

Missouri Department of Natural Resources  
**Rulemaking Report**  
Updated: 06/23/2015

Affected Rule(s): Amendments to 10 CSR 10-6.241 Asbestos Projects—Registration, Notification and Performance Requirements and 10 CSR 10-6.250 Asbestos Projects—Certification, Accreditation and Business Exemption Requirements

1. What is the purpose of this proposed rulemaking?

The Missouri Department of Natural Resources' Air Pollution Control Program is proposing to change the asbestos fee structure pursuant to 643.079.10, RSMo. The relevant fee structure for asbestos related activities is codified in two state rules, 10 CSR 10-6.241 and 10 CSR 10-6.250. The department is proposing to amend both rules.

The purpose of this proposed rulemaking for 10 CSR 10-6.241 is to change the asbestos fees as follows:

- The registration fee will be increased from \$1,000 to \$2,650 per registration;
- The inspection fee will be increased from \$100 per inspection for the first three (3) inspections to \$200 per inspection for the first two (2) inspections;
- The abatement notification fee will be increased from \$100 to \$200 per notification; and
- The demolition fee of \$100 per project, which has not previously been collected, will now be collected.

The purpose of this proposed rulemaking for 10 CSR 10-6.250 is to revise the asbestos fees as follows:

- The asbestos worker certification fee will be increased from \$25 to \$40 per certification;
- The non-asbestos worker certification fee will be increased from \$75 to \$100 per certification;
- The asbestos worker recertification fee will be increased from \$5 to \$20 per certification;
- The non-asbestos worker recertification fee will be increased from \$5 to \$50 per certification;
- The asbestos exam fee of \$25 per exam will be unchanged;
- The asbestos accreditation fee of \$1,000 per course category, with a cap of \$3,000, will be unchanged; and
- The asbestos exemption fee of \$250 per exemption will be unchanged.

The increased asbestos fees will enable the Air Program to maintain its asbestos program to protect the health of Missouri citizens. The fee changes will become effective January 1, 2017, and affected entities will be subject to the new fees for asbestos-related activities commenced after December 31, 2016.

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?

These rulemakings propose to change asbestos fees as a result of an extensive stakeholder process. The Air Program has administered a complete asbestos program based upon federal requirements for many years. The fees the department charges for the asbestos registrations, inspections, notifications, demolitions, certifications, exams, and accreditations were originally codified in 643.232.3, 643.242.2, and 643.237.1(4), RSMo, and have not changed since 1989. The current fees do not cover the full administration of the department's asbestos program, and the shortfall has been funded by other air fee funds, primarily air emission fees. These air fee funds are also facing shortfall.

The passage of senate bill SB 642 during the 2014 legislative session amended 643.079.10, RSMo, to grant the department the authority to adjust the asbestos fee structure with stakeholder agreement. The Air Program is proposing these rule amendments to adjust the asbestos fees to continue administering the asbestos program. These fee increases will help make the asbestos program self-sustaining in the ongoing effort to protect Missouri citizens from the hazards of airborne asbestos. The goal of the asbestos fee increase, combined with the existing fees, is to cover asbestos-related expenditures of approximately \$600,000 annually. The proposed fees are comparable to other states' asbestos fees for similar activities.

Missouri statute 643.079.10, RSMo, requires the department to obtain input and agreement on the proposed asbestos fee structure from stakeholders and approval from the Missouri Air Conservation Commission (MACC). The department has obtained stakeholder input and agreement, and presented the proposed fee structure to the MACC on May 28, 2015. The Department plans to file the proposed rulemakings for 10 CSR 10-6.241 and 10 CSR 10-6.250 in July 2015 and, after considering public comments, file the orders of rulemaking with the Joint Committee on Administrative Rules by December 1, 2015. If the General Assembly does not disapprove the revised asbestos fee structure within the first sixty (60) calendar days of the 2016 regular legislative session, the changes would go into effect January 1, 2017.

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

These rulemakings do 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?

These rulemakings do not prescribe environmental standards, limits, or conditions and, therefore, do not require Regulatory Impact Reports.

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

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 guidelines 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.

643.225, RSMo – Powers and duties of commission, provides the commission shall have the power to promulgate rules and regulations necessary to implement and administer the general intent and purposes of 643.225 to 643.250, RSMo, and chapter 536, RSMo.

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?

The proposed amendment to 10 CSR 10-6.241 will require Missouri individuals and companies that perform asbestos work to pay \$2,650 for each registration, \$200 for each of the first two (2) inspections, \$200 for each abatement notification, and \$100 for each demolition project. These fees include an increase of \$1,650 for each registration, \$100 per inspection for the first two inspections (no charge for more than two inspections), \$100 for each notification, and \$100 for each demolition (previously not collected). A fee change effective January 1, 2017 would require affected entities to pay the new fees on asbestos-related activities commenced after December 31, 2016. These fees will remain in place unless they are adjusted through a future stakeholder and rulemaking process as authorized by 643.079.10, RSMo.

The proposed amendment to 10 CSR 10-6.250 will require Missouri individuals and companies that perform asbestos work to pay \$40 for each asbestos worker certification, \$100 for each non-asbestos worker certification, \$20 for each asbestos worker recertification, \$50 for each non-asbestos worker recertification, \$25 for each asbestos exam, \$1,000 for each asbestos accreditation, and \$250 for each asbestos exemption. These fees include an increase of \$15 for each asbestos worker certification, \$25 for each non-asbestos worker certification, \$15 for each asbestos worker recertification, and \$45 for each non-asbestos worker recertification. The exam, accreditation, and exemption fees remain unchanged. A fee change effective January 1, 2017 would require affected entities to pay the new fees on asbestos-related activities commenced after December 31, 2016. These fees will remain in

place unless they are adjusted through a future stakeholder and rulemaking process as authorized by 643.079.10, RSMo.

Revising the asbestos fees benefits regulated entities as well as citizens throughout the State of Missouri. The revenue from the increased asbestos fees will ensure the viability of the department's asbestos program and its ongoing work to protect Missouri citizens from the hazards of airborne asbestos.

Specific examples of the asbestos program's services and activities include:

- Asbestos training provider accreditation—ensuring that training providers are presenting up to date, accurate, and complete asbestos training to those who will be working in the asbestos abatement field.
- Asbestos occupational certification—ensuring that individuals working in the asbestos abatement field are properly trained and competent to perform their activities in a manner that protects them, as well as others, from exposure to asbestos fibers.
- Demolition notification administration—notifying the Air Program and Regional Offices of impending demolitions. This will ensure the department has the opportunity to review the demolition plans, inspect the site, verify all materials with the potential to contain asbestos have been sampled and analyzed, and confirm all regulated materials have been properly abated.
- Asbestos project notification administration—notifying the Air Program and Regional Offices of impending asbestos abatement projects. This will ensure the department has the opportunity to review the abatement plans, inspect the site, and confirm that certified personnel perform the work and follow appropriate procedures.
- Asbestos compliance and enforcement activities—educating contractors and the regulated public on the hazards of asbestos and requirements for proper handling of asbestos material. Holding responsible parties accountable who do not comply with Missouri's asbestos laws and regulations.
- Asbestos concern investigation and response—responding to citizen concerns regarding renovation, demolition, and abatement activities in order to ensure these activities follow Missouri's laws and regulations.

Without an increase in asbestos fees, it will be a challenge for the Air Program to maintain these asbestos activities. Relying on the U.S. Environmental Protection Agency (EPA) to administer an asbestos program is not feasible since EPA has, in recent years, divested itself of the civil enforcement of certain asbestos rules. EPA provides compliance assistance and policy/interpretation support, but EPA is not able to fully administer the federal asbestos rules or the state-specific accreditation, registration, and certification requirements.

7. Who is most likely affected by the rulemaking?

These rulemakings impact Missouri individuals and companies that perform asbestos work. These entities are required to pay a fee for each certification, recertification, exam, accreditation, exemption, registration, inspection, abatement notification, and demolition.

The Air Program is aware of approximately 22 accredited asbestos training providers, 104 registered asbestos contractors, and 1,818 certified asbestos workers and supervisors in the State of Missouri.

In general, entities with higher levels of asbestos activities will be impacted the most by the new asbestos fees.

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.)

The proposed amendment to 10 CSR 10-6.241 will impact any small business that performs asbestos work which is subject to the fee requirements in the rule. The financial impact on a particular small business will increase in direct proportion to its asbestos activities for a given calendar year. Specifically, the annual registration fee will increase by \$1,650 for each registration, the inspection fee will increase by \$100 for each inspection up to a maximum fee of \$400, and the notification fee will increase by \$100 for each notification. The current demolition fee of \$100, which has not previously been collected, will commence collection on January 1 2017.

The proposed amendment to 10 CSR 10-6.250 will impact any small business that performs asbestos work which is subject to the fee requirements in the rule. The financial impact on a particular small business will increase in direct proportion to its asbestos activities for a given calendar year. Specifically, the asbestos worker certification fee will increase by \$15 per certification, the non-asbestos worker certification fee will increase by \$25 per certification, the asbestos worker recertification fee will increase by \$15 per certification, and the non-asbestos worker recertification fee will increase by \$45 per certification.

A majority of asbestos abatement and training companies are small businesses that depend on the revenue generated by the asbestos abatement industry. The additional revenue generated by these fee increases will benefit these small businesses because it will ensure the viability of the department's asbestos program in its ongoing work to protect Missouri citizens from the hazards of airborne asbestos.

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

The Missouri Department of Natural Resources and any other Missouri public agency performing asbestos work will be required to pay the increased fees starting January 1, 2017. The department does not expect this agency, or any other public agency, to incur additional costs to enforce these proposed rulemakings.

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

The proposed rulemakings increase the revenue that the Air Program collects annually from asbestos fees. The proposed fee increases were determined based on the projected revenue needed to maintain the Air Program's asbestos program and its ongoing mission to protect Missouri citizens from the hazards of airborne asbestos. The goal of the asbestos fee increase is to cover expenditures of approximately \$600,000 annually. The projected revenue increases will be itemized in the fiscal notes accompanying the proposed rulemakings.

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

The Air Program will develop the rulemakings. Individuals and entities with an interest in the overall Air Program fee structure, specifically asbestos fee stakeholders consisting of individuals and companies performing asbestos work, have been involved in the development of the fee changes in the proposed rulemakings.

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 rulemakings is also made available on the department's web site.

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

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

The purpose of these stakeholder discussions was to share the Air Program's projected budget outlook and obtain input and consensus on adjustments to the fee structure in order to support funding for the operations of the Air Program.

Information regarding rulemakings is also provided 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.

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 these proposed rulemakings is expected in July 2015 with a public hearing in September 2015. The comment period will begin after the rulemakings are filed and end seven (7) days after the public hearing.