



Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director

DEPARTMENT OF NATURAL RESOURCES

www.dnr.mo.gov

AUG - 1 2012

Mr. Karl Brooks
Regional Administrator
U.S. EPA, Region VII
901 North Fifth Street
Kansas City, KS 66101

Dear Mr. Brooks:

The Missouri Air Conservation Commission has recently promulgated the following air quality plan to be included in the Missouri State Implementation Plan (SIP). The following is enclosed for your review and approval into the SIP:

Revision to the Missouri State Implementation Plan - Section 128 Declaration:
Missouri Air Conservation Commission Representation and Conflicts of Interest Provisions

This revision to the SIP is to satisfy the requirements of Section 128 of the federal Clean Air Act Amendments of 1990. Section 128 asserts that each SIP shall contain provisions respecting conflicts of interest and providing for representation of the public interest by the applicable state board. This plan demonstrates that Missouri meets the Section 128 requirements via the referencing of specific corresponding state statutes and regulations.

The commission adopted the enclosed plan action on July 25, 2012 after considering program staff testimony at the public hearing. One written comment was received from the U.S. Environmental Protection Agency (EPA) during the public comment period. The commission has full legal authority to develop the SIP pursuant to Section 643.050 of the Missouri Air Conservation Law. The state followed all applicable administrative procedures in proposing and adopting the plan action. Enclosed are the required SIP submittal elements for determination of plan completeness per 40 CFR Part 51, Appendix V.

In order to comply with Attachment A of the "Regional Consistency for the Administrative Requirements of State Implementation Plan Submittals and the Use of Letter Notices" memo dated April 6, 2011, a searchable PDF version of this exact document will be emailed to the EPA Region VII State Coordinator and will be posted on our website at <http://www.dnr.mo.gov/env/apcp/sips.htm> under the "Administrative SIPs" subheading.

The Missouri Department of Natural Resources requests that the EPA amend the SIP to incorporate this plan.

Mr. Karl Brooks
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Thank you for your attention to this matter. If you have any questions regarding this submittal, please contact Wendy Vit, Missouri Department of Natural Resources' Air Pollution Control Program at P.O. Box 176, Jefferson City, MO 65102 or by phone at (573) 751-4817. E-mail inquiries may be forwarded to wendy.vit@dnr.mo.gov.

Sincerely,

AIR POLLUTION CONTROL PROGRAM

Original signed by Kyra L. Moore

Kyra L. Moore
Director

KLM:jwc

Enclosures: Copy of Plan
Copy of commission signature page certifying Missouri Air Conservation
Commission adoption
Copies of public hearing notices
Copy of public hearing transcript introductory statement
Copy of "Summary of Comments & Responses and Recommendation for
Adoption"

c: Missouri Air Conservation Commission

**Section 128 Declaration:
Missouri Air Conservation Commission
Representation and Conflicts of Interest
Provisions**

A Missouri State Implementation Plan Revision

**Adoption
July 25, 2012**



**MISSOURI
DEPARTMENT OF
NATURAL RESOURCES**

**Division of Environmental Quality
Air Pollution Control Program
P.O. Box 176
1659 East Elm Street
Jefferson City, Missouri 65101
Telephone (573) 751-4817**

This document certifies that the State of Missouri, as represented by the Missouri Air Conservation Commission (MACC), complies with Section 128 of the federal Clean Air Act Amendments of 1990 (CAA). Section 128 of the CAA provides that each state implementation plan (SIP) shall contain requirements respecting conflicts of interest and providing for representation of the public interest by the applicable state board. Furthermore, this section of the CAA allows states to adopt provisions which are more stringent than these requirements. The State of Missouri hereby presents this SIP revision to satisfy these requirements as detailed below.

1. MACC Representation

Section 128(a)(1) of the CAA requires that any board or body which approves permits or enforcement orders under the CAA must have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA.

In general, the intent of Section 128, is reflected by Section 643.030 RSMo of the Missouri Air Conservation Law (<http://www.moga.mo.gov/statutes/C643.HTM>):

It is the intent and purpose of this chapter to maintain purity of the air resources of the state to protect the health, general welfare and physical property of the people...

Section 643.040 RSMo creates the Air Conservation Commission and provides that the commission shall consist of seven (7) members appointed by the governor, with the advice and consent of the senate.

More specifically, 643.040.2 RSMo directly addresses the majority / public interest representation concerns:

All members shall be representative of the general interest of the public and shall have an interest in and knowledge of air conservation and the effects and control of air contaminants. At least three of such members shall represent agricultural, industrial and labor interests, respectively. The governor shall not appoint any other person who has a substantial interest as defined in section 105.450 [<http://www.moga.mo.gov/statutes/C100-199/1050000450.HTM>] in any business entity regulated under this chapter or any business entity which would be regulated under this chapter if located in Missouri.

Section 104.450 RSMo is being proffered for inclusion into the SIP in part 2 of this document. Therefore, to satisfy the requirements of Section 128(a)(1), the State of Missouri hereby presents 643.040.2 RSMo 2011, for incorporation into the Missouri State Implementation Plan.

2. Conflicts of Interest

Section 128(a)(2) of the CAA requires that “any potential conflicts of interest by members of such board or the head of an executive agency with similar powers be adequately disclosed.”

By statute, Missouri is more stringent than this requirement by providing for recusal, not merely disclosure. Per 643.040.2 RSMo–

The commission shall establish rules of procedure which specify when members shall exempt themselves from participating in and voting on issues before the commission due to potential conflict of interest.

The implementation of this statute is reflected in Title 10, Division 10 of the Missouri Code of State Regulations (CSR) regarding the Air Conservation Commission. First, Section (1) of 10 CSR 10-1.020 *Commission Voting and Meeting Procedures* (<http://sos.mo.gov/adrules/csr/current/10csr/10c10-1.pdf>) addresses the disclosure of conflicts of interest:

*(1) Prior to discussion and/or vote on any rule, variance, appeal or order, all members of the Missouri Air Conservation Commission shall disclose when they –
(A) May have a conflict of interest as defined under sections 105.450-105.482 RSMo;*

Then Section (2) of this rule goes on to detail the recusal process required by the statute:

(2) The member shall be excluded from voting on the matter at issue unless such member fully advises the commission of the interest and receives a determination from the commission that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the state expects from commission members. Fully advises means explains in detail in a signed, written statement available for public inspection.

Similarly, the Missouri Air Conservation Commission Operation Policies manual (www.dnr.mo.gov/env/apcp/MACC_Policy.pdf) states that–

Commissioners will avoid both actual and perceived conflicts of interest in their quasi-judicial role and will avoid ex parte contact with other parties, including department staff, to pending disputes.

If a commissioner publicly takes or expresses a position on a specific issue, party or permit that later comes before the commission on an appeal, the commissioner will recuse himself on the record from any discussion, deliberation, or decision making on the issue.

The Operations Policies manual also states that “Commissioners shall comply with all applicable statutory requirements regarding conflict of interest, including RSMo Chapter 105.” Section 105.452 RSMo outlines prohibited acts by elected and appointed public officials and employees. Section 105.454 RSMo provides additional prohibited acts (and exceptions) by elected or appointed public officials and employees. (<http://www.moga.mo.gov/STATUTES/C105.HTM>)

The conflict of interest provisions of Section 128(a)(2) pertain to heads of applicable executive agencies as well as the commission. Likewise, Chapter 105 RSMo applies not only to the MACC, but to all employees including the head of the executive agency (i.e. the Directors of the Missouri Department of Natural Resources and its Air Pollution Control Program) as well. Specifically, 105.452.1(4) & (5) RSMo state that no appointed or elected state official or employee shall –

(4) Favorably act on any matter that is so specifically designed so as to provide a special monetary benefit to such official or his spouse or dependent children, including but not limited to increases in retirement benefits, whether received from the state of Missouri or any third party by reason of such act. For the purposes of this subdivision, "special monetary benefit" means being materially affected in a substantially different manner or degree than the manner or degree in which the public in general will be affected or, if the matter affects only a special class of persons, then affected in a substantially different manner or degree than the manner or degree in which such class will be affected. In all such matters such officials must recuse themselves from acting, except that such official may act on increases in compensation subject to the restrictions of section 13 of article VII of the Missouri Constitution; or

(5) Use his decision-making authority for the purpose of obtaining a financial gain which materially enriches himself, his spouse or dependent children by acting or refraining from acting for the purpose of coercing or extorting from another anything of actual pecuniary value.

Lastly, the department's Administrative Policies and Procedures manual states that no department employee should—

...engage in any personal, business, or professional activity or receive or retain any direct or indirect financial interest that places them in a position of conflict between their private interests and the public interests of the department related to the duties and responsibilities of their jobs.

Thus, the provisions of Section 128(a)(2) are satisfied by 643.040.2 RSMo, the relevant sections of Chapter 105 RSMo and 10 CSR 10-1.020(1)&(2). Part 1 of this document already proffers 643.040.2 RSMo for inclusion into the SIP. Section 105.450 RSMo 2011 defines certain terms and is hereby submitted for incorporation into the Missouri State Implementation Plan only insofar as the terms, defined therein, relate to the other sections of Chapter 105 RSMo that are also to be included in to the SIP through this document. In addition, only certain Sections of 105.452-105.482 RSMO, referred to in part 2 of this document, are applicable to the MACC, the Directors of the Missouri Department of Natural Resources & its Air Pollution Control Program, and/or to Section 128 of the CAA. Therefore, the State of Missouri hereby presents Sections 105.452, 105.454, 105.462, 104.463, 105.466 & 105.472 RSMo 2011, and Sections (1) & (2) of 10 CSR 10-1.020, effective July 30, 1998, for incorporation into the Missouri State Implementation Plan.

3. Conclusion

Through this revision to the Missouri State Implementation Plan, the State meets the requirements of Section 128 of the Clean Air Act, relating to representation on state boards and conflicts of interest by members of such boards and the heads of executive agencies.

Compliant with 643.055 RSMo, the Missouri Air Conservation Commission has determined that this action is needed to have a U.S. Environmental Protection Agency approved State Implementation Plan.

The Revision to Section 128 Declaration: Missouri Air Conservation Commission is hereby adopted by the Missouri Air Conservation Commission this 25th day of July, 2012.

D. J. [unclear]

Signatures On File	_____ , Chairman
	_____ , Vice Chairman
	_____ , Member
	_____ , Member

_____, Member

_____, Member

_____, Member

Jay Nixon, Governor
Sara Parker Pauley, Director

Air Pollution Control Program



State Plan Actions

[On Public Notice](#) | [Proposed for Adoption](#)

On Public Notice

Notice of Public Hearing

Missouri State Implementation Plan Revision - Section 128 Declaration: Missouri Air Conservation Commission Representation and Conflicts of Interest Provisions

This plan was developed to demonstrate that the State of Missouri, as represented by the Missouri Air Conservation Commission, complies with Section 128 of the Clean Air Act. Section 128 provides that each state implementation plan shall contain requirements regarding conflicts of interest and providing for representation of the public interest by the applicable state board. This plan is administrative in nature.

The Missouri Air Conservation Commission will hold a public hearing on Thursday, June 28, 2012 beginning at 9 a.m. at the Holiday Inn Southwest & Viking Conference Center, Salon 3, 10709 Watson Road, St. Louis, Missouri. The commission will hear testimony related to the above proposed action.

The Department will accept written or email comments for the record until 5 p.m. on July 5, 2012. Please send written comments to Chief, Air Quality Planning Section, Air Pollution Control Program, P.O. Box 176, Jefferson City, MO 65102-0176. Email comments may be submitted via this web site (below). All written and email comments and public hearing testimony will be equally considered.

[Submit Comments](#)

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Proposed for Adoption

There are currently no plan actions proposed for adoption.

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Bechtel, Cheri

From: Bechtel, Cheri
Sent: Friday, May 25, 2012 11:15 AM
To: Drake, Tiffany
Cc: Graf, Wayne This email was also bcc'd to 264 individual addresses.
Subject: Missouri Air Conservation Commission to hold public hearing on 6/28/2012

Below is a notice for items scheduled for public hearing at the June 28, 2012 Missouri Air Conservation Commission meeting. If you have any questions, please contact Wendy Vit with the Air Pollution Control Program at (573) 751-0572 or wendy.vit@dnr.mo.gov.

MISSOURI AIR CONSERVATION COMMISSION WILL HOLD PUBLIC HEARING

JEFFERSON CITY, MO -- The Missouri Air Conservation Commission will hold a public hearing on Thursday, June 28, 2012 beginning at 9 a.m. at the Holiday Inn Southwest & Viking Conference Center, Salon 3, 10709 Watson Road, St. Louis, Missouri. The commission will hear testimony related to the following proposed action:

- * Missouri State Implementation Plan Revision - Section 128 Declaration: Missouri Air Conservation Commission Representation and Conflicts of Interest Provisions

If the Commission adopts this action, it will be the Department's intention to submit it to the U.S. Environmental Protection Agency to be included in Missouri's State Implementation Plan unless otherwise noted above.

Documents for the above item will be available for review at the Missouri Department of Natural Resources, Air Pollution Control Program, 1659 Elm Street, Jefferson City, (573) 751-4817 and in the Public Notices section of the program web site <http://dnr.mo.gov/env/apcp/public-notices.htm>. This information will be available at least 30 days prior to the public hearing date.

The Department will accept written or email comments for the record until 5 p.m. on July 5, 2012. Please send written comments to Chief, Air Quality Planning Section, Air Pollution Control Program, P.O. Box 176, Jefferson City, MO 65102-0176. Email comments may be submitted via the program web site noted above. All written and email comments and public hearing testimony will be equally considered.

Citizens wishing to speak at the public hearing should notify the secretary to the Missouri Air Conservation Commission, Missouri Department of Natural Resources, Air Pollution Control Program, P.O. Box 176, Jefferson City, Missouri 65102-0176, or telephone (573) 526-3420. The Department requests persons intending to give verbal presentations also provide a written copy of their testimony to the commission secretary at the time of the public hearing.

Persons with disabilities requiring special services or accommodations to attend the meeting can make arrangements by calling the Program directly at (573) 751-4817, the Division of Environmental Quality's toll free number at (800) 361-4827, or by writing two weeks in advance of the meeting to: Missouri Department of Natural Resources, Air Conservation Commission Secretary, P.O. Box 176, Jefferson City, MO 65102. Hearing impaired persons may contact the program through Relay Missouri, (800) 735-2966.

Thank you,

Cheri Bechtel

Air Pollution Control Program

573-751-8308

cheri.bechtel@dnr.mo.gov

PUBLIC HEARING 6/28/2012

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BEFORE THE AIR CONSERVATION COMMISSION
STATE OF MISSOURI

JUNE 28, 2012
MISSOURI AIR CONSERVATION COMMISSION
PUBLIC HEARING
Holiday Inn Southwest & Viking Conference Center
Salon 3

10709 Watson Road
St. Louis, MO 63127

June 28, 2012

9:00 a.m.

BEFORE:

David Zimmerman, Chairman

Mark Garnett

Ron Boyer

Jack Baker

(Starting time of the public hearing: 9:39 a.m.)

The Court Reporter:

Suzanne Zes

Midwest Litigation Services

711 North Eleventh Street

St. Louis, MO 63101

314.644.2191

314.644.1334

MIDWEST LITIGATION SERVICES

www.midwestlitigation.com

Phone: 1.800.280.3376

Fax: 314.644.1334

1 P R O C E E D I N G S

2 CHAIRMAN ZIMMERMAN: I will now call the
3 public hearing to order. Let the record show the
4 following Commissioners are present: David Zimmerman,
5 Ron Boyer, Jack Baker, Mark Garnett.

6 The Air Conservation Commission of the State
7 of Missouri has called this public hearing pursuant to
8 Section 643.070 Revised Statutes of Missouri, EPA
9 promulgated rule 40CFR 51.102 for the purpose of
10 hearing testimony relating to the Missouri State
11 Implementation Plan Revision, Section 128 Declaration,
12 Missouri Air Conservation Commission Representation
13 and Conflicts of Interest Provisions.

14 The hearing record will close at 5 p.m. on
15 July 5th, 2012. Anyone who has not been scheduled to
16 appear but who wishes to be heard should indicate that
17 you wish to speak on the sign-in sheets available at
18 the door.

19 Section 643.100 of the Missouri Statutes
20 provides that all oral testimony be given under oath.
21 Accordingly, when you are called to testify, please
22 present yourself to the court reporter first to be
23 sworn in. When you testify, please state your name,
24 business address and your occupation or affiliation.
25 If have you a prepared statement, it will helpful if

1 you will provide a copy to the staff director, court
2 reporter and members of the Commission. Ms. Kyra
3 Moore.

4 (MS. MOORE WAS SWORN.)

5 MS. MOORE: Chairman, members of Commission,
6 my name is Kyra Moore. I am the Director of the Air
7 Pollution Control Program within the Department of
8 Natural Resources for the Air Conservation Commission.
9 I work at 1659 East Elm Street in Jefferson City,
10 Missouri. The Air Program posted the proposed State
11 Implementation Plan for public review and comment on
12 the Department of Natural Resources' website.

13 In addition to making the proposed State
14 Implementation Plan available for reviewing and
15 comment, the Air Program distributed the public
16 hearing notice to approximately 300 citizens,
17 organizations, corporations, associations and elected
18 officials. Finally, we notified the Kansas City, St.
19 Louis County and Springfield local air pollution
20 control agencies, the U.S. Environmental Protection
21 Agency, and the states of Illinois and Kansas of this
22 public hearing. Chairman, that concludes my
23 testimony. Thank you.

24 MR. ZIMMERMAN: Joe?

25 (MR. WINKELMANN SWORN IN.)

1 MR. WINKELMANN: Chairman, members of the
2 Commission, my name is Joe Winkelmann. I am employed
3 as an environmental engineer with the Air Pollution
4 Control Program located at 1659 East Elm Street,
5 Jefferson City, Missouri. I am here today to present
6 testimony for a proposed revision to the State
7 Implementation Plan or SIP, for the Section 128
8 Declaration regarding the Missouri Air Conservation
9 Commission representation and conflicts of interest
10 provisions. The plan revision starts on page 75 of
11 your briefing document.

12 The purpose of this revision is to satisfy
13 the requirements of Section 128 of the federal Clean
14 Air Act Amendments of 1990. Section 128 asserts that
15 each SIP shall contain provisions respecting conflicts
16 of interest and providing for representation of the
17 public interest by the applicable state board. This
18 plan is administrative in nature and addresses the
19 Section 128 requirements via the referencing of
20 specific corresponding state statutes and regulations.
21 In particular, Section 643.040 of the Revised Statutes
22 of the State of Missouri, which creates the Air
23 Conservation Commission, also addresses public
24 interest representation and conflicts of interest
25 concerns. For example, this statute states that all

**COMMENTS AND RESPONSES
AND
RECOMMENDATION FOR ADOPTION**

**PROPOSED REVISION TO
THE MISSOURI STATE IMPLEMENTATION PLAN —
SECTION 128 DECLARATION:
MISSOURI AIR CONSERVATION COMMISSION
REPRESENTATION AND CONFLICTS OF INTEREST PROVISIONS**

On June 28, 2012 the Missouri Air Conservation Commission held a public hearing concerning the proposed revision to the State Implementation Plan (SIP) for the Section 128 Declaration regarding the Missouri Air Conservation Commission representation and conflicts of interest provisions. This plan was developed to demonstrate that the State of Missouri, as represented by the Missouri Air Conservation Commission, complies with Section 128 of the Clean Air Act (CAA). Section 128 asserts that each SIP shall contain provisions respecting conflicts of interest and providing for representation of the public interest by the applicable state board. This plan is administrative in nature and addresses the Section 128 requirements via the referencing of specific corresponding state statutes and regulations. One comment was received concerning this proposed plan during the public comment period. Revisions were made to the plan as a result of this public comment.

The complete document, as amended, has been reprinted below. It is also available online at <http://www.dnr.mo.gov/env/apcp/stateplanrevisions.htm>

The Missouri Department of Natural Resources' Air Pollution Control Program recommends the commission adopt the plan action as amended. If the commission adopts this plan action, it will be the department's intention to submit this plan to the U.S. Environmental Protection Agency (EPA) for inclusion in the Missouri State Implementation Plan.

SUMMARY OF COMMENTS: The department received one comment from EPA.

COMMENT #1: EPA commented that the plan presents Sections 105.450 through 105.482 of the Missouri Revised Statutes (RSMo) for inclusion into the SIP. Because several of these sections do not appear to govern actions by the department or the Missouri Air Conservation Commission (which are the specific actions addressed by CAA Section 128), EPA recommends that the department review these sections and only include those provisions that are specifically pertinent to meeting the requirements of CAA Section 128. In addition, EPA made a suggestion to correct a minor editing error.

RESPONSE AND EXPLANATION OF CHANGE: The department appreciates EPA's cooperation in the development of this plan document. The department has reviewed the RSMo sections quoted by the state regulation referred to in part 2 of the plan document as EPA suggested and has determined that certain sections are indeed not pertinent to the nature of this plan. As a result of EPA's comment, the last paragraph of part 2 of the document has been revised to incorporate only the applicable sections of State statute and two insubstantial editing corrections were made.