SECOND REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED]

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 642

97TH GENERAL ASSEMBLY

2014

4971S.05T

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AN ACT

To repeal sections 260.273, 260.279, 260.355, 260.380, 260.392, 260.475, 444.510, 444.520, 444.762, 444.765, 444.770, 444.772, 444.773, 444.805, 640.015, 640.016, 640.100, 643.055, 643.079, 644.026, 644.051, 644.057, and 644.145, RSMo, and to enact in lieu thereof twenty-five new sections relating to natural resources.

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

Section A. Sections 260.273, 260.279, 260.355, 260.380, 260.392, 260.475,
2 444.510, 444.520, 444.762, 444.765, 444.770, 444.772, 444.773, 444.805, 640.015,
3 640.016, 640.100, 643.055, 643.079, 644.026, 644.051, 644.057, and 644.145,
4 RSMo, are repealed and twenty-five new sections enacted in lieu thereof, to be
5 known as sections 260.273, 260.279, 260.355, 260.380, 260.392, 260.475, 444.510,
6 444.520, 444.762, 444.765, 444.768, 444.770, 444.772, 444.773, 444.805, 640.015,
7 640.016, 640.100, 643.055, 643.079, 644.026, 644.051, 644.057, 644.058, and
8 644.145, to read as follows:

260.273. 1. Any person purchasing a new tire may present to the seller
2 the used tire or remains of such used tire for which the new tire purchased is to
3 replace.

4 2. A fee for each new tire sold at retail shall be imposed on any person
5 engaging in the business of making retail sales of new tires within this
6 state. The fee shall be charged by the retailer to the person who purchases a tire
7 for use and not for resale. Such fee shall be imposed at the rate of fifty cents for
8 each new tire sold. Such fee shall be added to the total cost to the purchaser at
9 retail after all applicable sales taxes on the tires have been computed. The fee

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

10 imposed, less six percent of fees collected, which shall be retained by the tire
11 retailer as collection costs, shall be paid to the department of revenue in the form
12 and manner required by the department of revenue and shall include the total
13 number of new tires sold during the preceding month. The department of revenue
14 shall promulgate rules and regulations necessary to administer the fee collection
15 and enforcement. The terms "sold at retail" and "retail sales" do not include the
16 sale of new tires to a person solely for the purpose of resale, if the subsequent
17 retail sale in this state is to the ultimate consumer and is subject to the fee.

18 3. The department of revenue shall administer, collect and enforce the fee
19 authorized pursuant to this section pursuant to the same procedures used in the
20 administration, collection and enforcement of the general state sales and use tax
21 imposed pursuant to chapter 144 except as provided in this section. The proceeds
22 of the new tire fee, less four percent of the proceeds, which shall be retained by
23 the department of revenue as collection costs, shall be transferred by the
24 department of revenue into an appropriate subaccount of the solid waste
25 management fund, created pursuant to section 260.330.

26 4. Up to five percent of the revenue available may be allocated, upon
27 appropriation, to the department of natural resources to be used cooperatively
28 with the department of elementary and secondary education for the purposes of
29 developing environmental educational materials, programs, and curriculum that
30 assist in the department's implementation of sections 260.200 to 260.345.

31 5. Up to fifty percent of the moneys received pursuant to this section may,
32 upon appropriation, be used to administer the programs imposed by this section.
33 Up to forty-five percent of the moneys received under this section may, upon
34 appropriation, be used for the grants authorized in subdivision (2) of subsection
35 6 of this section. All remaining moneys shall be allocated, upon appropriation,
36 for the projects authorized in section 260.276, except that any unencumbered
37 moneys may be used for public health, environmental, and safety projects in
38 response to environmental or public health emergencies and threats as
39 determined by the director.

40 6. The department shall promulgate, by rule, a statewide plan for the use
41 of moneys received pursuant to this section to accomplish the following:

42 (1) Removal of **[**waste**]** **scrap** tires from illegal tire dumps;

43 (2) Providing grants to persons that will use products derived from
44 **[**waste**]** **scrap** tires, or **[**used waste**]** **use scrap** tires as a fuel or fuel supplement;
45 and

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(3) Resource recovery activities conducted by the department pursuant to section 260.276.

7. The fee imposed in subsection 2 of this section shall begin the first day of the month which falls at least thirty days but no more than sixty days immediately following August 28, 2005, and shall terminate January 1, **[**2015**] 2020**.

260.279. In letting contracts for the performance of any job or service for the removal or clean up of **[**waste**] scrap** tires under this chapter, the department of natural resources shall, in addition to the requirements of sections 34.073 and 34.076 and any other points awarded during the evaluation process, give to any vendor that meets one or more of the following factors a five percent preference and ten bonus points for each factor met:

(1) The bid is submitted by a vendor that has resided or maintained its headquarters or principal place of business in Missouri continuously for the two years immediately preceding the date on which the bid is submitted;

(2) The bid is submitted by a nonresident corporation vendor that has an affiliate or subsidiary that employs at least twenty state residents and has maintained its headquarters or principal place of business in Missouri continuously for the two years immediately preceding the date on which the bid is submitted;

(3) The bid is submitted by a vendor that resides or maintains its headquarters or principal place of business in Missouri and, for the purposes of completing the bid project and continuously over the entire term of the project, an average of at least seventy-five percent of such vendor's employees are Missouri residents who have resided in the state continuously for at least two years immediately preceding the date on which the bid is submitted. Such vendor must certify the residency requirements of this subdivision and submit a written claim for preference at the time the bid is submitted;

(4) The bid is submitted by a nonresident vendor that has an affiliate or subsidiary that employs at least twenty state residents and has maintained its headquarters or principal place of business in Missouri and, for the purposes of completing the bid project and continuously over the entire term of the project, an average of at least seventy-five percent of such vendor's employees are Missouri residents who have resided in the state continuously for at least two years immediately preceding the date on which the bid is submitted. Such vendor must certify the residency requirements of this section and submit a written

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31 claim for preference at the time the bid is submitted;
32 (5) The bid is submitted by any vendor that provides written certification
33 that the end use of the tires collected during the project will be for fuel purposes
34 or for the manufacture of a useable good or product. For the purposes of this
35 section, the landfilling of **[**waste**] scrap** tires, **[**waste**] scrap** tire chips, or **[**waste**]**
36 **scrap** tire shreds in any manner, including landfill cover, shall not permit the
37 vendor a preference.

260.355. Exempted from the provisions of sections 260.350 to 260.480 are:
2 (1) Radioactive wastes regulated under section 2011, et seq., of title 42 of
3 United States Code;
4 (2) Emissions to the air subject to regulation of and which are regulated
5 by the Missouri air conservation commission pursuant to chapter 643;
6 (3) Discharges to the waters of this state pursuant to a permit issued by
7 the Missouri clean water commission pursuant to chapter 204;
8 (4) Fluids injected or returned into subsurface formations in connection
9 with oil or gas operations regulated by the Missouri oil and gas council pursuant
10 to chapter 259;
11 (5) Mining wastes used in reclamation of mined lands pursuant to a
12 permit issued by the Missouri **[**land reclamation**] mining** commission pursuant
13 to chapter 444.

260.380. 1. After six months from the effective date of the standards,
2 rules and regulations adopted by the commission pursuant to section 260.370,
3 hazardous waste generators located in Missouri shall:
4 (1) Promptly file and maintain with the department, on registration forms
5 it provides for this purpose, information on hazardous waste generation and
6 management as specified by rules and regulations. Hazardous waste generators
7 shall pay a one hundred dollar registration fee upon initial registration, and a
8 one hundred dollar registration renewal fee annually thereafter to maintain an
9 active registration. Such fees shall be deposited in the hazardous waste fund
10 created in section 260.391;
11 (2) Containerize and label all hazardous wastes as specified by standards,
12 rules and regulations;
13 (3) Segregate all hazardous wastes from all nonhazardous wastes and
14 from noncompatible wastes, materials and other potential hazards as specified by
15 standards, rules and regulations;
16 (4) Provide safe storage and handling, including spill protection, as

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17 specified by standards, rules and regulations, for all hazardous wastes from the
18 time of their generation to the time of their removal from the site of generation;
19 (5) Unless provided otherwise in the rules and regulations, utilize only a
20 hazardous waste transporter holding a license pursuant to sections 260.350 to
21 260.430 for the removal of all hazardous wastes from the premises where they
22 were generated;
23 (6) Unless provided otherwise in the rules and regulations, provide a
24 separate manifest to the transporter for each load of hazardous waste transported
25 from the premises where it was generated. The generator shall specify the
26 destination of such load on the manifest. The manner in which the manifest shall
27 be completed, signed and filed with the department shall be in accordance with
28 rules and regulations;
29 (7) Utilize for treatment, resource recovery, disposal or storage of all
30 hazardous wastes, only a hazardous waste facility authorized to operate pursuant
31 to sections 260.350 to 260.430 or the federal Resource Conservation and Recovery
32 Act, or a state hazardous waste management program authorized pursuant to the
33 federal Resource Conservation and Recovery Act, or any facility exempted from
34 the permit required pursuant to section 260.395;
35 (8) Collect and maintain such records, perform such monitoring or
36 analyses, and submit such reports on any hazardous waste generated, its
37 transportation and final disposition, as specified in sections 260.350 to 260.430
38 and rules and regulations adopted pursuant to sections 260.350 to 260.430;
39 (9) Make available to the department upon request samples of waste and
40 all records relating to hazardous waste generation and management for inspection
41 and copying and allow the department to make unhampered inspections at any
42 reasonable time of hazardous waste generation and management facilities located
43 on the generator's property and hazardous waste generation and management
44 practices carried out on the generator's property;
45 (10) (a) Pay annually, on or before January first of each year, effective
46 January 1, 1982, a fee to the state of Missouri to be placed in the hazardous
47 waste fund. The fee shall be five dollars per ton or portion thereof of hazardous
48 waste registered with the department as specified in subdivision (1) of this
49 subsection for the twelve-month period ending June thirtieth of the previous
50 year. However, the fee shall not exceed fifty-two thousand dollars per generator
51 site per year nor be less than one hundred fifty dollars per generator site per
52 year.

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53 (b) All moneys payable pursuant to the provisions of this subdivision shall
54 be promptly transmitted to the department of revenue, which shall deposit the
55 same in the state treasury to the credit of the hazardous waste fund created in
56 section 260.391.

57 (c) The hazardous waste management commission shall establish and
58 submit to the department of revenue procedures relating to the collection of the
59 fees authorized by this subdivision. Such procedures shall include, but not be
60 limited to, necessary records identifying the quantities of hazardous waste
61 registered, the form and submission of reports to accompany the payment of fees,
62 the time and manner of payment of fees, which shall not be more often than
63 quarterly.

64 (d) **Notwithstanding any statutory fee amounts or maximums to**
65 **the contrary,** the director of the department of natural resources may conduct
66 a comprehensive review **[**of**] and propose changes to** the fee structure set forth
67 in this section. The comprehensive review shall include stakeholder meetings in
68 order to solicit stakeholder input from each of the following groups: cement kiln
69 representatives, chemical companies, large and small hazardous waste
70 generators, and any other interested parties. Upon completion of the
71 comprehensive review, the department shall submit **a** proposed **[**changes to the**]**
72 fee structure with stakeholder agreement to the hazardous waste management
73 commission. The commission shall**[**, upon receiving the department's
74 recommendations,**]** review such recommendations at the forthcoming regular or
75 special meeting**, but shall not vote on the fee structure until a subsequent**
76 **meeting**. **[**The commission shall not take a vote on the fee structure until the
77 following regular meeting.**]** If the commission approves, by vote of two-thirds
78 majority **or five of seven commissioners**, the **[**hazardous waste**]** fee structure
79 recommendations, the commission shall **[**promulgate by regulation and publish
80 the recommended fee structure no later than October first of the same year. The
81 commission shall**] authorize the department to file a notice of proposed**
82 **rulemaking containing the recommended fee structure, and after**
83 **considering public comments may authorize the department to** file the
84 order of rulemaking for such rule with the joint committee on administrative
85 rules pursuant to sections 536.021 and 536.024 no later than December first of
86 the same year. If such rules are not disapproved by the general assembly in the
87 manner set out below, they shall take effect on January first of the **[**next odd-
88 numbered**] following calendar** year and the fee structure set out in this section

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shall expire upon the effective date of the commission-adopted fee structure, contrary to subsection 4 of this section. Any regulation promulgated under this subsection shall be deemed to be beyond the scope and authority provided in this subsection, or detrimental to permit applicants, if the general assembly, within the first sixty calendar days of the regular session immediately following the **[**promulgation**]** **filing** of such regulation**[**, by concurrent resolution, shall disapprove the fee structure contained in such regulation**]** **disapproves the regulation by concurrent resolution**. If the general assembly so disapproves any regulation **[**promulgated**]** **filed** under this subsection, **[**the hazardous waste management commission shall continue to use the fee structure set forth in the most recent preceding regulation promulgated under this subsection.**]** **the department and the commission shall not implement the proposed fee structure and shall continue to use the previous fee structure. The authority of the commission to further revise the fee structure as provided by** this subsection shall expire on August 28, **[**2023**]** **2024**.

2. Missouri treatment, storage, or disposal facilities shall pay annually, on or before January first of each year, a fee to the department equal to two dollars per ton or portion thereof for all hazardous waste received from outside the state. This fee shall be based on the hazardous waste received for the twelve-month period ending June thirtieth of the previous year.

3. Exempted from the requirements of this section are individual householders and farmers who generate only small quantities of hazardous waste and any person the commission determines generates only small quantities of hazardous waste on an infrequent basis, except that:

(1) Householders, farmers and exempted persons shall manage all hazardous wastes they may generate in a manner so as not to adversely affect the health of humans, or pose a threat to the environment, or create a public nuisance; and

(2) The department may determine that a specific quantity of a specific hazardous waste requires special management. Upon such determination and after public notice by press release or advertisement thereof, including instructions for handling and delivery, generators exempted pursuant to this subsection shall deliver, but without a manifest or the requirement to use a licensed hazardous waste transporter, such waste to:

(a) Any storage, treatment or disposal site authorized to operate pursuant to sections 260.350 to 260.430 or the federal Resource Conservation and Recovery

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125 Act, or a state hazardous waste management program authorized pursuant to the
126 federal Resource Conservation and Recovery Act which the department designates
127 for this purpose; or
128 (b) A collection station or vehicle which the department may arrange for
129 and designate for this purpose.
130 4. Failure to pay the fee, or any portion thereof, prescribed in this section
131 by the due date shall result in the imposition of a penalty equal to fifteen percent
132 of the original fee. The fee prescribed in this section shall expire December 31,
133 2018, except that the department shall levy and collect this fee for any hazardous
134 waste generated prior to such date and reported to the department.

260.392. 1. As used in sections 260.392 to 260.399, the following terms
2 mean:
3 (1) "Cask", all the components and systems associated with the container
4 in which spent fuel, high-level radioactive waste, highway route controlled
5 quantity, or transuranic radioactive waste are stored;
6 (2) "High-level radioactive waste", the highly radioactive material
7 resulting from the reprocessing of spent nuclear fuel including liquid waste
8 produced directly in reprocessing and any solid material derived from such liquid
9 waste that contains fission products in sufficient concentrations, and other highly
10 radioactive material that the United States Nuclear Regulatory Commission has
11 determined to be high-level radioactive waste requiring permanent isolation;
12 (3) "Highway route controlled quantity", as defined in 49 CFR Part
13 173.403, as amended, a quantity of radioactive material within a single
14 package. Highway route controlled quantity shipments of thirty miles or less
15 within the state are exempt from the provisions of this section;
16 (4) "Low-level radioactive waste", any radioactive waste not classified as
17 high-level radioactive waste, transuranic radioactive waste, or spent nuclear fuel
18 by the United States Nuclear Regulatory Commission, consistent with existing
19 law. Shipment of all sealed sources meeting the definition of low-level radioactive
20 waste, shipments of low-level radioactive waste that are within a radius of no
21 more than fifty miles from the point of origin, and all naturally occurring
22 radioactive material given written approval for landfill disposal by the Missouri
23 department of natural resources under 10 CSR 80-3.010 are exempt from the
24 provisions of this section. Any low-level radioactive waste that has a radioactive
25 half-life equal to or less than one hundred twenty days is exempt from the
26 provisions of this section;

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27 (5) "Shipper", the generator, owner, or company contracting for
28 transportation by truck or rail of the spent fuel, high-level radioactive waste,
29 highway route controlled quantity shipments, transuranic radioactive waste, or
30 low-level radioactive waste;
31 (6) "Spent nuclear fuel", fuel that has been withdrawn from a nuclear
32 reactor following irradiation, the constituent elements of which have not been
33 separated by reprocessing;
34 (7) "State-funded institutions of higher education", any campus of any
35 university within the state of Missouri that receives state funding and has a
36 nuclear research reactor;
37 (8) "Transuranic radioactive waste", defined in 40 CFR Part 191.02, as
38 amended, as waste containing more than one hundred nanocuries of alpha-
39 emitting transuranic isotopes with half-lives greater than twenty years, per gram
40 of waste. For the purposes of this section, transuranic waste shall not include:
41 (a) High-level radioactive wastes;
42 (b) Any waste determined by the Environmental Protection Agency with
43 the concurrence of the Environmental Protection Agency administrator that does
44 not need the degree of isolation required by this section; or
45 (c) Any waste that the United States Nuclear Regulatory Commission has
46 approved for disposal on a case-by-case basis in accordance with 10 CFR Part 61,
47 as amended.
48 2. Any shipper that ships high-level radioactive waste, transuranic
49 radioactive waste, highway route controlled quantity shipments, spent nuclear
50 fuel, or low-level radioactive waste through or within the state shall be subject
51 to the fees established in this subsection, provided that no state-funded
52 institution of higher education that ships nuclear waste shall pay any such
53 fee. These higher education institutions shall reimburse the Missouri state
54 highway patrol directly for all costs related to shipment escorts. The fees for all
55 other shipments shall be:
56 (1) One thousand eight hundred dollars for each truck transporting
57 through or within the state high-level radioactive waste, transuranic radioactive
58 waste, spent nuclear fuel or highway route controlled quantity shipments. All
59 truck shipments of high-level radioactive waste, transuranic radioactive waste,
60 spent nuclear fuel, or highway route controlled quantity shipments are subject to
61 a surcharge of twenty-five dollars per mile for every mile over two hundred miles
62 traveled within the state;

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63 (2) One thousand three hundred dollars for the first cask and one hundred
64 twenty-five dollars for each additional cask for each rail shipment through or
65 within the state of high-level radioactive waste, transuranic radioactive waste,
66 or spent nuclear fuel;
67 (3) One hundred twenty-five dollars for each truck or train transporting
68 low-level radioactive waste through or within the state.
69 The department of natural resources may accept an annual shipment fee as
70 negotiated with a shipper or accept payment per shipment.
71 3. All revenue generated from the fees established in subsection 2 of this
72 section shall be deposited into the environmental radiation monitoring fund
73 established in section 260.750 and shall be used by the department of natural
74 resources to achieve the following objectives and for purposes related to the
75 shipment of high-level radioactive waste, transuranic radioactive waste, highway
76 route controlled quantity shipments, spent nuclear fuel, or low-level radioactive
77 waste, including, but not limited to:
78 (1) Inspections, escorts, and security for waste shipment and planning;
79 (2) Coordination of emergency response capability;
80 (3) Education and training of state, county, and local emergency
81 responders;
82 (4) Purchase and maintenance of necessary equipment and supplies for
83 state, county, and local emergency responders through grants or other funding
84 mechanisms;
85 (5) Emergency responses to any transportation incident involving the
86 high-level radioactive waste, transuranic radioactive waste, highway route
87 controlled quantity shipments, spent nuclear fuel, or low-level radioactive waste;
88 (6) Oversight of any environmental remediation necessary resulting from
89 an incident involving a shipment of high-level radioactive waste, transuranic
90 radioactive waste, highway route controlled quantity shipments, spent nuclear
91 fuel, or low-level radioactive waste. Reimbursement for oversight of any such
92 incident shall not reduce or eliminate the liability of any party responsible for the
93 incident; such party may be liable for full reimbursement to the state or payment
94 of any other costs associated with the cleanup of contamination related to a
95 transportation incident;
96 (7) Administrative costs attributable to the state agencies which are
97 incurred through their involvement as it relates to the shipment of high-level
98 radioactive waste, transuranic radioactive waste, highway route controlled

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99 quantity shipments, spent nuclear fuel, or low-level radioactive waste through or
100 within the state.

101 4. Nothing in this section shall preclude any other state agency from
102 receiving reimbursement from the department of natural resources and the
103 environmental radiation monitoring fund for services rendered that achieve the
104 objectives and comply with the provisions of this section.

105 5. Any unencumbered balance in the environmental radiation monitoring
106 fund that exceeds three hundred thousand dollars in any given fiscal year shall
107 be returned to shippers on a pro rata basis, based on the shipper's contribution
108 into the environmental radiation monitoring fund for that fiscal year.

109 6. The department of natural resources, in coordination with the
110 department of health and senior services and the department of public safety,
111 may promulgate rules necessary to carry out the provisions of this section. Any
112 rule or portion of a rule, as that term is defined in section 536.010, that is created
113 under the authority delegated in this section shall become effective only if it
114 complies with and is subject to all of the provisions of chapter 536 and, if
115 applicable, section 536.028. This section and chapter 536 are nonseverable and
116 if any of the powers vested with the general assembly pursuant to chapter 536 to
117 review, to delay the effective date, or to disapprove and annul a rule are
118 subsequently held unconstitutional, then the grant of rulemaking authority and
119 any rule proposed or adopted after August 28, 2009, shall be invalid and void.

120 7. All funds deposited in the environmental radiation monitoring fund
121 through fees established in subsection 2 of this section shall be utilized, subject
122 to appropriation by the general assembly, for the administration and enforcement
123 of this section by the department of natural resources. All interest earned by the
124 moneys in the fund shall accrue to the fund.

125 8. All fees shall be paid to the department of natural resources prior to
126 shipment.

127 9. Notice of any shipment of high-level radioactive waste, transuranic
128 radioactive waste, highway route controlled quantity shipments, or spent nuclear
129 fuel through or within the state shall be provided by the shipper to the governor's
130 designee for advanced notification, as described in 10 CFR Parts 71 and 73, as
131 amended, prior to such shipment entering the state. Notice of any shipment of
132 low-level radioactive waste through or within the state shall be provided by the
133 shipper to the Missouri department of natural resources before such shipment
134 enters the state.

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135 10. Any shipper who fails to pay a fee assessed under this section, or fails
136 to provide notice of a shipment, shall be liable in a civil action for an amount not
137 to exceed ten times the amount assessed and not paid. The action shall be
138 brought by the attorney general at the request of the department of natural
139 resources. If the action involves a facility domiciled in the state, the action shall
140 be brought in the circuit court of the county in which the facility is located. If the
141 action does not involve a facility domiciled in the state, the action shall be
142 brought in the circuit court of Cole County.

143 11. Beginning on December 31, 2009, and every two years thereafter, the
144 department of natural resources shall prepare and submit a report on activities
145 of the environmental radiation monitoring fund to the general assembly. This
146 report shall include information on fee income received and expenditures made
147 by the state to enforce and administer the provisions of this section.

148 12. The provisions of this section shall not apply to high-level radioactive
149 waste, transuranic radioactive waste, highway route controlled quantity
150 shipments, spent nuclear fuel, or low-level radioactive waste shipped by or for the
151 federal government for military or national defense purposes.

152 13. **[**Under section 23.253 of the Missouri sunset act:

153 (1) The provisions of the new program authorized under this section shall
154 automatically sunset six years after August 28, 2009, unless reauthorized by an
155 act of the general assembly; and

156 (2) If such program is reauthorized,**]** The program authorized under this
157 section shall automatically sunset **[**twelve years after the effective date of the
158 reauthorization of this section; and

159 (3) This section shall terminate on September first of the calendar year
160 immediately following the calendar year in which the program authorized under
161 this section is sunset**] on August 28, 2024**.

260.475. 1. Every hazardous waste generator located in Missouri shall
2 pay, in addition to the fees imposed in section 260.380, a fee of twenty-five dollars
3 per ton annually on all hazardous waste which is discharged, deposited, dumped
4 or placed into or on the soil as a final action, and two dollars per ton on all other
5 hazardous waste transported off site. No fee shall be imposed upon any
6 hazardous waste generator who registers less than ten tons of hazardous waste
7 annually pursuant to section 260.380, or upon:

8 (1) Hazardous waste which must be disposed of as provided by a remedial
9 plan for an abandoned or uncontrolled hazardous waste site;

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10 (2) Fly ash waste, bottom ash waste, slag waste and flue gas emission
11 control waste generated primarily from the combustion of coal or other fossil
12 fuels;
13 (3) Solid waste from the extraction, beneficiation and processing of ores
14 and minerals, including phosphate rock and overburden from the mining of
15 uranium ore and smelter slag waste from the processing of materials into
16 reclaimed metals;
17 (4) Cement kiln dust waste;
18 (5) Waste oil; or
19 (6) Hazardous waste that is:
20 (a) Reclaimed or reused for energy and materials;
21 (b) Transformed into new products which are not wastes;
22 (c) Destroyed or treated to render the hazardous waste nonhazardous; or
23 (d) Waste discharged to a publicly owned treatment works.
24 2. The fees imposed in this section shall be reported and paid to the
25 department on an annual basis not later than the first of January. The payment
26 shall be accompanied by a return in such form as the department may prescribe.
27 3. All moneys collected or received by the department pursuant to this
28 section shall be transmitted to the department of revenue for deposit in the state
29 treasury to the credit of the hazardous waste fund created pursuant to section
30 260.391. Following each annual reporting date, the state treasurer shall certify
31 the amount deposited in the fund to the commission.
32 4. If any generator or transporter fails or refuses to pay the fees imposed
33 by this section, or fails or refuses to furnish any information reasonably requested
34 by the department relating to such fees, there shall be imposed, in addition to the
35 fee determined to be owed, a penalty of fifteen percent of the fee shall be
36 deposited in the hazardous waste fund.
37 5. If the fees or any portion of the fees imposed by this section are not
38 paid by the date prescribed for such payment, there shall be imposed interest
39 upon the unpaid amount at the rate of ten percent per annum from the date
40 prescribed for its payment until payment is actually made, all of which shall be
41 deposited in the hazardous waste fund.
42 6. The state treasurer is authorized to deposit all of the moneys in the
43 hazardous waste fund in any of the qualified depositories of the state. All such
44 deposits shall be secured in such a manner and shall be made upon such terms
45 and conditions as are now or may hereafter be provided for by law relative to

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46 state deposits. Interest received on such deposits shall be credited to the
47 hazardous waste fund.
48 7. This fee shall expire December 31, 2018, except that the department
49 shall levy and collect this fee for any hazardous waste generated prior to such
50 date and reported to the department.
51 8. **Notwithstanding any statutory fee amounts or maximums to**
52 **the contrary,** the director of the department of natural resources may conduct
53 a comprehensive review **[**of**] and propose changes to** the fee structure set forth
54 in this section. The comprehensive review shall include stakeholder meetings in
55 order to solicit stakeholder input from each of the following groups: cement kiln
56 representatives, chemical companies, large and small hazardous waste
57 generators, and any other interested parties. Upon completion of the
58 comprehensive review, the department shall submit **a** proposed **[**changes to the**]**
59 fee structure with stakeholder agreement to the hazardous waste management
60 commission. The commission shall**[**, upon receiving the department's
61 recommendations,**]** review such recommendations at the forthcoming regular or
62 special meeting**, but shall not vote on the fee structure until a subsequent**
63 **meeting**. **[**The commission shall not take a vote on the fee structure until the
64 following regular meeting.**]** If the commission approves, by vote of two-thirds
65 majority **or five of seven commissioners**, the **[**hazardous waste**]** fee structure
66 recommendations, the commission shall **[**promulgate by regulation and publish
67 the recommended fee structure no later than October first of the same year. The
68 commission shall**] authorize the department to file a notice of proposed**
69 **rulemaking containing the recommended fee structure, and after**
70 **considering public comments may authorize the department to** file the
71 order of rulemaking for such rule with the joint committee on administrative
72 rules pursuant to sections 536.021 and 536.024 no later than December first of
73 the same year. If such rules are not disapproved by the general assembly in the
74 manner set out below, they shall take effect on January first of the **[**next odd-
75 numbered**] following calendar** year and the fee structure set out in this section
76 shall expire upon the effective date of the commission-adopted fee structure,
77 contrary to subsection 7 of this section. Any regulation promulgated under this
78 subsection shall be deemed to be beyond the scope and authority provided in this
79 subsection, or detrimental to permit applicants, if the general assembly, within
80 the first sixty calendar days of the regular session immediately following the
81 **[**promulgation**] filing** of such regulation**[**, by concurrent resolution, shall

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82 disapprove the fee structure contained in such regulation**] disapproves the**
83 **regulation by concurrent resolution**. If the general assembly so disapproves
84 any regulation **[**promulgated**] filed** under this subsection, **[**the hazardous waste
85 management commission shall continue to use the fee structure set forth in the
86 most recent preceding regulation promulgated under this subsection.**] the**
87 **department and the commission shall not implement the proposed fee**
88 **structure and shall continue to use the previous fee structure. The**
89 **authority of the commission to further revise the fee structure as**
90 **provided by** this subsection shall expire on August 28, **[**2023**] 2024**.

444.510. As used in sections 444.500 to 444.755, unless the context clearly
2 indicates otherwise, the following words and terms mean:

3 (1) "Affected land", the pit area or area from which overburden has been
4 removed, or upon which overburden has been deposited;

5 (2) "Box cut", the first open cut in the mining of coal which results in the
6 placing of overburden on the surface of the land adjacent to the initial pit and
7 outside of the area of land to be mined;

8 (3) "Commission", the **[**land reclamation**] Missouri mining** commission
9 **within the department of natural resources** created by section 444.520;

10 (4) "Company owned land", land owned by the operator in fee simple;

11 (5) "Director", the **staff** director of the **[**land reclamation**] Missouri**
12 **mining** commission;

13 (6) "Gob", that portion of refuse consisting of waste coal or bony coal of
14 relatively large size which is separated from the marketable coal in the cleaning
15 process or solid refuse material, not readily waterborne or pumpable, without
16 crushing;

17 (7) "Highwall", that side of the pit adjacent to unmined land;

18 (8) "Leased land", all affected land where the operator does not own the
19 land in fee simple;

20 (9) "Operator", any person, firm or corporation engaged in or controlling
21 a strip mining operation;

22 (10) "Overburden", as applied to the strip mining of coal, means all of the
23 earth and other materials which lie above natural deposits of coal, and includes
24 such earth and other materials disturbed from their natural state in the process
25 of strip mining;

26 (11) "Owner", the owner of any right in the land other than the operator;

27 (12) "Peak", a projecting point of overburden created in the strip mining

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28 process or that portion of unmined land remaining within the pit;
29 (13) "Person", any individual, partnership, copartnership, firm, company,
30 public or private corporation, association, joint stock company, trust, estate,
31 political subdivision, or any agency, board, department, or bureau of the state or
32 federal government, or any other legal entity whatever which is recognized by law
33 as the subject of rights and duties;
34 (14) "Pit", the place where coal is being or has been mined by strip
35 mining;
36 (15) "Refuse", all waste material directly connected with the cleaning and
37 preparation of substances mined by strip mining;
38 (16) "Ridge", a lengthened elevation of overburden created in the strip
39 mining process;
40 (17) "Strip mining", mining by removing the overburden lying above
41 natural deposits of coal, and mining directly from the natural deposits thereby
42 exposed, and includes mining of exposed natural deposits of coal over which no
43 overburden lies; except that "strip mining" of coal shall only mean those activities
44 exempted from the "Surface Coal Mining Law", pursuant to subsection 6 of
45 section 444.815.

444.520. 1. There is a **[**land reclamation**] Missouri mining** commission
2 whose domicile for administrative purposes is the department of natural
3 resources. The commission shall consist of the following **[**seven**] eight** persons:
4 The state geologist, the director of the department of conservation, the director
5 of staff of the clean water commission, and **[**four**] five** other persons selected from
6 the general public who are residents of Missouri and who shall have an interest
7 in and knowledge of conservation and land reclamation, and one of whom shall
8 in addition have training and experience in surface mining, **one of whom shall**
9 **in addition have training and experience in subsurface mining,** but not
10 more than **[**one**] two** can have a direct connection with the mining industry. The
11 **[**four**] five** members from the general public shall be appointed by the governor,
12 by and with the advice and consent of the senate. No more than **[**two**] three** of
13 the appointed members shall belong to the same political party. The three
14 members who serve on the commission by virtue of their office may designate a
15 representative to attend any meetings in their place and exercise all their powers
16 and duties. All necessary personnel required by the commission shall be selected,
17 employed and discharged by the commission. The director of the department
18 shall not have the authority to abolish positions.

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19 2. The initial term of the appointed members shall be as follows: Two
20 members, each from a different political party, shall be appointed for a term of
21 two years, and two members, each from a different political party, shall be
22 appointed for a term of four years. The governor shall designate the term of office
23 for each person appointed when making the initial appointment. The terms of
24 their successors shall be for four years. There is no limitation on the number of
25 terms any appointed member may serve. The terms of all members shall continue
26 until their successors have been duly appointed and qualified. If a vacancy occurs
27 in the appointed membership, the governor shall appoint a member for the
28 remaining portion of the unexpired term created by the vacancy. The governor
29 may remove any appointed member for cause.

30 3. All members of the commission shall serve without compensation for
31 their duties, but shall be reimbursed for necessary travel and other expenses
32 incurred in the performance of their official duties.

33 4. At the first meeting of the commission, which shall be called by the
34 state geologist, and at yearly intervals thereafter, the members shall select from
35 among themselves a chairman and a vice chairman. The members of the
36 commission shall appoint a qualified director who shall be a full-time employee
37 of the commission and who shall act as its administrative agent. The commission
38 shall determine the compensation of the director to be payable from
39 appropriations made for that purpose.

444.762. It is hereby declared to be the policy of this state to strike a
2 balance between **[**surface**]** mining of minerals and reclamation of land subjected
3 to surface disturbance by **[**surface**]** mining, as contemporaneously as possible, and
4 for the conservation of land, and thereby to preserve natural resources, to
5 encourage the planting of forests, to advance the seeding of grasses and legumes
6 for grazing purposes and crops for harvest, to aid in the protection of wildlife and
7 aquatic resources, to establish recreational, home and industrial sites, to protect
8 and perpetuate the taxable value of property, and to protect and promote the
9 health, safety and general welfare of the people of this state.

444.765. Wherever used or referred to in sections 444.760 to 444.790,
2 unless a different meaning clearly appears from the context, the following terms
3 mean:

4 (1) "Affected land", the pit area or area from which overburden shall have
5 been removed, or upon which overburden has been deposited after September 28,
6 1971. When mining is conducted underground, affected land means any

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7 excavation or removal of overburden required to create access to mine openings,
8 except that areas of disturbance encompassed by the actual underground
9 openings for air shafts, portals, adits and haul roads in addition to disturbances
10 within fifty feet of any openings for haul roads, portals or adits shall not be
11 considered affected land. Sites which exceed the excluded areas by more than one
12 acre for underground mining operations shall obtain a permit for the total extent
13 of affected lands with no exclusions as required under sections 444.760 to
14 444.790;

15 (2) "Beneficiation", the dressing or processing of minerals for the purpose
16 of regulating the size of the desired product, removing unwanted constituents,
17 and improving the quality or purity of a desired product;

18 (3) "Commercial purpose", the purpose of extracting minerals for their
19 value in sales to other persons or for incorporation into a product;

20 (4) "Commission", the **[**land reclamation**]** **Missouri mining** commission
21 in the department of natural resources **created by section 444.520**;

22 (5) "Construction", construction, erection, alteration, maintenance, or
23 repair of any facility including but not limited to any building, structure,
24 highway, road, bridge, viaduct, water or sewer line, pipeline or utility line, and
25 demolition, excavation, land clearance, and moving of minerals or fill dirt in
26 connection therewith;

27 (6) "Department", the department of natural resources;

28 (7) "Director", the staff director of the **[**land reclamation**]** **Missouri**
29 **mining** commission **or his or her designee**;

30 (8) "Excavation", any operation in which earth, minerals, or other material
31 in or on the ground is moved, removed, or otherwise displaced for purposes of
32 construction at the site of excavation, by means of any tools, equipment, or
33 explosives and includes, but is not limited to, backfilling, grading, trenching,
34 digging, ditching, drilling, well-drilling, auguring, boring, tunneling, scraping,
35 cable or pipe plowing, plowing-in, pulling-in, ripping, driving, demolition of
36 structures, and the use of high-velocity air to disintegrate and suction to remove
37 earth and other materials. For purposes of this section, excavation or removal of
38 overburden for purposes of mining for a commercial purpose or for purposes of
39 reclamation of land subjected to surface mining is not included in this
40 definition. Neither shall excavations of sand and gravel by political subdivisions
41 using their own personnel and equipment or private individuals for personal use
42 be included in this definition;

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43 (9) "Fill dirt", material removed from its natural location through mining
44 or construction activity, which is a mixture of unconsolidated earthy material,
45 which may include some minerals, and which is used to fill, raise, or level the
46 surface of the ground at the site of disposition, which may be at the site it was
47 removed or on other property, and which is not processed to extract mineral
48 components of the mixture. Backfill material for use in completing reclamation
49 is not included in this definition;

50 (10) "Land improvement", work performed by or for a public or private
51 owner or lessor of real property for purposes of improving the suitability of the
52 property for construction at an undetermined future date, where specific plans for
53 construction do not currently exist;

54 (11) "Mineral", a constituent of the earth in a solid state which, when
55 extracted from the earth, is usable in its natural form or is capable of conversion
56 into a usable form as a chemical, an energy source, or raw material for
57 manufacturing or construction material. For the purposes of this section, this
58 definition includes barite, tar sands, **[**and**]** oil shales, **cadmium, barium,**
59 **nickel, cobalt, molybdenum, germanium, gallium, tellurium, selenium,**
60 **vanadium, indium, mercury, uranium, rare earth elements, platinum**
61 **group elements, manganese, phosphorus, sodium, titanium, zirconium,**
62 **lithium, thorium, or tungsten;** but does not include iron, lead, zinc, gold,
63 silver, coal, surface or subsurface water, fill dirt, natural oil or gas together with
64 other chemicals recovered therewith;

65 (12) "Mining", the removal of overburden and extraction of underlying
66 minerals or the extraction of minerals from exposed natural deposits for a
67 commercial purpose, as defined by this section;

68 (13) "Operator", any person, firm or corporation engaged in and
69 controlling a surface mining operation;

70 (14) "Overburden", all of the earth and other materials which lie above
71 natural deposits of minerals; and also means such earth and other materials
72 disturbed from their natural state in the process of surface mining other than
73 what is defined in subdivision (10) of this section;

74 (15) "Peak", a projecting point of overburden created in the surface mining
75 process;

76 (16) "Pit", the place where minerals are being or have been mined by
77 surface mining;

78 (17) "Public entity", the state or any officer, official, authority, board, or

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79 commission of the state and any county, city, or other political subdivision of the
80 state, or any institution supported in whole or in part by public funds;
81 (18) "Refuse", all waste material directly connected with the cleaning and
82 preparation of substance mined by surface mining;
83 (19) "Ridge", a lengthened elevation of overburden created in the surface
84 mining process;
85 (20) "Site" or "mining site", any location or group of associated locations
86 separated by a natural barrier where minerals are being surface mined by the
87 same operator;
88 (21) "Surface mining", the mining of minerals for commercial purposes by
89 removing the overburden lying above natural deposits thereof, and mining
90 directly from the natural deposits thereby exposed, and shall include mining of
91 exposed natural deposits of such minerals over which no overburden lies and,
92 after August 28, 1990, the surface effects of underground mining operations for
93 such minerals. For purposes of the provisions of sections 444.760 to 444.790,
94 surface mining shall not include excavations to move minerals or fill dirt within
95 the confines of the real property where excavation occurs or to remove minerals
96 or fill dirt from the real property in preparation for construction at the site of
97 excavation. No excavation of fill dirt shall be deemed surface mining regardless
98 of the site of disposition or whether construction occurs at the site of excavation.

444.768. 1. Notwithstanding any statutory fee amounts or
2 **maximums to the contrary, the director of the department of natural**
3 **resources may conduct a comprehensive review and propose changes**
4 **to the fee, bond, or assessment structure as set forth in chapter 444.**
5 **The comprehensive review shall include stakeholder meetings in order**
6 **to solicit stakeholder input from regulated entities and any other**
7 **interested parties. Upon completion of the comprehensive review, the**
8 **department shall submit a proposed fee, bond, or assessment structure**
9 **with stakeholder agreement to the Missouri mining commission. The**
10 **commission shall review such recommendations at a forthcoming**
11 **regular or special meeting, but shall not vote on the proposed structure**
12 **until a subsequent meeting. If the commission approves, by vote of two-**
13 **thirds majority, the fee, bond, or assessment structure**
14 **recommendations, the commission shall authorize the department to**
15 **file a notice of proposed rulemaking containing the recommended**
16 **structure, and after considering public comments may authorize the**

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department to file the final order of rulemaking for such rule with the joint committee on administrative rules pursuant to sections 536.021 and 536.024 no later than December first of the same year. If such rules are not disapproved by the general assembly in the manner set out below, they shall take effect on January first of the following calendar year, at which point the existing fee, bond, or assessment structure shall expire. Any regulation promulgated under this subsection shall be deemed to be beyond the scope and authority provided in this subsection, or detrimental to permit applicants, if the general assembly, within the first sixty days of the regular session immediately following the filing of such regulation disapproves the regulation by concurrent resolution. If the general assembly so disapproves any regulation filed under this subsection, the department and the commission shall not implement the proposed fee, bond, or assessment structure and shall continue to use the previous fee, bond, or assessment structure. The authority for the commission to further revise the fee, bond, or assessment structure as provided in this subsection shall expire on August 28, 2024.

2. Failure to pay any fee, bond, or assessment, or any portion thereof, referenced in this section by the due date may result in the imposition of a late fee equal to fifteen percent of the unpaid amount, plus ten percent interest per annum. Any order issued by the department under chapter 444 may require payment of such amounts. The department may bring an action in the appropriate circuit court to collect any unpaid fee, late fee, interest, or attorney's fees and costs incurred directly in fee collection. Such action may be brought in the circuit court of the county in which the facility is located, or in the circuit court of Cole County.

444.770. 1. It shall be unlawful for any operator to engage in surface mining without first obtaining from the commission a permit to do so, in such form as is hereinafter provided, including any operator involved in any gravel mining operation where the annual tonnage of gravel mined by such operator is less than five thousand tons, except as provided in subsection 2 of this section.

2. (1) A property owner or operator conducting gravel removal at the request of a property owner for the primary purpose of managing seasonal gravel accretion on property not used primarily for gravel mining, or a political subdivision who contracts with an operator for excavation to obtain sand and

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10 gravel material solely for the use of such political subdivision shall be exempt
11 from obtaining a permit as required in subsection 1 of this section. Such gravel
12 removal shall be conducted solely on the property owner's or political
13 subdivision's property and shall be in accordance with department guidelines,
14 rules, and regulations. The property owner shall notify the department before
15 any person or operator conducts gravel removal from the property owner's
16 property if the gravel is sold. Notification shall include the nature of the activity,
17 name of the county and stream in which the site is located and the property
18 owner's name. The property owner shall not be required to notify the department
19 regarding any gravel removal at each site location for up to one year from the
20 original notification regarding that site. The property owner shall renotify the
21 department before any person or operator conducts gravel removal at any site
22 after the expiration of one year from the previous notification regarding that site.
23 At the time of each notification to the department, the department shall provide
24 the property owner with a copy of the department's guidelines, rules, and
25 regulations relevant to the activity reported. Said guidelines, rules and
26 regulations may be transmitted either by mail or via the internet.

27 (2) The annual tonnage of gravel mined by such property owner or
28 operator conducting gravel removal at the request of a property owner shall be
29 less than two thousand tons, with a site limitation of one thousand tons
30 annually. Any operator conducting gravel removal at the request of a property
31 owner that has removed two thousand tons of sand and gravel material within
32 one calendar year shall have a watershed management practice plan approved by
33 the commission in order to remove any future sand or gravel material the
34 remainder of the calendar year. The application for approval shall be
35 accompanied by an application fee equivalent to the fee paid under section
36 444.772 and shall contain the name of the watershed from which the operator will
37 be conducting sand and gravel removal, the location within the watershed district
38 that the sand and gravel will be removed, and the description of the vehicles and
39 equipment used for removal. Upon approval of the watershed management
40 practice plan, the department shall provide a copy of the relevant commission
41 regulations to the operator.

42 (3) No property owner or operator conducting gravel removal at the
43 request of a property owner for the primary purpose of managing seasonal gravel
44 accretion on property not used primarily for gravel mining shall conduct gravel
45 removal from any site located within a distance, to be determined by the

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46 commission and included in the guidelines, rules, and regulations given to the
47 property owner at the time of notification, of any building, structure, highway,
48 road, bridge, viaduct, water or sewer line, and pipeline or utility line.

49 3. Sections 444.760 to 444.790 shall apply only to those areas which are
50 opened on or after January 1, 1972, or to the extended portion of affected areas
51 extended after that date. The effective date of this section for minerals not
52 previously covered under the provisions of sections 444.760 to 444.790 shall be
53 August 28, 1990.

54 4. All surface mining operations where land is affected after September
55 28, 1971, which are under the control of any government agency whose
56 regulations are equal to or greater than those imposed by section 444.774, are not
57 subject to the further provisions of sections 444.760 to 444.790, except that such
58 operations shall be registered with the **[**land reclamation**]** **Missouri mining**
59 commission.

60 5. Any portion of a surface mining operation which is subject to the
61 provisions of sections 260.200 to 260.245 and the regulations promulgated
62 thereunder, shall not be subject to the provisions of sections 444.760 to 444.790,
63 and any bonds or portions thereof applicable to such operations shall be promptly
64 released by the commission, and the associated permits cancelled by the
65 commission upon presentation to it of satisfactory evidence that the operator has
66 received a permit pursuant to section 260.205 and the regulations promulgated
67 thereunder. Any land reclamation bond associated with such released permits
68 shall be retained by the commission until presentation to the commission of
69 satisfactory evidence that:

70 (1) The operator has complied with sections 260.226 and 260.227, and the
71 regulations promulgated thereunder, pertaining to closure and postclosure plans
72 and financial assurance instruments; and

73 (2) The operator has commenced operation of the solid waste disposal area
74 or sanitary landfill as those terms are defined in chapter 260.

75 6. Notwithstanding the provisions of subsection 1 of this section, any
76 political subdivision which uses its own personnel and equipment or any private
77 individual for personal use may conduct in-stream gravel operations without
78 obtaining from the commission a permit to conduct such an activity.

79 7. Any person filing a complaint of an alleged violation of this section with
80 the department shall identify themself by name and telephone number, provide
81 the date and location of the violation, and provide adequate information, as

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82 determined by the department, that there has been a violation.
83 Any records, statements, or communications submitted by any person to the
84 department relevant to the complaint shall remain confidential and used solely
85 by the department to investigate such alleged violation.

444.772. 1. Any operator desiring to engage in surface mining shall make
2 written application to the director for a permit.
3 2. Application for permit shall be made on a form prescribed by the
4 commission and shall include:
5 (1) The name of all persons with any interest in the land to be mined;
6 (2) The source of the applicant's legal right to mine the land affected by
7 the permit;
8 (3) The permanent and temporary post office address of the applicant;
9 (4) Whether the applicant or any person associated with the applicant
10 holds or has held any other permits pursuant to sections 444.500 to 444.790, and
11 an identification of such permits;
12 (5) The written consent of the applicant and any other persons necessary
13 to grant access to the commission or the director to the area of land affected
14 under application from the date of application until the expiration of any permit
15 granted under the application and thereafter for such time as is necessary to
16 assure compliance with all provisions of sections 444.500 to 444.790 or any rule
17 or regulation promulgated pursuant to them. Permit applications submitted by
18 operators who mine an annual tonnage of less than ten thousand tons shall be
19 required to include written consent from the operator to grant access to the
20 commission or the director to the area of land affected;
21 (6) A description of the tract or tracts of land and the estimated number
22 of acres thereof to be affected by the surface mining of the applicant for the next
23 succeeding twelve months; and
24 (7) Such other information that the commission may require as such
25 information applies to land reclamation.
26 3. The application for a permit shall be accompanied by a map in a scale
27 and form specified by the commission by regulation.
28 4. The application shall be accompanied by a bond, security or certificate
29 meeting the requirements of section 444.778, a geologic resources fee authorized
30 under section 256.700, and a permit fee approved by the commission not to exceed
31 one thousand dollars. The commission may also require a fee for each site listed
32 on a permit not to exceed four hundred dollars for each site. If mining operations

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33 are not conducted at a site for six months or more during any year, the fee for
34 such site for that year shall be reduced by fifty percent. The commission may
35 also require a fee for each acre bonded by the operator pursuant to section
36 444.778 not to exceed twenty dollars per acre. If such fee is assessed, the
37 per-acre fee on all acres bonded by a single operator that exceed a total of two
38 hundred acres shall be reduced by fifty percent. In no case shall the total fee for
39 any permit be more than three thousand dollars. Permit and renewal fees shall
40 be established by rule, except for the initial fees as set forth in this subsection,
41 and shall be set at levels that recover the cost of administering and enforcing
42 sections 444.760 to 444.790, making allowances for grants and other sources of
43 funds. The director shall submit a report to the commission and the public each
44 year that describes the number of employees and the activities performed the
45 previous calendar year to administer sections 444.760 to 444.790. For any
46 operator of a gravel mining operation where the annual tonnage of gravel mined
47 by such operator is less than five thousand tons, the total cost of submitting an
48 application shall be three hundred dollars. The issued permit shall be valid from
49 the date of its issuance until the date specified in the mine plan unless sooner
50 revoked or suspended as provided in sections 444.760 to 444.790. Beginning
51 August 28, 2007, the fees shall be set at a permit fee of eight hundred dollars, a
52 site fee of four hundred dollars, and an acre fee of ten dollars, with a maximum
53 fee of three thousand dollars. Fees may be raised as allowed in this subsection
54 after a regulation change that demonstrates the need for increased fees.

55 5. An operator desiring to have his or her permit amended to cover
56 additional land may file an amended application with the commission. Upon
57 receipt of the amended application, and such additional fee and bond as may be
58 required pursuant to the provisions of sections 444.760 to 444.790, the director
59 shall, if the applicant complies with all applicable regulatory requirements, issue
60 an amendment to the original permit covering the additional land described in
61 the amended application.

62 6. An operation may withdraw any land covered by a permit, excepting
63 affected land, by notifying the commission thereof, in which case the penalty of
64 the bond or security filed by the operator pursuant to the provisions of sections
65 444.760 to 444.790 shall be reduced proportionately.

66 7. Where mining or reclamation operations on acreage for which a permit
67 has been issued have not been completed, the permit shall be renewed. The
68 operator shall submit a permit renewal form furnished by the director for an

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69 additional permit year and pay a fee equal to an application fee calculated
70 pursuant to subsection 4 of this section, but in no case shall the renewal fee for
71 any operator be more than three thousand dollars. For any operator involved in
72 any gravel mining operation where the annual tonnage of gravel mined by such
73 operator is less than five thousand tons, the permit as to such acreage shall be
74 renewed by applying on a permit renewal form furnished by the director for an
75 additional permit year and payment of a fee of three hundred dollars. Upon
76 receipt of the completed permit renewal form and fee from the operator, the
77 director shall approve the renewal. With approval of the director and operator,
78 the permit renewal may be extended for a portion of an additional year with a
79 corresponding prorating of the renewal fee.

80 8. Where one operator succeeds another at any uncompleted operation,
81 either by sale, assignment, lease or otherwise, the commission may release the
82 first operator from all liability pursuant to sections 444.760 to 444.790 as to that
83 particular operation if both operators have been issued a permit and have
84 otherwise complied with the requirements of sections 444.760 to 444.790 and the
85 successor operator assumes as part of his or her obligation pursuant to sections
86 444.760 to 444.790 all liability for the reclamation of the area of land affected by
87 the former operator.

88 9. The application for a permit shall be accompanied by a plan of
89 reclamation that meets the requirements of sections 444.760 to 444.790 and the
90 rules and regulations promulgated pursuant thereto, and shall contain a verified
91 statement by the operator setting forth the proposed method of operation,
92 reclamation, and a conservation plan for the affected area including approximate
93 dates and time of completion, and stating that the operation will meet the
94 requirements of sections 444.760 to 444.790, and any rule or regulation
95 promulgated pursuant to them.

96 10. At the time that a permit application is deemed complete by the
97 director, the operator shall publish a notice of intent to operate a surface mine
98 in any newspaper qualified pursuant to section 493.050 to publish legal notices
99 in any county where the land is located. If the director does not respond to a
100 permit application within forty-five calendar days, the application shall be
101 deemed to be complete. Notice in the newspaper shall be posted once a week for
102 four consecutive weeks beginning no more than ten days after the application is
103 deemed complete. The operator shall also send notice of intent to operate a
104 surface mine by certified mail to the governing body of the counties or cities in

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105 which the proposed area is located, and to the last known addresses of all record
106 landowners **[**of contiguous real property or real property located adjacent to the
107 proposed mine plan area**] whose property is:**
108 **(1) Within two thousand six hundred forty feet, or one-half mile**
109 **from the border of the proposed mine plan area; and**
110 **(2) Adjacent to the proposed mine plan area, land upon which**
111 **the mine plan area is located, or adjacent land having a legal**
112 **relationship with either the applicant or the owner of the land upon**
113 **which the mine plan area is located**.
114 The notice shall include the name and address of the operator, a legal description
115 consisting of county, section, township and range, the number of acres involved,
116 a statement that the operator plans to mine a specified mineral during a specified
117 time, and the address of the commission. The notices shall also contain a
118 statement that any person with a direct, personal interest in one or more of the
119 factors the **[**commission**] director** may consider in issuing a permit may request
120 a public meeting**[**, a public hearing**]** or file written comments to the director no
121 later than fifteen days following the final public notice publication date. **If any**
122 **person requests a public meeting, the applicant shall cooperate with**
123 **the director in making all necessary arrangements for the public**
124 **meeting to be held in a reasonably convenient location and at a**
125 **reasonable time for interested participants, and the applicant shall**
126 **bear the expenses.**
127 11. The **[**commission**] director** may approve a permit application or
128 permit amendment whose operation or reclamation plan deviates from the
129 requirements of sections 444.760 to 444.790 if it can be demonstrated by the
130 operator that the conditions present at the surface mining location warrant an
131 exception. The criteria accepted for consideration when evaluating the merits of
132 an exception or variance to the requirements of sections 444.760 to 444.790 shall
133 be established by regulations.
134 12. Fees imposed pursuant to this section shall become effective August
135 28, 2007, and shall expire on December 31, 2018. No other provisions of this
136 section shall expire.

444.773. 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 **[**four**] six** weeks after **completion of** the
4 **[**public notice period**] process** provided in **subsection 10 of** section 444.772

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5 **[**expires as to whether**] to issue or deny** the permit **[**should be issued or
6 denied**]**. If the director determines that the application has not fully complied
7 with the provisions of section 444.772 or any rule or regulation promulgated
8 pursuant to that section, the director **[**shall recommend denial of**] may seek**
9 **additional information from the applicant before making a decision to**
10 **issue or deny** the permit. The director shall consider any **[**written**] public**
11 comments when making **[**his or her recommendation to the commission on the
12 issuance or denial of**] the decision to issue or deny** the permit. **In issuing**
13 **a permit, the director may impose reasonable conditions consistent**
14 **with the provisions of sections 444.760 to 444.790.**

15 2. **[**If the recommendation of the director is to deny the permit, a hearing
16 as provided in sections 444.760 to 444.790, if requested by the applicant within
17 fifteen days of the date of notice of recommendation of the director, shall be held
18 by the commission.

19 3. If the recommendation of the director is for issuance of the permit, the
20 director shall issue the permit without a public meeting or a hearing except that
21 upon petition, received prior to the date of the notice of recommendation, from
22 any person whose health, safety or livelihood will be unduly impaired by the
23 issuance of this permit, a public meeting or a hearing may be held. If a public
24 meeting is requested pursuant to this chapter and the applicant agrees, the
25 director shall, within thirty days after the time for such request has passed, order
26 that a public meeting be held. The meeting shall be held in a reasonably
27 convenient location for all interested parties. The applicant shall cooperate with
28 the director in making all necessary arrangements for the public meeting. Within
29 thirty days after the close of the public meeting, the director shall recommend to
30 the commission approval or denial of the permit. If the public meeting does not
31 resolve the concerns expressed by the public, any person whose health, safety or
32 livelihood will be unduly impaired by the issuance of such permit may make a
33 written request to the land reclamation commission for a formal public
34 hearing. The land reclamation commission may grant a public hearing to
35 formally resolve concerns of the public. Any public hearing before the commission
36 shall address one or more of the factors set forth in this section.**] The director's**
37 **decision shall be deemed to be the decision of the director of the**
38 **department of natural resources and shall be subject to appeal to the**
39 **administrative hearing commission as provided by sections 640.013 and**
40 **621.250.**

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41 **[**4. In any public hearing, if**] 3. For purposes of an appeal,** the
42 **administrative hearing** commission **[**finds**] may consider**, based on
43 competent and substantial scientific evidence on the record, **[**that**] whether** an
44 interested party's health, safety or livelihood will be unduly impaired by the
45 issuance of the permit**[**, the commission may deny such permit**]**. **[**If**]** The
46 **administrative hearing** commission **[**finds**] may also consider**, based on
47 competent and substantial scientific evidence on the record, **[**that**] whether** the
48 operator has demonstrated, during the five-year period immediately preceding the
49 date of the permit application, a pattern of noncompliance at other locations in
50 Missouri that suggests a reasonable likelihood of future acts of noncompliance**[**,
51 the commission may deny such permit**]**. In determining whether a reasonable
52 likelihood of noncompliance will exist in the future, the **administrative hearing**
53 commission may look to past acts of noncompliance in Missouri, but only to the
54 extent they suggest a reasonable likelihood of future acts of noncompliance. Such
55 past acts of noncompliance in Missouri, in and of themselves, are an insufficient
56 basis to suggest a reasonable likelihood of future acts of noncompliance. In
57 addition, such past acts shall not be used as a basis to suggest a reasonable
58 likelihood of future acts of noncompliance unless the noncompliance has caused
59 or has the potential to cause, a risk to human health or to the environment, or
60 has caused or has potential to cause pollution, or was knowingly committed, or
61 is defined by the United States Environmental Protection Agency as other than
62 minor. If a hearing petitioner or the **administrative hearing** commission
63 demonstrates either present acts of noncompliance or a reasonable likelihood that
64 the permit seeker or the operations of associated persons or corporations in
65 Missouri will be in noncompliance in the future, such a showing will satisfy the
66 noncompliance requirement in this subsection. In addition, such basis must be
67 developed by multiple noncompliances of any environmental law administered by
68 the Missouri department of natural resources at any single facility in Missouri
69 that resulted in harm to the environment or impaired the health, safety or
70 livelihood of persons outside the facility. For any permit seeker that has not been
71 in business in Missouri for the past five years, the **administrative hearing**
72 commission may review the record of noncompliance in any state where the
73 applicant has conducted business during the past five years. **[**Any decision of the
74 commission made pursuant to a hearing held pursuant to this section is subject
75 to judicial review as provided in chapter 536. No judicial review shall be
76 available, however, until and unless all administrative remedies are exhausted.**]**

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Once the administrative hearing commission has reviewed the appeal, the administrative hearing commission shall make a recommendation to the commission on permit issuance or denial.

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

444.805. As used in this law, unless the context clearly indicates otherwise, the following words and terms mean:

(1) "Approximate original contour", that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the commission determines that they are in compliance with subdivision (8) of subsection 2 of section 444.855;

(2) "Coal preparation area", that portion of the permitted area used for the beneficiation of raw coal and structures related to the beneficiation process such as the washer, tipple, crusher, slurry pond or ponds, gob pile and all waste material directly connected with the cleaning, preparation and shipping of coal, but does not include subsurface coal waste disposal areas;

(3) "Coal preparation area reclamation", the reclamation of the coal preparation area by disposal or burial or both of coal waste according to the approved reclamation plan, the replacement of topsoil, and initial seeding;

(4) "Commission", the **[**land reclamation**]** **Missouri mining** commission created by section 444.520;

(5) "Director", the **staff** director of the **[**land reclamation**]** **Missouri**

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21 **mining** commission;

22 (6) "Federal lands", any land, including mineral interests, owned by the
23 United States without regard to how the United States acquired ownership of the
24 land and without regard to the agency having responsibility for management
25 thereof, except Indian lands;

26 (7) "Federal lands program", a program established by the United States
27 Secretary of the Interior to regulate surface coal mining and reclamation
28 operations on federal lands;

29 (8) "Imminent danger to the health and safety of the public", the existence
30 of any condition or practice, or any violation of a permit or other requirement of
31 this law in a surface coal mining and reclamation operation, which condition,
32 practice, or violation could reasonably be expected to cause substantial physical
33 harm to persons outside the permit area before such condition, practice, or
34 violation can be abated. A reasonable expectation of death or serious injury
35 before abatement exists if a rational person, subjected to the same conditions or
36 practices giving rise to the peril, would not expose himself or herself to the
37 danger during the time necessary for abatement;

38 (9) "Operator", any person engaged in coal mining;

39 (10) "Permit", a permit to conduct surface coal mining and reclamation
40 operations issued by the commission;

41 (11) "Permit area", the area of land indicated on the approved map
42 submitted by the operator with his application, which area of land shall be
43 covered by the operator's bond and shall be readily identifiable by appropriate
44 markers on the site;

45 (12) "Permittee", a person holding a permit;

46 (13) "Person", any individual, partnership, copartnership, firm, company,
47 public or private corporation, association, joint stock company, trust, estate,
48 political subdivision, or any agency, board, department, or bureau of the state or
49 federal government, or any other legal entity whatever which is recognized by law
50 as the subject of rights and duties;

51 (14) "Phase I reclamation", the filling and grading of all areas disturbed
52 in the conduct of surface coal mining operations, including the replacement of top
53 soil and initial seeding;

54 (15) "Phase I reclamation bond", a bond for performance filed by a
55 permittee pursuant to section 444.950 that may have no less than eighty percent
56 released upon the successful completion of phase I reclamation of a permit area

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57 in accordance with the approved reclamation plan, with the rest of the bond
58 remaining in effect until phase III liability is released;
59 (16) "Prime farmland", land which historically has been used for intensive
60 agricultural purposes, and which meets the technical criteria established by the
61 commission on the basis of such factors as moisture availability, temperature
62 regime, chemical balance, permeability, surface layer composition, susceptibility
63 to flooding, and erosion characteristics;
64 (17) "Reclamation plan", a plan submitted by an applicant for a permit
65 which sets forth a plan for reclamation of the proposed surface coal mining
66 operations;
67 (18) "Surface coal mining and reclamation operations", surface coal mining
68 operations and all activities necessary and incident to the reclamation of such
69 operations;
70 (19) "Surface coal mining operations", or "affected land", or "disturbed
71 land":
72 (a) Activities conducted on the surface of lands in connection with a
73 surface coal mine or surface operations and surface impacts incident to an
74 underground coal mine. Such activities include excavation for the purpose of
75 obtaining coal including such common methods as contour, strip, auger,
76 mountaintop removal, box cut, open pit, and area mining, the uses of explosives
77 and blasting, and in situ distillation or retorting, leaching or other chemical or
78 physical processing, and the cleaning, concentrating, or other processing or
79 preparation, loading of coal at or near the mine site; provided, however, that such
80 activities do not include the extraction of coal incidental to the extraction of other
81 minerals where coal does not exceed sixteen and two-thirds percentum of the
82 tonnage of minerals removed for purposes of commercial use or sale, or coal
83 explorations subject to section 444.845; and
84 (b) The areas upon which such activities occur or where such activities
85 disturb the natural land surface. Such areas shall also include any adjacent land
86 the use of which is incidental to any such activities, all lands affected by the
87 construction of new roads or the improvement or use of existing roads to gain
88 access to the site of such activities and for haulage, and excavations, workings,
89 impoundments, dams, ventilation shafts, entryways, refuse banks, dumps,
90 stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or
91 depressions, repair areas, storage areas, processing areas, shipping areas and
92 other areas upon which are sited structures, facilities, or other property or

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93 materials on the surface, resulting from or incident to such activities;
94 (20) "This law" or "law", sections 444.800 to 444.970;
95 (21) "Unwarranted failure to comply", the failure of a permittee to prevent
96 the occurrence of any violation of the permit, reclamation plan, law or rule and
97 regulation, due to indifference, lack of diligence, or lack of reasonable care, or the
98 failure to abate any such violation due to indifference, lack of diligence, or lack
99 of reasonable care.

640.015. 1. All provisions of the law to the contrary notwithstanding, all
2 rules that prescribe environmental conditions or standards promulgated by the
3 department of natural resources, a board or a commission, pursuant to authorities
4 granted in this chapter and chapters 260, 278, 319, 444, 643, and 644, the
5 hazardous waste management commission in chapter 260, the state soil and
6 water districts commission in chapter 278, the **[**land reclamation**]** **Missouri**
7 **mining** commission in chapter 444, the safe drinking water commission in this
8 chapter, the air conservation commission in chapter 643, and the clean water
9 commission in chapter 644 shall cite the specific section of law or legal
10 authority. The rule shall also be based on the regulatory impact report provided
11 in this section.
12 2. The regulatory impact report required by this section shall include:
13 (1) A report on the peer-reviewed scientific data used to commence the
14 rulemaking process;
15 (2) A description of persons who will most likely be affected by the
16 proposed rule, including persons that will bear the costs of the proposed rule and
17 persons that will benefit from the proposed rule;
18 (3) A description of the environmental and economic costs and benefits of
19 the proposed rule;
20 (4) The probable costs to the agency and to any other agency of the
21 implementation and enforcement of the proposed rule and any anticipated effect
22 on state revenue;
23 (5) A comparison of the probable costs and benefits of the proposed rule
24 to the probable costs and benefits of inaction, which includes both economic and
25 environmental costs and benefits;
26 (6) A determination of whether there are less costly or less intrusive
27 methods for achieving the proposed rule;
28 (7) A description of any alternative method for achieving the purpose of
29 the proposed rule that were seriously considered by the department and the

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30 reasons why they were rejected in favor of the proposed rule;
31 (8) An analysis of both short-term and long-term consequences of the
32 proposed rule;
33 (9) An explanation of the risks to human health, public welfare, or the
34 environment addressed by the proposed rule;
35 (10) The identification of the sources of scientific information used in
36 evaluating the risk and a summary of such information;
37 (11) A description and impact statement of any uncertainties and
38 assumptions made in conducting the analysis on the resulting risk estimate;
39 (12) A description of any significant countervailing risks that may be
40 caused by the proposed rule; and
41 (13) The identification of at least one, if any, alternative regulatory
42 approaches that will produce comparable human health, public welfare, or
43 environmental outcomes.
44 3. The department, board, or commission shall develop the regulatory
45 impact report required by this section using peer-reviewed and published data or
46 when the peer-reviewed data is not reasonably available, a written explanation
47 shall be filed at the time of the rule promulgation notice explaining why the peer-
48 reviewed data was not available to support the regulation. If the peer-reviewed
49 data is not available, the department must provide all scientific references and
50 the types, amount, and sources of scientific information that was used to develop
51 the rule at the time of the rule promulgation notice.
52 4. The department, board, or commission shall publish in at least one
53 newspaper of general circulation, qualified pursuant to chapter 493, with an
54 average circulation of twenty thousand or more and on the department, board, or
55 commission website a notice of availability of any regulatory impact report
56 conducted pursuant to this section and shall make such assessments and analyses
57 available to the public by posting them on the department, board, or commission
58 website. The department, board, or commission shall allow at least sixty days for
59 the public to submit comments and shall post all comments and respond to all
60 significant comments prior to promulgating the rule.
61 5. The department, board, or commission shall file a copy of the regulatory
62 impact report with the joint committee on administrative rules concurrently with
63 the filing of the proposed rule pursuant to section 536.024.
64 6. If the department, board, or commission fails to conduct the regulatory
65 impact report as required for each proposed rule pursuant to this section, such

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66 rule shall be void unless the written explanation delineating why the peer-
67 reviewed data was not available has been filed at the time of the rule
68 promulgation notice.

69 7. Any other provision of this section to the contrary notwithstanding, the
70 department, board, or commission referenced in subsection 1 of this section may
71 adopt a rule without conducting a regulatory impact report if the director of the
72 department determines that immediate action is necessary to protect human
73 health, public welfare, or the environment; provided, however, in doing so, the
74 department, board, or commission shall be required to provide written
75 justification as to why it deviated from conducting a regulatory impact report and
76 shall complete the regulatory impact report within one hundred eighty days of the
77 adoption of the rule.

78 8. The provisions of this section shall not apply if the department adopts
79 environmental protection agency rules and rules from other applicable federal
80 agencies without variance.

640.016. 1. The department of natural resources shall not place in any
2 permit any requirement, provision, stipulation, or any other restriction which is
3 not prescribed or authorized by regulation or statute, unless the requirement,
4 provision, stipulation, or other restriction is pursuant to the authority addressed
5 in statute.

6 2. Prior to submitting a permit to public comment the department of
7 natural resources shall deliver such permit to the permit applicant at the contact
8 address on the permit application for final review. In the interest of expediting
9 permit issuance, permit applicants may waive the opportunity to review draft
10 permits prior to public notice. The permit applicant shall have ten days to review
11 the permit for errors. Upon receipt of the applicant's review of the permit, the
12 department of natural resources shall correct the permit where nonsubstantive
13 drafting errors exist. The department of natural resources shall make such
14 changes within ten days and submit the permit for public comment. If the permit
15 applicant is not provided the opportunity to review permits prior to submission
16 for public comment, the permit applicant shall have the authority to correct
17 drafting errors in their permits after they are issued without paying any fee for
18 such changes or modifications.

19 3. In any matter where a permit is denied by the department of natural
20 resources pursuant to authorities granted in this chapter and chapters 260, 278,
21 319, 444, 643, and 644, the hazardous waste management commission in chapter

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22 260, the state soil and water districts commission in chapter 278, the **[**land
23 reclamation**]** **Missouri mining** commission in chapter 444, the safe drinking
24 water commission in this chapter, the air conservation commission in chapter
25 643, and the clean water commission in chapter 644, such denial shall clearly
26 state the basis for such denial.

27 4. Once a permit or action has been approved by the department, the
28 department shall not revoke or change, without written permission from the
29 permittee, the decision for a period of one year or unless the department
30 determines that immediate action is necessary to protect human health, public
31 welfare, or the environment.

640.100. 1. The safe drinking water commission created in section
2 640.105 shall promulgate rules necessary for the implementation, administration
3 and enforcement of sections 640.100 to 640.140 and the federal Safe Drinking
4 Water Act as amended.

5 2. No standard, rule or regulation or any amendment or repeal thereof
6 shall be adopted except after a public hearing to be held by the commission after
7 at least thirty days' prior notice in the manner prescribed by the rulemaking
8 provisions of chapter 536 and an opportunity given to the public to be heard; the
9 commission may solicit the views, in writing, of persons who may be affected by,
10 knowledgeable about, or interested in proposed rules and regulations, or
11 standards. Any person heard or registered at the hearing, or making written
12 request for notice, shall be given written notice of the action of the commission
13 with respect to the subject thereof. Any rule or portion of a rule, as that term is
14 defined in section 536.010, that is promulgated to administer and enforce sections
15 640.100 to 640.140 shall become effective only if the agency has fully complied
16 with all of the requirements of chapter 536, including but not limited to section
17 536.028, if applicable, after June 9, 1998. All rulemaking authority delegated
18 prior to June 9, 1998, is of no force and effect and repealed as of June 9, 1998,
19 however, nothing in this section shall be interpreted to repeal or affect the
20 validity of any rule adopted or promulgated prior to June 9, 1998. If the
21 provisions of section 536.028 apply, the provisions of this section are nonseverable
22 and if any of the powers vested with the general assembly pursuant to section
23 536.028 to review, to delay the effective date, or to disapprove and annul a rule
24 or portion of a rule are held unconstitutional or invalid, the purported grant of
25 rulemaking authority and any rule so proposed and contained in the order of
26 rulemaking shall be invalid and void, except that nothing in this chapter or

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27 chapter 644 shall affect the validity of any rule adopted and promulgated prior
28 to June 9, 1998.

29 3. The commission shall promulgate rules and regulations for the
30 certification of public water system operators, backflow prevention assembly
31 testers and laboratories conducting tests pursuant to sections 640.100 to
32 640.140. Any person seeking to be a certified backflow prevention assembly
33 tester shall satisfactorily complete standard, nationally recognized written and
34 performance examinations designed to ensure that the person is competent to
35 determine if the assembly is functioning within its design specifications. Any
36 such state certification shall satisfy any need for local certification as a backflow
37 prevention assembly tester. However, political subdivisions may set additional
38 testing standards for individuals who are seeking to be certified as backflow
39 prevention assembly testers. Notwithstanding any other provision of law to the
40 contrary, agencies of the state or its political subdivisions shall only require
41 carbonated beverage dispensers to conform to the backflow protection
42 requirements established in the National Sanitation Foundation standard
43 eighteen, and the dispensers shall be so listed by an independent testing
44 laboratory. The commission shall promulgate rules and regulations for collection
45 of samples and analysis of water furnished by municipalities, corporations,
46 companies, state establishments, federal establishments or individuals to the
47 public. The department of natural resources or the department of health and
48 senior services shall, at the request of any supplier, make any analyses or tests
49 required pursuant to the terms of section 192.320 and sections 640.100 to
50 640.140. The department shall collect fees to cover the reasonable cost of
51 laboratory services, both within the department of natural resources and the
52 department of health and senior services, laboratory certification and program
53 administration as required by sections 640.100 to 640.140. The laboratory
54 services and program administration fees pursuant to this subsection shall not
55 exceed two hundred dollars for a supplier supplying less than four thousand one
56 hundred service connections, three hundred dollars for supplying less than seven
57 thousand six hundred service connections, five hundred dollars for supplying
58 seven thousand six hundred or more service connections, and five hundred dollars
59 for testing surface water. Such fees shall be deposited in the safe drinking water
60 fund as specified in section 640.110. The analysis of all drinking water required
61 by section 192.320 and sections 640.100 to 640.140 shall be made by the
62 department of natural resources laboratories, department of health and senior

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63 services laboratories or laboratories certified by the department of natural
64 resources.

65 4. The department of natural resources shall establish and maintain an
66 inventory of public water supplies and conduct sanitary surveys of public water
67 systems. Such records shall be available for public inspection during regular
68 business hours.

69 5. (1) For the purpose of complying with federal requirements for
70 maintaining the primacy of state enforcement of the federal Safe Drinking Water
71 Act, the department is hereby directed to request appropriations from the general
72 revenue fund and all other appropriate sources to fund the activities of the public
73 drinking water program and in addition to the fees authorized pursuant to
74 subsection 3 of this section, an annual fee for each customer service connection
75 with a public water system is hereby authorized to be imposed upon all customers
76 of public water systems in this state. **[**The fees collected shall not exceed the
77 amounts specified in this subsection and the commission may set the fees, by
78 rule, in a lower amount by proportionally reducing all fees charged pursuant to
79 this subsection from the specified maximum amounts. Reductions shall be
80 roughly proportional but in each case shall be divisible by twelve.**]** Each customer
81 of a public water system shall pay an annual fee for each customer service
82 connection.

83 (2) The annual fee per customer service connection for unmetered
84 customers and customers with meters not greater than one inch in size shall be
85 based upon the number of service connections in the water system serving that
86 customer, and shall not exceed:

87 1 to 1,000 connections..... $ 3.24
88 1,001 to 4,000 connections..... 3.00
89 4,001 to 7,000 connections..... 2.76
90 7,001 to 10,000 connections..... 2.40
91 10,001 to 20,000 connections..... 2.16
92 20,001 to 35,000 connections..... 1.92
93 35,001 to 50,000 connections..... 1.56
94 50,001 to 100,000 connections..... 1.32
95 More than 100,000 connections..... 1.08.

96 (3) The annual user fee for customers having meters greater than one inch
97 but less than or equal to two inches in size shall not exceed seven dollars and
98 forty-four cents; for customers with meters greater than two inches but less than

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99 or equal to four inches in size shall not exceed forty-one dollars and sixteen cents;
100 and for customers with meters greater than four inches in size shall not exceed
101 eighty-two dollars and forty-four cents.

102 (4) Customers served by multiple connections shall pay an annual user
103 fee based on the above rates for each connection, except that no single facility
104 served by multiple connections shall pay a total of more than five hundred dollars
105 per year.

106 6. Fees imposed pursuant to subsection 5 of this section shall become
107 effective on August 28, 2006, and shall be collected by the public water system
108 serving the customer beginning September 1, 2006, and continuing until such
109 time that the safe drinking water commission, at its discretion, specifies a **[**lower**]**
110 **different** amount under **[**subdivision (1) of**]** subsection **[**5**] 8** of this section. The
111 commission shall promulgate rules and regulations on the procedures for billing,
112 collection and delinquent payment. Fees collected by a public water system
113 pursuant to subsection 5 of this section **and fees established by the**
114 **commission pursuant to subsection 8 of this section** are state fees. The
115 annual fee shall be enumerated separately from all other charges, and shall be
116 collected in monthly, quarterly or annual increments. Such fees shall be
117 transferred to the director of the department of revenue at frequencies not less
118 than quarterly. Two percent of the revenue arising from the fees shall be
119 retained by the public water system for the purpose of reimbursing its expenses
120 for billing and collection of such fees.

121 7. Imposition and collection of the fees authorized in subsection 5 **and**
122 **fees established by the commission pursuant to subsection 8** of this
123 section shall be suspended on the first day of a calendar quarter if, during the
124 preceding calendar quarter, the federally delegated authority granted to the safe
125 drinking water program within the department of natural resources to administer
126 the Safe Drinking Water Act, 42 U.S.C. 300g-2, is withdrawn. The fee shall not
127 be reinstated until the first day of the calendar quarter following the quarter
128 during which such delegated authority is reinstated.

129 8. **[**Fees imposed pursuant to subsection 5 of this section shall expire on
130 September 1, 2017.**] Notwithstanding any statutory fee amounts or**
131 **maximums to the contrary, the department of natural resources may**
132 **conduct a comprehensive review and propose changes to the fee**
133 **structure set forth in this section. The comprehensive review shall**
134 **include stakeholder meetings in order to solicit stakeholder input from**

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135 **public and private water suppliers, and any other interested**
136 **parties. Upon completion of the comprehensive review, the department**
137 **shall submit a proposed fee structure with stakeholder agreement to**
138 **the safe drinking water commission. The commission shall review such**
139 **recommendations at a forthcoming regular or special meeting, but shall**
140 **not vote on the fee structure until a subsequent meeting. If the**
141 **commission approves, by vote of two-thirds majority or six of nine**
142 **commissioners, the fee structure recommendations, the commission**
143 **shall authorize the department to file a notice of proposed rulemaking**
144 **containing the recommended fee structure, and after considering public**
145 **comments may authorize the department to file the final order of**
146 **rulemaking for such rule with the joint committee on administrative**
147 **rules pursuant to sections 536.021 and 536.024 no later than December**
148 **first of the same year. If such rules are not disapproved by the general**
149 **assembly in the manner set out below, they shall take effect on January**
150 **first of the following calendar year, at which point the existing fee**
151 **structure shall expire. Any regulation promulgated under this**
152 **subsection shall be deemed to be beyond the scope and authority**
153 **provided in this subsection, or detrimental to permit applicants, if the**
154 **general assembly within the first sixty calendar days of the regular**
155 **session immediately following the filing of such regulation, disapproves**
156 **the regulation by concurrent resolution. If the general assembly so**
157 **disapproves any regulation filed under this subsection, the department**
158 **and the commission shall not implement the proposed fee structure and**
159 **shall continue to use the previous fee structure. The authority of the**
160 **commission to further revise the fee structure as provided by this**
161 **subsection shall expire on August 28, 2024.**

643.055. 1. Other provisions of law notwithstanding, the Missouri air
2 conservation commission shall have the authority to promulgate rules and
3 regulations, pursuant to chapter 536, to establish standards and guidelines to
4 ensure that the state of Missouri is in compliance with the provisions of the
5 federal Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.). The
6 standards and guidelines so established shall not be any stricter than those
7 required under the provisions of the federal Clean Air Act, as amended; nor shall
8 those standards and guidelines be enforced in any area of the state prior to the
9 time required by the federal Clean Air Act, as amended. The restrictions of this
10 section shall not apply to the parts of a state implementation plan developed by

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the commission to bring a nonattainment area into compliance and to maintain compliance when needed to have a United States Environmental Protection Agency approved state implementation plan. The determination of which parts of a state implementation plan are not subject to the restrictions of this section shall be based upon specific findings of fact by the air conservation commission as to the rules, regulations and criteria that are needed to have a United States Environmental Protection Agency approved plan.

2. The Missouri air conservation commission shall also have the authority to grant exceptions and variances from the rules set under subsection 1 of this section when the person applying for the exception or variance can show that compliance with such rules:

(1) Would cause economic hardship; or

(2) Is physically impossible; or

(3) Is more detrimental to the environment than the variance would be; or

(4) Is impractical or of insignificant value under the existing conditions.

3. The department shall not regulate the manufacture, performance, or use of residential wood burning heaters or appliances through a state implementation plan or otherwise, unless first specifically authorized to do so by the general assembly. No rule or regulation respecting the establishment or the enforcement of performance standards for residential wood burning heaters or appliances shall become effective unless and until first approved by the joint committee on administrative rules.

4. New rules or regulations shall not be applied to existing wood burning furnaces, stoves, fireplaces, or heaters that individuals are currently using as their source of heat for their homes or businesses. All wood burning furnaces, stoves, fireplaces, and heaters existing on August 28, 2014 shall be not subject to any rules or regulations enacted after such date. No employee of the state or state agency shall enforce any new rules or regulations against such existing wood burning furnaces, stoves, fireplaces, and heaters.

643.079. 1. Any air contaminant source required to obtain a permit issued under sections 643.010 to 643.355 shall pay annually beginning April 1, 1993, a fee as provided herein. For the first year the fee shall be twenty-five dollars per ton of each regulated air contaminant emitted. Thereafter, the fee

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5 shall be set every three years by the commission by rule and shall be at least
6 twenty-five dollars per ton of regulated air contaminant emitted but not more
7 than forty dollars per ton of regulated air contaminant emitted in the previous
8 calendar year. If necessary, the commission may make annual adjustments to the
9 fee by rule. The fee shall be set at an amount consistent with the need to fund
10 the reasonable cost of administering sections 643.010 to 643.355, taking into
11 account other moneys received pursuant to sections 643.010 to 643.355. For the
12 purpose of determining the amount of air contaminant emissions on which the
13 fees authorized under this section are assessed, a facility shall be considered one
14 source under the definition of subsection 2 of section 643.078, except that a
15 facility with multiple operating permits shall pay the emission fees authorized
16 under this section separately for air contaminants emitted under each individual
17 permit.

18 2. A source which produces charcoal from wood shall pay an annual
19 emission fee under this subsection in lieu of the fee established in subsection 1
20 of this section. The fee shall be based upon a maximum fee of twenty-five dollars
21 per ton and applied upon each ton of regulated air contaminant emitted for the
22 first four thousand tons of each contaminant emitted in the amount established
23 by the commission pursuant to subsection 1 of this section, reduced according to
24 the following schedule:

25 (1) For fees payable under this subsection in the years 1993 and 1994, the
26 fee shall be reduced by one hundred percent;

27 (2) For fees payable under this subsection in the years 1995, 1996 and
28 1997, the fee shall be reduced by eighty percent;

29 (3) For fees payable under this subsection in the years 1998, 1999 and
30 2000, the fee shall be reduced by sixty percent.

31 3. The fees imposed in subsection 2 of this section shall not be imposed
32 or collected after the year 2000 unless the general assembly reimposes the fee.

33 4. Each air contaminant source with a permit issued under sections
34 643.010 to 643.355 shall pay the fee for the first four thousand tons of each
35 regulated air contaminant emitted each year but no air contaminant source shall
36 pay fees on total emissions of regulated air contaminants in excess of twelve
37 thousand tons in any calendar year. A permitted air contaminant source which
38 emitted less than one ton of all regulated pollutants shall pay a fee equal to the
39 amount per ton set by the commission. An air contaminant source which pays
40 emission fees to a holder of a certificate of authority issued pursuant to section

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41 643.140 may deduct such fees from any amount due under this section. The fees
42 imposed in this section shall not be applied to carbon oxide emissions. The fees
43 imposed in subsection 1 and this subsection shall not be applied to sulfur dioxide
44 emissions from any Phase I affected unit subject to the requirements of Title IV,
45 Section 404, of the federal Clean Air Act, as amended, 42 U.S.C. 7651, et seq., any
46 sooner than January 1, 2000. The fees imposed on emissions from Phase I
47 affected units shall be consistent with and shall not exceed the provisions of the
48 federal Clean Air Act, as amended, and the regulations promulgated
49 thereunder. Any such fee on emissions from any Phase I affected unit shall be
50 reduced by the amount of the service fee paid by that Phase I affected unit
51 pursuant to subsection 8 of this section in that year. Any fees that may be
52 imposed on Phase I sources shall follow the procedures set forth in subsection 1
53 and this subsection and shall not be applied retroactively.

54 5. Moneys collected under this section shall be transmitted to the director
55 of revenue for deposit in appropriate subaccounts of the natural resources
56 protection fund created in section 640.220. A subaccount shall be maintained for
57 fees paid by air contaminant sources which are required to be permitted under
58 Title V of the federal Clean Air Act, as amended, 42 U.S.C. Section 7661, et seq.,
59 and used, upon appropriation, to fund activities by the department to implement
60 the operating permits program authorized by Title V of the federal Clean Air Act,
61 as amended. Another subaccount shall be maintained for fees paid by air
62 contaminant sources which are not required to be permitted under Title V of the
63 federal Clean Air Act as amended, and used, upon appropriation, to fund other
64 air pollution control program activities. Another subaccount shall be maintained
65 for service fees paid under subsection 8 of this section by Phase I affected units
66 which are subject to the requirements of Title IV, Section 404, of the federal
67 Clean Air Act Amendments of 1990, as amended, 42 U.S.C. 7651, and used, upon
68 appropriation, to fund air pollution control program activities. The provisions of
69 section 33.080 to the contrary notwithstanding, moneys in the fund shall not
70 revert to general revenue at the end of each biennium. Interest earned by
71 moneys in the subaccounts shall be retained in the subaccounts. The per-ton fees
72 established under subsection 1 of this section may be adjusted annually,
73 consistent with the need to fund the reasonable costs of the program, but shall
74 not be less than twenty-five dollars per ton of regulated air contaminant nor more
75 than forty dollars per ton of regulated air contaminant. The first adjustment
76 shall apply to moneys payable on April 1, 1994, and shall be based upon the

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77 general price level for the twelve-month period ending on August thirty-first of
78 the previous calendar year.

79 6. The department may initiate a civil action in circuit court against any
80 air contaminant source which has not remitted the appropriate fees within thirty
81 days. In any judgment against the source, the department shall be awarded
82 interest at a rate determined pursuant to section 408.030 and reasonable
83 attorney's fees. In any judgment against the department, the source shall be
84 awarded reasonable attorney's fees.

85 7. The department shall not suspend or revoke a permit for an air
86 contaminant source solely because the source has not submitted the fees pursuant
87 to this section.

88 8. Any Phase I affected unit which is subject to the requirements of Title
89 IV, Section 404, of the federal Clean Air Act, as amended, 42 U.S.C. 7651, shall
90 pay annually beginning April 1, 1993, and terminating December 31, 1999, a
91 service fee for the previous calendar year as provided herein. For the first year,
92 the service fee shall be twenty-five thousand dollars for each Phase I affected
93 generating unit to help fund the administration of sections 643.010 to
94 643.355. Thereafter, the service fee shall be annually set by the commission by
95 rule, following public hearing, based on an annual allocation prepared by the
96 department showing the details of all costs and expenses upon which such fees
97 are based consistent with the department's reasonable needs to administer and
98 implement sections 643.010 to 643.355 and to fulfill its responsibilities with
99 respect to Phase I affected units, but such service fee shall not exceed twenty-five
100 thousand dollars per generating unit. Any such Phase I affected unit which is
101 located on one or more contiguous tracts of land with any Phase II generating
102 unit that pays fees under subsection 1 or subsection 2 of this section shall be
103 exempt from paying service fees under this subsection. A "contiguous tract of
104 land" shall be defined to mean adjacent land, excluding public roads, highways
105 and railroads, which is under the control of or owned by the permit holder and
106 operated as a single enterprise.

107 9. The department of natural resources shall determine the fees due
108 pursuant to this section by the state of Missouri and its departments, agencies
109 and institutions, including two- and four-year institutions of higher
110 education. The director of the department of natural resources shall forward the
111 various totals due to the joint committee on capital improvements and the
112 directors of the individual departments, agencies and institutions. The

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113 departments, as part of the budget process, shall annually request by specific line
114 item appropriation funds to pay said fees and capital funding for projects
115 determined to significantly improve air quality. If the general assembly fails to
116 appropriate funds for emissions fees as specifically requested, the departments,
117 agencies and institutions shall pay said fees from other sources of revenue or
118 funds available. The state of Missouri and its departments, agencies and
119 institutions may receive assistance from the small business technical assistance
120 program established pursuant to section 643.173.

121 10. **Notwithstanding any statutory fee amounts or maximums to**
122 **the contrary,** the **[**director of the**]** department of natural resources may conduct
123 a comprehensive review **[**of**] and propose changes to** the fee structure **[**set
124 forth in this section. The comprehensive review shall include**] authorized by**
125 **sections 643.073, 643.075, 643.079, 643.225, 643.228, 643.232, 643.237, and**
126 **643.242 after holding** stakeholder meetings in order to solicit stakeholder input
127 from each of the following groups: **the asbestos industry,** electric utilities,
128 mineral and metallic mining and processing facilities, cement kiln
129 representatives, and any other interested industrial or business entities or
130 interested parties. **[**Upon completion of the comprehensive review,**]** The
131 department shall submit **a** proposed **[**changes to the**]** fee structure with
132 stakeholder agreement to the air conservation commission. The commission
133 shall**[**, upon receiving the department's recommendations,**]** review such
134 recommendations at the forthcoming regular or special meeting**, but shall not**
135 **vote on the fee structure until a subsequent meeting**. **[**The commission
136 shall review fee structure recommendations from the department. The
137 commission shall not take a vote on the fee structure recommendations until the
138 following regular or special meeting.**]** If the commission approves, by vote of two-
139 thirds majority or five of seven commissioners, the fee structure
140 recommendations, the commission shall **[**promulgate by regulation and publish
141 the recommended fee structure no later than October first of the same year. The
142 commission shall**] authorize the department to file a notice of proposed**
143 **rulemaking containing the recommended fee structure, and after**
144 **considering public comments, may authorize the department to** file the
145 order of rulemaking for such rule with the joint committee on administrative
146 rules pursuant to sections 536.021 and 536.024 no later than December first of
147 the same year. If such rules are not disapproved by the general assembly in the
148 manner set out below, they shall take effect on January first of the **[**next odd-

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149 numbered**] following calendar** year and the **previous** fee structure **[**set out in
150 this section**]** shall expire upon the effective date of the commission-adopted fee
151 structure. Any regulation promulgated under this subsection shall be deemed to
152 be beyond the scope and authority provided in this subsection, or detrimental to
153 permit applicants, if the general assembly, within the first sixty calendar days
154 of the regular session immediately following the **[**promulgation**] filing** of such
155 regulation, by concurrent resolution**[**, shall disapprove the fee structure contained
156 in such regulation**] disapproves the regulation by concurrent resolution**.
157 If the general assembly so disapproves any regulation **[**promulgated**] filed** under
158 this subsection, the **[**air conservation**]** commission shall continue to use the
159 **previous** fee structure **[**set forth in the most recent preceding regulation
160 promulgated under this subsection**]**. **The authority of the commission to**
161 **further revise the fee structure as provided by** this subsection shall expire
162 on August 28, **[**2023**] 2024**.

644.026. 1. The commission shall:

2 (1) Exercise general supervision of the administration and enforcement
3 of sections 644.006 to 644.141 and all rules and regulations and orders
4 promulgated thereunder;

5 (2) Develop comprehensive plans and programs for the prevention, control
6 and abatement of new or existing pollution of the waters of the state;

7 (3) Advise, consult, and cooperate with other agencies of the state, the
8 federal government, other states and interstate agencies, and with affected
9 groups, political subdivisions and industries in furtherance of the purposes of
10 sections 644.006 to 644.141;

11 (4) Accept gifts, contributions, donations, loans and grants from the
12 federal government and from other sources, public or private, for carrying out any
13 of its functions, which funds shall not be expended for other than the purposes
14 for which provided;

15 (5) Encourage, participate in, or conduct studies, investigations, and
16 research and demonstrations relating to water pollution and causes, prevention,
17 control and abatement thereof as it may deem advisable and necessary for the
18 discharge of its duties pursuant to sections 644.006 to 644.141;

19 (6) Collect and disseminate information relating to water pollution and
20 the prevention, control and abatement thereof;

21 (7) After holding public hearings, identify waters of the state and
22 prescribe water quality standards for them, giving due recognition to variations,

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23 if any, and the characteristics of different waters of the state which may be
24 deemed by the commission to be relevant insofar as possible pursuant to any
25 federal water pollution control act. These shall be reevaluated and modified as
26 required by any federal water pollution control act;

27 (8) Adopt, amend, promulgate, or repeal after due notice and hearing rules
28 and regulations to enforce, implement, and effectuate the powers and duties of
29 sections 644.006 to 644.141 and any required of this state by any federal water
30 pollution control act, and as the commission may deem necessary to prevent,
31 control and abate existing or potential pollution. In addition to opportunities to
32 submit written statements or provide testimony at public hearings in support of
33 or in opposition to proposed rulemakings as required by section 536.021, any
34 person who submits written comments or oral testimony on a proposed rule shall,
35 at any public meeting to vote on an order of rulemaking or other commission
36 policy, have the opportunity to respond to the proposed order of rulemaking or
37 department of natural resources' response to comments to the extent that such
38 response is limited to issues raised in oral or written comments made during the
39 public notice comment period or public hearing on the proposed rule;

40 (9) Issue, modify or revoke orders prohibiting or abating discharges of
41 water contaminants into the waters of the state or adopting other remedial
42 measures to prevent, control or abate pollution;

43 (10) Administer state and federal grants and loans to municipalities and
44 political subdivisions for the planning and construction of sewage treatment
45 works;

46 (11) Hold such hearings, issue such notices of hearings and subpoenas
47 requiring the attendance of such witnesses and the production of such evidence,
48 administer such oaths, and take such testimony as the commission deems
49 necessary or as required by any federal water pollution control act. Any of these
50 powers may be exercised on behalf of the commission by any members thereof or
51 a hearing officer designated by it;

52 (12) Require the prior submission of plans and specifications, or other
53 data including the quantity and types of water contaminants, and inspect the
54 construction of treatment facilities and sewer systems or any part thereof in
55 connection with the issuance of such permits or approval as are required by
56 sections 644.006 to 644.141, except that manholes and polyvinyl chloride (PVC)
57 pipe used for gravity sewers and with a diameter no greater than twenty-seven
58 inches shall not be required to be tested for leakage;

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59 (13) Issue, continue in effect, revoke, modify or deny, under such
60 conditions as it may prescribe, to prevent, control or abate pollution or any
61 violations of sections 644.006 to 644.141 or any federal water pollution control
62 act, permits for the discharge of water contaminants into the waters of this state,
63 and for the installation, modification or operation of treatment facilities, sewer
64 systems or any parts thereof. Such permit conditions, in addition to all other
65 requirements of this subdivision, shall ensure compliance with all effluent
66 regulations or limitations, water quality related effluent limitations, national
67 standards of performance and toxic and pretreatment effluent standards, and all
68 requirements and time schedules thereunder as established by sections 644.006
69 to 644.141 and any federal water pollution control act; however, no permit shall
70 be required of any person for any emission into publicly owned treatment
71 facilities or into publicly owned sewer systems tributary to publicly owned
72 treatment works;

73 (14) Establish permits by rule. Such permits shall only be available for
74 those facilities or classes of facilities that control potential water contaminants
75 that pose a reduced threat to public health or the environment and that are in
76 compliance with commission water quality standards rules, effluent rules or rules
77 establishing permits by rule. Such permits by rule shall have the same legal
78 standing as other permits issued pursuant to this chapter. Nothing in this
79 section shall prohibit the commission from requiring a site-specific permit or a
80 general permit for individual facilities;

81 (15) Require proper maintenance and operation of treatment facilities and
82 sewer systems and proper disposal of residual waste from all such facilities and
83 systems;

84 (16) Exercise all incidental powers necessary to carry out the purposes of
85 sections 644.006 to 644.141, assure that the state of Missouri complies with any
86 federal water pollution control act, retains maximum control thereunder and
87 receives all desired federal grants, aid and benefits;

88 (17) Establish effluent and pretreatment and toxic material control
89 regulations to further the purposes of sections 644.006 to 644.141 and as required
90 to ensure compliance with all effluent limitations, water quality-related effluent
91 limitations, national standards of performance and toxic and pretreatment
92 effluent standards, and all requirements and any time schedules thereunder, as
93 established by any federal water pollution control act for point sources in this
94 state, and where necessary to prevent violation of water quality standards of this

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95 state;

96 (18) Prohibit all discharges of radiological, chemical, or biological warfare
97 agent or high-level radioactive waste into waters of this state;

98 (19) Require that all publicly owned treatment works or facilities which
99 receive or have received grants or loans from the state or the federal government
100 for construction or improvement make all charges required by sections 644.006
101 to 644.141 or any federal water pollution control act for use and recovery of
102 capital costs, and the operating authority for such works or facility is hereby
103 authorized to make any such charges;

104 (20) Represent the state of Missouri in all matters pertaining to interstate
105 water pollution including the negotiation of interstate compacts or agreements;

106 (21) Develop such facts and make such investigations as are consistent
107 with the purposes of sections 644.006 to 644.141, and, in connection therewith,
108 to enter or authorize any representative of the commission to enter at all
109 reasonable times and upon reasonable notice in or upon any private or public
110 property for any purpose required by any federal water pollution control act or
111 sections 644.006 to 644.141 for the purpose of developing rules, regulations,
112 limitations, standards, or permit conditions, or inspecting or investigating any
113 records required to be kept by sections 644.006 to 644.141 or any permit issued
114 pursuant to sections 644.006 to 644.141, any condition which the commission or
115 director has probable cause to believe to be a water contaminant source or the
116 site of any suspected violation of sections 644.006 to 644.141, regulations,
117 standards, or limitations, or permits issued pursuant to sections 644.006 to
118 644.141. The results of any such investigation shall be reduced to writing, and
119 shall be furnished to the owner or operator of the property. No person shall
120 refuse entry or access, requested for the purposes of inspection pursuant to this
121 subdivision, to an authorized representative in carrying out the inspection. A
122 suitably restricted search warrant, upon a showing of probable cause in writing
123 and upon oath, shall be issued by any judge or associate circuit judge having
124 jurisdiction to any representative for the purpose of enabling him or her to make
125 such inspection. Information obtained pursuant to this section shall be available
126 to the public unless it constitutes trade secrets or confidential information, other
127 than effluent data, of the person from whom it is obtained, except when disclosure
128 is required pursuant to any federal water pollution control act;

129 (22) Retain, employ, provide for, and compensate, within appropriations
130 available therefor, such consultants, assistants, deputies, clerks and other

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131 employees on a full- or part-time basis as may be necessary to carry out the
132 provisions of sections 644.006 to 644.141 and prescribe the times at which they
133 shall be appointed and their powers and duties;

134 (23) Secure necessary scientific, technical, administrative and operation
135 services, including laboratory facilities, by contract or otherwise, with any
136 educational institution, experiment station, or any board, department, or other
137 agency of any political subdivision of the state or the federal government;

138 (24) Require persons owning or engaged in operations which do or could
139 discharge water contaminants, or introduce water contaminants or pollutants of
140 a quality and quantity to be established by the commission, into any publicly
141 owned treatment works or facility, to provide and maintain any facilities and
142 conduct any tests and monitoring necessary to establish and maintain records
143 and to file reports containing information relating to measures to prevent, lessen
144 or render any discharge less harmful or relating to rate, period, composition,
145 temperature, and quality and quantity of the effluent, and any other information
146 required by any federal water pollution control act or the director, and to make
147 them public, except as provided in subdivision (21) of this section. The
148 commission shall develop and adopt such procedures for inspection, investigation,
149 testing, sampling, monitoring and entry respecting water contaminant and point
150 sources as may be required for approval of such a program pursuant to any
151 federal water pollution control act;

152 (25) Take any action necessary to implement continuing planning
153 processes and areawide waste treatment management as established pursuant to
154 any federal water pollution control act or sections 644.006 to 644.141**;**

155 **(26) Exercise general supervision of the department as the sole**
156 **designated state agency with authority to administer the federal Clean**
157 **Water Act in the state of Missouri, which shall include authority to**
158 **approve any stream or wetland mitigation used in connection with any**
159 **section 401 water quality certification**.

160 2. No rule or portion of a rule promulgated pursuant to this chapter shall
161 become effective unless it has been promulgated pursuant to chapter 536.

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

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which reduce the quality of such waters below the water quality standards established by the commission;

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

(4) To discharge any radiological, chemical, or biological warfare agent or high-level radioactive waste into the waters of the state.

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

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

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

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

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

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

[However, nothing shall prevent the department from taking action to assure protection of the environment and human health.**]** A construction permit may be required **[**where necessary as determined by the department, including**] by the department in** the following **circumstances**:

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

(b) To **[**correct**] address** noncompliance;

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42 (c) When an unauthorized discharge has occurred or has the potential to
43 occur; or
44 (d) To correct a violation of water quality standards.
45 In addition, any point source that proposes to construct an earthen storage
46 structure to hold, convey, contain, store or treat domestic, agricultural, or
47 industrial process wastewater also shall be subject to the construction permit
48 provisions of this subsection. All other construction-related activities at point
49 sources shall be exempt from the construction permit requirements. All activities
50 that are exempted from the construction permit requirement are subject to the
51 following conditions:
52 a. Any point source system designed to hold, convey, contain, store or
53 treat domestic, agricultural or industrial process wastewater shall be designed
54 by a professional engineer registered in Missouri in accordance with the
55 commission's design rules;
56 b. Such point source system shall be constructed in accordance with the
57 registered professional engineer's design and plans; and
58 c. Such point source system may receive a post-construction site
59 inspection by the department prior to receiving operating permit approval. A site
60 inspection may be performed by the department, upon receipt of a complete
61 operating permit application or submission of an engineer's statement of work
62 complete.
63 A governmental unit may apply to the department for authorization to operate
64 a local supervised program, and the department may authorize such a program.
65 A local supervised program would recognize the governmental unit's engineering
66 capacity and ability to conduct engineering work, supervise construction and
67 maintain compliance with relevant operating permit requirements.
68 4. Before issuing any permit required by this section, the director shall
69 issue such notices, conduct such hearings, and consider such factors, comments
70 and recommendations as required by sections 644.006 to 644.141 or any federal
71 water pollution control act. The director shall determine if any state or any
72 provisions of any federal water pollution control act the state is required to
73 enforce, any state or federal effluent limitations or regulations, water quality-
74 related effluent limitations, national standards of performance, toxic and
75 pretreatment standards, or water quality standards which apply to the source, or
76 any such standards in the vicinity of the source, are being exceeded, and shall
77 determine the impact on such water quality standards from the source. The

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director, in order to effectuate the purposes of sections 644.006 to 644.141, shall deny a permit if the source will violate any such acts, regulations, limitations or standards or will appreciably affect the water quality standards or the water quality standards are being substantially exceeded, unless the permit is issued with such conditions as to make the source comply with such requirements within an acceptable time schedule.

5. The director shall grant or deny the permit within sixty days after all requirements of the Federal Water Pollution Control Act concerning issuance of permits have been satisfied unless the application does not require any permit pursuant to any federal water pollution control act. The director or the commission may require the applicant to provide and maintain such facilities or to conduct such tests and monitor effluents as necessary to determine the nature, extent, quantity or degree of water contaminant discharged or released from the source, establish and maintain records and make reports regarding such determination.

6. The director shall promptly notify the applicant in writing of his or her action and if the permit is denied state the reasons therefor. The applicant may appeal to the commission from the denial of a permit or from any condition in any permit by filing notice of appeal with the commission within thirty days of the notice of denial or issuance of the permit. After a final action is taken on a new or reissued general permit, a potential applicant for the general permit who can demonstrate that he or she is or may be adversely affected by any permit term or condition may appeal the terms and conditions of the general permit within thirty days of the department's issuance of the general permit. In no event shall a permit constitute permission to violate the law or any standard, rule or regulation promulgated pursuant thereto.

7. In any hearing held pursuant to this section that involves a permit, license, or registration, the burden of proof is on the party specified in section 640.012. Any decision of the commission made pursuant to a hearing held pursuant to this section is subject to judicial review as provided in section 644.071.

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

9. Permits may be modified, reissued, or terminated at the request of the

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114 permittee. All requests shall be in writing and shall contain facts or reasons
115 supporting the request.

116 10. No manufacturing or processing plant or operating location shall be
117 required to pay more than one operating fee. Operating permits shall be issued
118 for a period not to exceed five years after date of issuance, except that general
119 permits shall be issued for a five-year period, and also except that neither a
120 construction nor an annual permit shall be required for a single residence's waste
121 treatment facilities. Applications for renewal of a site-specific operating permit
122 shall be filed at least one hundred eighty days prior to the expiration of the
123 existing permit. Applications seeking to renew coverage under a general permit
124 shall be submitted at least thirty days prior to the expiration of the general
125 permit, unless the permittee has been notified by the director that an earlier
126 application must be made. General permits may be applied for and issued
127 electronically once made available by the director.

128 11. Every permit issued to municipal or any publicly owned treatment
129 works or facility shall require the permittee to provide the clean water
130 commission with adequate notice of any substantial new introductions of water
131 contaminants or pollutants into such works or facility from any source for which
132 such notice is required by sections 644.006 to 644.141 or any federal water
133 pollution control act. Such permit shall also require the permittee to notify the
134 clean water commission of any substantial change in volume or character of water
135 contaminants or pollutants being introduced into its treatment works or facility
136 by a source which was introducing water contaminants or pollutants into its
137 works at the time of issuance of the permit. Notice must describe the quality and
138 quantity of effluent being introduced or to be introduced into such works or
139 facility by a source which was introducing water contaminants or pollutants into
140 its works at the time of issuance of the permit. Notice must describe the quality
141 and quantity of effluent being introduced or to be introduced into such works or
142 facility and the anticipated impact of such introduction on the quality or quantity
143 of effluent to be released from such works or facility into waters of the state.

144 12. The director or the commission may require the filing or posting of a
145 bond as a condition for the issuance of permits for construction of temporary or
146 future water treatment facilities or facilities that utilize innovative technology for
147 wastewater treatment in an amount determined by the commission to be
148 sufficient to ensure compliance with all provisions of sections 644.006 to 644.141,
149 and any rules or regulations of the commission and any condition as to such

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150 construction in the permit. For the purposes of this section, "innovative
151 technology for wastewater treatment" shall mean a completely new and generally
152 unproven technology in the type or method of its application that bench testing
153 or theory suggest has environmental, efficiency, and cost benefits beyond the
154 standard technologies. No bond shall be required for designs approved by any
155 federal agency or environmental regulatory agency of another state. The bond
156 shall be signed by the applicant as principal, and by a corporate surety licensed
157 to do business in the state of Missouri and approved by the commission. The
158 bond shall remain in effect until the terms and conditions of the permit are met
159 and the provisions of sections 644.006 to 644.141 and rules and regulations
160 promulgated pursuant thereto are complied with.

161 13. (1) The department shall issue or deny applications for construction
162 and site-specific operating permits received after January 1, 2001, within one
163 hundred eighty days of the department's receipt of an application. For general
164 construction and operating permit applications received after January 1, 2001,
165 that do not require a public participation process, the department shall issue or
166 deny the permits within sixty days of the department's receipt of an
167 application. For an application seeking coverage under a renewed general permit
168 that does not require an individual public participation process, the director shall
169 issue or deny the permit within sixty days of the director's receipt of the
170 application, or upon issuance of the general permit, whichever is later. In regard
171 to an application seeking coverage under an initial general permit that does not
172 require an individual public participation process, the director shall issue or deny
173 the permit within sixty days of the department's receipt of the application. For
174 an application seeking coverage under a renewed general permit that requires an
175 individual public participation process, the director shall issue or deny the permit
176 within ninety days of the director's receipt of the application, or upon issuance
177 of the general permit, whichever is later. In regard to an application for an
178 initial general permit that requires an individual public participation process, the
179 director shall issue or deny the permit within ninety days of the director's receipt
180 of the application.

181 (2) If the department fails to issue or deny with good cause a construction
182 or operating permit application within the time frames established in subdivision
183 (1) of this subsection, the department shall refund the full amount of the initial
184 application fee within forty-five days of failure to meet the established time
185 frame. If the department fails to refund the application fee within forty-five days,

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186 the refund amount shall accrue interest at a rate established pursuant to section
187 32.065.

188 (3) Permit fee disputes may be appealed to the commission within thirty
189 days of the date established in subdivision (2) of this subsection. If the applicant
190 prevails in a permit fee dispute appealed to the commission, the commission may
191 order the director to refund the applicant's permit fee plus interest and
192 reasonable attorney's fees as provided in sections 536.085 and 536.087. A refund
193 of the initial application or annual fee does not waive the applicant's
194 responsibility to pay any annual fees due each year following issuance of a
195 permit.

196 (4) No later than December 31, 2001, the commission shall promulgate
197 regulations defining shorter review time periods than the time frames established
198 in subdivision (1) of this subsection, when appropriate, for different classes of
199 construction and operating permits. In no case shall commission regulations
200 adopt permit review times that exceed the time frames established in subdivision
201 (1) of this subsection. The department's failure to comply with the commission's
202 permit review time periods shall result in a refund of said permit fees as set forth
203 in subdivision (2) of this subsection. On a semiannual basis, the department
204 shall submit to the commission a report which describes the different classes of
205 permits and reports on the number of days it took the department to issue each
206 permit from the date of receipt of the application and show averages for each
207 different class of permits.

208 (5) During the department's technical review of the application, the
209 department may request the applicant submit supplemental or additional
210 information necessary for adequate permit review. The department's technical
211 review letter shall contain a sufficient description of the type of additional
212 information needed to comply with the application requirements.

213 (6) Nothing in this subsection shall be interpreted to mean that inaction
214 on a permit application shall be grounds to violate any provisions of sections
215 644.006 to 644.141 or any rules promulgated pursuant to sections 644.006 to
216 644.141.

217 14. The department shall respond to all requests for individual
218 certification under Section 401 of the Federal Clean Water Act within the lesser
219 of sixty days or the allowed response period established pursuant to applicable
220 federal regulations without request for an extension period unless such extension
221 is determined by the commission to be necessary to evaluate significant impacts

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222 on water quality standards and the commission establishes a timetable for
223 completion of such evaluation in a period of no more than one hundred eighty
224 days.

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

228 16. The department shall implement permit shield provisions equivalent
229 to the permit shield provisions implemented by the U.S. Environmental
230 Protection Agency pursuant to the Clean Water Act, Section 402(k), 33 U.S.C.
231 1342(k), and its implementing regulations, for permits issued pursuant to chapter
232 644.

233 17. Prior to the development of a new general permit or reissuance of a
234 general permit for aquaculture, land disturbance requiring a storm water permit,
235 or reissuance of a general permit under which fifty or more permits were issued
236 under a general permit during the immediately preceding five-year period for a
237 designated category of water contaminant sources, the director shall implement
238 a public participation process complying with the following minimum
239 requirements:

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

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

247 (3) The director shall hold a public informational meeting to provide
248 information on anticipated permit conditions and requirements and to receive
249 informal comments from permittees and other interested persons. The director
250 shall include notice of the public informational meeting with the notice of intent
251 to issue a new general permit or reissue a general permit under subdivision (2)
252 of this subsection. The notice of the public informational meeting, including the
253 date, time and location, shall be posted on the department's website at least
254 thirty days in advance of the public meeting. If the meeting is being held for
255 reissuance of a general permit, notice shall also be made by electronic mail to all
256 permittees holding the current general permit which is expiring. Notice to
257 current permittees shall be made at least twenty days prior to the public meeting;

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

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

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

272 18. Notices required to be made by the department pursuant to subsection
273 17 of this section may be made by electronic mail. The department shall not be
274 required to make notice to any permittee or other person who has not provided
275 a current electronic mail address to the department. In the event the department
276 chooses to make material modifications to the general permit before its
277 expiration, the department shall follow the public participation process described
278 in subsection 17 of this section.

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

644.057. **Notwithstanding any statutory fee amounts or maximums
2 to the contrary,** the director of the department of natural resources may
3 conduct a comprehensive review **[**of**] and propose changes to** the clean water
4 fee structure set forth in sections 644.052 **[**and**],** 644.053**, and 644.061**. The
5 comprehensive review shall include stakeholder meetings in order to solicit
6 stakeholder input from each of the following groups: agriculture, industry,
7 municipalities, public and private wastewater facilities, and the development
8 community. Upon completion of the comprehensive review, the department shall
9 submit **a** proposed **[**changes to the**]** fee structure with stakeholder agreement to
10 the clean water commission. The commission shall**[**, upon receiving the
11 department's recommendations,**]** review such recommendations at the forthcoming
12 regular or special meeting **[**under subsection 3 of section 644.021**],but shall not
13 vote on the fee structure until a subsequent meeting**. **[**The commission

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14 shall not take a vote on the clean water fee structure recommendations until the
15 following regular or special meeting.**]** In no case shall the clean water commission
16 adopt or recommend any clean water fee in excess of five thousand dollars. If the
17 commission approves, by vote of two-thirds majority or five of seven
18 commissioners, the **[**clean water**]** fee structure recommendations, the commission
19 shall **[**promulgate by regulation and publish the recommended clean water fee
20 structure no later than October first of the same year. The commission shall**]**
21 **authorize the department to file a notice of proposed rulemaking**
22 **containing the recommended fee structure, and after considering public**
23 **comments, may authorize the department to** file the order of rulemaking
24 for such rule with the joint committee on administrative rules pursuant to
25 sections 536.021 and 536.024 no later than December first of the same year. If
26 such rules are not disapproved by the general assembly in the manner set out
27 below, they shall take effect on January first of the **[**next odd-numbered**]**
28 **following calendar** year and the fee structures set forth in sections 644.052
29 **[**and**],** 644.053**, and 644.061** shall expire upon the effective date of the
30 commission-adopted fee structure, contrary to section 644.054. Any regulation
31 promulgated under this subsection shall be deemed to be beyond the scope and
32 authority provided in this subsection, or detrimental to permit applicants, if the
33 general assembly, within the first sixty calendar days of the regular session
34 immediately following the **[**promulgation**] filing** of such regulation**[**, by
35 concurrent resolution, shall disapprove the fee structure contained in such
36 regulation**] disapproves the regulation by concurrent resolution**. If the
37 general assembly so disapproves any regulation **[**promulgated**] filed** under this
38 subsection, the **[**clean water commission shall continue to use the fee structure
39 set forth in the most recent preceding regulation promulgated under this
40 subsection.**] department and the commission shall not implement the**
41 **proposed fee structure and shall continue to use the previous fee**
42 **structure. The authority of the commission to further revise the fee**
43 **structure provided by** this section shall expire on August 28, **[**2023**] 2024**.

644.058. Notwithstanding the provisions of section 644.026 to the
2 **contrary, in promulgating water quality standards, the commission**
3 **shall only revise water quality standards upon the completion of an**
4 **assessment by the department finding that there is an environmental**
5 **need for such revision. As part of the implementation of any revised**
6 **water quality standards modifications of twenty-five percent or more,**

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the department shall conduct an evaluation which shall include the environmental and economic impacts of the revised water quality standards on a subbasin basis. This evaluation shall be conducted at the eight-digit hydrologic unit code level. The department shall document these evaluations and use them in making individual site-specific permit decisions.

644.145. 1. When issuing permits under this chapter that incorporate a new requirement for discharges from publicly owned combined or separate sanitary or storm sewer systems or treatment works, or when enforcing provisions of this chapter or the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., pertaining to any portion of a publicly owned combined or separate sanitary or storm sewer system or treatment works, the department of natural resources shall make a finding of affordability **on the costs to be incurred and the impact of any rate changes on ratepayers** upon which to base such permits and decisions, to the extent allowable under this chapter and the Federal Water Pollution Control Act.

2. (1) The department of natural resources shall not be required under this section to make a finding of affordability when:

(a) Issuing collection system extension permits;

(b) Issuing National Pollution Discharge Elimination System operating permit renewals which include no new environmental requirements; or

(c) The permit applicant certifies that the applicable requirements are affordable to implement or otherwise waives the requirement for an affordability finding; however, at no time shall the department require that any applicant certify, as a condition to approving any permit, administrative or civil action, that a requirement, condition, or penalty is affordable.

(2) The exceptions provided under paragraph (c) of subdivision (1) of this subsection do not apply when the community being served has less than three thousand three hundred residents.

3. When used in this chapter and in standards, rules and regulations promulgated pursuant to this chapter, the following words and phrases mean:

(1) "Affordability", with respect to payment of a utility bill, a measure of whether an individual customer or household **with an income equal to the lower of the median household income for their community or the state of Missouri** can pay the bill without undue hardship or unreasonable sacrifice in the essential lifestyle or spending patterns of the individual or household,

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taking into consideration the criteria described in subsection 4 of this section;

(2) "Financial capability", the financial capability of a community to make investments necessary to make water quality-related improvements**;**

(3) "Finding of affordability", a department statement as to whether an individual or a household receiving as income an amount equal to the lower of the median household income for the applicant community or the state of Missouri would be required to make unreasonable sacrifices in their essential lifestyle or spending patterns or undergo hardships in order to make the projected monthly payments for sewer services. The department shall make a statement that the proposed changes meet the definition of affordable, or fail to meet the definition of affordable, or are implemented as a federal mandate regardless of affordability.

4. The department of natural resources shall adopt procedures by which it will make affordability findings that evaluate the affordability of permit requirements and enforcement actions described in subsection 1 of this section, and may begin implementing such procedures prior to promulgating implementing regulations. The commission shall have the authority to promulgate rules to implement this section pursuant to chapters 536 and 644, and shall promulgate such rules as soon as practicable. Affordability findings shall be based upon reasonably verifiable data and shall include an assessment of affordability with respect to persons or entities affected. The department shall offer the permittee an opportunity to review a draft affordability finding, and the permittee may suggest changes and provide additional supporting information, subject to subsection 6 of this section. The finding shall be based upon the following criteria:

(1) A community's financial capability and ability to raise or secure necessary funding;

(2) Affordability of pollution control options for the individuals or households **at or below the median household income level** of the community;

(3) An evaluation of the overall costs and environmental benefits of the control technologies;

(4) **Inclusion of ongoing costs of operating and maintaining the existing wastewater collection and treatment system, including payments on outstanding debts for wastewater collection and treatment**

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67 **systems when calculating projected rates;**
68 **(5)** An inclusion of ways to reduce economic impacts on distressed
69 populations in the community, including but not limited to low- and fixed-income
70 populations. This requirement includes but is not limited to:
71 (a) Allowing adequate time in implementation schedules to mitigate
72 potential adverse impacts on distressed populations resulting from the costs of
73 the improvements and taking into consideration local community economic
74 considerations; and
75 (b) Allowing for reasonable accommodations for regulated entities when
76 inflexible standards and fines would impose a disproportionate financial hardship
77 in light of the environmental benefits to be gained;
78 **[**(5)**]** **(6)** An assessment of other community investments **and operating**
79 **costs** relating to environmental improvements **and public health protection**;
80 **[**(6)**]** **(7)** An assessment of factors set forth in the United States
81 Environmental Protection Agency's guidance, including but not limited to the
82 "Combined Sewer Overflow Guidance for Financial Capability Assessment and
83 Schedule Development" that may ease the cost burdens of implementing wet
84 weather control plans, including but not limited to small system considerations,
85 the attainability of water quality standards, and the development of wet weather
86 standards; and
87 **[**(7)**]** **(8)** An assessment of any other relevant local community economic
88 condition.
89 5. Prescriptive formulas and measures used in determining financial
90 capability, affordability, and thresholds for expenditure, such as median
91 household income, should not be considered to be the only indicator of a
92 community's ability to implement control technology and shall be viewed in the
93 context of other economic conditions rather than as a threshold to be achieved.
94 6. Reasonable time spent preparing draft affordability findings, allowing
95 permittees to review draft affordability findings or draft permits, or revising draft
96 affordability findings, shall be allowed in addition to the department's deadlines
97 for making permitting decisions pursuant to section 644.051.
98 7. If the department of natural resources fails to make a finding of
99 affordability where required by this section, then the resulting permit or decision
100 shall be null, void and unenforceable.
101 8. The department of natural resources' findings under this section may
102 be appealed to the commission pursuant to subsection 6 of section 644.051.

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9. The department shall file an annual report by the beginning of the fiscal year with the governor, the speaker of the house of representatives, the president pro tempore of the senate, and the chairs of the committees in both houses having primary jurisdiction over natural resource issues showing at least the following information on the findings of affordability completed in the previous calendar year:

(1) The total number of findings of affordability issued by the department, those categorized as affordable, those categorized as not meeting the definition of affordable, and those implemented as a federal mandate regardless of affordability;

(2) The average increase in sewer rates both in dollars and percentage for all findings found to be affordable;

(3) The average increase in sewer rates as a percentage of median house income in the communities for those findings determined to be affordable and a separate calculation of average increases in sewer rates for those found not to meet the definition of affordable;

(4) A list of all the permit holders receiving findings, and for each permittee the following data taken from the finding of affordability shall be listed:

(a) Current and projected monthly residential sewer rates in dollars;

(b) Projected monthly residential sewer rates as a percentage of median house income;

(c) Percentage of households at or below the state poverty rate.

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