

Missouri Department of Natural Resources
Rulemaking Report
Updated: 08/28/2014

Affected Rule(s): 10 CSR 10-6.110 Reporting Emission Data, Emission Fees, and Process Information

1. What is the purpose of this proposed rulemaking?

The Missouri Department of Natural Resources' Air Pollution Control Program is proposing to change the air emission fee structure pursuant to section 643.079.10., RSMo in SB 642. The purpose of this proposed rulemaking is to increase the emission fee for permitted sources from \$40 to \$48 per ton of air pollution emitted annually. If these changes become effective January 1, 2016, affected sources will be subject to the \$48 per ton fee starting with calendar year 2015 emissions (payment due June 1, 2016 and every June 1 thereafter). The increased emission fee will enable the department's Air Pollution Control Program to remain solvent and maintain its authority as the implementing agency of the federal Clean Air Act in the State of Missouri.

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?

This rulemaking is the outcome of a detailed fee stakeholder process and is proposed to change fees due to the fee stakeholder process. Air emissions have been steadily decreasing in the state as a result of more stringent federal regulations, and this trend is expected to continue in the coming years. With the emission fee capped at \$40 per ton in 643.079.1., RSMo and air emissions trending downward, the department's Air Pollution Control Program is projected to become insolvent in approximately October 2016. The passage of SB 642 in the 2014 legislative session revises 643.079.10., RSMo and establishes a new process and timeline for the department to adjust the air emission fee structure. This rulemaking is being proposed now so that the emission fee changes would become effective January 1, 2016. This would allow the department's Air Pollution Control Program to collect payments based on the increased emission fee beginning June 1, 2016, which is necessary to address the program's insolvency prior to October 2016. In order to meet the target date for the increased emission fees, the department must first obtain input and agreement on the proposed emission fee structure from stakeholders and approval from the Missouri Air Conservation Commission (MACC). The department would then need to file the proposed rulemaking for 10 CSR 10-6.110 and, after considering public comments, file the order of rulemaking with the Joint Committee on Administrative Rules by December 1, 2014. If the General Assembly does not disapprove the revised emission fee structure within 60 days of the 2015 regular legislative session, the changes would go into effect January 1, 2016.

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, 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 sections 643.010 to 643.190, RSMo and chapter 536, RSMo.

643.055, 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., 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 sections 643.073, 643.075, 643.079, 643.225, 643.228, 643.232, 643.237, and 643.242 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 will require Missouri sources with an air permit to pay an increased emission fee per ton of applicable air pollutant (particulate matter, sulfur dioxide, nitrogen oxides, volatile organic compounds, hazardous air pollutants, and lead) emitted on an annual basis. The fee applies to the first 4,000 tons of a single pollutant, up to no more than 12,000 tons total for all pollutants combined, in any given calendar year. The fee of \$48 per ton would become effective January 1, 2016, requiring affected sources to pay at this emission fee rate starting June 1, 2016 for calendar year 2015 emissions and beyond. The \$48 per ton emission fee will remain in place unless it is adjusted through a future stakeholder and rulemaking process as authorized by 643.079.10., RSMo.

Increasing the air emission fee benefits regulated industry as well as citizens throughout the State of Missouri. With the revenue from the increased emission fee, the department's Air Pollution Control Program will remain solvent and maintain the

minimum level of services and activities required to be the implementing agency of the federal Clean Air Act in the State of Missouri. Specific examples of the Air Program's core services and activities include:

- Reducing harmful emissions of air pollution in order to protect the health of Missouri citizens. 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.
- Issuing timely construction and operating permits. Businesses rely on the timely issuance of these permits in order to meet their own construction and operational deadlines and continue the growth of their businesses. Delays can contribute to financial strain for businesses. Issuing timely permits helps economic development within the state, while assuring the protection of public health by making sure businesses comply with emission 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.
- Responding to citizen complaints and concerns about a variety of issues impacting their health or quality of life, such as strong odors, excessive dust, and smoke.
- 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.

In light of the downward trend in overall air emissions in the state, it has been a challenge for the department's Air Pollution Control Program to maintain these essential core activities without an increase in emission fees. If the Air Program is 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 and other stakeholders have indicated they do not want to happen. If the EPA were in control of air regulatory processes in the state, EPA would enforce regulations and issue permits, which would likely result in less timely permits for Missouri businesses and more costly enforcement actions due the penalty structure in federal law and the penalty calculation methods utilized by the EPA. Other consequences of EPA taking over air regulatory issues in the state include less opportunity for industry and the general public to provide input on the development of air regulations, generally resulting in less flexible, more costly requirements.

7. Who is most likely affected by the rulemaking?

This rulemaking impacts Missouri sources that have a construction permit under 10 CSR 10-6.060, and/or an operating permit under 10 CSR 10-6.065. These sources are required to report their air emissions on an Emission Inventory Questionnaire (EIQ) and pay corresponding emission fees on an annual basis. As of May 7, 2014, there are a total of 2,229 facilities with air permits operating in the state of Missouri affected by this rulemaking.

In general, sources with higher levels of air emissions will be impacted the most by the new emission fee of \$48 per ton, including power plants, cement kilns, and other industrial facilities. The chart below summarizes the potential impacts of the emission fee change by industry sector within the state. The chart is based on each permitted facility's 2012 chargeable emissions, which is the sum of the first 4,000 tons of each individual air pollutant emitted during calendar year 2012, up to no more than 12,000 tons total. Note that 2012 emissions may not be representative of future years because the total amount of chargeable emissions varies each year based in part on production/activity levels variations at the sources. In addition, air emissions have been decreasing as a result of more stringent federal regulations that have been put in place over the last several years, and this trend is expected to continue in the coming years. This chart is presented for the purpose of illustrating the relative impacts of the emission fee increase by industry sector; it does not indicate projected impacts on Air Program revenue associated with this fee change. The projected Air Program revenue impacts are detailed in the fiscal note accompanying the proposed rulemaking.

Estimated Impacts of Increased Air Emission Fee by Missouri Industry Sector

Missouri Industry Sector	2012 Chargeable Emissions (tons)	Number of Permitted Facilities	Total Fees at Current Rate of \$40/ton (\$)	Total Fees at New Rate of \$48/ton at 2012 Emissions Levels (\$)	Difference (\$)
Electric Services (Fossil Fuel Power Generation)	104,081	84	4,163,240	4,995,888	832,648
Cement, Hydraulic	12,758	9	510,320	612,384	102,064
Lime	9,997	6	399,880	479,856	79,976
Natural Gas Transmission	7,092	15	283,680	340,416	56,736
Electric And Other Services Combined (Fossil Fuel Power Generation)	6,894	6	275,760	330,912	55,152
Steam And Air-Conditioning Supply	5,707	3	228,280	273,936	45,656
Primary Aluminum	5,277	1	211,080	253,296	42,216
Primary Nonferrous Metals	4,037	1	161,480	193,776	32,296
Malt Beverages (Except Malt Extract)	3,732	1	149,280	179,136	29,856
Secondary Smelting And Refining Of Nonferrous Metals (Except Copper And Aluminum)	3,190	3	127,600	153,120	25,520
Motor Vehicles And Passenger Car Bodies (Automobiles)	2,470	3	98,800	118,560	19,760

Missouri Industry Sector	2012 Chargeable Emissions (tons)	Number of Permitted Facilities	Total Fees at Current Rate of \$40/ton (\$)	Total Fees at New Rate of \$48/ton at 2012 Emissions Levels (\$)	Difference (\$)
Pesticides And Agricultural Chemicals	1,933	7	77,320	92,784	15,464
Crushed And Broken Limestone	1,797	299	71,880	86,256	14,376
Soybean Oil Mills	1,047	13	41,880	50,256	8,376
Minerals And Earths, Ground Or Otherwise Treated (Grinding, Washing, Separating, Etc. Of Kaolin And Ball Clay)	964	7	38,560	46,272	7,712
Glass Containers	931	2	37,240	44,688	7,448
Asphalt Paving Mixtures And Blocks	909	107	36,360	43,632	7,272
Nitrogenous Fertilizers	798	2	31,920	38,304	6,384
Commercial Printing, Gravure	756	36	30,240	36,288	6,048
Colleges, Universities, And Professional Schools	658	17	26,320	31,584	5,264
Ready-Mixed Concrete	633	282	25,320	30,384	5,064
Plastics Foam Products (Polystyrene Foam Products)	494	9	19,760	23,712	3,952
Industrial Organic Chemicals (Ethyl Alcohol)	479	6	19,160	22,992	3,832
Flat Glass	425	1	17,000	20,400	3,400
Sewerage Systems	411	6	16,440	19,728	3,288
Plastics Products, Nec (Plastics Sausage Casings)	410	16	16,400	19,680	3,280
Bags- Uncoated Paper And Multiwall	393	2	15,720	18,864	3,144
Petroleum Bulk Stations And Terminals (Except Petroleum Sold Via Retail Method)	393	18	15,720	18,864	3,144
Unsupported Plastics Film And Sheet	391	3	15,640	18,768	3,128
Prepared Feeds And Feed Ingredients For Animals And Fowls, Except Dogs And Cats (Except Slaughtering Animals For Pet Food)	353	49	14,120	16,944	2,824
Refuse Systems (Solid Waste Landfills)	350	27	14,000	16,800	2,800
Boat Building And Repairing (Boat Building)	340	5	13,600	16,320	2,720
Cotton Ginning	338	32	13,520	16,224	2,704
General Medical And Surgical Hospitals	327	47	13,080	15,696	2,616
Metal Foil And Leaf	316	1	12,640	15,168	2,528
Motor Vehicle Parts And Accessories (Dump Truck Lifting Mechanisms And Fifth Wheels)	309	12	12,360	14,832	2,472
Wet Corn Milling (Except Refining Purchased Corn Oil)	282	1	11,280	13,536	2,256
Wood Kitchen Cabinets	275	11	11,000	13,200	2,200

Missouri Industry Sector	2012 Chargeable Emissions (tons)	Number of Permitted Facilities	Total Fees at Current Rate of \$40/ton (\$)	Total Fees at New Rate of \$48/ton at 2012 Emissions Levels (\$)	Difference (\$)
Plastics Products, Nec (Except Plastics Pipe Fittings, Inflatable Plastics Life Jackets, Plastics Furniture Parts, And Plastics Sausage Casings)	257	8	10,280	12,336	2,056
Gum And Wood Chemcials	252	16	10,080	12,096	2,016
Clay Refractories	241	6	9,640	11,568	1,928
Grain And Field Beans (Merchant Wholesalers Except Those Selling Grains And Field Beans Via Retail Method)	230	76	9,200	11,040	1,840
Packaging Paper And Plastics Film, Coated And Laminated (Single-Web And Multi-Web Plastics Packaging Film And Sheet)	215	3	8,600	10,320	1,720
Flour And Other Grain Mill Products	212	5	8,480	10,176	1,696
Asphalt Felts And Coatings	211	8	8,440	10,128	1,688
Aluminum Foundries	209	2	8,360	10,032	1,672
Refined Petroleum Pipelines	198	9	7,920	9,504	1,584
Hardwood Dimension And Flooring Mills (Hardwood Dimension Lumber Made From Logs Or Bolts)	196	4	7,840	9,408	1,568
Truck Trailers	187	8	7,480	8,976	1,496
Rubber And Plastics Hose And Belting	185	10	7,400	8,880	1,480
Lead And Zinc Ores	184	11	7,360	8,832	1,472
Motor Vehicle Parts And Accessories	183	1	7,320	8,784	1,464
Small Arms Ammunition	182	1	7,280	8,736	1,456
Poultry Slaughtering And Processing (Poultry Slaughtering And Processing)	157	8	6,280	7,536	1,256
Metal Cans	153	3	6,120	7,344	1,224
Industrial Inorganic Chemicals	148	3	5,920	7,104	1,184
Pharmaceutical Preparations	148	9	5,920	7,104	1,184
Aircraft (Except Research And Development Not Producing Prototypes)	145	3	5,800	6,960	1,160
National Security	137	7	5,480	6,576	1,096
Air-Conditioning And Warm Air Heating Equipment And Commercial And Industrial Refrigeration Equipment (Except Motor Vehicle Air-Conditioning)	132	11	5,280	6,336	1,056
Metal Doors, Sash, Frames, Molding, And Trim	129	3	5,160	6,192	1,032
Paints, Varnishes, Lacquers, Enamels And Allied Products	125	14	5,000	6,000	1,000

Missouri Industry Sector	2012 Chargeable Emissions (tons)	Number of Permitted Facilities	Total Fees at Current Rate of \$40/ton (\$)	Total Fees at New Rate of \$48/ton at 2012 Emissions Levels (\$)	Difference (\$)
Coating, Engraving, And Allied Services, Nec (Except Jewelry, Silverware, And Flatware Engraving And Etching)	123	11	4,920	5,904	984
Farm Supplies (Merchant Wholesalers Except Those Selling Lawn And Garden Supplies Via Retail Method)	121	64	4,840	5,808	968
Prefabricated Metal Buildings And Components	119	1	4,760	5,712	952
Medicinal Chemicals And Botanical Products	116	4	4,640	5,568	928
Truck And Bus Bodies	114	8	4,560	5,472	912
Industrial Organic Chemicals (Aliphatics)	113	3	4,520	5,424	904
Aluminum Extruded Products	106	2	4,240	5,088	848
Other (includes all industry sectors with < 100 tons of chargeable emissions)	5,976	757	239,040	286,848	47,808
Totals	193,151	2,229			

Notes:

- This chart is based on 2012 emissions solely for the purpose of demonstrating the relative impacts of the new emission fee rate of \$48 per ton by industry sector. 2012 emission levels may not be representative of future-year emissions due to expected emission reductions resulting from more stringent federal regulations being implemented over the next few years.
- This chart does not illustrate impacts on the Air Program's projected revenue. See the fiscal notes for this rulemaking for details on expected impacts of the fee change on the Air Program's revenue.

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 with an air permit that is subject to the emissions reporting and fee requirements of 10 CSR 10-6.110. The financial impact on a particular small business will be in direct proportion to its air emissions for a given calendar year. Specifically, for every ton of air pollution a small business emits in a year (up to 4,000 tons per pollutant or a total of 12,000 tons), the emission fee increase to \$48 will result in an extra annual cost of \$8, effective January 1, 2016 and beyond (payment due June 1, 2016 and every subsequent June 1).

In terms of numbers of facilities, the largest categories of permitted small businesses in the state are limestone crushing, ready-mixed concrete, and asphalt paving operations. These industry sectors make up nearly 40% of the 1,644 small businesses with an air permit in the State of Missouri. Based on calendar year 2012 emissions, the small businesses within these three industry sectors reported an average of 5 tons of chargeable emissions. At the new emission fee of \$48 per ton rather than the existing \$40 fee per ton would ultimately result in an average additional annual cost of approximately \$40 for the typical permitted small business in Missouri.

The extra revenue generated by this emission fee increase will benefit small businesses because it will enable the department's Air Pollution Control Program to remain solvent and maintain the minimum 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 and operational deadlines and continue the growth of their businesses. It will also allow the Air Program to continue providing compliance assistance by educating small businesses about air regulations and helping them understand their options for compliance. If the Air Program were not able to maintain the minimum level of core services, the EPA would take the lead on many of Missouri's air issues. If the EPA were in control of air regulatory processes in the state, EPA would enforce regulations and issue permits, which would likely result in less timely permits for Missouri businesses and more costly enforcement actions due the penalty structure in federal law and the penalty calculation methods utilized by the U.S. EPA. 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 agency to incur additional costs to implement and enforce this proposed rulemaking. However, other public agencies with an air permit will have costs associated with the new emission fee; these public agencies are listed in the Public Entity fiscal note accompanying the proposed rulemaking.

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

The proposed rulemaking increases the revenue that the department's Air Pollution Control Program collects annually from air emission fees. The proposed \$48 per ton emission fee was determined based on the projected revenue needed to maintain the Air Program's minimum level of activities and services required to be the implementing agency of the federal Clean Air Act in the State of Missouri. The projections account for the fact that overall air emissions in the state continue to decline as a result of more stringent federal requirements. The projected revenue increases will be itemized in the fiscal note accompanying the proposed rulemaking.

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

The Missouri Department of Natural Resources' Air Pollution Control Program will develop the rulemaking. Emissions 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.

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

The normal process will be followed: public hearing, MACC adoption, order of rulemaking, and publication in the Code of State Regulations. Information on the rulemaking is also made available on the department's web site.

Prior to the commencement of the rulemaking process as required by 643.079.10., RSMo in SB 642, the department's Air Pollution Control Program held meetings with stakeholders on April 24, 2014, May 19, 2014, June 16, 2014, August 21, 2014, and August 28, 2014 to discuss the program's projected budget outlook and obtain input on adjustments to the fee structure in order to support funding the operations of the program.

Information regarding rulemakings is also provided to the Small Business Compliance Advisory Committee, 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.

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 is expected on September 2, 2014 with a public hearing October 30, 2014. The comment period will begin after the rulemaking is filed and end seven (7) days after the public hearing.