Missouri Department of Natural Resources
Rulemaking Report
Updated: 8/10/2015

Affected Rule(s): 10 CSR 10-6.060 Construction Permits Required

1. What is the purpose of this proposed rulemaking?

The Missouri Department of Natural Resources' Air Pollution Control Program is proposing to change the permit fee structure pursuant to 643.079.10, RSMo. The purpose of this proposed rulemaking is to increase construction permit fees to cover a reasonable portion of the Air Program's permitting workload. The Air Program designed the new fee structure to be as fair and equitable as possible with complicated, time- and resource-intensive permits costing more than simpler permits.

The proposed rulemaking makes the following changes:

- Increases the filing fee for de minimis, minor, and temporary source construction permits from $100 to $250 per application;
- Increases the filing fee for major construction permits from $100 to $5,000 per application;
- Increases the construction permit processing fee from $50 per hour to $75 per hour, including permit amendments;
- Increases the Portable Source Relocation Request fee from $200 per request to $300 per request; and
- Clarifies that the construction permit processing fee begins to accrue when the Air Program receives the application.

The Air Program plans to file the final Order of Rulemaking for these amendments by December 1, 2015, and the fee changes would become effective January 1, 2017. Construction permit applicants will be subject to the new filing fees for applications submitted after December 31, 2016. The new processing fee of $75 per hour also becomes effective January 1, 2017. Permits in process as of December 31, 2016, will be charged $50 per hour through December 31, 2016 and $75 per hour for work completed from January 1, 2017 forward.

In addition, other non-substantive clarification/error correction modifications deemed necessary during the rulemaking process will be included.

2. Why is the rulemaking being proposed now?

The Air Program is self-reliant in funding its operating budget through various fees charged to regulated entities. Section 643.079.10, RSMo, authorizes the department, in collaboration with stakeholders, to review the permit fee structure and propose changes to the Missouri Air Conservation Commission. This section was amended in 2014 (Senate Bill 642) and the department has since conducted a comprehensive review of the authorized fees. This rulemaking will increase permit fees for the first time since they

were established in 1992. Increased construction permit fees will contribute to funding permit work and other related activities such as providing technical assistance, stack testing oversight, enforcement, and inspections, just to name a few. The Air Program intends for this increase to construction permits to cover a reasonable portion of the costs related to permitting with the remainder covered by emission fees and federal grants.

The Air Program is proposing this rulemaking now so that changes to the construction permit fees become effective January 1, 2017. As mentioned above, Section 643.079.10, RSMo, states that the department should obtain stakeholder input and agreement and then present the fee structure to the Missouri Air Conservation Commission for approval. In order to meet the January 1, 2017 goal, the department needs to file the Order of Rulemaking with the Joint Committee on Administrative Rules by December 1, 2015. If the General Assembly does not disapprove the revised fee structure within 60 days of the 2015 regular legislative session, the changes to the fees become effective January 1, 2017.

3. Will the rulemaking incorporate any document by reference, rather than state the language within the rulemaking?

   This rulemaking does not incorporate any document by reference.

4. Does this rulemaking prescribe environmental standards, limits or conditions and is a Regulatory Impact Report required for this rulemaking?

   This rulemaking does not prescribe environmental standards, limits, or conditions and therefore does not require a Regulatory Impact Report.

5. What authority does DNR have to carry out this rulemaking?

   643.050, RSMo – Powers and duties of commission, provides the commission shall have the power to adopt, promulgate, amend, and repeal rules and regulations consistent with the general intent and purposes of 643.010 to 643.190, RSMo, and 536, RSMo.

   643.055, RSMo – Commission may adopt rules for compliance with federal law, provides the commission shall have authority to promulgate rules and regulations to establish standards and guidance to ensure the state is in compliance with the provisions of the federal Clean Air Act. The state is prohibited from being stricter than the federal Clean Air Act except for nonattainment and maintenance areas.

   643.079.10, RSMo – Notwithstanding any statutory fee amounts or maximums to the contrary, the Department of Natural Resources may conduct a comprehensive review and propose changes to the fee structure authorized by 643.073, 643.075, 643.079, 643.225, 643.228, 643.232, 643.237, and 643.242, RSMo after holding stakeholder meetings in order to solicit stakeholder input from each of the following groups: the asbestos industry, electric utilities, mineral and metallic mining and processing facilities, cement

kiln representatives, and any other interested industrial or business entities or interested parties.

6. What does the rulemaking require and how does it produce benefits?

This rulemaking requires all sources obtaining construction permits to pay increased construction permit fees starting January 1, 2017 as follows:

Permit Application Type	Rule Subsection Reference	Filing Fee		Processing Fee	
		Existing	Effective Jan. 1, 2017	Existing	Effective Jan. 1, 2017
Portable Source Relocation Request	**(4)**	**$200**	**$300**	**----**	**----**
De minimis	**(5)**	**$100**	**$250**	**$50/hr**	**$75/hr**
Minor	**(6)**	**$100**	**$250**	**$50/hr**	**$75/hr**
NSR	**(7)**	**$100**	**$5000**	**$50/hr**	**$75/hr**
PSD	**(8)**	**$100**	**$5000**	**$50/hr**	**$75/hr**
HAP	**(9)**	**$100**	**$5000**	**$50/hr**	**$75/hr**
Temporary/Pilot	**(3)**	**$100**	**$250**	**$50/hr**	**$75/hr**
Permit Amendment	**(10)**	**----**	**----**	**$50/hr**	**$75/hr**

The hourly rate for the processing fee will remain at $50 per hour through December 31, 2016 and increase to $75 per hour on January 1, 2017. Permits in process will be charged $50 per hour through December 31, 2016 and change to $75 per hour for work done from January 1, 2017 forward. This rulemaking also clarifies that the construction permit processing fee begins to accrue when the Air Program receives the application. These processing fees and filing fees contribute to funding for air pollution control activities related to construction permits.

Increasing the construction permit fees benefits regulated industry as well as citizens throughout the State of Missouri. The revenue from the increased construction permit fees will help keep the Air Program solvent and enable the Program to continue to provide the level of services and activities required to be the implementing agency of the federal Clean Air Act in the State of Missouri. Examples of the Air Program's services and activities include:

- Protecting the health of Missouri citizens by reducing harmful air pollution emissions. Air pollution presents a serious public health threat, contributing to cardiovascular and respiratory symptoms, aggravated asthma, and other adverse health effects. Improving air quality reduces the state's health care costs with fewer doctor and emergency room visits, increases worker productivity by decreasing the number of sick days, and enhances the overall quality of life for Missourians. Children, the

elderly, and people with respiratory illnesses are the most susceptible to adverse health effects from air pollution.

- Limiting air pollution emissions from stationary sources. Construction permits require source owners or operators to demonstrate the new construction or modification project will not cause or contribute to a violation of the National Ambient Air Quality Standards.
- Issuing timely construction permits. Businesses rely on the timely issuance of these permits in order to meet their construction goals and deadlines. Delays can contribute to planning complications and financial strain for businesses. Issuing timely permits helps economic development within the state while protecting public health and ensuring businesses comply with permit requirements.
- Providing compliance assistance by educating businesses about air regulations and helping them understand their options for compliance.
- Conducting inspections to ensure compliance with protective requirements.
- Operating a statewide network of instruments for monitoring air pollution levels across the state. The data from these monitors are used to determine whether the public is being exposed to unhealthy levels of air pollution, identify air pollution trends, and investigate citizen complaints.
- Working with stakeholders, community leaders, and citizen groups to develop sound, cost-effective air regulations.

Without fee increases, it will be a challenge for the Air Program to maintain these essential activities and services. If the Air Program were not able to do so, the U.S. Environmental Protection Agency (EPA) would take the lead on many of Missouri's air issues, an alternative the regulated community indicates they do not want. It makes sense for the department to take the lead in carrying out the Clean Air Act. The department is better suited to develop solutions for pollution problems that require special understanding of local industries, geography, housing, and travel patterns, as well as other factors. The EPA issuing and enforcing permits would likely result in less timely permits and more costly enforcement actions for Missouri businesses due to the federal penalty structure and calculation methods utilized by the EPA.

7. Who is most likely affected by the rulemaking?

The increase of construction permit filing and processing fees proposed by this rulemaking affects all sources that are subject to a construction permit under 10 CSR 10-6.060 after December 31, 2016.

Entities applying for a de minimis, minor, temporary, pilot, or major construction permit are required to pay a filing fee for each construction permit application and an additional processing fee for every hour staff works on the construction permit. Entities submitting a Portable Source Relocation Request pay a flat filing fee but no hourly review fee. Entities applying for a permit amendment are not required to pay a filing fee, but must pay the hourly processing fee for staff time required to amend the permit.

Major permits (NSR, PSD, and HAP) are for the construction of new facilities that emit pollutants above major source levels or major modifications to existing facilities. The Air Program receives only one to five major permit applications annually. A filing fee increase from $100 to $5,000 is being proposed because these are complicated, resource- and time- intensive permit projects requiring extensive analyses. This increase is necessary to cover the workload required by staff assisting the source with the application. These efforts include, but are not limited to, research, modeling, engineering assistance, stack test oversight, and meetings with Air Program staff, source personnel or consultants, and EPA personnel. The proposed $5,000 filing fee covers the equivalent of fifty hours of staff time used prior to submission of the construction permit application, which is typically on the conservative side. After submission of these major source applications, hourly processing times vary with some approaching 2,000 hours. The cost of the $5,000 filing fee and the $75 hourly processing fee is a very small percentage of the total construction cost of a new facility or major modification to an existing facility.

Most construction permits fall into the de minimis and minor categories, which generally involve activities such as process changes and new equipment with emissions that do not trigger major permits. The Air Program completes an average of 268 de minimis and minor permits annually. These permits typically require between 10 and 40 hours of staff time to process. Under the new fee structure, the cost of a de minimis or minor source construction permit will increase by approximately fifty percent due to the hourly processing fee increase from $50 to $75, plus the $150 increase of the application filing fee.

Portable Source Relocation Requests are permits for moving equipment, usually for operations such as rock crushing, concrete plants, and asphalt paving. The Air Program completes an average of 69 Portable Source Relocation Requests annually. These permit applications will increase from $200 to $300 for the application filing fee. The hourly processing fee does not apply to equipment relocations.

Temporary/pilot projects are for trial or short-term operation, usually for testing new equipment or temporarily replacing existing equipment at an installation. The Air Program completes an average of 12 temporary/pilot permits annually. These permits typically require approximately 8 hours of staff time to process. Under the new fee structure, the cost of a temporary/pilot construction permit will increase by approximately fifty percent due to the processing fee increase from $50 to $75, plus the $150 increase of the application filing fee.

8. What impact will the proposed rulemaking have on small businesses? (A small business is defined as a for-profit enterprise with fewer than 100 full or part-time employees.)

This rulemaking will impact any small business that requires a construction permit according to the provisions of 10 CSR 10-6.060. The financial impact on any particular business is a result of their permitting needs. The hourly processing fee ensures the cost of the permit is in proportion with the complexity of the permit. In summary, complicated permits cost more than simple permits, achieving the Air Program and stakeholder’s goal

of making permit fees as fair and equitable as possible.

This rulemaking will require that the following increased construction permit fees be paid:

Permit Application Type	Rule Subsection Reference	Filing Fee		Processing Fee	
		Existing	Effective Jan. 1, 2017	Existing	Effective Jan. 1, 2017
Portable Source Relocation Request	**(4)**	**$200**	**$300**	**----**	**----**
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HAP	**(9)**	**$100**	**$5000**	**$50/hr**	**$75/hr**
Temporary/Pilot	**(3)**	**$100**	**$250**	**$50/hr**	**$75/hr**
Permit Amendment	**(10)**	**----**	**----**	**$50/hr**	**$75/hr**

The Air Program receives only one to five major permit applications annually. Sources applying for major construction permits are not typically small businesses, however it is possible for a small business to build a new facility or modify an existing facility requiring a major permit. A larger filing fee increase from $100 to $5,000 is being proposed because these are complicated, resource- and time- intensive permit projects requiring extensive analysis. This increase is necessary to cover the workload required by staff assisting the source with completing the application. These efforts include, but are not limited to, research, modeling, engineering assistance, and meetings with Air Program staff, source personnel or consultants, and EPA personnel. The proposed $5,000 filing fee covers the equivalent of fifty hours of staff time used prior to submission of the construction permit application, which is typically on the conservative side. After submission of these major source applications, hourly processing times vary with some approaching 2,000 hours. To date, the Air Program has not received any negative feedback about this fee increase from any stakeholder. The cost of the $5,000 filing fee and the $75 hourly processing fee is a very small percentage of the total construction cost of a new facility or major modification to an existing facility.

Some of the largest categories of affected small businesses in the state with air permits are limestone crushing, ready-mixed concrete, asphalt paving operations, power plants, and landfills. Normally, these businesses need a de minimis, minor, or portable source relocation permit. Costs of de minimis and minor source construction permits will increase by approximately fifty percent due to the hourly processing fee increase from $50 to $75, plus the $150 increase of the application filing fee. Portable Source Relocation Requests are permits for moving equipment. These permit applications will

increase from $200 to $300 for the application filing fee. The hourly processing fee does not apply to equipment relocations.

Increasing permit fees benefits small businesses because the revenue from the increased permit fees will help keep the Air Program solvent and able to provide the level of services and activities required to be the implementing agency of the federal Clean Air Act in the State of Missouri. In particular, the increased revenue allows the Air Program to continue issuing timely permits in order for small businesses to meet their construction goals and deadlines for expansion of their businesses. It will also allow the Air Program to continue providing compliance assistance to small businesses, educating them about air regulations, and helping them understand their options for compliance.

If the Air Program were not able to implement the Clean Air Act, the EPA would take the lead on many of Missouri's air issues, an alternative the regulated community indicates they do not want. It makes sense for the department to take the lead in carrying out the Clean Air Act. The department is better suited to develop solutions for pollution problems that require a special understanding of local industries, geography, housing, and travel patterns, as well as other factors.

The EPA issuing and enforcing permits would likely result in less timely permits and more costly enforcement actions for Missouri's small businesses due to the federal penalty structure and calculation methods utilized by the EPA. The EPA would also likely provide less compliance assistance, resulting in more noncompliance among small businesses.

9. What are the probable costs for the department or any other public agency in the implementation and enforcement of the rulemaking?

The department does not expect this or any other agency to incur additional costs to implement and enforce this proposed rulemaking. However, other public agencies are subject to the requirements of 10 CSR 10-6.060, including the increased construction permit fees proposed by this rulemaking. The number of affected public agencies and the type of public owned facilities are listed in the Public Entity Fiscal Note accompanying this rulemaking.

10. What is the anticipated effect of the rulemaking on state revenue?

The proposed rulemaking increases the revenue the Air Program collects from permit fees. The accompanying fiscal notes report the projected revenue resulting from increasing the permit fees. Since the Air Program does not receive any funding from the state's general revenue, the increased permit fees will help keep the Air Program solvent and able to provide the level of services and activities required to be the implementing agency of the federal Clean Air Act in the State of Missouri. In particular, the increased revenue allows the Air Program to continue issuing timely permits making it possible for businesses to meet their goals and deadlines while complying with air regulations.

11. Who was/will be involved in developing the rulemaking?

The Air Program will develop the rulemaking. The proposed fee structure was developed through a comprehensive review with stakeholder input. Permit fee stakeholders consisting of electric utilities, mineral and metallic mining and processing facilities, cement kiln representatives, and other interested industrial or business entities and interested parties have also been involved in the development of the fee changes in the proposed rulemaking. This is described in more detail below.

12. How has/will the development of the rulemaking been/be shared with interested parties and the public at large?

Prior to the commencement of the rulemaking process, the Air Program held several meetings and conference calls with stakeholders as required by 643.079.10, RSMo, on the following dates:

2014	2015
April 24	January 29
May 19	April 30
June 16	May 19
August 21	May 26
August 28	
December 4	

The agendas, minutes, presentations, and other materials are available at http://dnr.mo.gov/env/apcp/airadvisory/apcpstakeholder.htm.

In addition to holding stakeholder meetings and conference calls, the Air Program did extensive outreach to industry and businesses potentially affected by the permit fee changes. This included a direct mailing to all facilities with an air permit and regular email updates and meeting announcements to the Air Program's listserv, which reaches 1,278 stakeholders and other interested parties. The Air Program also met with the Missouri Limestone Producers in July of 2015. The Air Program provides information regarding rulemakings to the Air Program Advisory Forum, the Air Quality Advisory Committee of the East-West Gateway Council of Governments, and the Air Quality Forum of the Mid-America Regional Council.

The normal rulemaking process will be followed: public hearing, Missouri Air Conservation Commission adoption, Order of Rulemaking, and publication in the Code of State Regulations. Information on rulemakings is made available to stakeholders and the public through posting on the department's website and public notification of public hearing and the associated open comment period published in the Missouri Register.

13. Who may I contact to either ask questions or provide input on this rulemaking?

Questions and/or comments can be sent to:

Chief, Air Quality Planning Section
Missouri Department of Natural Resources' Air Pollution Control Program
P.O. Box 176
Jefferson City, MO 65102-0176

or

Missouri Air Conservation Commission
P.O. Box 176
Jefferson City, MO 65102-0176

or call: (573) 751-4817

14. What is the expected calendar for this rulemaking, particularly the dates for the comment period and public hearing?

A tentative filing of this proposed rulemaking must occur no later than August 17, 2015 with a public hearing no later than October 29, 2015. The comment period will begin after the rulemaking is filed and end seven (7) days after the public hearing.