

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR

SENATE BILL NO. 476

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEHOE.

Offered April 15, 2015.

Senate Substitute adopted, April 15, 2015.

Taken up for Perfection April 15, 2015. Bill declared Perfected and Ordered Printed, as amended.

ADRIANE D. CROUSE, Secretary.

2217S.02P

AN ACT

To repeal sections 259.010, 259.020, 259.030, 259.050, 259.070, 259.080, 259.100, 259.190, 259.210, 260.235, 260.395, 260.500, 444.600, 444.773, 621.250, 640.115, 643.075, 643.078, 644.011, 644.016, 644.051, and 644.056, RSMo, and to enact in lieu thereof twenty-four new sections relating to the department of natural resources.

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

Section A. Sections 259.010, 259.020, 259.030, 259.050, 259.070, 259.080,
2 259.100, 259.190, 259.210, 260.235, 260.395, 260.500, 444.600, 444.773, 621.250,
3 640.115, 643.075, 643.078, 644.011, 644.016, 644.051, and 644.056, RSMo, are
4 repealed and twenty-four new sections enacted in lieu thereof, to be known as
5 sections 259.010, 259.020, 259.030, 259.050, 259.052, 259.070, 259.080, 259.100,
6 259.190, 259.210, 260.235, 260.395, 260.500, 444.600, 444.773, 444.980, 621.250,
7 640.115, 643.075, 643.078, 644.011, 644.016, 644.051, and 644.056, to read as
8 follows:

259.010. There shall be a "State Oil and Gas Council" composed of the
2 following members in accordance with the provisions of section 259.020:

3 (1) [One member from the division of geology and land survey] **The state**
4 **geologist;**

5 (2) One member from the department of economic development;

6 (3) One member from the Missouri public service commission;

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

- 7 (4) One member from the clean water commission;
- 8 (5) One member from the Missouri University of Science and Technology
9 petroleum engineering program;
- 10 (6) One member from the Missouri Independent Oil and Gas Association;
- 11 and
- 12 (7) Two members from the public.

259.020. The member entities in section 259.010 shall be represented on
2 the council by the executive head of each respective entity, except that:

- 3 (1) The Missouri University of Science and Technology shall be
4 represented by a professor of petroleum engineering employed at the university;
- 5 (2) The Missouri Independent Oil and Gas Association shall be
6 represented by a designated member of the association; and
- 7 (3) The public members shall be appointed to the council by the governor,
8 with the advice and consent of the senate. Both public members shall have an
9 interest in and knowledge of the oil and gas industry, **and** both shall be residents
10 of Missouri[, and at least one shall also be a resident of a county of the third or
11 fourth classification]. The executive head of any member state agency, the
12 professor of petroleum engineering at the Missouri University of Science and
13 Technology and the member from the Missouri Independent Oil and Gas
14 Association may from time to time authorize any member of the state agency's
15 staff, another professor of petroleum engineering at the Missouri University of
16 Science and Technology or another member of the Missouri Independent Oil and
17 Gas Association, respectively, to represent it on the council and to fully exercise
18 any of the powers and duties of the member representative.

259.030. 1. The council shall elect a chairman and vice chairman from the
2 members of the council [other than the representative of the division of geology
3 and land survey]. A chairman and vice chairman may serve more than a
4 one-year term, if so elected by the members of the council.

5 2. The state geologist shall act as administrator for the council and shall
6 be responsible for enforcing the provisions of this chapter.

259.050. Unless the context otherwise requires, the following words mean:

- 2 (1) "Certificate of clearance" means a permit prescribed by the council for
3 the transportation or the delivery of oil or gas or product and issued or registered
4 in accordance with the rule, regulation, or order requiring such permit;
- 5 (2) "Council", the state oil and gas council established by section 259.010;
- 6 (3) **"Department", the department of natural resources;**

7 (4) "Field", the general area underlaid by one or more pools;

8 [(4)] (5) "Gas", all natural gas and all other fluid hydrocarbons which are
9 produced at the wellhead and not hereinbelow defined as oil;

10 [(5)] (6) "Illegal gas" means gas which has been produced from any well
11 within this state in excess of the quantity permitted by any rule, regulation, or
12 order of the council;

13 [(6)] (7) "Illegal oil" means oil which has been produced from any well
14 within the state in excess of the quantity permitted by any rule, regulation, or
15 order of the council;

16 [(7)] (8) "Illegal product" means any product derived in whole or in part
17 from illegal oil or illegal gas;

18 [(8)] (9) "Noncommercial gas well", a gas well drilled for the sole purpose
19 of furnishing gas for private domestic consumption by the owner and not for
20 resale or trade;

21 [(9)] (10) "Oil", crude petroleum oil and other hydrocarbons regardless
22 of gravity which are produced at the wellhead in liquid form and the liquid
23 hydrocarbons known as distillate or condensate recovered or extracted from gas,
24 other than gas produced in association with oil and commonly known as
25 casinghead gas. **The term shall also include hydrocarbons that do not**
26 **flow to a wellhead but are produced by other means, including those**
27 **contained in oil-shale and oil-sand;**

28 [(10)] (11) "Owner", the person who has the right to drill into and
29 produce from a pool and to appropriate the oil or gas he produced therefrom
30 either for himself or others or for himself and others;

31 [(11)] (12) "Pool", an underground reservoir containing a common
32 accumulation of oil or gas or both; each zone of a structure which is completely
33 separated from any other zone in the same structure is a "pool", as that term is
34 used in this chapter;

35 [(12)] "Producer", the owner of a well or wells capable of producing oil or
36 gas or both;]

37 (13) "Product", any commodity made from oil or gas and includes refined
38 crude oil, crude tops, topped crude, processed crude, processed crude petroleum,
39 residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated
40 crude oil, residuum, gas oil, casinghead gasoline, natural-gas gasoline, kerosene,
41 [benzine] **benzene**, wash oil, waste oil, blended gasoline, lubricating oil, blends
42 or mixtures of oil with one or more liquid products or by-products derived from

43 oil or gas, and blends or mixtures of two or more liquid products or by-products
44 derived from oil or gas whether [hereinabove] **herein** enumerated or not;

45 (14) "Reasonable market demand" means the demand for oil or gas for
46 reasonable current requirements for consumption and use within and without the
47 state, together with such quantities as are reasonably necessary for building up
48 or maintaining reasonable working stocks and reasonable reserves of oil or gas
49 or product;

50 (15) "Waste" means and includes:

51 (a) Physical waste, as that term is generally understood in the oil and gas
52 industry, but not including unavoidable or accidental waste;

53 (b) The inefficient, excessive, or improper use of, or the unnecessary
54 dissipation of, reservoir energy;

55 (c) The location, spacing, drilling, equipping, operating, or producing of
56 any oil or gas well or wells in a manner which causes, or tends to cause, reduction
57 in the quantity of oil or gas ultimately recoverable from a pool under prudent and
58 proper operations, or which causes or tends to cause unnecessary or excessive
59 surface loss or destruction of oil or gas;

60 (d) The inefficient storing of oil;

61 (e) The production of oil or gas in excess of transportation or marketing
62 facilities or in excess of reasonable market demand; and

63 (f) Through negligence, the unnecessary or excessive surface loss or
64 destruction of oil or gas resulting from evaporation, seepage, leakage or deliberate
65 combustion;

66 (16) "Well", any hole drilled in the earth for or in connection with the
67 exploration, discovery, or recovery of oil or gas, or for or in connection with the
68 underground storage of gas in natural formation, or for or in connection with the
69 disposal of salt water, nonusable gas or other waste accompanying the production
70 of oil or gas.

**259.052. 1. There is hereby created in the state treasury the "Oil
2 and Gas Resources Fund" which shall consist of all gifts, donations,
3 transfers, moneys appropriated by the general assembly, permit
4 application fees collected under section 259.080, operating fees, closure
5 fees, late fees, severance fees, and bequests to the fund. The fund shall
6 be administered by the department of natural resources.**

**7 2. The state treasurer shall be custodian of the fund and may
8 approve disbursements from the fund in accordance with sections**

9 **30.170 and 30.180. Notwithstanding the provisions of section 33.080 to**
10 **the contrary, any moneys remaining in the fund at the end of the**
11 **biennium shall not revert to the credit of the general revenue**
12 **fund. The state treasurer shall invest moneys in the fund in the same**
13 **manner as other funds are invested. Any interest and moneys on such**
14 **investments shall be credited to the fund.**

15 **3. After appropriation by the general assembly, the money in**
16 **such fund shall be expended by the department to administer the**
17 **provisions of chapter 259, and to collect, process, manage, interpret,**
18 **and distribute geologic and hydrologic resource information pertaining**
19 **to oil and gas potential, and not for any other purpose.**

259.070. 1. The council has the duty of administering the provisions of
2 this chapter. The council shall meet at least once each calendar quarter of the
3 year and upon the call of the chairperson.

4 2. The council shall conduct a review of the statutes and rules and
5 regulations under this chapter on a biennial basis. Based on such review, the
6 council, if necessary, shall recommend changes to the statutes under this chapter
7 and shall amend rules and regulations accordingly.

8 3. (1) The council shall have the power and duty to form an advisory
9 committee to the council for the purpose of reviewing the statutes and rules and
10 regulations under subsection 2 of this section. The advisory committee shall
11 make recommendations to the council when necessary to amend current statutes
12 and rules and regulations under this chapter and shall review any proposed new
13 or amended statute or regulation before such proposed statute or regulation is
14 considered by the council.

15 (2) The advisory committee shall be made up of representatives from the
16 **[division of geology and land survey] department**, the oil and gas industry and
17 any council member desiring to be on such advisory committee. The advisory
18 committee shall meet prior to each calendar quarter meeting of the council, if
19 necessary for the purposes set forth under this subsection, and present any
20 recommendations to the council at such calendar quarter meeting. The council
21 shall designate one of its members to serve as the chairperson of the advisory
22 committee.

23 (3) The advisory committee may make recommendations to the council on
24 appropriate fees or other funding mechanisms to support the oil and gas program
25 efforts of the **[division of geology and land survey] department**.

26 4. The council, **acting through the department**, has the duty and
27 authority to make such investigations as it deems proper to determine whether
28 waste exists or is imminent or whether other facts exist which justify action.

29 5. The council, acting through the [office of the state geologist]
30 **department**, has the authority:

31 (1) To require **through the issuance of appropriate orders**:

32 (a) Identification of ownership of oil or gas wells, producing leases, tanks,
33 plants, structures, and facilities for the refining or intrastate transportation of
34 oil and gas;

35 (b) The making and filing of all mechanical well logs and the filing of
36 directional surveys if taken, and the filing of reports on well location, drilling and
37 production, and the filing free of charge of samples and core chips and of complete
38 cores less tested sections, when requested in the office of the state geologist
39 within six months after the completion or abandonment of the well;

40 (c) The drilling, casing, operation, and plugging of wells in such manner
41 as to prevent the escape of oil or gas out of one stratum into another; the
42 intrusion of water into oil or gas stratum; the pollution of fresh water supplies
43 by oil, gas, or highly mineralized water; to prevent blowouts, cavings, seepages,
44 and fires; and to prevent the escape of oil, gas, or water into workable coal or
45 other mineral deposits;

46 (d) The furnishing of a reasonable bond with good and sufficient surety,
47 conditioned upon the full compliance with the provisions of this chapter, and the
48 rules and regulations of the council prescribed to govern the production of oil and
49 gas on state and private lands within the state of Missouri; provided that, in lieu
50 of a bond with a surety, an applicant may furnish to the council his own personal
51 bond, on conditions as described in this paragraph, secured by a certificate of
52 deposit or an irrevocable letter of credit in an amount equal to that of the
53 required surety bond or secured by some other financial instrument on conditions
54 as above described or as provided by council regulations;

55 (e) That the production from wells be separated into gaseous and liquid
56 hydrocarbons, and that each be accurately measured by such means and upon
57 such standards as may be prescribed by the council;

58 (f) The operation of wells with efficient gas-oil and water-oil ratios, and
59 to fix these ratios;

60 (g) Certificates of clearance in connection with the transportation or
61 delivery of any native and indigenous Missouri produced crude oil, gas, or any

62 product;

63 (h) Metering or other measuring of any native and indigenous
64 Missouri-produced crude oil, gas, or product in pipelines, gathering systems,
65 barge terminals, loading racks, refineries, or other places; and

66 (i) That every person who produces, sells, purchases, acquires, stores,
67 transports, refines, or processes native and indigenous Missouri-produced crude
68 oil or gas in this state shall keep and maintain within this state complete and
69 accurate records of the quantities thereof, which records shall be available for
70 examination by the council or its agents at all reasonable times and that every
71 such person file with the council such reports as it may prescribe with respect to
72 such oil or gas or the products thereof;

73 (2) To regulate pursuant to rules adopted by the council:

74 (a) **The release and forfeiture of bonds required under paragraph**
75 **(d) of subdivision (1) of subsection 5 of this section;**

76 (b) The drilling, producing, and plugging of wells, and all other operations
77 for the production of oil or gas;

78 [(b)] (c) The [shooting and chemical] treatment of wells;

79 [(c)] (d) The spacing of wells;

80 [(d)] (e) Operations to increase ultimate recovery such as cycling of gas,
81 the maintenance of pressure, and the introduction of gas, water, or other
82 substances into producing formations; and

83 [(e)] (f) Disposal of highly mineralized water and oil field wastes;

84 (3) To limit and to allocate the production of oil and gas from any field,
85 pool, or area;

86 (4) To classify wells as oil or gas wells for purposes material to the
87 interpretation or enforcement of this chapter;

88 (5) To promulgate and to enforce rules, regulations, and orders to
89 effectuate the purposes and the intent of this chapter;

90 (6) To make rules, regulations, or orders for the classification of wells as
91 oil wells or dry natural gas wells; or wells drilled, or to be drilled, for geological
92 information; or as wells for secondary recovery projects; or wells for the disposal
93 of highly mineralized water, brine, or other oil field wastes; or wells for the
94 storage of dry natural gas, or casinghead gas; or wells for the development of
95 reservoirs for the storage of liquid petroleum gas;

96 (7) To detail such personnel and equipment or enter into such contracts
97 as it may deem necessary for carrying out the plugging of or other remedial

98 measures on wells which have been abandoned and not plugged according to the
99 standards for plugging set out in the rules and regulations promulgated by the
100 council pursuant to this chapter. Members of the council, **the department**, or
101 authorized representatives may, with the consent of the owner or person in
102 possession, enter any property for the purpose of investigating, plugging, or
103 performing remedial measures on any well, or to supervise the investigation,
104 plugging, or performance of remedial measures on any well. A reasonable effort
105 to contact the owner or the person in possession of the property to seek his
106 permission shall be made before members of the council, **the department**, or
107 authorized representatives enter the property for the purposes described in this
108 paragraph. If the owner or person in possession of the property cannot be found
109 or refuses entry or access to any member of the council, **the department**, or to
110 any authorized representative presenting appropriate credentials, the council **or**
111 **the department** may request the attorney general to initiate in any court of
112 competent jurisdiction an action for injunctive relief to restrain any interference
113 with the exercise of powers and duties described in this subdivision. Any entry
114 authorized under this subdivision shall be construed as an exercise of the police
115 power for the protection of public health, safety and general welfare and shall not
116 be construed as an act of condemnation of property nor of trespass
117 thereon. Members of the council [and], **the department**, **or** authorized
118 representatives shall not be liable for any damages necessarily resulting from the
119 entry upon land for purposes of investigating, plugging, or performing remedial
120 measures or the supervision of such activity. However, if growing crops are
121 present, arrangements for timing of such remedial work may be agreed upon
122 between the state and landowner in order to minimize damages;

123 (8) To develop such facts and make such investigations or inspections as
124 are consistent with the purposes of this chapter. [Members of the council] **The**
125 **department** or **its** authorized representatives may, with the consent of the
126 owner or person in possession, enter upon any property for the purposes of
127 inspecting or investigating any condition which the [council] **department** shall
128 have probable cause to believe is subject to regulation under this chapter, the
129 rules and regulations promulgated pursuant thereto or any permit issued by the
130 [council] **department**. If the owner or person in possession of the property
131 refuses entry or access for purposes of the inspections or investigations described,
132 the [council] **department** or authorized representatives shall make application
133 for a search warrant. Upon a showing of probable cause in writing and under

134 oath, a suitable restricted search warrant shall be issued by any judge having
135 jurisdiction for purposes of enabling inspections authorized under this
136 subdivision. The results of any inspection or investigation pursuant to this
137 subdivision shall be reduced to writing with a copy furnished to the owner, person
138 in possession, or operator;

139 (9) To cooperate with landowners with respect to the conversion of wells
140 drilled for oil and gas to alternative use as water wells as follows: the state
141 geologist shall determine the feasibility of the conversion of a well drilled under
142 a permit for oil and gas for use as a water well and shall advise the landowner
143 of modifications required for conversion of the well in a manner that is consistent
144 with the requirements of this chapter. If such conversion is carried out, release
145 of the operator from legal liability or other responsibility shall be required and
146 the expense of the conversion shall be borne by the landowner.

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

259.080. 1. It shall be unlawful to commence operations for the drilling
2 of a well for oil or gas, or to commence operations to deepen any well to a
3 different geological formation, **or to commence injection activities for**
4 **enhanced recovery of oil or gas or for disposal of fluids**, without first
5 giving the state geologist notice of intention to drill **or intention to inject** and
6 first obtaining a permit from the state geologist under such rules and regulations
7 as may be prescribed by the council.

8 2. **The department of natural resources may conduct a**
9 **comprehensive review, and propose a new fee structure, or propose**
10 **changes to the oil and gas fee structure, which may include but need**
11 **not be limited to permit application fees, operating fees, closure fees,**
12 **and late fees, and an extraction or severance fee. The comprehensive**
13 **review shall include stakeholder meetings in order to solicit**
14 **stakeholder input from each of the following groups: oil and gas**
15 **industry representatives, the advisory committee, and any other**
16 **interested parties. Upon completion of the comprehensive review, the**
17 **department shall submit a proposed fee structure or changes to the oil**
18 **and gas fee structure with stakeholder agreement to the oil and gas**
19 **council. The council shall review such recommendations at the**
20 **forthcoming regular or special meeting, but shall not vote on the fee**

21 structure until a subsequent meeting. If the council approves, by vote
22 of two-thirds majority, the fee structure recommendations, the council
23 shall authorize the department to file a notice of proposed rulemaking
24 containing the recommended fee structure, and after considering public
25 comments may authorize the department to file the final order of
26 rulemaking for such rule with the joint committee on administrative
27 rules under sections 536.021 and 536.024 no later than December first
28 of the same year. If such rules are not disapproved by the general
29 assembly in the manner set out in this section, they shall take effect on
30 January first of the following year, at which point the existing fee
31 structure shall expire. Any regulation promulgated under this
32 subsection shall be deemed beyond the scope and authority provided
33 in this subsection, or detrimental to permit applicants, if the general
34 assembly, within the first sixty calendar days of the regular session
35 immediately following the filing of such regulation, disapproves the
36 regulation by concurrent resolution. If the general assembly so
37 disapproved any regulation filed under this subsection, the department
38 and the council shall not implement the proposed fee structure and
39 shall continue to use the previous fee structure. The authority of the
40 council to further revise the fee structure as provided in this
41 subsection shall expire on August 28, 2025.

42 3. Failure to pay the fees, or any portion thereof, established
43 under this section or to submit required reports, forms or information
44 by the due date shall result in the imposition of a late fee established
45 by the council. The department may issue an administrative order
46 requiring payment of unpaid fees or may request that the attorney
47 general bring an action in the appropriate circuit court to collect any
48 unpaid fee, late fee, interest, or attorney's fees and costs incurred
49 directly in fee collection. Such action may be brought in the circuit
50 court of Cole County, or, in the case of well fees, in the circuit court of
51 the county in which the well is located.

259.100. 1. The council shall set spacing units as follows:

2 (1) When necessary to prevent waste, to avoid the drilling of unnecessary
3 wells, or to protect correlative rights, the council shall establish spacing units for
4 a pool. Spacing units when established shall be of uniform size and shape for the
5 entire pool, except that when found to be necessary for any of the purposes above
6 mentioned, the council is authorized to divide any pool into zones and establish

7 spacing units for each zone, which units may differ in size and shape from those
8 established in any other zone;

9 (2) The size and shape of spacing units are to be such as will result in the
10 efficient and economical development of the pool as a whole;

11 (3) An order establishing spacing units for a pool shall specify the size
12 and shape of each unit and the location of the permitted well thereon in
13 accordance with a reasonably uniform spacing plan. Upon application, if the
14 state geologist finds that a well drilled at the prescribed location would not
15 produce in paying quantities, or that surface conditions would substantially add
16 to the burden or hazard of drilling such well, the [state geologist] **department**
17 is authorized to enter an order permitting the well to be drilled at a location
18 other than that prescribed by such spacing order; however, the state geologist
19 shall include in the order suitable provisions to prevent the production from the
20 spacing unit of more than its just and equitable share of the oil and gas in the
21 pool;

22 (4) An order establishing **spacing** units for a pool shall cover all lands
23 determined or believed to be underlaid by such pool, and may be modified by the
24 [state geologist] **department** from time to time to include additional areas
25 determined to be underlaid by such pool. When found necessary for the
26 prevention of waste, or to avoid the drilling of unnecessary wells or to protect
27 correlative rights, an order establishing spacing units in a pool may be modified
28 by the state geologist to increase the size of spacing units in the pool or any zone
29 thereof, or to permit the drilling of additional wells on a reasonable uniform plan
30 in the pool, or any zone thereof. Orders of the [state geologist] **department** may
31 be appealed to the council within thirty days.

32 2. [The provisions of subsection 1 of this section shall not apply to
33 noncommercial gas wells.

34 3.] Applicants seeking a permit for a noncommercial gas well shall file a
35 bond [or other instrument of credit acceptable to the council equal to the greater
36 of three hundred dollars or one dollar and fifty cents per well foot] **under**
37 **paragraph (d) of subdivision (1) of subsection 5 of section 259.070** and
38 meet the following conditions and procedures: an owner of a noncommercial gas
39 well with drilling rights may apply for the establishment of a drilling unit
40 [containing no less than three acres,] with a well set back of one hundred
41 sixty-five feet on which a well no deeper than eight hundred feet in depth may be
42 drilled. An owner **of a noncommercial gas well** may apply to the [council]

43 **department** for a variance to establish a [drilling] **spacing** unit [of less than
44 three acres and/or less than one hundred sixty-five feet], **to set back distances,**
45 **or both.**

259.190. 1. Illegal oil, illegal gas, and illegal product are declared to be
2 contraband and are subject to seizure and sale as herein provided; seizure and
3 sale to be in addition to any and all other remedies and penalties provided in this
4 chapter for violations relating to illegal oil, illegal gas, or illegal
5 product. Whenever the council believes that any oil, gas or product is illegal, the
6 council, acting by the attorney general, shall bring a civil action in rem in the
7 circuit court of the county where such oil, gas, or product is found, to seize and
8 sell the same, or the council may include such an action in rem for the seizure
9 and sale of illegal oil, illegal gas, or illegal product in any suit brought for an
10 injunction or penalty involving illegal oil, illegal gas, or illegal product. Any
11 person claiming an interest in oil, gas, or product affected by any such action
12 shall have the right to intervene as an interested party in such action.

13 2. Actions for the seizure and sale of illegal oil, illegal gas, or illegal
14 product shall be strictly in rem, and shall proceed in the name of the state as
15 plaintiff against the illegal oil, illegal gas, or illegal products as defendant. No
16 bond or similar undertaking shall be required of the plaintiff. Upon the filing of
17 the petition for seizure and sale, the attorney general shall issue a notice, with
18 a copy of the complaint attached thereto, which shall be served in the manner
19 provided for service of original notices in civil actions, upon any and all persons
20 having or claiming any interest in the illegal oil, illegal gas, or illegal products
21 described in the petition. Service shall be completed by the filing of an affidavit
22 by the person making the service, stating the time and manner of making such
23 service. Any person who fails to appear and answer within the period of thirty
24 days shall be forever barred by the judgment based on such service. If the court,
25 on a properly verified petition, or affidavits, or oral testimony, finds that grounds
26 for seizure and for sale exist, the court shall issue an immediate order of seizure,
27 describing the oil, gas, or product to be seized and directing the sheriff of the
28 county to take such oil, gas, or product into his custody, actual or constructive,
29 and to hold the same subject to the further order of the court. The court, in such
30 order of seizure, may direct the sheriff to deliver the oil, gas, or product seized by
31 him under the order to an agent appointed by the court as the agent of the court;
32 such agent to give bond in an amount and with such surety as the court may
33 direct, conditioned upon his compliance with the orders of the court concerning

34 the custody and disposition of such oil, gas, or product.

35 3. Any person having an interest in oil, gas, or product described in an
36 order of seizure and contesting the right of the state to the seizure and sale
37 thereof may, prior to the sale thereof as herein provided, obtain the release
38 thereof, upon furnishing bond to the sheriff, approved by the court, in an amount
39 equal to one hundred fifty percent of the market value of the oil, gas, or product
40 to be released, and conditioned as the court may direct upon redelivery to the
41 sheriff of such product released or upon payment to the sheriff of the market
42 value thereof as the court may direct, if and when ordered by the court, and upon
43 full compliance with the further orders of the court.

44 4. If the court, after a hearing upon a petition for the seizure and sale of
45 oil, gas, or product, finds that such oil, gas, or product is contraband, the court
46 shall order the sale thereof by the sheriff in the same manner and upon the same
47 notice of sale as provided by law for the sale of personal property on execution of
48 judgment entered in a civil action except that the court may order that the illegal
49 oil, illegal gas, or illegal product be sold in specified lots or portions and at
50 specified intervals. Upon such sale, title to the oil, gas, or product sold shall vest
51 in the purchaser free of the claims of any and all persons having any title thereto
52 or interest therein at or prior to the seizure thereof, and the same shall be legal
53 oil, legal gas, or legal product, as the case may be, in the hands of the purchaser.

54 5. All proceeds derived from the sale of illegal oil, illegal gas, or illegal
55 product, as above provided, after payment of costs of suit and expenses incident
56 to the sale, **and** all amounts obtained by the council from the forfeiture of [surety
57 or personal] bonds required under paragraph (d) of subdivision (1) **of subsection**
58 **5** of section 259.070, [and any money recovered under subsection 1 of section
59 259.200] shall be paid to the state treasurer and credited to the "Oil and Gas
60 Remedial Fund", which is hereby created. The money in the oil and gas remedial
61 fund may be used by the [council] **department** to pay for the plugging of, or
62 other remedial measures on, wells [and to pay the expenses incurred by the
63 council in performing the duties imposed on it by this chapter. Any unexpended
64 balance in the fund at the end of the fiscal year not exceeding fifty thousand
65 dollars is exempt from the provisions of section 33.080 relating to transfer of
66 unexpended balances to the ordinary revenue funds]. **The state treasurer**
67 **shall be custodian of the fund and may approve disbursements from the**
68 **fund in accordance with sections 30.170 and 30.180. Notwithstanding**
69 **the provisions of section 33.080, to the contrary, any moneys remaining**

70 **in the fund at the end of the biennium shall not revert to the credit of**
71 **the general revenue fund. The state treasurer shall invest moneys in**
72 **the fund in the same manner as other funds are invested. Any interest**
73 **and moneys earned on such investments shall be credited to the fund.**

259.210. 1. Whenever it appears that any person is violating or
2 threatening to violate any provision of this chapter, or any rule, regulation, or
3 order of the council, the council [shall] **or the department may request that**
4 **the attorney general** bring suit against such person in the circuit court of any
5 county where the violation occurs or is threatened, to restrain such person from
6 continuing the violation or from carrying out the threat of violation. In any such
7 suit, the court shall have jurisdiction to grant to the council, without bond or
8 other undertaking, such prohibitory and mandatory injunctions as the facts may
9 warrant, including temporary restraining orders, preliminary injunctions,
10 temporary, preliminary, or final orders restraining the movement or disposition
11 of any illegal oil, illegal gas, or illegal product, any of which the court may order
12 to be impounded or placed in the custody of an agent appointed by the court.

13 2. If the council shall fail to bring suit to enjoin a violation or a
14 threatened violation of any provision of this chapter, or any rule, regulation, or
15 order of the council, within ten days after receipt of written request to do so by
16 any person who is or will be adversely affected by such violation, the person
17 making such request may bring suit in his own behalf to restrain such violation
18 or threatened violation in any court in which the council might have brought
19 suit. The council shall be made a party defendant in such suit in addition to the
20 person violating or threatening to violate a provision of this chapter, or a rule,
21 regulation, or order of the council, and the action shall proceed and injunctive
22 relief may be granted to the council or the petitioner without bond in the same
23 manner as if suit had been brought by the council.

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

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

7 (1) Be submitted on a form provided for this purpose by the department
8 and shall furnish the department with such equipment identification and data as
9 may be necessary to demonstrate to the satisfaction of the department that
10 equipment engaged in such transportation of hazardous waste, and other
11 equipment as designated in rules and regulations pursuant to sections 260.350

12 to 260.430, is adequate to provide protection of the health of humans and the
13 environment and to comply with the provisions of any federal hazardous waste
14 management act and sections 260.350 to 260.430 and the standards, rules and
15 regulations adopted pursuant to sections 260.350 to 260.430. If approved by the
16 department, this demonstration of protection may be satisfied by providing
17 certification that the equipment so identified meets and will be operated in
18 accordance with the rules and regulations of the Missouri public service
19 commission and the federal Department of Transportation for the transportation
20 of the types of hazardous materials for which it will be used;

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

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

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

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

48 a public nuisance.

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

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

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

79 7. After six months from the effective date of the standards, rules and
80 regulations adopted by the commission pursuant to section 260.370, it shall be
81 unlawful for any person to construct, substantially alter or operate, including
82 operations specified in the rules and regulations, a hazardous waste facility
83 without first obtaining a hazardous waste facility permit for such construction,

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

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

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

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

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

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

120 first year;

121 (6) The department shall supervise any field work undertaken to collect
122 geologic and engineering data for submission with the application. The state
123 geologist and departmental engineers shall review the geologic and engineering
124 plans, respectively, and attest to their accuracy and adequacy. The applicant
125 shall pay all reasonable costs, as determined by the commission, incurred by the
126 department pursuant to this subsection.

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

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

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

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

155 11. Whenever a permit is issued, renewed, denied, suspended or revoked

156 by the department, any aggrieved person, by petition filed with the [department]
157 **administrative hearing commission** within thirty days of the decision, may
158 appeal such decision [and shall be entitled to a hearing as provided in section
159 260.400] **as provided by sections 621.250 and 640.013. Once the**
160 **administrative hearing commission has reviewed the appeal, the**
161 **administrative hearing commission shall issue a recommended decision**
162 **to the commission on permit issuance, renewal, denial, suspension, or**
163 **revocation. The commission shall issue its own decision, based on the**
164 **appeal, for permit issuance, renewal, denial, suspension, or revocation.**
165 **If the commission changes a finding of fact or conclusion of law made**
166 **by the administrative hearing commission, or modifies or vacates the**
167 **decision recommended by the administrative hearing commission, it**
168 **shall issue its own decision, which shall include findings of fact and**
169 **conclusions of law. The commission shall mail copies of its final**
170 **decision to the parties to the appeal or their counsel of record. The**
171 **commission's decision shall be subject to judicial review pursuant to**
172 **chapter 536, except that the court of appeals district with territorial**
173 **jurisdiction coextensive with the county where the hazardous waste**
174 **facility is to be located or is located, shall have original jurisdiction. No**
175 **judicial review shall be available until and unless all administrative**
176 **remedies are exhausted.**

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

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

191 (1) On-site storage of hazardous wastes where such storage is exempted

192 by the commission by rule or regulation; however, such storage must conform to
193 the provisions of any federal hazardous waste management act and sections
194 260.350 to 260.430 and the applicable standards, rules and regulations adopted
195 pursuant to sections 260.350 to 260.430 and any other applicable hazardous
196 materials storage and spill-prevention requirements provided by law;

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

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

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

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

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

222 (2) An application fee of not more than five hundred dollars for a facility
223 that recovers waste generated at the same facility or an application fee of not
224 more than one thousand dollars for a facility that recovers waste generated at
225 off-site sources. Such fees shall be deposited in the hazardous waste fund created
226 in section 260.391. The department shall review such application for conformance
227 with applicable laws, rules and standard engineering principles and

228 practices. The applicant shall pay to the department all reasonable costs, as
229 determined by the commission, incurred by the department pursuant to this
230 subsection. All such funds shall be deposited in the hazardous waste fund
231 created in section 260.391.

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

256 16. No person, otherwise qualified pursuant to sections 260.350 to 260.430
257 for a license to transport hazardous wastes or for a permit to construct,
258 substantially alter or operate a hazardous waste facility, shall be denied such
259 license or permit on the basis of a lack of need for such transport service or such
260 facility because of the existence of other services or facilities capable of meeting
261 that need; except that permits for hazardous waste facilities may be denied on
262 determination made by the department that the financial resources of the persons
263 applying are such that the continued operation of the sites in accordance with

264 sections 260.350 to 260.430 cannot be reasonably assured or on determination
265 made by the department that the probable volume of business is insufficient to
266 ensure and maintain the solvency of then existing permitted hazardous waste
267 facilities.

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

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

260.500. As used in sections 260.500 to 260.550, unless the context clearly
2 indicates otherwise, the following terms mean:

3 (1) "Cleanup", all actions necessary to contain, collect, control, identify,
4 analyze, clean up, treat, disperse, remove, or dispose of a hazardous substance;

5 (2) "Cleanup costs", all costs incurred by the state or any of its political
6 subdivisions, or their agents, or by any other person participating with the
7 approval of the department of natural resources in the prevention or mitigation
8 of damages from a hazardous substance emergency or the cleanup of a hazardous
9 substance involved in a hazardous substance emergency, including a
10 proportionate share of those costs necessary to maintain the services authorized
11 in sections 260.500 to 260.550;

12 (3) "Department", the department of natural resources;

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

14 (5) "Hazardous substance", any substance or mixture of substances that
15 presents a danger to the public health or safety or the environment and includes:

16 (a) Any hazardous waste identified or listed by the department pursuant
17 to sections 260.350 to 260.430;

18 (b) Any element, compound, mixture, solution, or substance designated
19 pursuant to Sections 101(14) and 102 of the Comprehensive Environmental
20 Response, Compensation and Liability Act of 1980, as amended, and Section 302
21 of the Superfund Amendments and Reauthorization Act of 1986, as amended; and

22 (c) Any hazardous material designated by the Secretary of the United

23 States Department of Transportation pursuant to the Hazardous Materials
24 Transportation Act;

25 (d) "Hazardous substances" does not include radioactive materials, wastes,
26 emissions or discharges that are licensed or regulated by laws of the federal
27 government or of this state. However, such material released due to a
28 transportation accident shall be considered a hazardous substance;

29 (6) "Hazardous substance emergency":

30 (a) Any release of hazardous substances in quantities equal to or in excess
31 of those determined pursuant to Section 101(14) or 102 of the Comprehensive
32 Environmental Response, Compensation and Liability Act of 1980, as amended,
33 and Section 304 of the Superfund Amendments and Reauthorization Act of 1986,
34 as amended;

35 (b) Any release of petroleum including crude oil or any fraction thereof,
36 natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for
37 fuel (or mixtures of natural gas and such synthetic gas) in excess of fifty gallons
38 for liquids or three hundred cubic feet for gases, except that the notification and
39 reporting of any release of natural gas or natural gas mixtures by or from
40 intrastate facilities, regardless of the quantity of such release, shall be as
41 specified by the public service commission rather than pursuant to the
42 notification and reporting requirements contained in, or authorized by, sections
43 260.500 to 260.550. Interstate natural gas pipeline facilities shall report natural
44 gas releases to the state and the National Response Center in accordance with
45 federal Department of Transportation regulatory requirements;

46 (c) Any release of a hazardous waste which is reportable pursuant to
47 sections 260.350 to 260.430;

48 (d) Any release of a hazardous substance which requires immediate notice
49 pursuant to Part 171 of Title 49 of the Code of Federal Regulations;

50 (e) The department may promulgate rules and regulations identifying the
51 substances and the quantities thereof which, if released, constitute a hazardous
52 substance emergency;

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

58 (8) "Person having control over a hazardous substance", any person

59 producing, handling, storing, transporting, refining, or disposing of a hazardous
60 substance when a hazardous substance emergency occurs, including bailees,
61 carriers, and any other person in control of a hazardous substance when a
62 hazardous substance emergency occurs, whether they own the hazardous
63 substance or are operating under a lease, contract, or other agreement with the
64 legal owner thereof;

65 (9) "Release", any threatened or real emission, discharge, spillage,
66 leakage, pumping, pouring, emptying or dumping of a substance into or onto the
67 land, air or waters of the state unless done in compliance with the conditions of
68 a federal or state permit, unless the substance is confined and is expected to stay
69 confined to property owned, leased or otherwise controlled by the person having
70 control over the substance, or unless, in the case of pesticides, if application is
71 done in accordance with the product label;

72 (10) "State of Missouri basic emergency operations plan", the state plan,
73 its annexes, and appendices as developed or maintained by the state emergency
74 management agency for response to natural and man-made disasters in this state;

75 (11) "Waters of the state", **all waters within the jurisdiction of this**
76 **state, including** all rivers, streams, lakes and other bodies of surface and
77 subsurface water lying within or forming a part of the boundaries of the state
78 which are not entirely confined and located completely upon lands owned, leased
79 or otherwise controlled by a single person or by two or more persons jointly or as
80 tenants in common [and includes waters of the United States lying within the
81 state].

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

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

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

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

28 5. In any hearing held pursuant to this section the burden of proof shall
29 be on the applicant for a permit. Any decision of the commission made pursuant
30 to a hearing held under this section is subject to judicial review as provided in
31 section 444.700.] **Whenever a strip mine operator permit provided under**
32 **section 444.540 is issued, denied, suspended, or revoked by the**
33 **department of natural resources, any aggrieved person, by petition**
34 **filed with the administrative hearing commission within thirty days of**
35 **the decision, may appeal such decision as provided by sections 621.250**
36 **and 640.013. For purposes of an appeal, the administrative hearing**
37 **commission may consider, based on competent and substantial**
38 **scientific evidence on the record, whether an interested party's health,**
39 **safety, or livelihood will be unduly impaired by the issuance, denial,**
40 **suspension, or revocation of the permit. The administrative hearing**
41 **commission may also consider, based on competent and substantial**
42 **scientific evidence on the record, whether the operator has**
43 **demonstrated, during the five-year period immediately preceding the**
44 **date of the permit application, a pattern of noncompliance at other**
45 **locations in Missouri that suggests a reasonable likelihood of future**
46 **acts of noncompliance. In determining whether a reasonable likelihood**
47 **of noncompliance will exist in the future, the administrative hearing**
48 **commission may look to past acts of noncompliance in Missouri, but**
49 **only to the extent they suggest a reasonable likelihood of future acts of**

50 noncompliance. Such past acts of noncompliance in Missouri, in and of
51 themselves, are an insufficient basis to suggest a reasonable likelihood
52 of future acts of noncompliance. In addition, such past acts shall not
53 be used as a basis to suggest a reasonable likelihood of future acts of
54 noncompliance unless the noncompliance has caused or has the
55 potential to cause, a risk to human health or to the environment, or has
56 caused or has potential to cause pollution, or was knowingly
57 committed, or is defined by the United States Environmental Protection
58 Agency as other than minor. If a hearing petitioner demonstrates or
59 the administrative hearing commission finds either present acts of
60 noncompliance or a reasonable likelihood that the permit seeker or the
61 operations of associated persons or corporations in Missouri will be in
62 noncompliance in the future, such a showing will satisfy the
63 noncompliance requirement in this subsection. In addition, such basis
64 must be developed by multiple noncompliances of any environmental
65 law administered by the Missouri department of natural resources at
66 any single facility in Missouri that resulted in harm to the environment
67 or impaired the health, safety, or livelihood of persons outside the
68 facility. For any permit seeker that has not been in business in
69 Missouri for the past five years, the administrative hearing commission
70 may review the record of noncompliance in any state where the
71 applicant has conducted business during the past five years. Once the
72 administrative hearing commission has reviewed the appeal, the
73 administrative hearing commission shall issue a recommended decision
74 to the commission on permit issuance, denial, suspension, or
75 revocation. The commission shall issue its own decision, based on the
76 appeal, for permit issuance, denial, suspension, or revocation. If the
77 commission changes a finding of fact or conclusion of law made by the
78 administrative hearing commission, or modifies or vacates the decision
79 recommended by the administrative hearing commission, it shall issue
80 its own decision, which shall include findings of fact and conclusions
81 of law. The commission shall mail copies of its final decision to the
82 parties to the appeal or their counsel of record. The commission's
83 decision shall be subject to judicial review pursuant to chapter 536,
84 except that the court of appeals district with territorial jurisdiction
85 coextensive with the county where the mine is located or is to be
86 located shall have original jurisdiction. No judicial review shall be

87 available until and unless all administrative remedies are exhausted.

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

12 [2.] The director's decision shall be deemed to be the decision of the
13 director of the department of natural resources and shall be subject to appeal to
14 the administrative hearing commission as provided by sections 640.013 and
15 621.250.

16 [3.] **2. Whenever a surface mining operation permit provided**
17 **under section 444.772 is issued, denied, suspended, or revoked by the**
18 **department of natural resources, any aggrieved person, by petition**
19 **filed with the administrative hearing commission within thirty days of**
20 **the decision, may appeal such decision as provided by sections 621.250**
21 **and 640.013.** For purposes of an appeal, the administrative hearing commission
22 may consider, based on competent and substantial scientific evidence on the
23 record, whether an interested party's health, safety or livelihood will be unduly
24 impaired by the issuance, **denial, suspension, or revocation** of the
25 permit. The administrative hearing commission may also consider, based on
26 competent and substantial scientific evidence on the record, whether the operator
27 has demonstrated, during the five-year period immediately preceding the date of
28 the permit application, a pattern of noncompliance at other locations in Missouri
29 that suggests a reasonable likelihood of future acts of noncompliance. In
30 determining whether a reasonable likelihood of noncompliance will exist in the
31 future, the administrative hearing commission may look to past acts of
32 noncompliance in Missouri, but only to the extent they suggest a reasonable
33 likelihood of future acts of noncompliance. Such past acts of noncompliance in
34 Missouri, in and of themselves, are an insufficient basis to suggest a reasonable
35 likelihood of future acts of noncompliance. In addition, such past acts shall not

36 be used as a basis to suggest a reasonable likelihood of future acts of
37 noncompliance unless the noncompliance has caused or has the potential to cause,
38 a risk to human health or to the environment, or has caused or has potential to
39 cause pollution, or was knowingly committed, or is defined by the United States
40 Environmental Protection Agency as other than minor. If a hearing petitioner
41 **demonstrates** or the administrative hearing commission [**demonstrates**] **finds**
42 either present acts of noncompliance or a reasonable likelihood that the permit
43 seeker or the operations of associated persons or corporations in Missouri will be
44 in noncompliance in the future, such a showing will satisfy the noncompliance
45 requirement in this subsection. In addition, such basis must be developed by
46 multiple noncompliances of any environmental law administered by the Missouri
47 department of natural resources at any single facility in Missouri that resulted
48 in harm to the environment or impaired the health, safety or livelihood of persons
49 outside the facility. For any permit seeker that has not been in business in
50 Missouri for the past five years, the administrative hearing commission may
51 review the record of noncompliance in any state where the applicant has
52 conducted business during the past five years. [Once] The administrative
53 hearing commission [has reviewed the appeal, the administrative hearing
54 commission] shall [make a recommendation] **issue a recommended decision**
55 to the commission on permit issuance [or], denial, **suspension, or revocation.**

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

444.980. **Whenever a surface coal mining operation permit**
2 **provided under section 444.815 or a coal exploration operation permit**
3 **provided under section 444.845 is issued, denied, suspended, or revoked**
4 **by the department of natural resources, any aggrieved person, by**

5 petition filed with the administrative hearing commission within thirty
6 days of the decision, may appeal such decision as provided by sections
7 621.250 and 640.013. For purposes of an appeal, the administrative
8 hearing commission may consider, based on competent and substantial
9 scientific evidence on the record, whether an interested party's health,
10 safety, or livelihood will be unduly impaired by the issuance, denial,
11 suspension, or revocation of the permit. The administrative hearing
12 commission may also consider, based on competent and substantial
13 scientific evidence on the record, whether the operator has
14 demonstrated, during the five-year period immediately preceding the
15 date of the permit application, a pattern of noncompliance at other
16 locations in Missouri that suggests a reasonable likelihood of future
17 acts of noncompliance. In determining whether a reasonable likelihood
18 of noncompliance will exist in the future, the administrative hearing
19 commission may look to past acts of noncompliance in Missouri, but
20 only to the extent they suggest a reasonable likelihood of future acts of
21 noncompliance. Such past acts of noncompliance in Missouri, in and of
22 themselves, are an insufficient basis to suggest a reasonable likelihood
23 of future acts of noncompliance. In addition, such past acts shall not
24 be used as a basis to suggest a reasonable likelihood of future acts of
25 noncompliance unless the noncompliance has caused or has the
26 potential to cause, a risk to human health or to the environment, or has
27 caused or has potential to cause pollution, or was knowingly
28 committed, or is defined by the United States Environmental Protection
29 Agency as other than minor. If a hearing petitioner demonstrates or
30 the administrative hearing commission finds either present acts of
31 noncompliance or a reasonable likelihood that the permit seeker or the
32 operations of associated persons or corporations in Missouri will be in
33 noncompliance in the future, such a showing will satisfy the
34 noncompliance requirement in this subsection. In addition, such basis
35 must be developed by multiple noncompliances of any environmental
36 law administered by the Missouri department of natural resources at
37 any single facility in Missouri that resulted in harm to the environment
38 or impaired the health, safety, or livelihood of persons outside the
39 facility. For any permit seeker that has not been in business in
40 Missouri for the past five years, the administrative hearing commission
41 may review the record of noncompliance in any state where the

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

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

18 2. Except as otherwise provided by law, any person or entity who is a
19 party to, or who is aggrieved or adversely affected by, any finding, order, decision,

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

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

56 commission may change a finding of fact or conclusion of law made by the
57 administrative hearing commission, or may vacate or modify the recommended
58 decision issued by the administrative hearing commission, only if the commission
59 states in writing the specific reason for a change made under this subsection.

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

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

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

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

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

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

16 3. Permit applicants shall show, as part of their application, that a

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

24 4. Any community water system or nontransient, noncommunity water
25 system against which an administrative order has been issued for significant
26 noncompliance with the federal Safe Drinking Water Act, as amended, sections
27 640.100 to 640.140 or any rule or regulation promulgated thereunder shall be
28 required to show that a permanent organization exists that serves as the
29 continuing operating authority for the facility and that such continuing operating
30 authority has the managerial, technical and financial capacity to comply with
31 sections 640.100 to 640.140 and regulations promulgated thereunder. If the
32 water system cannot show to the department's satisfaction that such continuing
33 operating authority exists, or if the water system is not making substantial
34 progress toward compliance, the water system's permit may be revoked. The
35 continuing operating authority may [reapply for a permit in accordance with rules
36 promulgated by the commission] **appeal such decision to the administrative
37 hearing commission as provided by sections 621.250 and 640.013.**

38 5. **Whenever a permit is issued, denied, suspended, or revoked by
39 the department, any aggrieved person, by petition filed with the
40 administrative hearing commission within thirty days of the decision,
41 may appeal such decision as provided by sections 621.250 and
42 640.013. Once the administrative hearing commission has reviewed the
43 appeal, the administrative hearing commission shall issue a
44 recommended decision to the commission on permit issuance, denial,
45 suspension, or revocation. The commission shall issue its own decision,
46 based on the appeal, for permit issuance, denial, suspension, or
47 revocation. If the commission changes a finding of fact or conclusion
48 of law made by the administrative hearing commission, or modifies or
49 vacates the decision recommended by the administrative hearing
50 commission, it shall issue its own decision, which shall include findings
51 of fact and conclusions of law. The commission shall mail copies of its
52 final decision to the parties to the appeal or their counsel of**

53 **record. The commission's decision shall be subject to judicial review**
54 **pursuant to chapter 536, except that the court of appeals district with**
55 **territorial jurisdiction coextensive with the county where the**
56 **waterworks is located, or is to be located, shall have original**
57 **jurisdiction. No judicial review shall be available until and unless all**
58 **administrative remedies are exhausted.**

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

5 2. Every source required to obtain a construction permit shall make
6 application [therefor] to the department [and shall submit therewith] **that**
7 **includes** such plans and specifications as prescribed by rule. The director shall
8 promptly investigate each application, and if he **or she** determines that the
9 source meets and will meet the requirements of sections 643.010 to 643.190 and
10 the rules promulgated pursuant thereto, he **or she** shall issue a construction
11 permit with such conditions as he deems necessary to ensure that the source will
12 meet the requirements of sections 643.010 to 643.190 and the rules. An
13 application submitted for the construction or modification and operation of any
14 regulated air contaminant source shall receive a unified construction and
15 operating permit review process under section 643.078, unless the applicant
16 requests in writing that the construction and operating permits be reviewed
17 separately. If the director determines that the source does not meet or will not
18 meet the requirements of sections 643.010 to 643.190 and the rules promulgated
19 pursuant thereto, he **or she** shall deny the construction permit.

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

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

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

38 6. **As provided by sections 621.250 and 640.013,** any aggrieved
39 person may appeal any permit decision made under this section, including failure
40 to render a decision within the time period established in this section. A notice
41 of appeal shall be filed with the **administrative hearing** commission within
42 thirty days of the director's action or within thirty days from the date by which
43 the decision should have been rendered if the director has failed to act. **Once**
44 **the administrative hearing commission has reviewed the appeal, the**
45 **administrative hearing commission shall issue a recommended decision**
46 **to the commission on permit issuance, renewal, denial, suspension, or**
47 **revocation, or any condition of the permit. The commission shall issue**
48 **its own decision, based on the appeal, for permit issuance, renewal,**
49 **denial, suspension, or revocation, or any condition of the permit. If the**
50 **commission changes a finding of fact or conclusion of law made by the**
51 **administrative hearing commission, or modifies or vacates the decision**
52 **recommended by the administrative hearing commission, it shall issue**
53 **its own decision, which shall include findings of fact and conclusions**
54 **of law. The commission shall mail copies of its final decision to the**
55 **parties to the appeal or their counsel of record. The commission's**
56 **decision shall be subject to judicial review pursuant to chapter 536,**
57 **except that the court of appeals district with territorial jurisdiction**
58 **coextensive with the county where the air contaminant source is**
59 **located or is to be located, shall have original jurisdiction. No judicial**
60 **review shall be available until and unless all administrative remedies**
61 **are exhausted.**

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

67 issuance of a permit wherein the proposed construction is that of a private
68 residence.

69 (2) Upon completion of the department's evaluation of the application, but
70 before receiving a construction permit, the applicant shall reimburse the
71 department for all reasonable costs incurred by the department whether or not
72 a construction permit is issued by the department or withdrawn by the applicant.
73 If the department fails to approve or deny a construction permit within the time
74 period specified in this section, the applicant shall not be required to reimburse
75 the department for the review of the construction permit application. The
76 commission shall, by rule, set the hourly charge, not to exceed the actual cost
77 thereof and not to exceed fifty dollars per hour, for review of each construction
78 permit application. The commission may exempt any person from payment of the
79 hourly fees under this subdivision, or may reduce such fees, upon an appeal filed
80 with the commission by such person stating that the fee will create an
81 unreasonable economic hardship upon such person. The commission may conduct
82 a closed meeting and have closed records, as defined in section 610.010, for the
83 purpose of gathering information from the person filing an appeal for the
84 exemption. Information obtained in this meeting may be held confidential by the
85 commission upon the request of the person filing the appeal for exemption. If the
86 fees or any portion of the fees imposed by this section are not paid within ninety
87 days from the date of billing there shall be imposed interest upon the unpaid
88 amount at the rate of ten percent per annum from the date of billing until
89 payment is actually made. A construction permit application for a portable
90 facility may include any site at which the portable facility is expected to be used;
91 however, a separate site permit application shall be required when the portable
92 facility is used or expected to be used at any site which is not included in a
93 previously approved construction permit application. Upon receipt of the
94 application, the applicant shall be notified by the department of hourly fees and
95 requirements put forth in this subdivision.

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

99 (4) All moneys received pursuant to this section and section 643.073 and
100 any other moneys so designated shall be placed in the state treasury and credited
101 to the natural resources protection fund air pollution permit fee subaccount,
102 created in section 640.220, and shall be expended for the administration of this

103 section and sections 643.073 and 643.078 and for no other purpose, and shall be
104 used to supplement state general revenue and federal funds appropriated to the
105 department. After appropriation, the moneys received pursuant to this section
106 and in such fund subaccount shall be expended for the administration of this
107 section and for no other purpose. Any unexpended balance in such fund
108 subaccount at the end of any appropriation period shall not be transferred to the
109 general revenue fund of the state treasury and shall be exempt from the
110 provisions of section 33.080. Any interest received on such deposits shall be
111 credited to the fund subaccount.

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

643.078. 1. It shall be unlawful for any person to operate any regulated
2 air contaminant source after August 28, 1992, without an operating permit except
3 as otherwise provided in sections 643.010 to 643.190.

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

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

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

23 5. Within one hundred and eighty days of commencing operations, the

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

33 6. If the director determines that an air contaminant source does not meet
34 the terms and conditions of the construction permit and that the operation of the
35 source will result in emissions which exceed the limits established in the
36 construction permit, he shall not validate the operating permit. If the source
37 corrects the deficiency, the director shall then validate the operating permit. If
38 the source is unable to correct the deficiency, then the director and the applicant
39 may, by mutual agreement, add such terms and conditions to the operating
40 permit which are deemed appropriate, so long as the emissions from the air
41 contaminant source do not exceed the limits established in the construction
42 permit, and the director shall validate the operating permit. The director may
43 add terms and conditions to the operating permit which allow the source to
44 exceed the emission limits established in the construction permit. In such a case,
45 the director shall notify the affected public and the commission shall, upon
46 request by any affected person, hold a public hearing upon the revised operating
47 permit application.

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

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

57 9. The director shall take action within thirty days after a request for
58 validation of the operating permit and shall render a decision within one hundred
59 twenty days of receipt of a request for issuance of an operating permit for a class

60 B source. The director shall render a decision within the time period established
61 in section 502 of the federal Clean Air Act, as amended, 42 U.S.C. 7661, for a
62 class A source. Any affected person may appeal any permit decision, including
63 failure to render a decision within the time period established in this section, to
64 the **administrative hearing commission as provided by subsection 16 of**
65 **this section, section 621.250, and section 640.013.**

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

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

72 12. The director shall enforce all applicable federal rules, standards and
73 requirements issued under the federal Clean Air Act, as amended, 42 U.S.C.
74 7661, et seq., and shall incorporate such applicable standards and any limitations
75 established pursuant to Title III into operating permits as required under Title
76 V of the federal Clean Air Act, as amended, 42 U.S.C. 7661, et seq.

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

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

92 15. An air contaminant source with a valid operating permit which
93 submits a complete application for a permit renewal at least six months prior to
94 the expiration of the permit shall be deemed to have a valid operating permit
95 until the director acts upon its permit application. The director shall promptly

96 notify the applicant in writing of his action on the application and if the
97 operating permit is not issued state the reasons therefor.

98 16. The applicant may appeal to the **administrative hearing**
99 commission if [an] **a construction, modification, or** operating permit is [not]
100 issued, **renewed, denied, suspended, modified, or revoked by the**
101 **department**, or may appeal any condition[, suspension, modification or
102 revocation] of any permit by filing [notice of appeal] **a petition** with the
103 **administrative hearing** commission within thirty days of the notice of the
104 director's response to the request for issuance of the **construction,**
105 **modification, or** operating permit **as provided by sections 621.250 and**
106 **640.013. Once the administrative hearing commission has reviewed the**
107 **appeal, the administrative hearing commission shall issue a**
108 **recommended decision to the commission on the issuance, renewal,**
109 **denial, suspension, modification, revocation, or any condition of the**
110 **permit. The commission shall issue its own decision, based on the**
111 **appeal, for the issuance, renewal, denial, suspension, modification,**
112 **revocation, or any condition of the permit. If the commission changes**
113 **a finding of fact or conclusion of law made by the administrative**
114 **hearing commission, or modifies or vacates the decision recommended**
115 **by the administrative hearing commission, it shall issue its own**
116 **decision, which shall include findings of fact and conclusions of**
117 **law. The commission shall mail copies of its final decision to the**
118 **parties to the appeal or their counsel of record. The commission's**
119 **decision shall be subject to judicial review pursuant to chapter 536,**
120 **except that the court of appeals district with territorial jurisdiction**
121 **coextensive with the county where the air contaminant source is**
122 **located or is to be located shall have original jurisdiction. No judicial**
123 **review shall be available until and unless all administrative remedies**
124 **are exhausted.**

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

644.011. Whereas the pollution of the waters of this state constitutes a
2 menace to public health and welfare, creates a public nuisance, is harmful to
3 wildlife, fish and aquatic life and impairs domestic, agricultural, industrial,
4 recreational and other legitimate uses of water, and whereas the problem of water

5 pollution in this state is closely related to the problem of water pollution in
6 adjoining states, and whereas this state must possess the authority required of
7 states in the Federal Water Pollution Control Act as amended if it is to retain
8 control of its water pollution control programs, it is hereby declared to be the
9 public policy of this state to conserve the waters of the state and to protect,
10 maintain, and improve the quality thereof for public water supplies and for
11 domestic, agricultural, industrial, recreational and other legitimate beneficial
12 uses and for the propagation of wildlife, fish and aquatic life; to provide that no
13 waste be discharged into any waters of the state without first receiving the
14 necessary treatment or other corrective action to protect the legitimate beneficial
15 uses of such waters and meet the requirements of the Federal Water Pollution
16 Control Act as amended; to provide for the prevention, abatement and control of
17 new or existing water pollution; and to cooperate with other agencies of the state,
18 agencies of other states, the federal government and any other persons in
19 carrying out these objectives. **It is also the policy of this state to strive to**
20 **meet these objectives while maintaining maximum employment and full**
21 **industrial development of the state. The commission shall seek the**
22 **accomplishment of these objectives through the prevention, abatement,**
23 **and control of water pollution by all practical and economically**
24 **feasible methods.**

644.016. When used in sections 644.006 to 644.141 and in standards, rules
2 and regulations promulgated pursuant to sections 644.006 to 644.141, the
3 following words and phrases mean:

4 (1) "Aquaculture facility", a hatchery, fish farm, or other facility used for
5 the production of aquatic animals that is required to have a permit pursuant to
6 the federal Clean Water Act, as amended, 33 U.S.C. 1251, et seq.;

7 (2) "Commission", the clean water commission of the state of Missouri
8 created in section 644.021;

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

- 17 (4) "Department", the department of natural resources;
- 18 (5) "Director", the director of the department of natural resources;
- 19 (6) "Discharge", the causing or permitting of one or more water
20 contaminants to enter the waters of the state;
- 21 (7) "Effluent control regulations", limitations on the discharge of water
22 contaminants;
- 23 (8) "General permit", a permit written with a standard group of conditions
24 and with applicability intended for a designated category of water contaminant
25 sources that have the same or similar operations, discharges and geographical
26 locations, and that require the same or similar monitoring, and that would be
27 more appropriately controlled pursuant to a general permit rather than pursuant
28 to a site-specific permit;
- 29 (9) "General permit template", a draft general permit that is being
30 developed through a public participation process;
- 31 (10) "Human sewage", human excreta and wastewater, including bath and
32 toilet waste, residential laundry waste, residential kitchen waste, and other
33 similar waste from household or establishment appurtenances;
- 34 (11) "Income" includes retirement benefits, consultant fees, and stock
35 dividends;
- 36 (12) "Minor violation", a violation which possesses a small potential to
37 harm the environment or human health or cause pollution, was not knowingly
38 committed, and is not defined by the United States Environmental Protection
39 Agency as other than minor;
- 40 (13) "Permit by rule", a permit granted by rule, not by a paper certificate,
41 and conditioned by the permit holder's compliance with commission rules;
- 42 (14) "Permit holders or applicants for a permit" shall not include officials
43 or employees who work full time for any department or agency of the state of
44 Missouri;
- 45 (15) "Person", any individual, partnership, copartnership, firm, company,
46 public or private corporation, association, joint stock company, trust, estate,
47 political subdivision, or any agency, board, department, or bureau of the state or
48 federal government, or any other legal entity whatever which is recognized by law
49 as the subject of rights and duties;
- 50 (16) "Point source", any discernible, confined and discrete conveyance,
51 including but not limited to any pipe, ditch, channel, tunnel, conduit, well,
52 discrete fissure, container, rolling stock, concentrated animal feeding operation,

53 or vessel or other floating craft, from which pollutants are or may be
54 discharged. Point source does not include agricultural storm water discharges
55 and return flows from irrigated agriculture;

56 (17) "Pollution", such contamination or other alteration of the physical,
57 chemical or biological properties of any waters of the state, including change in
58 temperature, taste, color, turbidity, or odor of the waters, or such discharge of any
59 liquid, gaseous, solid, radioactive, or other substance into any waters of the state
60 as will or is reasonably certain to create a nuisance or render such waters
61 harmful, detrimental or injurious to public health, safety or welfare, or to
62 domestic, industrial, agricultural, recreational, or other legitimate beneficial uses,
63 or to wild animals, birds, fish or other aquatic life;

64 (18) "Pretreatment regulations", limitations on the introduction of
65 pollutants or water contaminants into publicly owned treatment works or
66 facilities which the commission determines are not susceptible to treatment by
67 such works or facilities or which would interfere with their operation, except that
68 wastes as determined compatible for treatment pursuant to any federal water
69 pollution control act or guidelines shall be limited or treated pursuant to this
70 chapter only as required by such act or guidelines;

71 (19) "Residential housing development", any land which is divided or
72 proposed to be divided into three or more lots, whether contiguous or not, for the
73 purpose of sale or lease as part of a common promotional plan for residential
74 housing;

75 (20) "Sewer system", pipelines or conduits, pumping stations, and force
76 mains, and all other structures, devices, appurtenances and facilities used for
77 collecting or conducting wastes to an ultimate point for treatment or handling;

78 (21) "Significant portion of his or her income" shall mean ten percent of
79 gross personal income for a calendar year, except that it shall mean fifty percent
80 of gross personal income for a calendar year if the recipient is over sixty years of
81 age, and is receiving such portion pursuant to retirement, pension, or similar
82 arrangement;

83 (22) "Site-specific permit", a permit written for discharges emitted from
84 a single water contaminant source and containing specific conditions, monitoring
85 requirements and effluent limits to control such discharges;

86 (23) "Treatment facilities", any method, process, or equipment which
87 removes, reduces, or renders less obnoxious water contaminants released from
88 any source;

89 (24) "Water contaminant", any particulate matter or solid matter or liquid
90 or any gas or vapor or any combination thereof, or any temperature change which
91 is in or enters any waters of the state either directly or indirectly by surface
92 runoff, by sewer, by subsurface seepage or otherwise, which causes or would cause
93 pollution upon entering waters of the state, or which violates or exceeds any of
94 the standards, regulations or limitations set forth in sections 644.006 to 644.141
95 or any federal water pollution control act, or is included in the definition of
96 pollutant in such federal act;

97 (25) "Water contaminant source", the point or points of discharge from a
98 single tract of property on which is located any installation, operation or
99 condition which includes any point source defined in sections 644.006 to 644.141
100 and nonpoint source pursuant to any federal water pollution control act, which
101 causes or permits a water contaminant therefrom to enter waters of the state
102 either directly or indirectly;

103 (26) "Water quality standards", specified concentrations and durations of
104 water contaminants which reflect the relationship of the intensity and
105 composition of water contaminants to potential undesirable effects;

106 (27) "Waters of the state", **all waters within the jurisdiction of this**
107 **state, including** all rivers, streams, lakes and other bodies of surface and
108 subsurface water lying within or forming a part of the boundaries of the state
109 which are not entirely confined and located completely upon lands owned, leased
110 or otherwise controlled by a single person or by two or more persons jointly or as
111 tenants in common [and includes waters of the United States lying within the
112 state].

644.051. 1. It is unlawful for any person:

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

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

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

12 (4) To discharge any radiological, chemical, or biological warfare agent or

13 high-level radioactive waste into the waters of the state.

14 2. It shall be unlawful for any person to operate, use or maintain any
15 water contaminant or point source in this state that is subject to standards, rules
16 or regulations promulgated pursuant to the provisions of sections 644.006 to
17 644.141 unless such person holds an operating permit from the commission,
18 subject to such exceptions as the commission may prescribe by rule or
19 regulation. However, no operating permit shall be required of any person for any
20 emission into publicly owned treatment facilities or into publicly owned sewer
21 systems tributary to publicly owned treatment works.

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

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

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

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

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

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

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

39 (b) To address noncompliance;

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

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

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

49 following conditions:

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

54 b. Such point source system shall be constructed in accordance with the
55 registered professional engineer's design and plans; and

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

61 A governmental unit may apply to the department for authorization to operate
62 a local supervised program, and the department may authorize such a program.

63 A local supervised program would recognize the governmental unit's engineering
64 capacity and ability to conduct engineering work, supervise construction and
65 maintain compliance with relevant operating permit requirements.

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

82 5. The director shall grant or deny the permit within sixty days after all
83 requirements of the Federal Water Pollution Control Act concerning issuance of
84 permits have been satisfied unless the application does not require any permit

85 pursuant to any federal water pollution control act. The director or the
86 commission may require the applicant to provide and maintain such facilities or
87 to conduct such tests and monitor effluents as necessary to determine the nature,
88 extent, quantity or degree of water contaminant discharged or released from the
89 source, establish and maintain records and make reports regarding such
90 determination.

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

120 7. In any hearing held pursuant to this section that involves a permit,

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

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

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

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

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

157 and quantity of effluent being introduced or to be introduced into such works or
158 facility and the anticipated impact of such introduction on the quality or quantity
159 of effluent to be released from such works or facility into waters of the state.

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

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

193 of the general permit, whichever is later. In regard to an application for an
194 initial general permit that requires an individual public participation process, the
195 director shall issue or deny the permit within ninety days of the director's receipt
196 of the application.

197 (2) If the department fails to issue or deny with good cause a construction
198 or operating permit application within the time frames established in subdivision
199 (1) of this subsection, the department shall refund the full amount of the initial
200 application fee within forty-five days of failure to meet the established time
201 frame. If the department fails to refund the application fee within forty-five days,
202 the refund amount shall accrue interest at a rate established pursuant to section
203 32.065.

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

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

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

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

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

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

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

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

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

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

263 (3) The director shall hold a public informational meeting to provide
264 information on anticipated permit conditions and requirements and to receive

265 informal comments from permittees and other interested persons. The director
266 shall include notice of the public informational meeting with the notice of intent
267 to issue a new general permit or reissue a general permit under subdivision (2)
268 of this subsection. The notice of the public informational meeting, including the
269 date, time and location, shall be posted on the department's website at least
270 thirty days in advance of the public meeting. If the meeting is being held for
271 reissuance of a general permit, notice shall also be made by electronic mail to all
272 permittees holding the current general permit which is expiring. Notice to
273 current permittees shall be made at least twenty days prior to the public meeting;

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

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

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

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

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

644.056. 1. The director shall cause investigations to be made upon the
2 request of the commission or upon receipt of information concerning alleged
3 violations of sections 644.006 to 644.141 or any standard, limitation, order, rule
4 or regulation promulgated pursuant thereto, or any term or condition of any

5 permit and may cause to be made any other investigations he or she deems
6 advisable. Violations shall include obtaining a permit by misrepresentation or
7 failure to fully disclose all relevant facts.

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

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

41 **respondent to a formal complaint may appear at the hearing in person**
42 **or by counsel, and may make oral argument, offer testimony and**
43 **evidence, and cross-examine witnesses. After due consideration of the**
44 **record, or upon default in appearance of the respondent on the return**
45 **day specified in the notice given as provided in this subsection, the**
46 **commission shall issue and enter such final order, or make such final**
47 **determination as it deems appropriate under the circumstances, and it**
48 **shall immediately notify the petitioner or respondent thereof in writing**
49 **by certified or registered mail.**

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

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

62 6. After due consideration of the record, or upon default in appearance of
63 the respondent on the return day specified in the notice given as provided in
64 subsection 3, the commission shall issue and enter such final order, or make such
65 final determination as it deems appropriate under the circumstances, and it shall
66 immediately notify the petitioner or respondent thereof in writing by certified or
67 registered mail.] **Whenever a permit under this chapter is revoked,**
68 **terminated, or modified by the department of natural resources, the**
69 **applicant, by petition filed with the administrative hearing commission**
70 **within thirty days of the decision, may appeal such decision as**
71 **provided by sections 621.250 and 640.013. Once the administrative**
72 **hearing commission has reviewed the appeal, the administrative**
73 **hearing commission shall issue a recommended decision to the**
74 **commission on permit revocation, termination, or modification. The**
75 **commission shall issue its own decision, based on the appeal, for permit**
76 **revocation, termination, or modification. If the commission changes a**

77 finding of fact or conclusion of law made by the administrative hearing
78 commission, or modifies or vacates the decision recommended by the
79 administrative hearing commission, it shall issue its own decision,
80 which shall include findings of fact and conclusions of law. The
81 commission shall mail copies of its final decision to the parties to the
82 appeal or their counsel of record. The commission's decision shall be
83 subject to judicial review pursuant to chapter 536, except that the court
84 of appeals district with territorial jurisdiction coextensive with the
85 county where the point source is located or is to be located shall have
86 original jurisdiction. No judicial review shall be available until and
87 unless all administrative remedies are exhausted.

✓

Bill

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