed the emission limits established in the construction permit. In such a case,  
45 the director shall notify the affected public and the commission shall, upon  
46 request by any affected person, hold a public hearing upon the revised operating  
47 permit application.

48 7. Except as provided in subsection 8 of this section, an operating permit  
49 shall be valid for five years from the date of issuance or validation, whichever is  
50 later, unless otherwise revoked or terminated pursuant to sections 643.010 to  
51 643.190.

52 8. An applicant for a construction permit for an air contaminant source  
53 with valid operating permit may request that the air contaminant source be  
54 issued a new five-year operating permit. The operating permit would be issued  
55 in the manner and under the conditions provided in sections 643.010 to 643.190  
56 and would supersede any existing operating permit for the source.

57 9. The director shall take action within thirty days after a request for  
58 validation of the operating permit and shall render a decision within one hundred  
59 twenty days of receipt of a request for issuance of an operating permit for a class  
60 B source. The director shall render a decision within the time period established  
61 in section 502 of the federal Clean Air Act, as amended, 42 U.S.C. 7661, for a  
62 class A source. Any affected person may appeal any permit decision, including  
63 failure to render a decision within the time period established in this section, to  
64 the **administrative hearing commission as provided by subsection 16 of**  
65 **this section, section 621.250, and section 640.013.**

66 10. The director may suspend, revoke or modify an operating permit for  
67 cause.

68 11. The director shall not approve an operating permit if he receives an  
69 objection to approval of the permit from the United States Environmental  
70 Protection Agency within the time period specified under Title V of the Clean Air  
71 Act, as amended, 42 U.S.C. 7661, et seq.

72 12. The director shall enforce all applicable federal rules, standards and  
73 requirements issued under the federal Clean Air Act, as amended, 42 U.S.C.

74 7661, et seq., and shall incorporate such applicable standards and any limitations  
75 established pursuant to Title III into operating permits as required under Title  
76 V of the federal Clean Air Act, as amended, 42 U.S.C. 7661, et seq.

77 13. Applicable standards promulgated by the commission by rule shall be  
78 incorporated by the director into the operating permit of any air contaminant  
79 source which has, on the effective date of the rule, at least three years remaining  
80 before renewal of its operating permit. If less than three years remain before  
81 renewal of the source's operating permit, such applicable standards shall be  
82 incorporated into the permit unless the permit contains a shield from such new  
83 requirements consistent with Title V of the federal Clean Air Act, as amended,  
84 42 U.S.C. 7661, et seq.

85 14. The holder of a valid operating permit shall have operational  
86 flexibility to make changes to any air contaminant source, if the changes will not  
87 result in air contaminant emissions in excess of those established in the operating  
88 permit or result in the emissions of any air contaminant not previously emitted  
89 without obtaining a modification of the operating permit provided such changes  
90 are consistent with Section 502(b)(10) of the federal Clean Air Act, as amended,  
91 42 U.S.C. 7661.

92 15. An air contaminant source with a valid operating permit which  
93 submits a complete application for a permit renewal at least six months prior to  
94 the expiration of the permit shall be deemed to have a valid operating permit  
95 until the director acts upon its permit application. The director shall promptly  
96 notify the applicant in writing of his action on the application and if the  
97 operating permit is not issued state the reasons therefor.

98 16. [The applicant] **Any aggrieved person** may appeal to the  
99 **administrative hearing** commission if [an] **a construction, modification,**  
100 **or operating permit is [not] issued, renewed, denied, suspended, modified,**  
101 **or revoked by the department,** or may appeal any condition[, suspension,  
102 modification or revocation] of any permit by filing [notice of appeal] **a petition**  
103 with the **administrative hearing** commission within thirty days of the notice  
104 of the director's response to the request for issuance of the **construction,**  
105 **modification, or operating permit as provided by sections 621.250 and**  
106 **640.013. Once the administrative hearing commission has reviewed the**  
107 **appeal, the administrative hearing commission shall issue a**  
108 **recommended decision to the commission on the issuance, renewal,**  
109 **denial, suspension, modification, revocation, or any condition of the**

110 permit. The commission shall issue its own decision, based on the  
111 appeal, for the issuance, renewal, denial, suspension, modification,  
112 revocation, or any condition of the permit. If the commission changes  
113 a finding of fact or conclusion of law made by the administrative  
114 hearing commission, or modifies or vacates the decision recommended  
115 by the administrative hearing commission, it shall issue its own  
116 decision, which shall include findings of fact and conclusions of  
117 law. The commission shall mail copies of its final decision to the  
118 parties to the appeal or their counsel of record. The commission's  
119 decision shall be subject to judicial review pursuant to chapter 536,  
120 except that the court of appeals district with territorial jurisdiction  
121 coextensive with the county where the air contaminant source is  
122 located or is to be located shall have original jurisdiction. No judicial  
123 review shall be available until and unless all administrative remedies  
124 are exhausted.

125           17. Any person who obtains a valid operating permit from a city or county  
126 pursuant to the authority granted in section 643.140 shall be deemed to have met  
127 the requirements of this section.

644.051. 1. It is unlawful for any person:

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

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

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

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

14           2. It shall be unlawful for any person to operate, use or maintain any  
15 water contaminant or point source in this state that is subject to standards, rules  
16 or regulations promulgated pursuant to the provisions of sections 644.006 to  
17 644.141 unless such person holds an operating permit from the commission,  
18 subject to such exceptions as the commission may prescribe by rule or

19 regulation. However, no operating permit shall be required of any person for any  
20 emission into publicly owned treatment facilities or into publicly owned sewer  
21 systems tributary to publicly owned treatment works.

22         3. It shall be unlawful for any person to construct, build, replace or make  
23 major modification to any point source or collection system that is principally  
24 designed to convey or discharge human sewage to waters of the state, unless such  
25 person obtains a construction permit from the commission, except as provided in  
26 this section. The following activities shall be excluded from construction permit  
27 requirements:

28             (1) Facilities greater than one million gallons per day that are authorized  
29 through a local supervised program, and are not receiving any department  
30 financial assistance;

31             (2) All sewer extensions or collection projects that are one thousand feet  
32 in length or less with fewer than two lift stations;

33             (3) All sewer collection projects that are authorized through a local  
34 supervised program; and

35             (4) Any other exclusions the commission may promulgate by rule.

36 A construction permit may be required by the department in the following  
37 circumstances:

38             (a) Substantial deviation from the commission's design standards;

39             (b) To address noncompliance;

40             (c) When an unauthorized discharge has occurred or has the potential to  
41 occur; or

42             (d) To correct a violation of water quality standards.

43 In addition, any point source that proposes to construct an earthen storage  
44 structure to hold, convey, contain, store or treat domestic, agricultural, or  
45 industrial process wastewater also shall be subject to the construction permit  
46 provisions of this subsection. All other construction-related activities at point  
47 sources shall be exempt from the construction permit requirements. All activities  
48 that are exempted from the construction permit requirement are subject to the  
49 following conditions:

50             a. Any point source system designed to hold, convey, contain, store or  
51 treat domestic, agricultural or industrial process wastewater shall be designed  
52 by a professional engineer registered in Missouri in accordance with the  
53 commission's design rules;

54             b. Such point source system shall be constructed in accordance with the

55 registered professional engineer's design and plans; and

56 c. Such point source system may receive a post-construction site  
57 inspection by the department prior to receiving operating permit approval. A site  
58 inspection may be performed by the department, upon receipt of a complete  
59 operating permit application or submission of an engineer's statement of work  
60 complete.

61 A governmental unit may apply to the department for authorization to operate  
62 a local supervised program, and the department may authorize such a program.  
63 A local supervised program would recognize the governmental unit's engineering  
64 capacity and ability to conduct engineering work, supervise construction and  
65 maintain compliance with relevant operating permit requirements.

66 4. Before issuing any permit required by this section, the director shall  
67 issue such notices, conduct such hearings, and consider such factors, comments  
68 and recommendations as required by sections 644.006 to 644.141 or any federal  
69 water pollution control act. The director shall determine if any state or any  
70 provisions of any federal water pollution control act the state is required to  
71 enforce, any state or federal effluent limitations or regulations, water  
72 quality-related effluent limitations, national standards of performance, toxic and  
73 pretreatment standards, or water quality standards which apply to the source, or  
74 any such standards in the vicinity of the source, are being exceeded, and shall  
75 determine the impact on such water quality standards from the source. The  
76 director, in order to effectuate the purposes of sections 644.006 to 644.141, shall  
77 deny a permit if the source will violate any such acts, regulations, limitations or  
78 standards or will appreciably affect the water quality standards or the water  
79 quality standards are being substantially exceeded, unless the permit is issued  
80 with such conditions as to make the source comply with such requirements within  
81 an acceptable time schedule.

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

91           6. The director shall promptly notify the applicant in writing of his or her  
92 action and if the permit is denied state the reasons [therefor] **for such denial.**  
93 **As provided by sections 621.250 and 640.013,** the applicant may appeal to  
94 the **administrative hearing** commission from the denial of a permit or from any  
95 condition in any permit by filing [notice of appeal] **a petition** with the  
96 **administrative hearing** commission within thirty days of the notice of denial  
97 or issuance of the permit. After a final action is taken on a new or reissued  
98 general permit, a potential applicant for the general permit who can demonstrate  
99 that he or she is or may be adversely affected by any permit term or condition  
100 may appeal the terms and conditions of the general permit within thirty days of  
101 the department's issuance of the general permit. In no event shall a permit  
102 constitute permission to violate the law or any standard, rule or regulation  
103 promulgated pursuant thereto. **Once the administrative hearing**  
104 **commission has reviewed the appeal, the administrative hearing**  
105 **commission shall issue a recommended decision to the commission on**  
106 **permit issuance, denial, or any condition of the permit. The**  
107 **commission shall issue its own decision, based on the appeal, for permit**  
108 **issuance, denial, or any condition of the permit. If the commission**  
109 **changes a finding of fact or conclusion of law made by the**  
110 **administrative hearing commission, or modifies or vacates the decision**  
111 **recommended by the administrative hearing commission, it shall issue**  
112 **its own decision, which shall include findings of fact and conclusions**  
113 **of law. The commission shall mail copies of its final decision to the**  
114 **parties to the appeal or their counsel of record. The commission's**  
115 **decision shall be subject to judicial review pursuant to chapter 536,**  
116 **except that the court of appeals district with territorial jurisdiction**  
117 **coextensive with the county where the point source is to be located,**  
118 **shall have original jurisdiction. No judicial review shall be available**  
119 **until and unless all administrative remedies are exhausted.**

120           7. In any hearing held pursuant to this section that involves a permit,  
121 license, or registration, the burden of proof is on the party specified in section  
122 640.012. Any decision of the commission made pursuant to a hearing held  
123 pursuant to this section is subject to judicial review as provided in section  
124 644.071.

125           8. In any event, no permit issued pursuant to this section shall be issued  
126 if properly objected to by the federal government or any agency authorized to

127 object pursuant to any federal water pollution control act unless the application  
128 does not require any permit pursuant to any federal water pollution control act.

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

132           10. No manufacturing or processing plant or operating location shall be  
133 required to pay more than one operating fee. Operating permits shall be issued  
134 for a period not to exceed five years after date of issuance, except that general  
135 permits shall be issued for a five-year period, and also except that neither a  
136 construction nor an annual permit shall be required for a single residence's waste  
137 treatment facilities. Applications for renewal of a site-specific operating permit  
138 shall be filed at least one hundred eighty days prior to the expiration of the  
139 existing permit. Applications seeking to renew coverage under a general permit  
140 shall be submitted at least thirty days prior to the expiration of the general  
141 permit, unless the permittee has been notified by the director that an earlier  
142 application must be made. General permits may be applied for and issued  
143 electronically once made available by the director.

144           11. Every permit issued to municipal or any publicly owned treatment  
145 works or facility shall require the permittee to provide the clean water  
146 commission with adequate notice of any substantial new introductions of water  
147 contaminants or pollutants into such works or facility from any source for which  
148 such notice is required by sections 644.006 to 644.141 or any federal water  
149 pollution control act. Such permit shall also require the permittee to notify the  
150 clean water commission of any substantial change in volume or character of water  
151 contaminants or pollutants being introduced into its treatment works or facility  
152 by a source which was introducing water contaminants or pollutants into its  
153 works at the time of issuance of the permit. Notice must describe the quality and  
154 quantity of effluent being introduced or to be introduced into such works or  
155 facility by a source which was introducing water contaminants or pollutants into  
156 its works at the time of issuance of the permit. Notice must describe the quality  
157 and quantity of effluent being introduced or to be introduced into such works or  
158 facility and the anticipated impact of such introduction on the quality or quantity  
159 of effluent to be released from such works or facility into waters of the state.

160           12. The director or the commission may require the filing or posting of a  
161 bond as a condition for the issuance of permits for construction of temporary or  
162 future water treatment facilities or facilities that utilize innovative technology for

163 wastewater treatment in an amount determined by the commission to be  
164 sufficient to ensure compliance with all provisions of sections 644.006 to 644.141,  
165 and any rules or regulations of the commission and any condition as to such  
166 construction in the permit. For the purposes of this section, "innovative  
167 technology for wastewater treatment" shall mean a completely new and generally  
168 unproven technology in the type or method of its application that bench testing  
169 or theory suggest has environmental, efficiency, and cost benefits beyond the  
170 standard technologies. No bond shall be required for designs approved by any  
171 federal agency or environmental regulatory agency of another state. The bond  
172 shall be signed by the applicant as principal, and by a corporate surety licensed  
173 to do business in the state of Missouri and approved by the commission. The  
174 bond shall remain in effect until the terms and conditions of the permit are met  
175 and the provisions of sections 644.006 to 644.141 and rules and regulations  
176 promulgated pursuant thereto are complied with.

177       13. (1) The department shall issue or deny applications for construction  
178 and site-specific operating permits received after January 1, 2001, within one  
179 hundred eighty days of the department's receipt of an application. For general  
180 construction and operating permit applications received after January 1, 2001,  
181 that do not require a public participation process, the department shall issue or  
182 deny the permits within sixty days of the department's receipt of an  
183 application. For an application seeking coverage under a renewed general permit  
184 that does not require an individual public participation process, the director shall  
185 issue or deny the permit within sixty days of the director's receipt of the  
186 application, or upon issuance of the general permit, whichever is later. In regard  
187 to an application seeking coverage under an initial general permit that does not  
188 require an individual public participation process, the director shall issue or deny  
189 the permit within sixty days of the department's receipt of the application. For  
190 an application seeking coverage under a renewed general permit that requires an  
191 individual public participation process, the director shall issue or deny the permit  
192 within ninety days of the director's receipt of the application, or upon issuance  
193 of the general permit, whichever is later. In regard to an application for an  
194 initial general permit that requires an individual public participation process, the  
195 director shall issue or deny the permit within ninety days of the director's receipt  
196 of the application.

197       (2) If the department fails to issue or deny with good cause a construction  
198 or operating permit application within the time frames established in subdivision

199 (1) of this subsection, the department shall refund the full amount of the initial  
200 application fee within forty-five days of failure to meet the established time  
201 frame. If the department fails to refund the application fee within forty-five days,  
202 the refund amount shall accrue interest at a rate established pursuant to section  
203 32.065.

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

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

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

229 (6) Nothing in this subsection shall be interpreted to mean that inaction  
230 on a permit application shall be grounds to violate any provisions of sections  
231 644.006 to 644.141 or any rules promulgated pursuant to sections 644.006 to  
232 644.141.

233 14. The department shall respond to all requests for individual  
234 certification under Section 401 of the Federal Clean Water Act within the lesser

235 of sixty days or the allowed response period established pursuant to applicable  
236 federal regulations without request for an extension period unless such extension  
237 is determined by the commission to be necessary to evaluate significant impacts  
238 on water quality standards and the commission establishes a timetable for  
239 completion of such evaluation in a period of no more than one hundred eighty  
240 days.

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

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

249 17. Prior to the development of a new general permit or reissuance of a  
250 general permit for aquaculture, land disturbance requiring a storm water permit,  
251 or reissuance of a general permit under which fifty or more permits were issued  
252 under a general permit during the immediately preceding five-year period for a  
253 designated category of water contaminant sources, the director shall implement  
254 a public participation process complying with the following minimum  
255 requirements:

256 (1) For a new general permit or reissuance of a general permit, a general  
257 permit template shall be developed for which comments shall be sought from  
258 permittees and other interested persons prior to issuance of the general permit;

259 (2) The director shall publish notice of his intent to issue a new general  
260 permit or reissue a general permit by posting notice on the department's website  
261 at least one hundred eighty days before the proposed effective date of the general  
262 permit;

263 (3) The director shall hold a public informational meeting to provide  
264 information on anticipated permit conditions and requirements and to receive  
265 informal comments from permittees and other interested persons. The director  
266 shall include notice of the public informational meeting with the notice of intent  
267 to issue a new general permit or reissue a general permit under subdivision (2)  
268 of this subsection. The notice of the public informational meeting, including the  
269 date, time and location, shall be posted on the department's website at least  
270 thirty days in advance of the public meeting. If the meeting is being held for

271 reissuance of a general permit, notice shall also be made by electronic mail to all  
272 permittees holding the current general permit which is expiring. Notice to  
273 current permittees shall be made at least twenty days prior to the public meeting;

274 (4) The director shall hold a thirty-day public comment period to receive  
275 comments on the general permit template with the thirty-day comment period  
276 expiring at least sixty days prior to the effective date of the general  
277 permit. Scanned copies of the comments received during the public comment  
278 period shall be posted on the department's website within five business days after  
279 close of the public comment period;

280 (5) A revised draft of a general permit template and the director's  
281 response to comments submitted during the public comment period shall be  
282 posted on the department's website at least forty-five days prior to issuance of the  
283 general permit. At least forty-five days prior to issuance of the general permit  
284 the department shall notify all persons who submitted comments to the  
285 department that these documents have been posted to the department's website;

286 (6) Upon issuance of a new or renewed general permit, the general permit  
287 shall be posted to the department's website.

288 18. Notices required to be made by the department pursuant to subsection  
289 17 of this section may be made by electronic mail. The department shall not be  
290 required to make notice to any permittee or other person who has not provided  
291 a current electronic mail address to the department. In the event the department  
292 chooses to make material modifications to the general permit before its  
293 expiration, the department shall follow the public participation process described  
294 in subsection 17 of this section.

295 19. The provisions of subsection 17 of this section shall become effective  
296 beginning January 1, 2013.

644.056. 1. The director shall cause investigations to be made upon the  
2 request of the commission or upon receipt of information concerning alleged  
3 violations of sections 644.006 to 644.141 or any standard, limitation, order, rule  
4 or regulation promulgated pursuant thereto, or any term or condition of any  
5 permit and may cause to be made any other investigations he or she deems  
6 advisable. Violations shall include obtaining a permit by misrepresentation or  
7 failure to fully disclose all relevant facts.

8 2. If, in the opinion of the director, the investigation discloses that a  
9 violation does exist, the director may, by conference, conciliation or persuasion,  
10 endeavor to eliminate the violation.

11           3. In case of the failure by conference, conciliation or persuasion to correct  
12 or remedy any claimed violation, or as required to immediately and effectively  
13 halt or eliminate any imminent or substantial endangerments to the health or  
14 welfare of persons resulting from the discharge of pollutants, the director [shall]  
15 **may** order abatement [or file an abatement complaint with the commission if no  
16 permit has been issued, or in addition may file a complaint to revoke a permit if  
17 such permit has been issued], **revoke a permit, or request legal action by**  
18 **the attorney general.** When the director files a complaint, the commission  
19 shall order a hearing. The director shall cause to have issued and served upon  
20 the person complained against a written notice of the order or complaint, together  
21 with a copy of the order or complaint, which shall specify the provision of sections  
22 644.006 to 644.141 or the standard, rule, limitation, or regulation adopted  
23 pursuant thereto, or the condition of the permit of which the person is alleged to  
24 be in violation, and a statement of the manner in which and the extent to which  
25 the person is alleged to violate sections 644.006 to 644.141 or the standard, rule,  
26 limitation, or regulation, or condition of the permit. In any case involving a  
27 complaint, the commission shall require the person complained against to answer  
28 the charges of the formal complaint at a hearing before the commission at a time  
29 not less than thirty days after the date of notice. Service may be made upon any  
30 person within or without the state by registered mail, return receipt  
31 requested. Any person against whom the director issues an order may appeal the  
32 order to the commission within thirty days and the appeal shall stay the  
33 enforcement of the order until final determination by the commission. The  
34 commission shall set appeals for a hearing at a time not less than thirty days  
35 after the date of the request. The commission may sustain, reverse, or modify the  
36 director's order or may make such other orders as the commission deems  
37 appropriate under the circumstances. If any order issued by the director is not  
38 appealed within the time provided in this section, the order becomes final and  
39 may be enforced as provided in section 644.076. **When the commission**  
40 **schedules a matter for hearing, the petitioner on appeal or the**  
41 **respondent to a formal complaint may appear at the hearing in person**  
42 **or by counsel, and may make oral argument, offer testimony and**  
43 **evidence, and cross-examine witnesses. After due consideration of the**  
44 **record, or upon default in appearance of the respondent on the return**  
45 **day specified in the notice given as provided in this subsection, the**  
46 **commission shall issue and enter such final order, or make such final**

47 **determination as it deems appropriate under the circumstances, and it**  
48 **shall immediately notify the petitioner or respondent thereof in writing**  
49 **by certified or registered mail.**

50 4. Permits may be **revoked**, terminated, or modified if obtained in  
51 violation of sections 644.006 to 644.141 or by misrepresentation or failing to fully  
52 disclose all relevant facts, or when required to prevent violations of any provision  
53 of sections 644.006 to 644.141, or to protect the waters of this state, when such  
54 action is required by a change in conditions or the existence of a condition which  
55 requires either a temporary or permanent reduction or elimination of the  
56 authorized discharge, subject to the right of appeal contained in [this section]  
57 **sections 621.250 and 640.013.**

58 5. [When the commission schedules a matter for hearing, the petitioner  
59 on appeal or the respondent to a formal complaint may appear at the hearing in  
60 person or by counsel, and may make oral argument, offer testimony and evidence,  
61 and cross-examine witnesses.

62 6. After due consideration of the record, or upon default in appearance of  
63 the respondent on the return day specified in the notice given as provided in  
64 subsection 3, the commission shall issue and enter such final order, or make such  
65 final determination as it deems appropriate under the circumstances, and it shall  
66 immediately notify the petitioner or respondent thereof in writing by certified or  
67 registered mail.] **Whenever a permit under this chapter is revoked,**  
68 **terminated, or modified by the department of natural resources, any**  
69 **aggrieved person, by petition filed with the administrative hearing**  
70 **commission within thirty days of the decision, may appeal such**  
71 **decision as provided by sections 621.250 and 640.013. Once the**  
72 **administrative hearing commission has reviewed the appeal, the**  
73 **administrative hearing commission shall issue a recommended decision**  
74 **to the commission on permit revocation, termination, or**  
75 **modification. The commission shall issue its own decision, based on the**  
76 **appeal, for permit revocation, termination, or modification. If the**  
77 **commission changes a finding of fact or conclusion of law made by the**  
78 **administrative hearing commission, or modifies or vacates the decision**  
79 **recommended by the administrative hearing commission, it shall issue**  
80 **its own decision, which shall include findings of fact and conclusions**  
81 **of law. The commission shall mail copies of its final decision to the**  
82 **parties to the appeal or their counsel of record. The commission's**

83 **decision shall be subject to judicial review pursuant to chapter 536,**  
84 **except that the court of appeals district with territorial jurisdiction**  
85 **coextensive with the county where the point source is located or is to**  
86 **be located shall have original jurisdiction. No judicial review shall be**  
87 **available until and unless all administrative remedies are exhausted.**

✓

Unofficial

Bill

Copy