

FIRST REGULAR SESSION

SENATE BILL NO. 225

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROMINE.

Read 1st time January 12, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0375S.011

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A. Sections 260.235, 260.395, 444.600, 444.773, 621.250, 640.115, 2 643.075, 643.078, 644.051, and 644.056, RSMo, are repealed and eleven new 3 sections enacted in lieu thereof, to be known as sections 260.235, 260.395, 4 444.600, 444.773, 444.980, 621.250, 640.115, 643.075, 643.078, 644.051, and 5 644.056, to read as follows:

260.235. Any person aggrieved by a forfeiture of any financial assurance 2 instrument, civil or administrative penalty or denial, suspension or revocation of 3 a permit required by section 260.205 or a modification to a permit issued under 4 section 260.205 or any disapproval of the plan required by section 260.220, may 5 appeal such decision as provided in [section] sections 621.250[, subject to 6 judicial review as provided by law] and **640.013 by filing a petition with the 7 administrative hearing commission within thirty days of the 8 decision.** The notice of the department shall be effected by certified mail and 9 shall set forth the reasons for such forfeiture, disapproval, denial, suspension, 10 civil penalty or revocation. The department may seek an injunction in the circuit 11 court in which the facility is located requiring the facility for which the transfer 12 of ownership has been denied, or the permit or modification of the permit has 13 been denied, suspended or revoked, to cease operations from the date ordered by 14 the court until such time as the appeal is resolved or obtain a performance bond

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

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. **For**
22 **purposes of an appeal, the administrative hearing commission may**
23 **consider, based on competent and substantial scientific evidence on the**
24 **record, whether an interested party's health, safety or livelihood will**
25 **be unduly impaired by the forfeiture of any financial assurance**
26 **instrument, civil or administrative penalty, denial, suspension,**
27 **revocation, or modification of a permit or disapproval of the plan**
28 **required by section 260.220. The administrative hearing commission**
29 **may also consider, based on competent and substantial scientific**
30 **evidence on the record, whether the operator has demonstrated, during**
31 **the five-year period immediately preceding the date of the permit**
32 **application, a pattern of noncompliance at other locations in Missouri**
33 **that suggests a reasonable likelihood of future acts of noncompliance.**
34 **In determining whether a reasonable likelihood of noncompliance will**
35 **exist in the future, the administrative hearing commission may look to**
36 **past acts of noncompliance in Missouri, but only to the extent they**
37 **suggest a reasonable likelihood of future acts of noncompliance. Such**
38 **past acts of noncompliance in Missouri, in and of themselves, are an**
39 **insufficient basis to suggest a reasonable likelihood of future acts of**
40 **noncompliance. In addition, such past acts shall not be used as a basis**
41 **to suggest a reasonable likelihood of future acts of noncompliance**
42 **unless the noncompliance has caused or has the potential to cause, a**
43 **risk to human health or to the environment, or has caused or has**
44 **potential to cause pollution, or was knowingly committed, or is defined**
45 **by the United States Environmental Protection Agency as other than**
46 **minor. If a hearing petitioner or the administrative hearing**
47 **commission demonstrates either present acts of noncompliance or a**
48 **reasonable likelihood that the permit seeker or the operations of**
49 **associated persons or corporations in Missouri will be in**
50 **noncompliance in the future, such a showing will satisfy the**
51 **noncompliance requirement in this subsection. In addition, such basis**

52 **must be developed by multiple noncompliances of any environmental**
53 **law administered by the Missouri department of natural resources at**
54 **any single facility in Missouri that resulted in harm to the environment**
55 **or impaired the health, safety, or livelihood of persons outside the**
56 **facility. For any permit seeker that has not been in business in**
57 **Missouri for the past five years, the administrative hearing commission**
58 **may review the record of noncompliance in any state where the**
59 **applicant has conducted business during the past five years. Once the**
60 **administrative hearing commission has reviewed the appeal, the**
61 **administrative hearing commission shall make a final decision on the**
62 **forfeiture of any financial assurance instrument, civil or administrative**
63 **penalty, denial, suspension, revocation, or modification of a permit or**
64 **disapproval of the plan required by section 260.220. The administrative**
65 **hearing commission shall mail copies of its final decision to the parties**
66 **to the appeal or their counsel of record. The commission's decision**
67 **shall be subject to judicial review pursuant to chapter 536, except that**
68 **the court of appeals district with territorial jurisdiction coextensive**
69 **with the county where the solid waste processing facility or disposal**
70 **area is located or is to be located shall have original jurisdiction. No**
71 **judicial review shall be available until and unless all administrative**
72 **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. For purposes of
54 an appeal, the administrative hearing commission may consider, based
55 on competent and substantial scientific evidence on the record,
56 whether an interested party's health, safety, or livelihood will be
57 unduly impaired by the issuance, renewal, denial, suspension, or
58 revocation of the license. The administrative hearing commission may
59 also consider, based on competent and substantial scientific evidence
60 on the record, whether the applicant or licensee has demonstrated,
61 during the five-year period immediately preceding the date of the
62 license application, a pattern of noncompliance that suggests a
63 reasonable likelihood of future acts of noncompliance. In determining
64 whether a reasonable likelihood of noncompliance will exist in the
65 future, the administrative hearing commission may look to past acts of
66 noncompliance in Missouri, but only to the extent they suggest a
67 reasonable likelihood of future acts of noncompliance. Such past acts
68 of noncompliance in Missouri, in and of themselves, are an insufficient
69 basis to suggest a reasonable likelihood of future acts of
70 noncompliance. In addition, such past acts shall not be used as a basis
71 to suggest a reasonable likelihood of future acts of noncompliance
72 unless the noncompliance has caused or has the potential to cause, a
73 risk to human health or to the environment, or has caused or has
74 potential to cause pollution, or was knowingly committed, or is defined
75 by the United States Environmental Protection Agency as other than
76 minor. If a hearing petitioner or the administrative hearing
77 commission demonstrates either present acts of noncompliance or a
78 reasonable likelihood that the license seeker or the operations of
79 associated persons or corporations in Missouri will be in
80 noncompliance in the future, such a showing will satisfy the
81 noncompliance requirement in this subsection. In addition, such basis
82 must be developed by multiple noncompliances of any environmental
83 law administered by the Missouri department of natural resources that
84 resulted in harm to the environment or impaired the health, safety, or
85 livelihood of persons. For any license seeker that has not been in
86 business in Missouri for the past five years, the administrative hearing
87 commission may review the record of noncompliance in any state where
88 the applicant has conducted business during the past five years. Once

89 **the administrative hearing commission has reviewed the appeal, the**
90 **administrative hearing commission shall make a recommendation to**
91 **the commission on license issuance, renewal, denial, suspension, or**
92 **revocation. The commission shall issue its own decision, based on the**
93 **appeal, for license issuance, renewal, denial, suspension, or revocation.**
94 **If the commission changes a finding of fact or conclusion of law made**
95 **by the administrative hearing commission, or modifies or vacates the**
96 **decision recommended by the administrative hearing commission, it**
97 **shall issue its own decision, which shall include findings of fact and**
98 **conclusions of law. The commission shall mail copies of its final**
99 **decision to the parties to the appeal or their counsel of record. The**
100 **commission's decision shall be subject to judicial review pursuant to**
101 **chapter 536. No judicial review shall be available until and unless all**
102 **administrative remedies are exhausted.**

103 5. A license shall be issued for a period of one year and shall be renewed
104 upon proper application by the holder and a determination by the department
105 that the applicant is in compliance with all provisions of sections 260.350 to
106 260.430 and all standards, rules and regulations, orders and license terms and
107 conditions adopted or issued pursuant to sections 260.350 to 260.430.

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

114 7. After six months from the effective date of the standards, rules and
115 regulations adopted by the commission pursuant to section 260.370, it shall be
116 unlawful for any person to construct, substantially alter or operate, including
117 operations specified in the rules and regulations, a hazardous waste facility
118 without first obtaining a hazardous waste facility permit for such construction,
119 alteration or operation from the department. Such person must submit to the
120 department at least ninety days prior to submitting a permit application a letter
121 of intent to construct, substantially alter or operate any hazardous waste disposal
122 facility. The person must file an application within one hundred eighty days of
123 the filing of a letter of intent unless granted an extension by the
124 commission. The department shall publish such letter of intent as specified in

125 section 493.050 within ten days of receipt of such letter. The letter shall be
126 published once each week for four weeks in the county where the hazardous waste
127 disposal facility is proposed. Once such letter is submitted, all conditions for the
128 permit application evaluation purposes in existence as of the date of submission
129 shall be deemed frozen, in that no subsequent action by any person to change
130 such conditions in an attempt to thwart a fair and impartial decision on the
131 application for a permit shall be allowed as grounds for denial of the permit. Any
132 person before constructing, substantially altering or operating a hazardous waste
133 facility in this state shall file an application for a permit which shall:

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

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

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

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

150 (5) Include a fee payable to the state of Missouri which shall not exceed
151 one thousand dollars, which shall cover the first year of the permit, if issued, but
152 which is not refundable. If the permit is issued for more than one year, a fee
153 equal in amount to the first year's fee shall be paid to the state of Missouri prior
154 to issuance of the permit for each year the permit is to be in effect beyond the
155 first year;

156 (6) The department shall supervise any field work undertaken to collect
157 geologic and engineering data for submission with the application. The state
158 geologist and departmental engineers shall review the geologic and engineering
159 plans, respectively, and attest to their accuracy and adequacy. The applicant
160 shall pay all reasonable costs, as determined by the commission, incurred by the

161 department pursuant to this subsection.

162 8. (1) Prior to issuing or renewing a hazardous waste facility permit, the
163 department shall issue public notice by press release or advertisement and shall
164 notify all record owners of adjoining property by mail directed to the last known
165 address, and the village, town or city, if any, and the county in which the
166 hazardous waste facility is located; and, upon request, shall hold a public hearing
167 after public notice as required in this subsection at a location convenient to the
168 area affected by the issuance of the permit.

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

175 9. If the department determines that the application conforms to the
176 provisions of any federal hazardous waste management act and sections 260.350
177 to 260.430 and the standards, rules and regulations adopted pursuant to sections
178 260.350 to 260.430, it shall issue the hazardous waste facility permit, with such
179 terms and conditions and require such testing and construction supervision as it
180 deems necessary to protect the health of humans or the environment. The
181 department shall act within one hundred and eighty days after receipt of the
182 application. If the department denies the permit, it shall issue a report to the
183 applicant stating the reason for denial of a permit.

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

190 11. Whenever a permit is issued, renewed, denied, suspended or revoked
191 by the department, any aggrieved person, by petition filed with the [department]
192 **administrative hearing commission** within thirty days of the decision, may
193 appeal such decision [and shall be entitled to a hearing as provided in section
194 260.400] **as provided by sections 621.250 and 640.013. For purposes of**
195 **an appeal, the administrative hearing commission may consider, based**
196 **on competent and substantial scientific evidence on the record,**

197 whether an interested party's health, safety, or livelihood will be
198 unduly impaired by the issuance, renewal, denial, suspension, or
199 revocation of the permit. The administrative hearing commission may
200 also consider, based on competent and substantial scientific evidence
201 on the record, whether the applicant or permit holder has
202 demonstrated, during the five-year period immediately preceding the
203 date of the permit application, a pattern of noncompliance at other
204 locations in Missouri that suggests a reasonable likelihood of future
205 acts of noncompliance. In determining whether a reasonable likelihood
206 of noncompliance will exist in the future, the administrative hearing
207 commission may look to past acts of noncompliance in Missouri, but
208 only to the extent they suggest a reasonable likelihood of future acts of
209 noncompliance. Such past acts of noncompliance in Missouri, in and of
210 themselves, are an insufficient basis to suggest a reasonable likelihood
211 of future acts of noncompliance. In addition, such past acts shall not
212 be used as a basis to suggest a reasonable likelihood of future acts of
213 noncompliance unless the noncompliance has caused or has the
214 potential to cause, a risk to human health or to the environment, or has
215 caused or has potential to cause pollution, or was knowingly
216 committed, or is defined by the United States Environmental Protection
217 Agency as other than minor. If a hearing petitioner or the
218 administrative hearing commission demonstrates either present acts of
219 noncompliance or a reasonable likelihood that the permit seeker or the
220 operations of associated persons or corporations in Missouri will be in
221 noncompliance in the future, such a showing will satisfy the
222 noncompliance requirement in this subsection. In addition, such basis
223 must be developed by multiple noncompliances of any environmental
224 law administered by the Missouri department of natural resources at
225 any single facility in Missouri that resulted in harm to the environment
226 or impaired the health, safety, or livelihood of persons outside the
227 facility. For any permit seeker that has not been in business in
228 Missouri for the past five years, the administrative hearing commission
229 may review the record of noncompliance in any state where the
230 applicant has conducted business during the past five years. Once the
231 administrative hearing commission has reviewed the appeal, the
232 administrative hearing commission shall make a recommendation to
233 the commission on permit issuance, renewal, denial, suspension, or

234 **revocation. The commission shall issue its own decision, based on the**
235 **appeal, for permit issuance, renewal, denial, suspension, or revocation.**
236 **If the commission changes a finding of fact or conclusion of law made**
237 **by the administrative hearing commission, or modifies or vacates the**
238 **decision recommended by the administrative hearing commission, it**
239 **shall issue its own decision, which shall include findings of fact and**
240 **conclusions of law. The commission shall mail copies of its final**
241 **decision to the parties to the appeal or their counsel of record. The**
242 **commission's decision shall be subject to judicial review pursuant to**
243 **chapter 536, except that the court of appeals district with territorial**
244 **jurisdiction coextensive with the county where the hazardous waste**
245 **facility is to be located or is located, shall have original jurisdiction. No**
246 **judicial review shall be available until and unless all administrative**
247 **remedies are exhausted.**

248 12. A permit shall be issued for a fixed term, which shall not exceed ten
249 years in the case of any land disposal facility, storage facility, incinerator, or
250 other treatment facility. Nothing in this subsection shall preclude the
251 department from reviewing and modifying a permit at any time during its
252 term. Review of any application for a permit renewal shall consider
253 improvements in the state of control and measurement technology as well as
254 changes in applicable regulations. Each permit issued pursuant to this section
255 shall contain such terms and conditions as the department determines necessary
256 to protect human health and the environment, and upon proper application by the
257 holder and a determination by the department that the applicant is in compliance
258 with all provisions of sections 260.350 to 260.430 and all standards, rules and
259 regulations, orders and permit terms and conditions adopted or issued pursuant
260 to sections 260.350 to 260.430.

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

262 (1) On-site storage of hazardous wastes where such storage is exempted
263 by the commission by rule or regulation; however, such storage must conform to
264 the provisions of any federal hazardous waste management act and sections
265 260.350 to 260.430 and the applicable standards, rules and regulations adopted
266 pursuant to sections 260.350 to 260.430 and any other applicable hazardous
267 materials storage and spill-prevention requirements provided by law;

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

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

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

279 14. Facilities exempted pursuant to subsection 13 of this section must
280 comply with the provisions of subdivisions (3) to (7) of section 260.390 and such
281 other requirements, to be specified by rules and regulations, as are necessary to
282 comply with any federal hazardous waste management act or regulations
283 hereunder. Generators who use such an exempted facility shall keep records of
284 hazardous wastes transported, except by legal flow through sewer lines, to the
285 facility and submit such records to the department in accordance with the
286 provisions of section 260.380 and the standards, rules and regulations adopted
287 pursuant to sections 260.350 to 260.430. Any person, before constructing,
288 altering or operating a resource recovery facility in this state shall file an
289 application for a certification. Such application shall include:

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

293 (2) An application fee of not more than five hundred dollars for a facility
294 that recovers waste generated at the same facility or an application fee of not
295 more than one thousand dollars for a facility that recovers waste generated at
296 off-site sources. Such fees shall be deposited in the hazardous waste fund created
297 in section 260.391. The department shall review such application for conformance
298 with applicable laws, rules and standard engineering principles and
299 practices. The applicant shall pay to the department all reasonable costs, as
300 determined by the commission, incurred by the department pursuant to this
301 subsection. All such funds shall be deposited in the hazardous waste fund
302 created in section 260.391.

303 15. The owner or operator of any hazardous waste facility in existence on
304 September 28, 1977, who has achieved federal interim status pursuant to 42
305 U.S.C. 6925(e), and who has submitted to the department Part A of the federal

306 facility permit application, may continue to receive and manage hazardous wastes
307 in the manner as specified in the Part A application, and in accordance with
308 federal interim status requirements, until completion of the administrative
309 disposition of a permit application submitted pursuant to sections 260.350 to
310 260.430. The department may at any time require submission of, or the owner
311 or operator may at any time voluntarily submit, a complete application for a
312 permit pursuant to sections 260.350 to 260.430 and commission regulations. The
313 authority to operate pursuant to this subsection shall cease one hundred eighty
314 days after the department has notified an owner or operator that an application
315 for permit pursuant to sections 260.350 to 260.430 must be submitted, unless
316 within such time the owner or operator submits a completed application
317 therefor. Upon submission of a complete application, the authority to operate
318 pursuant to this subsection shall continue for such reasonable time as is required
319 to complete the administrative disposition of the permit application. If a facility
320 loses its federal interim status, or the Environmental Protection Agency requires
321 the owner or operator to submit Part B of the federal application, the department
322 shall notify the owner or operator that an application for a permit must be
323 submitted pursuant to this subsection. In addition to compliance with the federal
324 interim status requirements, the commission shall have the authority to adopt
325 regulations requiring persons operating pursuant to this subsection to meet
326 additional state interim status requirements.

327 16. No person, otherwise qualified pursuant to sections 260.350 to 260.430
328 for a license to transport hazardous wastes or for a permit to construct,
329 substantially alter or operate a hazardous waste facility, shall be denied such
330 license or permit on the basis of a lack of need for such transport service or such
331 facility because of the existence of other services or facilities capable of meeting
332 that need; except that permits for hazardous waste facilities may be denied on
333 determination made by the department that the financial resources of the persons
334 applying are such that the continued operation of the sites in accordance with
335 sections 260.350 to 260.430 cannot be reasonably assured or on determination
336 made by the department that the probable volume of business is insufficient to
337 ensure and maintain the solvency of then existing permitted hazardous waste
338 facilities.

339 17. All hazardous waste landfills constructed after October 31, 1980, shall
340 have a leachate collection system. The rules and regulations of the commission
341 shall treat and protect all aquifers to the same level of protection. The provisions

342 of this subsection shall not apply to the disposal of tailings and slag resulting
343 from mining, milling and primary smelting operations.

344 18. Any railroad corporation as defined in section 388.010 that transports
345 any hazardous waste as defined in section 260.360 or any hazardous substance
346 as defined in section 260.500 shall pay an annual fee of three hundred fifty
347 dollars. Fees collected pursuant to this subsection shall be deposited in the
348 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, renewed, denied, suspended, or revoked by**
33 **the 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, renewal,**
40 **denial, suspension, or revocation of the permit. The administrative**
41 **hearing commission may also consider, based on competent and**
42 **substantial 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 or the**
59 **administrative hearing commission demonstrates 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 make a recommendation to
74 the commission on permit issuance, renewal, denial, suspension, or
75 revocation. The commission shall issue its own decision, based on the
76 appeal, for permit issuance, renewal, denial, suspension, or revocation.
77 If the commission changes a finding of fact or conclusion of law made
78 by the administrative hearing commission, or modifies or vacates the
79 decision recommended by the administrative hearing commission, it
80 shall issue its own decision, which shall include findings of fact and
81 conclusions of law. The commission shall mail copies of its final
82 decision to the parties to the appeal or their counsel of record. The
83 commission's decision shall be subject to judicial review pursuant to
84 chapter 536, except that the court of appeals district with territorial
85 jurisdiction coextensive with the county where the mine is located or
86 is to be located shall have original jurisdiction. No judicial review
87 shall be available until and unless all administrative remedies are
88 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, renewed, denied, suspended, or revoked
18 by the department of natural resources, any aggrieved person, by
19 petition filed with the administrative hearing commission within thirty
20 days of the decision, may appeal such decision as provided by sections
21 621.250 and 640.013. For purposes of an appeal, the administrative hearing
22 commission may consider, based on competent and substantial scientific evidence
23 on the record, whether an interested party's health, safety or livelihood will be
24 unduly impaired by the issuance, **renewal, denial, suspension, or revocation**
25 of the permit. The administrative hearing commission may also consider, based
26 on competent and substantial scientific evidence on the record, whether the
27 operator has demonstrated, during the five-year period immediately preceding the
28 date of the permit application, a pattern of noncompliance at other locations in
29 Missouri that suggests a reasonable likelihood of future acts of noncompliance.
30 In 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 or
41 the administrative hearing commission demonstrates either present acts of
42 noncompliance or a reasonable likelihood that the permit seeker or the operations
43 of associated persons or corporations in Missouri will be in noncompliance in the
44 future, such a showing will satisfy the noncompliance requirement in this
45 subsection. In addition, such basis must be developed by multiple
46 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 hearing
53 commission has reviewed the appeal, the administrative hearing commission shall
54 make a recommendation to the commission on permit issuance [or], **renewal,**
55 **denial, suspension, or revocation.**

56 [4.] The commission shall issue its own decision, based on the appeal, for
57 permit issuance [or], **renewal, denial, suspension, or revocation.** If the
58 commission changes a finding of fact or conclusion of law made by the
59 administrative hearing commission, or modifies or vacates the decision
60 recommended by the administrative hearing commission, it shall issue its own
61 decision, which shall include findings of fact and conclusions of law. The
62 commission shall mail copies of its final decision to the parties to the appeal or
63 their counsel of record. The commission's decision shall be subject to judicial
64 review pursuant to chapter 536, except that the court of appeals district with
65 territorial jurisdiction coextensive with the county where the mine **is located or**
66 **is to be located** shall have original jurisdiction. No judicial review shall be
67 available until and unless all 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, renewed, denied, suspended,**
4 **or revoked by the department of natural resources, any aggrieved**
5 **person, by petition filed with the administrative hearing commission**
6 **within thirty days of the decision, may appeal such decision as**
7 **provided by sections 621.250 and 640.013. For purposes of an appeal,**
8 **the administrative hearing commission may consider, based on**
9 **competent and substantial scientific evidence on the record, whether**
10 **an interested party's health, safety, or livelihood will be unduly**
11 **impaired by the issuance, renewal, denial, suspension, or revocation of**
12 **the permit. The administrative hearing commission may also consider,**
13 **based on competent and substantial scientific evidence on the record,**
14 **whether the operator has demonstrated, during the five-year period**
15 **immediately preceding the date of the permit application, a pattern of**
16 **noncompliance at other locations in Missouri that suggests a reasonable**
17 **likelihood of future acts of noncompliance. In determining whether a**
18 **reasonable likelihood of noncompliance will exist in the future, the**
19 **administrative hearing commission may look to past acts of**

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

57 **jurisdiction coextensive with the county where the mine is located or**
58 **is to be located shall have original jurisdiction. No judicial review**
59 **shall be available until and unless all administrative remedies are**
60 **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, renewed, denied, suspended, or**
39 **revoked by the department, any aggrieved person, by petition filed with**
40 **the administrative hearing commission within thirty days of the**
41 **decision, may appeal such decision as provided by sections 621.250 and**
42 **640.013. For purposes of an appeal, the administrative hearing**
43 **commission may consider, based on competent and substantial**
44 **scientific evidence on the record, whether an interested party's health,**
45 **safety, or livelihood will be unduly impaired by the issuance, renewal,**
46 **denial, suspension, or revocation of the permit. The administrative**
47 **hearing commission may also consider, based on competent and**
48 **substantial scientific evidence on the record, whether the applicant or**
49 **permittee has demonstrated, during the five-year period immediately**
50 **preceding the date of the permit application, a pattern of**
51 **noncompliance that suggests a reasonable likelihood of future acts of**
52 **noncompliance. In determining whether a reasonable likelihood of**
53 **noncompliance will exist in the future, the administrative hearing**
54 **commission may look to past acts of noncompliance in Missouri, but**
55 **only to the extent they suggest a reasonable likelihood of future acts of**
56 **noncompliance. Such past acts of noncompliance in Missouri, in and of**
57 **themselves, are an insufficient basis to suggest a reasonable likelihood**
58 **of future acts of noncompliance. In addition, such past acts shall not**
59 **be used as a basis to suggest a reasonable likelihood of future acts of**
60 **noncompliance unless the noncompliance has caused or has the**
61 **potential to cause, a risk to human health or to the environment, or has**
62 **caused or has potential to cause pollution, or was knowingly**
63 **committed, or is defined by the United States Environmental Protection**
64 **Agency as other than minor. If a hearing petitioner or the**
65 **administrative hearing commission demonstrates either present acts of**
66 **noncompliance or a reasonable likelihood that the permit seeker or the**

67 operations of associated persons or corporations in Missouri will be in
68 noncompliance in the future, such a showing will satisfy the
69 noncompliance requirement in this subsection. In addition, such basis
70 must be developed by multiple noncompliances of any environmental
71 law administered by the Missouri department of natural resources at
72 any single facility in Missouri that resulted in harm to the environment
73 or impaired the health, safety, or livelihood of persons outside the
74 facility. For any permit seeker that has not been in business in
75 Missouri for the past five years, the administrative hearing commission
76 may review the record of noncompliance in any state where the
77 applicant has conducted business during the past five years. Once the
78 administrative hearing commission has reviewed the appeal, the
79 administrative hearing commission shall make a recommendation to
80 the commission on permit issuance, renewal, denial, suspension, or
81 revocation. The commission shall issue its own decision, based on the
82 appeal, for permit issuance, renewal, denial, suspension, or revocation.
83 If the commission changes a finding of fact or conclusion of law made
84 by the administrative hearing commission, or modifies or vacates the
85 decision recommended by the administrative hearing commission, it
86 shall issue its own decision, which shall include findings of fact and
87 conclusions of law. The commission shall mail copies of its final
88 decision to the parties to the appeal or their counsel of record. The
89 commission's decision shall be subject to judicial review pursuant to
90 chapter 536, except that the court of appeals district with territorial
91 jurisdiction coextensive with the county where the waterworks is
92 located, or is to be located, shall have original jurisdiction. No judicial
93 review shall be available until and unless all administrative remedies
94 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. **For**
44 **purposes of an appeal, the administrative hearing commission may**
45 **consider, based on competent and substantial scientific evidence on the**

46 record, whether an interested party's health, safety, or livelihood will
47 be unduly impaired by the issuance, renewal, denial, suspension, or
48 revocation of the permit, or any condition of the permit. The
49 administrative hearing commission may also consider, based on
50 competent and substantial scientific evidence on the record, whether
51 the applicant or permit holder has demonstrated, during the five-year
52 period immediately preceding the date of the permit application, a
53 pattern of noncompliance at other locations in Missouri that suggests
54 a reasonable likelihood of future acts of noncompliance. In
55 determining whether a reasonable likelihood of noncompliance will
56 exist in the future, the administrative hearing commission may look to
57 past acts of noncompliance in Missouri, but only to the extent they
58 suggest a reasonable likelihood of future acts of noncompliance. Such
59 past acts of noncompliance in Missouri, in and of themselves, are an
60 insufficient basis to suggest a reasonable likelihood of future acts of
61 noncompliance. In addition, such past acts shall not be used as a basis
62 to suggest a reasonable likelihood of future acts of noncompliance
63 unless the noncompliance has caused or has the potential to cause, a
64 risk to human health or to the environment, or has caused or has
65 potential to cause pollution, or was knowingly committed, or is defined
66 by the United States Environmental Protection Agency as other than
67 minor. If a hearing petitioner or the administrative hearing
68 commission demonstrates either present acts of noncompliance or a
69 reasonable likelihood that the permit seeker or the operations of
70 associated persons or corporations in Missouri will be in
71 noncompliance in the future, such a showing will satisfy the
72 noncompliance requirement in this subsection. In addition, such basis
73 must be developed by multiple noncompliances of any environmental
74 law administered by the Missouri department of natural resources at
75 any single facility in Missouri that resulted in harm to the environment
76 or impaired the health, safety, or livelihood of persons outside the
77 facility. For any permit seeker that has not been in business in
78 Missouri for the past five years, the administrative hearing commission
79 may review the record of noncompliance in any state where the
80 applicant has conducted business during the past five years. Once the
81 administrative hearing commission has reviewed the appeal, the
82 administrative hearing commission shall make a recommendation to

83 **the commission on permit issuance, renewal, denial, suspension, or**
84 **revocation, or any condition of the permit. The commission shall issue**
85 **its own decision, based on the appeal, for permit issuance, renewal,**
86 **denial, suspension, or revocation, or any condition of the permit. If the**
87 **commission changes a finding of fact or conclusion of law made by the**
88 **administrative hearing commission, or modifies or vacates the decision**
89 **recommended by the administrative hearing commission, it shall issue**
90 **its own decision, which shall include findings of fact and conclusions**
91 **of law. The commission shall mail copies of its final decision to the**
92 **parties to the appeal or their counsel of record. The commission's**
93 **decision shall be subject to judicial review pursuant to chapter 536,**
94 **except that the court of appeals district with territorial jurisdiction**
95 **coextensive with the county where the air contaminant source is**
96 **located or is to be located, shall have original jurisdiction. No judicial**
97 **review shall be available until and unless all administrative remedies**
98 **are exhausted.**

99 7. (1) There shall be a one hundred-dollar filing fee payable to the state
100 of Missouri with each application before a construction permit shall be issued. No
101 manufacturing or processing plant or operating location or other air contaminant
102 source shall be required to pay more than one filing fee with a construction
103 permit application. The provisions of this section shall not apply nor require the
104 issuance of a permit wherein the proposed construction is that of a private
105 residence.

106 (2) Upon completion of the department's evaluation of the application, but
107 before receiving a construction permit, the applicant shall reimburse the
108 department for all reasonable costs incurred by the department whether or not
109 a construction permit is issued by the department or withdrawn by the applicant.
110 If the department fails to approve or deny a construction permit within the time
111 period specified in this section, the applicant shall not be required to reimburse
112 the department for the review of the construction permit application. The
113 commission shall, by rule, set the hourly charge, not to exceed the actual cost
114 thereof and not to exceed fifty dollars per hour, for review of each construction
115 permit application. The commission may exempt any person from payment of the
116 hourly fees under this subdivision, or may reduce such fees, upon an appeal filed
117 with the commission by such person stating that the fee will create an
118 unreasonable economic hardship upon such person. The commission may conduct

119 a closed meeting and have closed records, as defined in section 610.010, for the
120 purpose of gathering information from the person filing an appeal for the
121 exemption. Information obtained in this meeting may be held confidential by the
122 commission upon the request of the person filing the appeal for exemption. If the
123 fees or any portion of the fees imposed by this section are not paid within ninety
124 days from the date of billing there shall be imposed interest upon the unpaid
125 amount at the rate of ten percent per annum from the date of billing until
126 payment is actually made. A construction permit application for a portable
127 facility may include any site at which the portable facility is expected to be used;
128 however, a separate site permit application shall be required when the portable
129 facility is used or expected to be used at any site which is not included in a
130 previously approved construction permit application. Upon receipt of the
131 application, the applicant shall be notified by the department of hourly fees and
132 requirements put forth in this subdivision.

133 (3) Applicants who withdraw their application before the department
134 completes its evaluation shall reimburse the department for costs incurred in the
135 evaluation.

136 (4) All moneys received pursuant to this section and section 643.073 and
137 any other moneys so designated shall be placed in the state treasury and credited
138 to the natural resources protection fund air pollution permit fee subaccount,
139 created in section 640.220, and shall be expended for the administration of this
140 section and sections 643.073 and 643.078 and for no other purpose, and shall be
141 used to supplement state general revenue and federal funds appropriated to the
142 department. After appropriation, the moneys received pursuant to this section
143 and in such fund subaccount shall be expended for the administration of this
144 section and for no other purpose. Any unexpended balance in such fund
145 subaccount at the end of any appropriation period shall not be transferred to the
146 general revenue fund of the state treasury and shall be exempt from the
147 provisions of section 33.080. Any interest received on such deposits shall be
148 credited to the fund subaccount.

149 8. Any person who obtains a valid permit from a city or county pursuant
150 to the authority granted in section 643.140 shall be deemed to have met the
151 requirements of this section and shall not be liable to the department for
152 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. For purposes of an appeal, the administrative hearing**
107 **commission may consider, based on competent and substantial**
108 **scientific evidence on the record, whether an interested party's health,**
109 **safety, or livelihood will be unduly impaired by the issuance, renewal,**
110 **denial, suspension, modification, revocation, or any condition of the**

111 permit. The administrative hearing commission may also consider,
112 based on competent and substantial scientific evidence on the record,
113 whether the operator has demonstrated, during the five-year period
114 immediately preceding the date of the permit application, a pattern of
115 noncompliance at other locations in Missouri that suggests a reasonable
116 likelihood of future acts of noncompliance. In determining whether a
117 reasonable likelihood of noncompliance will exist in the future, the
118 administrative hearing commission may look to past acts of
119 noncompliance in Missouri, but only to the extent they suggest a
120 reasonable likelihood of future acts of noncompliance. Such past acts
121 of noncompliance in Missouri, in and of themselves, are an insufficient
122 basis to suggest a reasonable likelihood of future acts of
123 noncompliance. In addition, such past acts shall not be used as a basis
124 to suggest a reasonable likelihood of future acts of noncompliance
125 unless the noncompliance has caused or has the potential to cause, a
126 risk to human health or to the environment, or has caused or has
127 potential to cause pollution, or was knowingly committed, or is defined
128 by the United States Environmental Protection Agency as other than
129 minor. If a hearing petitioner or the administrative hearing
130 commission demonstrates either present acts of noncompliance or a
131 reasonable likelihood that the permit seeker or the operations of
132 associated persons or corporations in Missouri will be in
133 noncompliance in the future, such a showing will satisfy the
134 noncompliance requirement in this subsection. In addition, such basis
135 must be developed by multiple noncompliances of any environmental
136 law administered by the Missouri department of natural resources at
137 any single facility in Missouri that resulted in harm to the environment
138 or impaired the health, safety, or livelihood of persons outside the
139 facility. For any permit seeker that has not been in business in
140 Missouri for the past five years, the administrative hearing commission
141 may review the record of noncompliance in any state where the
142 applicant has conducted business during the past five years. Once the
143 administrative hearing commission has reviewed the appeal, the
144 administrative hearing commission shall make a recommendation to
145 the commission on the issuance, renewal, denial, suspension,
146 modification, revocation, or any condition of the permit. The
147 commission shall issue its own decision, based on the appeal, for the

148 **issuance, renewal, denial, suspension, modification, revocation, or any**
149 **condition of the permit. If the commission changes a finding of fact or**
150 **conclusion of law made by the administrative hearing commission, or**
151 **modifies or vacates the decision recommended by the administrative**
152 **hearing commission, it shall issue its own decision, which shall include**
153 **findings of fact and conclusions of law. The commission shall mail**
154 **copies of its final decision to the parties to the appeal or their counsel**
155 **of record. The commission's decision shall be subject to judicial review**
156 **pursuant to chapter 536, except that the court of appeals district with**
157 **territorial jurisdiction coextensive with the county where the air**
158 **contaminant source is located or is to be located shall have original**
159 **jurisdiction. No judicial review shall be available until and unless all**
160 **administrative remedies are exhausted.**

161 17. Any person who obtains a valid operating permit from a city or county
162 pursuant to the authority granted in section 643.140 shall be deemed to have met
163 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. **For purposes of an appeal, the**
104 **administrative hearing commission may consider, based on competent**
105 **and substantial scientific evidence on the record, whether an interested**
106 **party's health, safety, or livelihood will be unduly impaired by the**
107 **issuance, denial, or from any condition of the permit. The**
108 **administrative hearing commission may also consider, based on**
109 **competent and substantial scientific evidence on the record, whether**
110 **the applicant or permit holder has demonstrated, during the five-year**
111 **period immediately preceding the date of the permit application, a**
112 **pattern of noncompliance at other locations in Missouri that suggests**
113 **a reasonable likelihood of future acts of noncompliance. In**
114 **determining whether a reasonable likelihood of noncompliance will**
115 **exist in the future, the administrative hearing commission may look to**
116 **past acts of noncompliance in Missouri, but only to the extent they**
117 **suggest a reasonable likelihood of future acts of noncompliance. Such**
118 **past acts of noncompliance in Missouri, in and of themselves, are an**
119 **insufficient basis to suggest a reasonable likelihood of future acts of**
120 **noncompliance. In addition, such past acts shall not be used as a basis**
121 **to suggest a reasonable likelihood of future acts of noncompliance**
122 **unless the noncompliance has caused or has the potential to cause, a**
123 **risk to human health or to the environment, or has caused or has**
124 **potential to cause pollution, or was knowingly committed, or is defined**
125 **by the United States Environmental Protection Agency as other than**
126 **minor. If a hearing petitioner or the administrative hearing**
127 **commission demonstrates either present acts of noncompliance or a**
128 **reasonable likelihood that the license seeker or the operations of**
129 **associated persons or corporations in Missouri will be in**

130 **noncompliance in the future, such a showing will satisfy the**
131 **noncompliance requirement in this subsection. In addition, such basis**
132 **must be developed by multiple noncompliances of any environmental**
133 **law administered by the Missouri department of natural resources at**
134 **any single facility in Missouri that resulted in harm to the environment**
135 **or impaired the health, safety or livelihood of persons outside the**
136 **facility. For any permit seeker that has not been in business in**
137 **Missouri for the past five years, the administrative hearing commission**
138 **may review the record of noncompliance in any state where the**
139 **applicant has conducted business during the past five years. Once the**
140 **administrative hearing commission has reviewed the appeal, the**
141 **administrative hearing commission shall make a recommendation to**
142 **the commission on permit issuance, denial, or any condition of the**
143 **permit. The commission shall issue its own decision, based on the**
144 **appeal, for permit issuance, denial, or any condition of the permit. If**
145 **the commission changes a finding of fact or conclusion of law made by**
146 **the administrative hearing commission, or modifies or vacates the**
147 **decision recommended by the administrative hearing commission, it**
148 **shall issue its own decision, which shall include findings of fact and**
149 **conclusions of law. The commission shall mail copies of its final**
150 **decision to the parties to the appeal or their counsel of record. The**
151 **commission's decision shall be subject to judicial review pursuant to**
152 **chapter 536, except that the court of appeals district with territorial**
153 **jurisdiction coextensive with the county where the point source is to**
154 **be located, shall have original jurisdiction. No judicial review shall be**
155 **available until and unless all administrative remedies are exhausted.**

156 7. In any hearing held pursuant to this section that involves a permit,
157 license, or registration, the burden of proof is on the party specified in section
158 640.012. Any decision of the commission made pursuant to a hearing held
159 pursuant to this section is subject to judicial review as provided in section
160 644.071.

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

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

167 supporting the request.

168 10. No manufacturing or processing plant or operating location shall be
169 required to pay more than one operating fee. Operating permits shall be issued
170 for a period not to exceed five years after date of issuance, except that general
171 permits shall be issued for a five-year period, and also except that neither a
172 construction nor an annual permit shall be required for a single residence's waste
173 treatment facilities. Applications for renewal of a site-specific operating permit
174 shall be filed at least one hundred eighty days prior to the expiration of the
175 existing permit. Applications seeking to renew coverage under a general permit
176 shall be submitted at least thirty days prior to the expiration of the general
177 permit, unless the permittee has been notified by the director that an earlier
178 application must be made. General permits may be applied for and issued
179 electronically once made available by the director.

180 11. Every permit issued to municipal or any publicly owned treatment
181 works or facility shall require the permittee to provide the clean water
182 commission with adequate notice of any substantial new introductions of water
183 contaminants or pollutants into such works or facility from any source for which
184 such notice is required by sections 644.006 to 644.141 or any federal water
185 pollution control act. Such permit shall also require the permittee to notify the
186 clean water commission of any substantial change in volume or character of water
187 contaminants or pollutants being introduced into its treatment works or facility
188 by a source which was introducing water contaminants or pollutants into its
189 works at the time of issuance of the permit. Notice must describe the quality and
190 quantity of effluent being introduced or to be introduced into such works or
191 facility by a source which was introducing water contaminants or pollutants into
192 its works at the time of issuance of the permit. Notice must describe the quality
193 and quantity of effluent being introduced or to be introduced into such works or
194 facility and the anticipated impact of such introduction on the quality or quantity
195 of effluent to be released from such works or facility into waters of the state.

196 12. The director or the commission may require the filing or posting of a
197 bond as a condition for the issuance of permits for construction of temporary or
198 future water treatment facilities or facilities that utilize innovative technology for
199 wastewater treatment in an amount determined by the commission to be
200 sufficient to ensure compliance with all provisions of sections 644.006 to 644.141,
201 and any rules or regulations of the commission and any condition as to such
202 construction in the permit. For the purposes of this section, "innovative

203 technology for wastewater treatment" shall mean a completely new and generally
204 unproven technology in the type or method of its application that bench testing
205 or theory suggest has environmental, efficiency, and cost benefits beyond the
206 standard technologies. No bond shall be required for designs approved by any
207 federal agency or environmental regulatory agency of another state. The bond
208 shall be signed by the applicant as principal, and by a corporate surety licensed
209 to do business in the state of Missouri and approved by the commission. The
210 bond shall remain in effect until the terms and conditions of the permit are met
211 and the provisions of sections 644.006 to 644.141 and rules and regulations
212 promulgated pursuant thereto are complied with.

213 13. (1) The department shall issue or deny applications for construction
214 and site-specific operating permits received after January 1, 2001, within one
215 hundred eighty days of the department's receipt of an application. For general
216 construction and operating permit applications received after January 1, 2001,
217 that do not require a public participation process, the department shall issue or
218 deny the permits within sixty days of the department's receipt of an
219 application. For an application seeking coverage under a renewed general permit
220 that does not require an individual public participation process, the director shall
221 issue or deny the permit within sixty days of the director's receipt of the
222 application, or upon issuance of the general permit, whichever is later. In regard
223 to an application seeking coverage under an initial general permit that does not
224 require an individual public participation process, the director shall issue or deny
225 the permit within sixty days of the department's receipt of the application. For
226 an application seeking coverage under a renewed general permit that requires an
227 individual public participation process, the director shall issue or deny the permit
228 within ninety days of the director's receipt of the application, or upon issuance
229 of the general permit, whichever is later. In regard to an application for an
230 initial general permit that requires an individual public participation process, the
231 director shall issue or deny the permit within ninety days of the director's receipt
232 of the application.

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

239 32.065.

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

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

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

265 (6) Nothing in this subsection shall be interpreted to mean that inaction
266 on a permit application shall be grounds to violate any provisions of sections
267 644.006 to 644.141 or any rules promulgated pursuant to sections 644.006 to
268 644.141.

269 14. The department shall respond to all requests for individual
270 certification under Section 401 of the Federal Clean Water Act within the lesser
271 of sixty days or the allowed response period established pursuant to applicable
272 federal regulations without request for an extension period unless such extension
273 is determined by the commission to be necessary to evaluate significant impacts
274 on water quality standards and the commission establishes a timetable for

275 completion of such evaluation in a period of no more than one hundred eighty
276 days.

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

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

285 17. Prior to the development of a new general permit or reissuance of a
286 general permit for aquaculture, land disturbance requiring a storm water permit,
287 or reissuance of a general permit under which fifty or more permits were issued
288 under a general permit during the immediately preceding five-year period for a
289 designated category of water contaminant sources, the director shall implement
290 a public participation process complying with the following minimum
291 requirements:

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

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

299 (3) The director shall hold a public informational meeting to provide
300 information on anticipated permit conditions and requirements and to receive
301 informal comments from permittees and other interested persons. The director
302 shall include notice of the public informational meeting with the notice of intent
303 to issue a new general permit or reissue a general permit under subdivision (2)
304 of this subsection. The notice of the public informational meeting, including the
305 date, time and location, shall be posted on the department's website at least
306 thirty days in advance of the public meeting. If the meeting is being held for
307 reissuance of a general permit, notice shall also be made by electronic mail to all
308 permittees holding the current general permit which is expiring. Notice to
309 current permittees shall be made at least twenty days prior to the public meeting;

310 (4) The director shall hold a thirty-day public comment period to receive

311 comments on the general permit template with the thirty-day comment period
312 expiring at least sixty days prior to the effective date of the general
313 permit. Scanned copies of the comments received during the public comment
314 period shall be posted on the department's website within five business days after
315 close of the public comment period;

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

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

324 18. Notices required to be made by the department pursuant to subsection
325 17 of this section may be made by electronic mail. The department shall not be
326 required to make notice to any permittee or other person who has not provided
327 a current electronic mail address to the department. In the event the department
328 chooses to make material modifications to the general permit before its
329 expiration, the department shall follow the public participation process described
330 in subsection 17 of this section.

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

49 4. **In case of the failure by conference, conciliation, or persuasion
50 to correct or remedy any claimed violation, or as required to**

51 **immediately and effectively halt or eliminate any imminent or**
52 **substantial endangerments to the health or welfare of persons resulting**
53 **from the discharge of pollutants, the director may revoke a permit if**
54 **such permit has been issued.** Permits may be **revoked**, terminated, or
55 modified if obtained in violation of sections 644.006 to 644.141 or by
56 misrepresentation or failing to fully disclose all relevant facts, or when required
57 to prevent violations of any provision of sections 644.006 to 644.141, or to protect
58 the waters of this state, when such action is required by a change in conditions
59 or the existence of a condition which requires either a temporary or permanent
60 reduction or elimination of the authorized discharge, subject to the right of appeal
61 contained in [this section] **sections 621.250 and 640.013.**

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

66 6. After due consideration of the record, or upon default in appearance of
67 the respondent on the return day specified in the notice given as provided in
68 subsection 3, the commission shall issue and enter such final order, or make such
69 final determination as it deems appropriate under the circumstances, and it shall
70 immediately notify the petitioner or respondent thereof in writing by certified or
71 registered mail.] **Whenever a permit under this chapter is revoked,**
72 **terminated, or modified by the department of natural resources, any**
73 **aggrieved person, by petition filed with the administrative hearing**
74 **commission within thirty days of the decision, may appeal such**
75 **decision as provided by sections 621.250 and 640.013. For purposes of**
76 **an appeal, the administrative hearing commission may consider, based**
77 **on competent and substantial scientific evidence on the record,**
78 **whether an interested party's health, safety, or livelihood will be**
79 **unduly impaired by the revocation, termination, or modification of the**
80 **permit. The administrative hearing commission may also consider,**
81 **based on competent and substantial scientific evidence on the record,**
82 **whether the operator has demonstrated, during the five-year period**
83 **immediately preceding the date of the permit application, a pattern of**
84 **noncompliance at other locations in Missouri that suggests a reasonable**
85 **likelihood of future acts of noncompliance. In determining whether a**
86 **reasonable likelihood of noncompliance will exist in the future, the**

87 administrative hearing commission may look to past acts of
88 noncompliance in Missouri, but only to the extent they suggest a
89 reasonable likelihood of future acts of noncompliance. Such past acts
90 of noncompliance in Missouri, in and of themselves, are an insufficient
91 basis to suggest a reasonable likelihood of future acts of
92 noncompliance. In addition, such past acts shall not be used as a basis
93 to suggest a reasonable likelihood of future acts of noncompliance
94 unless the noncompliance has caused or has the potential to cause, a
95 risk to human health or to the environment, or has caused or has
96 potential to cause pollution, or was knowingly committed, or is defined
97 by the United States Environmental Protection Agency as other than
98 minor. If a hearing petitioner or the administrative hearing
99 commission demonstrates either present acts of noncompliance or a
100 reasonable likelihood that the permit seeker or the operations of
101 associated persons or corporations in Missouri will be in
102 noncompliance in the future, such a showing will satisfy the
103 noncompliance requirement in this subsection. In addition, such basis
104 must be developed by multiple noncompliances of any environmental
105 law administered by the Missouri department of natural resources at
106 any single facility in Missouri that resulted in harm to the environment
107 or impaired the health, safety, or livelihood of persons outside the
108 facility. For any permit seeker that has not been in business in
109 Missouri for the past five years, the administrative hearing commission
110 may review the record of noncompliance in any state where the
111 applicant has conducted business during the past five years. Once the
112 administrative hearing commission has reviewed the appeal, the
113 administrative hearing commission shall make a recommendation to
114 the commission on permit revocation, termination, or
115 modification. The commission shall issue its own decision, based on the
116 appeal, for permit revocation, termination, or modification. If the
117 commission changes a finding of fact or conclusion of law made by the
118 administrative hearing commission, or modifies or vacates the decision
119 recommended by the administrative hearing commission, it shall issue
120 its own decision, which shall include findings of fact and conclusions
121 of law. The commission shall mail copies of its final decision to the
122 parties to the appeal or their counsel of record. The commission's
123 decision shall be subject to judicial review pursuant to chapter 536,

124 **except that the court of appeals district with territorial jurisdiction**
125 **coextensive with the county where the point source is located or is to**
126 **be located shall have original jurisdiction. No judicial review shall be**
127 **available until and unless all administrative remedies are exhausted.**

✓

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