



Missouri Department of Natural Resources

**Identification of Hazardous Waste Rules in
Title 10, Division 25, Chapters 3, 4, 5 and 7
of the Code of State Regulations Inconsistent
with the Requirements of Section 260.373.3
of the Revised Statutes of Missouri**

Prepared by the Hazardous Waste Program

Sept. 13, 2013

I. Executive Summary

This report has been prepared to satisfy the statutory requirement found in Section 260.373.3 of the Revised Statutes of Missouri. While the full text of Section 260.373 may be found in Appendix B, this section of the Missouri statutes reads as follows:

Rulemaking authority, limitations on--identification of inconsistent rules.

260.373.3. No later than December 31, 2013, the department shall identify rules in Title 10, Missouri Code of State Regulations, Division 25, Chapters 3, 4, 5, and 7 that are inconsistent with the provisions of subsection 1 of this section. The department shall thereafter file with the Missouri secretary of state any amendments necessary to ensure that such rules are not inconsistent with the provisions of subsection 1 of this section. On December 31, 2015, any rule contained in Title 10, Missouri Code of State Regulations, Division 25, Chapters 3, 4, 5, or 7 that remains inconsistent with the provisions of subsection 1 above shall be null and void to the extent that it is inconsistent.

This section of the statute was included in House Bill 1251, passed by the Missouri General Assembly in 2012. The bill addressed the authority of the Missouri Hazardous Waste Management Commission to adopt regulations relating to hazardous wastes that are stricter than, or implement requirements prior to, the corresponding federal regulations on the same topic. As part of the process to implement this new requirement, Section 260.373.3 requires the Missouri Department of Natural Resources to identify, by December 31, 2013, existing rules in Title 10, Division 25, Chapters 3, 4, 5, and 7 of the Code of State Regulations that are inconsistent with this limitation. The intent of this report is to fulfill this statutory requirement.

This report does this by outlining the process used by the department to identify which specific provisions in the affected chapters are inconsistent with the statute because they establish requirements that are stricter than, or implement requirements prior to, the analogous federal requirement. In addition to providing this information, the report also includes a document in Appendix D that identifies the specific rules in the affected chapters that have provisions that have been determined to be inconsistent with Section 260.373.1 RSMo. This document further denotes through the use of strikethrough text and shading specific provisions within the identified rules that are or may be inconsistent with Section 260.373.1.

The rule text document will be used by the department as the beginning point to develop the necessary rule amendments to these chapters to fulfill the next statutory requirement, which is that any amendments necessary to the rules to ensure that they are not inconsistent with the statute be filed, and the necessary changes made, by December 31, 2015. If for any reason this rulemaking is not completed by this timeline, any rule identified as being inconsistent with Section 260.373 RSMo will be considered null and void after that date, to the extent that it is inconsistent with the statute. It is the department's intention to complete the rulemaking process prior to the statutory timeline to ensure an orderly transition to these new requirements.

II. Process Used to Identify Inconsistent Regulations

In implementing the requirements of the law, Department of Natural Resources staff have focused on the statutory deadlines, which require that inconsistent rules be “identified” by December 31, 2013, and that the necessary amendments be finalized by December 31, 2015. Immediately after the law went into effect on August 28, 2012, department staff began the process of reviewing the existing rules in the affected chapters. Staff in the affected sections of the Hazardous Waste Program, which include the Compliance and Enforcement Section and the Permits Section, reviewed the rules that their sections work closely with and came up with an initial determination of whether and how the statute applied to individual provisions in the rules.

To make this determination, department staff went through an evaluation process based on the language in the statute. The first criterion evaluated was whether the rule in question is within the scope of the federal rules that the affected chapters were being evaluated against. The statute states that the commission shall not promulgate rules that are stricter than, or implement requirements prior to, the federal rules in 40 Code of Federal Regulations(CFR) Parts 260, 261, 262, 264, 265, 268, and 270. The corresponding state rules for these Parts of the CFR are found in Chapters 3, 4, 5, and 7. However some regulations in Chapters 3, 4, 5 and 7 contain requirements for topics that are not addressed by the Parts of the CFR identified in the statute. For example, Chapter 3 contains language related to used oil, which is regulated under 40 CFR Part 279. Since Part 279 was not identified in the statute as one of the Parts the state rules are to be evaluated against, requirements related to used oil in Chapter 3 were determined to not be within the scope of the statute and therefore were determined to not be inconsistent with the statute.

For rules in the affected chapters and determined to be within the scope of the review, the next criterion to be evaluated is whether or not the regulation in question establishes a requirement that is stricter than what the federal regulations require, or establishes a requirement before it is required under the federal regulations. For the most part, this turned out to be a very straightforward determination. The state hazardous waste regulations incorporate the federal regulations by reference, so they essentially use the federal regulations as a starting point, and then add to, modify, or exclude as necessary. On this basis, any state regulation containing phrases such as “in addition to what is required,” or “these requirements modify or add to,” is likely to establish a requirement that is not found in the analogous federal regulation. In fact, entire subsections of some rules in the Missouri regulations were determined to be inconsistent with section 260.373, as the entirety of the specific subsection of the state regulations establishes additional requirements beyond what is already required in the federal regulations.

Some of the state regulations that generated the most discussion as to whether or not they were stricter than the federal regulations, and therefore inconsistent, were those that, instead of building on the federal regulation in question and adding additional state requirements, the state regulations essentially substitute for the federal regulations in question. In these cases, the state regulations replace and restate the federal regulations by

using terms such as “in lieu of,” and then going on to restate the applicable requirements in full. In these cases, determining whether the state regulations are inconsistent required further analysis and comparison of what is actually required in the state regulation against what is required in the federal regulation on the same specific topic.

For regulations that had been determined to be both within the scope of the no stricter than evaluation, and to establish requirements stricter than the federal requirements, or prior to the federal requirements, the next criterion to be evaluated was whether any of the exclusions in the statute would apply.

In section 260.373, after establishing the general rule in 260.373.1 that requirements stricter than, or prior to, the federal regulations are prohibited, the next section of the statute goes on to list specific subjects on which the Missouri Hazardous Waste Management Commission would have the authority to decide whether to retain, modify, or rescind the regulation in question, even though it was inconsistent with the general prohibition on state regulations being stricter or sooner than federal regulations. The exclusions are found in sections 260.373.1(2) and 260.373.1(3), as well as section 260.373.2., as follows:

(2) Notwithstanding the limitations of subdivision (1) of this subsection, where state statutes expressly prescribe standards or requirements that are stricter than or implement requirements prior to any federal requirements, or where state statutes allow the establishment or collection of fees, costs, or taxes, the commission may promulgate rules as necessary to implement such statutes;

(3) Notwithstanding the limitations of subdivision (1) of this subsection, the commission may retain, modify, or repeal any current rules pertaining to the following:

(a) Thresholds for determining whether a hazardous waste generator is a large quantity generator, small quantity generator, or conditionally exempt small quantity generator;

(b) Descriptions of applicable registration requirements;

(c) The reporting of hazardous waste activities to the department; provided, however, that the commission shall promulgate rules, effective beginning with the reporting period July 1, 2015 - June 30, 2016, that allow for the submittal of reporting data in an electronic format on an annual basis by large quantity generators and treatment storage and disposal facilities;

(d) Rules requiring hazardous waste generators to display hazard labels (e.g., Department of Transportation (DOT) labels) on containers and tanks during the time hazardous waste is stored on-site;

(e) The exclusion for hazardous secondary materials used to make zinc fertilizers in 40 CFR 261.4; and

(f) The exclusions for hazardous secondary materials that are burned for fuel or that are recycled.

2. Nothing in this section shall be construed to repeal any other provision of law, and the commission and the department shall continue to have the authority to implement and enforce other statutes, and the rules promulgated pursuant to their authority.

The first exclusion in section 260.373.1(2) allows the commission the authority to promulgate rules as necessary based on other state statutes that expressly prescribe standards or requirements that are stricter than federal, or where state statutes allow for the collection of fees, costs, or taxes. The first part of this exclusion, for rules based on “other state statutes,” required some analysis and research into what other provisions in the Missouri Hazardous Waste Management Law give the commission the authority to promulgate regulations relating to hazardous waste. The second part of this exclusion allows the commission to promulgate rules as necessary to implement statutes that allow for the collection of fees, costs, or taxes. This exclusion recognizes the fact that, for the most part, the collection of fees, costs, or taxes on hazardous waste is not included in federal regulations, so the regulations dealing with fees, costs, and taxes tend to be state-specific.

The next exclusion in section 260.373.1(3) is more of a subject-specific exclusion. This section of the law lists a series of topics on which the commission may elect to retain, modify, or rescind at the commission’s discretion, the state regulations pertaining to that specific topic, despite the fact that the regulation may establish a requirement that is either stricter, or implemented prior to, what the federal regulations require. Because this particular exclusion provides the commission with the discretion to determine whether to retain, modify, or rescind the rule in question, it is the department’s determination that rules that fit within one of these exclusions would not automatically have to be included in any rulemaking to remove inconsistent language from the regulations. Ultimately, the commission will have the final decision on whether or not to exercise the discretion provided to the commission in this section of the statute.

III. Document Development and Stakeholder Involvement

After making an initial evaluation of the regulations based on the criteria discussed above, department staff began the process of developing a document to provide information about the department’s determination of how the statute was applied to each rule in the affected chapters of the Missouri hazardous waste regulations.

Initially, the department used three different colors of rule text to represent the status of rule provisions in each of the affected chapters. Red text was used to signify that the rule provision was determined to be inconsistent with section 260.373.1, that the department did not find that any of the exclusions were applicable, and that the rules provisions would be proposed to be rescinded in compliance with the statute.

Green text was used to signify that the rule provisions were not affected by the statute, or that while potentially affected because the rule provision met the basic requirement that it established a requirement that is stricter or prior to the federal requirement, the department

determined that one of the applicable exclusions prevented the rule provision from being identified as inconsistent with section 260.373.1.

Blue text was initially used for rule provisions where the department was unsure about which category the rule provisions in question belonged to, but ultimately, after further discussion, research, and analysis, every rule provision was coded either as green text to be retained, or as red text, to be rescinded, or possibly modified.

Once initially developed, this document was discussed further internally in meetings of affected department staff, and then distributed and shared with participant's in the department's Hazardous Waste Forum, which is a group of stakeholders that meet on a periodic basis to discuss issues relating to the department's Hazardous Waste Program. Forum participants, department staff, and other stakeholders held a series of meetings in the fall and winter of 2012, and throughout 2013 to further discuss this document, in an effort to solicit stakeholder input prior to the department finalizing its determination on the rules to be affected.

As a result of the stakeholder efforts, the department finalized a color-coded version of the rules that were impacted, which was used as a basis for developing the document that is included in Appendix D of this report. With the completion of this document, the department believes that it has satisfied the statutory requirement to identify existing rules in Chapters 3, 4, 5, and 7 of the Missouri hazardous waste regulations that are inconsistent with section 260.373.1 RSMo.

IV. Next steps

After presenting this report to the commission, department staff will proceed to develop the necessary rule amendments to make the changes identified. In addition to the changes identified in this report, department staff will continue to work with stakeholders through the Hazardous Waste Forum to develop additional rule changes that were not part of the "no stricter than" review process. These additional changes include such things as updating the incorporation by reference of new federal rules, revising the hazard labeling requirements for containers and tanks, and performing general cleanup of outdated or obsolete regulations determined to be necessary even though they were not found to be inconsistent with the statutes.

V. Conclusion

With the completion of this document, the department has satisfied the statutory requirement that the department identify rules in Title 10, Division 25, Chapters 3, 4, 5, and 7 that are inconsistent with a limitation on the rulemaking authority of the Missouri Hazardous Waste Management Commission found in section 260.373.1 of the Revised Statutes of Missouri. This report shall be used by the department as the basis for developing rule amendments to rescind or modify regulations that have been identified to be inconsistent with the statute, which are expected to be completed prior to the statutory required timeline of December 31, 2015.

Appendix A – Missouri Hazardous Waste Management Law

Missouri Revised Statutes

Chapter 260 Environmental Control Section 260.350

August 28, 2012

Short title.

260.350. Sections 260.350 to 260.430 shall be known and may be cited as the "Missouri Hazardous Waste Management Law".

(L. 1977 H.B. 318 § 1)

Chapter 260 Environmental Control Section 260.352

August 28, 2012

Department of natural resources shall verify compliance with corrective action plans for hazardous waste management.

260.352. All corrective action plans approved by the department pursuant to the provisions of sections 260.350 to 260.430 shall require the department, upon notice by the owner or operator that the approved plan has been completed, to verify within ninety days that the corrective action plan has been complied with and completed. The department shall issue a letter within thirty business days to the owners or operators certifying the completion and compliance.

(L. 2000 H.B. 1238 § 1 merged with S.B. 894 § 2)

Chapter 260

Environmental Control

Section 260.355

August 28, 2012

Exempted wastes.

260.355. Exempted from the provisions of sections 260.350 to 260.480 are:

- (1) Radioactive wastes regulated under section 2011, et seq., of title 42 of United States Code;
- (2) Emissions to the air subject to regulation of and which are regulated by the Missouri air conservation commission pursuant to chapter 643;
- (3) Discharges to the waters of this state pursuant to a permit issued by the Missouri clean water commission pursuant to chapter 204;
- (4) Fluids injected or returned into subsurface formations in connection with oil or gas operations regulated by the Missouri oil and gas council pursuant to chapter 259;
- (5) Mining wastes used in reclamation of mined lands pursuant to a permit issued by the Missouri land reclamation commission pursuant to chapter 444.

(L. 1977 H.B. 318 § 2, A.L. 1985 S.B. 110)

Chapter 260

Environmental Control

Section 260.360

August 28, 2012

Definitions.

260.360. When used in sections 260.350 to 260.430 and in standards, rules and regulations adopted pursuant to sections 260.350 to 260.430, the following words and phrases mean:

- (1) "Cleanup", all actions necessary to contain, collect, control, treat, disburse, remove or dispose of a hazardous waste;
- (2) "Commission", the hazardous waste management commission of the state of Missouri created by sections 260.350 to 260.430;

- (3) "Conference, conciliation and persuasion", a process of verbal or written communications consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;
- (4) "Department", the Missouri department of natural resources;
- (5) "Detonation", an explosion in which chemical transformation passes through the material faster than the speed of sound, which is 0.33 kilometers per second at sea level;
- (6) "Director", the director of the Missouri department of natural resources;
- (7) "Disposal", the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that such waste, or any constituent thereof, may enter the environment or be emitted into the air or be discharged into the waters, including groundwaters;
- (8) "Final disposition", the location, time and method by which hazardous waste loses its identity or enters the environment, including, but not limited to, disposal, resource recovery and treatment;
- (9) "Generation", the act or process of producing waste;
- (10) "Generator", any person who produces waste;
- (11) "Hazardous waste", any waste or combination of wastes, as determined by the commission by rules and regulations, which, because of its quantity, concentration, or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a present or potential threat to the health of humans or the environment;
- (12) "Hazardous waste facility", any property that is intended or used for hazardous waste management including, but not limited to, storage, treatment and disposal sites;
- (13) "Hazardous waste management", the systematic recognition and control of hazardous waste from generation to final disposition including, but not limited to, its identification, containerization, labeling, storage, collection, transfer or transportation, treatment, resource recovery or disposal;
- (14) "Infectious waste", waste in quantities and characteristics as determined by the department by rule and regulation, including the following wastes known or suspected to be infectious: isolation wastes, cultures and stocks of etiologic agents, contaminated blood and blood products, other contaminated surgical wastes, wastes from autopsy, contaminated laboratory wastes, sharps, dialysis unit wastes, discarded biologicals and antineoplastic chemotherapeutic materials;

provided, however, that infectious waste does not mean waste treated to department specifications;

(15) "Manifest", a department form accompanying hazardous waste from point of generation, through transport, to final disposition;

(16) "Minor violation", a violation which possesses a small potential to harm the environment or human health or cause pollution, was not knowingly committed, and is not defined by the United States Environmental Protection Agency as other than minor;

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

(18) "Plasma arc technology", a process that converts electrical energy into thermal energy. The plasma arc is created when a voltage is established between two points;

(19) "Resource recovery", the reclamation of energy or materials from waste, its reuse or its transformation into new products which are not wastes;

(20) "Storage", the containment or holding of waste at a designated location in such manner or for such a period of time, as determined in regulations adopted hereunder, so as not to constitute disposal of such waste;

(21) "Treatment", the processing of waste to remove or reduce its harmful properties or to contribute to more efficient or less costly management or to enhance its potential for resource recovery including, but not limited to, existing or future procedures for biodegradation, concentration, reduction in volume, detoxification, fixation, incineration, plasma arc technology, or neutralization;

(22) "Waste", any material for which no use or sale is intended and which will be discarded or any material which has been or is being discarded. Waste shall also include certain residual materials, to be specified by the rules and regulations, which may be sold for purposes of energy or materials reclamation, reuse or transformation into new products which are not wastes;

(23) "Waste explosives", any waste which has the potential to detonate, or any bulk military propellant which cannot be safely disposed of through other modes of treatment.

(L. 1977 H.B. 318 § 3, A.L. 1980 2d Ex. Sess. H.B. 5, et al., A.L. 1985 S.B. 110, A.L. 1986 H.B. 875 & 1649, A.L. 1987 H.B. 375, A.L. 1993 S.B. 80, et al., A.L. 2007 S.B. 54)

Chapter 260

Environmental Control

Section 260.365

August 28, 2012

Hazardous waste management commission created--composition, qualifications--compensation--terms--meetings, notice required, quorum.

260.365. 1. There is hereby created a hazardous waste management agency to be known as the "Hazardous Waste Management Commission of the State of Missouri", whose domicile for the purpose of sections 260.350 to 260.430 shall be deemed to be that of the department of natural resources of the state of Missouri. The commission shall consist of seven members appointed by the governor with the advice and consent of the senate. No more than four members shall belong to the same political party. All members shall be representative of the general interest of the public and shall have an interest in and knowledge of waste management and the effects of improper waste management on health and the environment and shall serve in a manner consistent with the purposes of sections 260.350 to 260.430. Three of the members, but no more than three, one for each interest, shall be knowledgeable of and may be employed in agriculture, the waste generating industry and the waste management industry. Except for the industry members, no member shall receive, or have received during the previous two years, a significant portion of income directly or indirectly from any license or permit holder or applicant for license or permit under any waste management act. At the first meeting of the commission and annually thereafter, the members shall select from among themselves a chairman and a vice chairman. Prior to any vote on any variance, appeal or order, they shall adopt a voting rule to exclude from such vote any member with a conflict of interest with respect to the matter at issue.

2. The members' terms of office shall be four years and until their successors are selected and qualified, except that, of those first appointed, three shall have a term of three years, two shall have a term of two years and two shall have a term of one year as designated by the governor at the time of appointment. There is no limitation on the number of terms any appointed member may serve. If a vacancy occurs the governor may appoint a member for the remaining portion of the unexpired term created by the vacancy. The governor may remove any appointed member for cause. The members of the commission shall be reimbursed for actual and necessary expenses incurred in the performance of their duties, and shall receive fifty dollars per day for each day spent in the performance of their official duties while in attendance at regular commission meetings.

3. The commission shall hold at least four regular meetings each year and such additional meetings as the chairman deems desirable at a place and time to be fixed by the chairman. Special meetings may be called by three members of the commission upon delivery of written notice to each member of the commission. Reasonable written notice of all meetings shall be given by the department to all members of the commission. Four members of the commission shall constitute a quorum. All powers and duties conferred upon members of the commission shall be exercised personally by the members and not by alternates or representatives. All actions

of the commission shall be taken at meetings open to the public. Any member absent from four consecutive regular commission meetings for any cause whatsoever shall be deemed to have resigned and the vacancy shall be filled immediately in accordance with this section.

(L. 1977 H.B. 318 § 4, A.L. 1980 2d Ex. Sess. H.B. 5, et al.)

Effective 10-31-80

CROSS REFERENCE

Chapter 260

Environmental Control

Section 260.370

August 28, 2012

Duties and powers of commission--rules and regulations to be adopted, procedures--inspection fees, use of, refund, when--variances granted, when.

260.370. 1. Where proven technology is available and the economic impact is reasonable, pursuant to rules and regulations promulgated by the commission, the hazardous waste management commission shall encourage that every effort is made to effectively treat, recycle, detoxify, incinerate or otherwise treat hazardous waste to be disposed of in the state of Missouri in order that such wastes are not disposed of in a manner which is hazardous to the public health and the environment. Where proven technology is available with respect to a specific hazardous waste and the economic impact is reasonable, pursuant to rules and regulations promulgated by the commission, the hazardous waste management commission shall direct that disposal of the specific hazardous wastes using land filling as the primary method is prohibited.

2. The hazardous waste management commission shall, by rules and regulations, categorize hazardous waste by taking into account toxicity, persistence and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness and other hazardous characteristics. The commission shall by rules and regulations further establish within each category the wastes which may or may not be disposed of through alternative hazardous waste management technologies including, but not limited to, treatment facilities, incinerators, landfills, landfarms, storage facilities, surface impoundments, recycling, reuse and reduction. The commission shall specify, by rule and regulation, the frequency of inspection for each method of hazardous waste management and for the different waste categories at hazardous waste management sites. The inspection may be daily when the hazardous waste management commission deems it necessary. The hazardous waste management commission shall specify, by rule, fees to be paid to the department by owners or operators of hazardous waste facilities who have obtained, or are required to obtain, a hazardous waste facility permit and who accept, on a commercial basis for remuneration, hazardous waste from off-site sources, but not including wastes generated by the same person at other sites located in Missouri or within a metropolitan statistical area located partially in Missouri and owned or operated by the same person and transferred to the hazardous waste facility, for treatment, storage or disposal, for inspections

conducted by the department to determine compliance with sections 260.350 to 260.430 and the regulations promulgated thereunder. Funds derived from these inspection fees shall be used for the purpose of funding the inspection of hazardous waste facilities, as specified in subsection 3 of section 260.391. Such fees shall not exceed twelve thousand dollars per year per facility and the commission shall establish a graduated fee scale based on the volume of hazardous waste accepted with reduced fees for facilities accepting smaller volumes of hazardous waste. The department shall furnish, upon request, to the person, firm or corporation operating the hazardous waste facility a complete, full and detailed accounting of the cost of the department's inspections of the facility for the twelve-month period immediately preceding the request within forty-five days after receipt of the request. Failure to provide the accounting within forty-five days shall require the department to refund the inspection fee paid during the twelve-month-time period.

3. In addition to any other powers vested in it by law, the commission shall have the following powers:

(1) From time to time adopt, amend or repeal, after due notice and public hearing, standards, rules and regulations to implement, enforce and carry out the provisions of sections 260.350 to 260.430 and any required of this state by any federal hazardous waste management act and as the commission may deem necessary to provide for the safe management of hazardous wastes to protect the health of humans and the environment. In implementing this subsection, the commission shall consider the variations within this state in climate, geology, population density, quantities and types of hazardous wastes generated, availability of hazardous waste facilities and such other factors as may be relevant to the safe management of hazardous wastes. Within two years after September 28, 1977, the commission shall adopt rules and regulations including the following:

(a) Rules and regulations establishing criteria and a listing for the determination of whether any waste or combination of wastes is hazardous for the purposes of sections 260.350 to 260.430, taking into account toxicity, persistence and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness and other hazardous characteristics;

(b) Rules and regulations for the storage, treatment and disposal of hazardous wastes;

(c) Rules and regulations for the transportation, containerization and labeling of hazardous wastes, which shall be consistent with those issued by the Missouri public service commission;

(d) Rules and regulations establishing standards for the issuance, modification, suspension, revocation or denial of such licenses and permits as are consistent with the purposes of sections 260.350 to 260.430;

(e) Rules and regulations establishing standards and procedures for the safe operation and maintenance of hazardous waste facilities in order to protect the health of humans and other living organisms;

(f) Rules and regulations listing those wastes or combinations of wastes, for which criteria have been established under paragraph (a) of this subdivision and which are not compatible and which may not be stored or disposed of together;

(g) Rules and regulations establishing procedures and requirements for the reporting of the generation, storage, transportation, treatment or disposal of hazardous wastes;

(2) Adopt and publish, after notice as required by the provisions of chapter 536 pertaining to administrative rulemaking, and public hearing, a state hazardous waste management plan to provide for the safe and effective management of hazardous wastes within this state. This plan shall be adopted within two years after September 28, 1977, and revised at least once every five years thereafter;

(3) Hold hearings, issue notices of hearings and subpoenas requiring the attendance of witnesses and the production of evidence, administer oaths and take testimony as the commission deems necessary to accomplish the purposes of sections 260.350 to 260.430 or as required by any federal hazardous waste management act. Unless otherwise specified in sections 260.350 to 260.430, any of these powers may be exercised on behalf of the commission by any members thereof or a hearing officer designated by it;

(4) Grant individual variances in accordance with the provisions of sections 260.350 to 260.430;

(5) Make such orders as are necessary to implement, enforce and effectuate the powers, duties and purposes of sections 260.350 to 260.430.

4. No rule or portion of a rule promulgated under the authority of sections 260.350 to 260.480 and sections 260.565 to 260.575 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024.

5. To the extent there is a conflict concerning authority for risk-based remediation rules between this section and section 644.143 or subdivision (8) of section 644.026, this section shall prevail.

(L. 1977 H.B. 318 § 5, A.L. 1980 2d Ex. Sess. H.B. 5, et al., A.L. 1988 S.B. 535, A.L. 1993 S.B. 52 merged with S.B. 80, et al., A.L. 1995 S.B. 3, A.L. 2004 S.B. 901 merged with S.B. 1040, A.L. 2010 H.B. 1965)

Chapter 260

Environmental Control

Section 260.371

August 28, 2012

Severability clause, exceptions.

260.371. The provisions of this act* are severable, except as otherwise provided in sections 260.225 and 260.370. If any provision of this act* is found by a court of competent jurisdiction

to be invalid or unconstitutional, the remaining provisions of this act shall remain in full force and effect.

(L. 1988 S.B. 535 § 3)

Effective 5-3-88

*"This act" (S.B. 535, 1988) contained numerous sections. Consult Disposition of Sections table for a definitive listing

Chapter 260

Environmental Control

Section 260.372

August 28, 2012

Powers and duties of commission.

260.372. 1. The Missouri hazardous waste management commission within the Missouri department of natural resources is hereby given the authority to aid in the promotion of hazardous waste recycling, reuse, or reduction by entering into contracts, subject to appropriations, for the development and implementation of projects dealing with said uses of hazardous wastes or the purchase and development of machinery, equipment, appliances, devices, and supplies solely required to develop and operate hazardous waste recycling, reuse, and reduction projects.

2. The hazardous waste management commission within the Missouri department of natural resources shall promulgate rules and regulations to establish or participate in one or more regional waste exchange clearing houses where generators of wastes may list those wastes that have market value or other use.

3. The hazardous waste management commission within the Missouri department of natural resources shall act in an advisory capacity to Missouri's member on the midwest low-level radioactive waste compact commission, review activities of the midwest low-level radioactive waste compact commission and midwest interstate radioactive waste compact states, and present recommendations in writing to the governor and the general assembly as requested or as necessary to insure adequate exchange of information.

(L. 1980 2d Ex. Sess. H.B. 5, et al., A.L. 2011 H.B. 464)

Chapter 260

Environmental Control

Section 260.373

August 28, 2012

Rulemaking authority, limitations on--identification of inconsistent rules.

260.373. 1. After August 28, 2012, the authority of the commission to promulgate rules under sections 260.350 to 260.391 and 260.393 to 260.433 is subject to the following:

(1) The commission shall not promulgate rules that are stricter than or implement requirements prior to the requirements of Title 40, U.S. Code of Federal Regulations, Parts 260, 261, 262, 264, 265, 268, and 270, as promulgated pursuant to Subtitle C of the Resource Conservation and Recovery Act, as amended;

(2) Notwithstanding the limitations of subdivision (1) of this subsection, where state statutes expressly prescribe standards or requirements that are stricter than or implement requirements prior to any federal requirements, or where state statutes allow the establishment or collection of fees, costs, or taxes, the commission may promulgate rules as necessary to implement such statutes;

(3) Notwithstanding the limitations of subdivision (1) of this subsection, the commission may retain, modify, or repeal any current rules pertaining to the following:

(a) Thresholds for determining whether a hazardous waste generator is a large quantity generator, small quantity generator, or conditionally exempt small quantity generator;

(b) Descriptions of applicable registration requirements;

(c) The reporting of hazardous waste activities to the department; provided, however, that the commission shall promulgate rules, effective beginning with the reporting period July 1, 2015 - June 30, 2016, that allow for the submittal of reporting data in an electronic format on an annual basis by large quantity generators and treatment storage and disposal facilities;

(d) Rules requiring hazardous waste generators to display hazard labels (e.g., Department of Transportation (DOT) labels) on containers and tanks during the time hazardous waste is stored on-site;

(e) The exclusion for hazardous secondary materials used to make zinc fertilizers in 40 CFR 261.4; and

(f) The exclusions for hazardous secondary materials that are burned for fuel or that are recycled.

2. Nothing in this section shall be construed to repeal any other provision of law, and the commission and the department shall continue to have the authority to implement and enforce other statutes, and the rules promulgated pursuant to their authority.

3. No later than December 31, 2013, the department shall identify rules in Title 10, Missouri Code of State Regulations, Division 25, Chapters 3, 4, 5, and 7 that are inconsistent with the provisions of subsection 1 of this section. The department shall thereafter file with the Missouri secretary of state any amendments necessary to ensure that such rules are not inconsistent with the provisions of subsection 1 of this section. On December 31, 2015, any rule contained in Title 10, Missouri Code of State Regulations, Division 25, Chapters 3, 4, 5, or 7 that remains inconsistent with the provisions of subsection 1 above shall be null and void to the extent that it is inconsistent.

4. Nothing in this section shall be construed to effectuate a modification of any permit. Upon request, the department shall modify as appropriate any permit containing requirements no longer in effect due to this section.

5. The department is prohibited from selectively excluding any rule or portion of a rule promulgated by the commission from any authorization application package, or program revision, submitted to the U.S. Environmental Protection Agency under Title 40, U.S. Code of Federal Regulations, Sections 271.5 or 271.21.

6. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly under chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2012, shall be invalid and void.

(L. 2012 H.B. 1251 merged with H.B. 1647)

Chapter 260

Environmental Control

Section 260.375

August 28, 2012

Duties of department--licenses required--permits required.

260.375. The department shall:

- (1) Exercise general supervision of the administration and enforcement of sections 260.350 to 260.430 and all standards, rules and regulations, orders or license and permit terms and conditions adopted or issued pursuant to sections 260.350 to 260.430;
- (2) Develop and implement programs to achieve goals and objectives set by the state hazardous waste management plan;
- (3) Retain, employ, provide for and compensate, within appropriations available therefor, such consultants, assistants, deputies, clerks and other employees on a full- or part-time basis as may be necessary to carry out the provisions of sections 260.350 to 260.430 and prescribe the times at which they shall be appointed and their powers and duties;
- (4) Budget and receive duly appropriated moneys for expenditures to carry out the provisions of sections 260.350 to 260.430;
- (5) Accept, receive and administer grants or other funds or gifts from public and private agencies including the federal government for the purpose of carrying out any of the functions of sections 260.350 to 260.430. Funds received by the department pursuant to this section shall be deposited with the state treasurer and held and disbursed by him or her in accordance with the appropriations of the general assembly;
- (6) Provide the commission all necessary support the commission may require to carry out its powers and duties including, but not limited to: keeping of records of all meetings; notification, at the direction of the chairman of the commission, of the members of the commission of the time, place and purpose of each meeting by written notice; drafting, for consideration of the commission, a state hazardous waste management plan and standards, rules and regulations necessary to carry out the purposes of sections 260.350 to 260.430; and investigation of petitions for variances and complaints made to the commission and submission of recommendations thereto;
- (7) Collect and maintain, and require any person to collect and maintain, such records and information of hazardous waste generation, storage, transportation, resource recovery, treatment and disposal in this state, including quantities and types imported and exported across the borders of this state and install, calibrate and maintain and require any person to install, calibrate

and maintain such monitoring equipment or methods, and make reports consistent with the purposes of sections 260.350 to 260.430;

(8) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise;

(9) Develop facts and make inspections and investigations, including gathering of samples and performing of tests and analyses, consistent with the purposes of sections 260.350 to 260.430, and in connection therewith, to enter or authorize any representative of the department to enter, at all reasonable times, in or upon any private or public property for any purpose required by sections 260.350 to 260.430 or any federal hazardous waste management act. Such entry may be for the purpose, without limitation, of developing or implementing standards, rules and regulations, orders or license or permit terms and conditions, of inspecting or investigating any records required to be kept by sections 260.350 to 260.430 or any license or permit issued pursuant to sections 260.350 to 260.430 or any hazardous waste management practice which the department or commission believes violates sections 260.350 to 260.430, or any standard, rule or regulation, order or license or permit term or condition adopted or issued pursuant to sections 260.350 to 260.430, or otherwise endangers the health of humans or the environment, or the site of any suspected violation of sections 260.350 to 260.430, or any standard, rule or regulation, order, or license or permit term or condition adopted or issued pursuant to sections 260.350 to 260.430. The results of any such investigation shall be reduced to writing and shall be furnished to the owner or operator of the property. No person shall refuse entry or access requested for the purpose of inspection pursuant to this subdivision to an authorized representative of the department or commission who presents appropriate credentials, nor obstruct or hamper the representative in carrying out the inspection. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath, shall be issued by any judge or associate circuit judge having jurisdiction to any such representative for the purpose of enabling the representative to make such inspection;

(10) Require each hazardous waste generator located within this state to file a registration report containing such information as the commission by regulation may specify relating to types and quantities of hazardous waste generated and methods of hazardous waste management, and to meet all other requirements placed upon hazardous waste generators by sections 260.350 to 260.430 and the standards, rules and regulations and orders adopted or issued pursuant to sections 260.350 to 260.430;

(11) Require each hazardous waste transporter operating in this state to obtain a license and to meet all applicable requirements of sections 260.350 to 260.430 and section 226.008, and the standards, rules and regulations, orders and license terms and conditions adopted or issued pursuant to sections 260.350 to 260.430 and section 226.008;

(12) Require each hazardous waste facility owner and operator to obtain a permit for each such facility and to meet all applicable requirements of sections 260.350 to 260.430 and the standards, rules and regulations, orders and permit terms and conditions adopted or issued pursuant to sections 260.350 to 260.430;

(13) Issue, continue in effect, revoke, modify or deny in accordance with the standards, rules and regulations, and hazardous waste facility permits;

(14) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of sections 260.350 to 260.430;

(15) Enter such order or determination as may be necessary to effectuate the provisions of sections 260.350 to 260.430 and the standards, rules and regulations, and license and permit terms and conditions adopted or issued pursuant to sections 260.350 to 260.430;

(16) Enter such order or cause to be instituted in a court of competent jurisdiction such legal proceedings as may be necessary in a situation of imminent hazard, as prescribed in section 260.420;

(17) Settle or compromise as it may deem advantageous to the state, with the approval of the commission, any suit undertaken by the commission for recovery of any penalty or for compelling compliance with any provision of sections 260.350 to 260.430 or any standard, rule or regulation, order, or license or permit term or condition adopted or issued pursuant to sections 260.350 to 260.430;

(18) Advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies and with affected groups, political subdivisions and industries in furtherance of the purposes of sections 260.350 to 260.430 and, upon request, consult with persons subject to sections 260.350 to 260.430 on the proper measures necessary to comply with the requirements of sections 260.350 to 260.430 and rules and regulations adopted pursuant to sections 260.350 to 260.430;

(19) Encourage, coordinate, participate in or conduct studies, investigations, research and demonstrations relating to hazardous waste management as it may deem advisable and necessary for the discharge of its duties pursuant to sections 260.350 to 260.430;

(20) Represent the state of Missouri in all matters pertaining to interstate hazardous waste management including the negotiation of interstate compacts or agreements;

(21) Arrange for the establishment, staffing, operation and maintenance of collection stations, within appropriations or other funding available therefor, for householders, farmers and other exempted persons as provided in section 260.380;

(22) Collect and disseminate information relating to hazardous waste management;

(23) Conduct education and training programs on hazardous waste problems and management;

(24) Encourage and facilitate public participation in the development, revision and implementation of the state hazardous waste program;

(25) Encourage waste reduction, resource recovery, exchange and energy conservation in hazardous waste management;

(26) Exercise all powers necessary to carry out the provisions of sections 260.350 to 260.430, assure that the state of Missouri complies with any federal hazardous waste management act and retains maximum control thereunder, and receives all desired federal grants, aid and other benefits;

(27) Present to the public, at a public meeting, and to the governor and the members of the general assembly, an annual report on the status of the state hazardous waste program;

(28) Develop comprehensive plans and programs to aid in the establishment of hazardous waste disposal sites as needed within the various geographical areas of the state within a reasonable period of time;

(29) Control, abate or clean up any hazardous waste placed into or on the land in a manner which endangers or is reasonably likely to endanger the health of humans or the environment and, in aid thereof, may cause to be filed by the attorney general or a prosecuting attorney, a suit seeking mandatory or prohibitory injunctive relief or such other relief as may be appropriate. The department shall also take such action as is necessary to recover all costs associated with the cleanup of any hazardous waste from the person responsible for the waste. All money received shall be deposited in the hazardous waste fund created in section 260.391;

(30) Oversee any corrective action work undertaken pursuant to sections 260.350 to 260.430 and rules promulgated pursuant to sections 260.350 to 260.430 to investigate, monitor, or clean up releases of hazardous waste or hazardous constituents to the environment at hazardous waste facilities. The department shall review the technical and regulatory aspects of corrective action plans, reports, documents, and associated field activities, and attest to their accuracy and adequacy. Owners or operators of hazardous waste facilities performing corrective actions shall pay to the department all reasonable costs, as determined by the commission, incurred by the department pursuant to this subdivision. All such funds remitted by owners or operators of hazardous waste facilities performing corrective actions shall be deposited in the hazardous waste fund created in section 260.391.

(L. 1977 H.B. 318 § 6, A.L. 1980 2d Ex. Sess. H.B. 5, et al., A.L. 2000 S.B. 577, A.L. 2004 S.B. 1040, A.L. 2005 S.B. 225

Chapter 260

Environmental Control

Section 260.377

August 28, 2012

Inspection by department.

260.377. Subject to appropriations, the department of natural resources shall conduct inspections of any hazardous waste facility. The frequency of such inspections shall be specified by the commission through rule and regulation based on the classification category of the hazardous waste, as specified in section 260.370. Such inspections shall determine compliance by licensee or permittee with the requirements of sections 260.350 to 260.430 and regulations promulgated thereunder as well as compliance with any special conditions in the permit issued to the permittee.

(L. 1980 2d Ex. Sess. H.B. 5, et al.)

Effective 10-31-80

Chapter 260

Environmental Control

Section 260.379

August 28, 2012

Permit not to be issued, when--notice to department of certain crimes, penalty for failure to notify--reinstatement, when.

260.379. 1. The department of natural resources shall not issue a permit to any person for the operation of any facility or issue any license to any person under the authority of sections 260.350 to 260.434, if such person has had three or more convictions, which convictions occurred after July 9, 1990, and within any five-year period within the courts of the United States or of any state except Missouri or had two or more convictions within a Missouri court after July 9, 1990, and within any five-year period, for any crimes or criminal acts, an element of which involves restraint of trade, price-fixing, intimidation of the customers of any person or for engaging in any other acts which may have the effect of restraining or limiting competition concerning activities regulated under this chapter or similar laws of other states or the federal government; except that convictions for violations by entities purchased or acquired by an applicant or permittee which occurred prior to the purchase or acquisition shall not be included. For the purpose of this section, the term "person" shall include any business organization or entity, successor corporation, partnership or subsidiary of any business organization or entity, and the owners and officers thereof, or the entity submitting the application.

2. The director shall suspend, revoke or not renew the permit or license of any person issued pursuant to sections 260.350 to 260.434, if such person has had two or more convictions in any court of the United States or of any state other than Missouri or two or more convictions within a Missouri court for crimes as specified herein if such conviction occurred after July 9, 1990, and within any five-year period.

3. Any person applying for a permit or license under sections 260.350 to 260.434 shall notify the director of any conviction for any act which would have the effect of limiting competition. Any person with a permit or license shall notify the department of any such conviction within thirty days of the conviction or plea. Failure to notify the director is a class D felony and subject to a fine of one thousand dollars per day for each day unreported.

4. Provided that after a period of five years after a permit has been revoked under the provisions of this section, the person, firm or corporation affected may apply for rehabilitation and reinstatement to the director of the department. The department shall promulgate the necessary rules and regulations for rehabilitation and reinstatement. The time period for same shall not exceed five years.

(L. 1990 S.B. 530)

Effective 7-9-90

Chapter 260

Environmental Control

Section 260.380

August 28, 2012

Duties of hazardous waste generators--fees to be collected, disposition--exemptions--expiration of fees.

260.380. 1. After six months from the effective date of the standards, rules and regulations adopted by the commission pursuant to section 260.370, hazardous waste generators located in Missouri shall:

(1) Promptly file and maintain with the department, on registration forms it provides for this purpose, information on hazardous waste generation and management as specified by rules and regulations. Hazardous waste generators shall pay a one hundred dollar registration fee upon initial registration, and a one hundred dollar registration renewal fee annually thereafter to maintain an active registration. Such fees shall be deposited in the hazardous waste fund created in section 260.391;

(2) Containerize and label all hazardous wastes as specified by standards, rules and regulations;

- (3) Segregate all hazardous wastes from all nonhazardous wastes and from noncompatible wastes, materials and other potential hazards as specified by standards, rules and regulations;
- (4) Provide safe storage and handling, including spill protection, as specified by standards, rules and regulations, for all hazardous wastes from the time of their generation to the time of their removal from the site of generation;
- (5) Unless provided otherwise in the rules and regulations, utilize only a hazardous waste transporter holding a license pursuant to sections 260.350 to 260.430 for the removal of all hazardous wastes from the premises where they were generated;
- (6) Unless provided otherwise in the rules and regulations, provide a separate manifest to the transporter for each load of hazardous waste transported from the premises where it was generated. The generator shall specify the destination of such load on the manifest. The manner in which the manifest shall be completed, signed and filed with the department shall be in accordance with rules and regulations;
- (7) Utilize for treatment, resource recovery, disposal or storage of all hazardous wastes, only a hazardous waste facility authorized to operate pursuant to sections 260.350 to 260.430 or the federal Resource Conservation and Recovery Act, or a state hazardous waste management program authorized pursuant to the federal Resource Conservation and Recovery Act, or any facility exempted from the permit required pursuant to section 260.395;
- (8) Collect and maintain such records, perform such monitoring or analyses, and submit such reports on any hazardous waste generated, its transportation and final disposition, as specified in sections 260.350 to 260.430 and rules and regulations adopted pursuant to sections 260.350 to 260.430;
- (9) Make available to the department upon request samples of waste and all records relating to hazardous waste generation and management for inspection and copying and allow the department to make unhampered inspections at any reasonable time of hazardous waste generation and management facilities located on the generator's property and hazardous waste generation and management practices carried out on the generator's property;
- (10) Pay annually, on or before January first of each year, effective January 1, 1982, a fee to the state of Missouri to be placed in the hazardous waste fund. The fee shall be five dollars per ton or portion thereof of hazardous waste registered with the department as specified in subdivision (1) of this subsection for the twelve-month period ending June thirtieth of the previous year. However, the fee shall not exceed fifty-two thousand dollars per generator site per year nor be less than one hundred fifty dollars per generator site per year;
 - (a) All moneys payable pursuant to the provisions of this subdivision shall be promptly transmitted to the department of revenue, which shall deposit the same in the state treasury to the credit of the hazardous waste fund created in section 260.391;

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

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 Act, or a state hazardous waste management program authorized pursuant to the federal Resource Conservation and Recovery Act which the department designates for this purpose; or

(b) A collection station or vehicle which the department may arrange for and designate for this purpose.

*4. Failure to pay the fee, or any portion thereof, prescribed in this section by the due date shall result in the imposition of a penalty equal to fifteen percent of the original fee. The fee prescribed in this section shall expire December 31, 2013, except that the department shall levy and collect this fee for any hazardous waste generated prior to such date and reported to the department.

(L. 1977 H.B. 318 § 7, A.L. 1980 2d Ex. Sess. H.B. 5, et al., A.L. 1985 S.B. 110, A.L. 2000 S.B. 577, A.L. 2004 S.B. 1040, A.L. 2005 S.B. 225, A.L. 2011 S.B. 135)

Effective 6-22-11

*Fee expires 12-31-13

Chapter 260

Environmental Control

Section 260.385

August 28, 2012

Activities not allowed and requirements to be met by hazardous waste transporters.

260.385. After six months from the effective date of the standards, rules and regulations adopted by the commission pursuant to section 260.370, hazardous waste transporters shall:

- (1) Not transport any hazardous waste in this state without first obtaining a hazardous waste transporter license from the department as specified in section 260.395;
- (2) Use and operate equipment which has been approved by the department and follow procedures, when transporting hazardous wastes, which meet all applicable state and federal regulations and standards for the transportation of hazardous materials and all applicable standards, rules and regulations adopted under sections 260.350 to 260.430 and all terms and conditions of their license;
- (3) Unless otherwise provided in sections 260.350 to 260.430 or the rules and regulations adopted hereunder, accept only shipments of hazardous waste that are accompanied by a manifest, provided by the generator, that has been completed and signed by the generator in accordance with the rules and regulations adopted under sections 260.350 to 260.430;
- (4) Complete, sign and file the transporter portion of the manifest as specified in rules and regulations adopted under sections 260.350 to 260.430;
- (5) Deliver hazardous waste and the accompanying manifest only to the destination specified by the generator on the manifest, which destination must be a hazardous waste facility holding a permit under sections 260.350 to 260.430 or the federal Resource Conservation and Recovery Act, or a state hazardous waste management program authorized under the federal Resource Conservation and Recovery Act, or a resource recovery or other facility exempted from the permit requirement, and in accordance with provisions which apply under section 260.395 and rules and regulations adopted hereunder;
- (6) Collect and maintain such records and submit such reports as specified in sections 260.350 to 260.430 and in rules and regulations and terms and conditions of their license adopted or issued hereunder;
- (7) Make available to the department upon request made during transportation, samples of wastes transported and all records relating to hazardous waste transportation, for inspection and copying, and allow the department to make unhampered inspections at any reasonable time of all facilities and equipment.

Chapter 260

Environmental Control

Section 260.390

August 28, 2012

Duties of hazardous waste facility owners and operators--tax to be collected, disposition--duties upon termination of use of facility--inspection fees, commercial facilities, requirements.

260.390. 1. After six months from the effective date of the standards, rules and regulations adopted by the commission pursuant to section 260.370, hazardous waste facility owners or operators shall:

(1) Not construct, substantially alter or operate, including all postclosure activities and operations specified in the rules and regulations, a hazardous waste facility without first obtaining a hazardous waste facility permit from the department as specified in section 260.395;

(2) Operate the facility according to the standards, rules and regulations adopted under sections 260.350 to 260.430 and all terms and conditions of the permit;

(3) Unless otherwise provided in sections 260.350 to 260.430 or the rules and regulations adopted hereunder, accept delivery of hazardous waste only if delivery is by a hazardous waste transporter holding a license under sections 260.350 to 260.430, the shipment is accompanied by a manifest properly completed by both the generator and transporter and their facility is the destination indicated by the generator on the manifest. Exempted from the requirements of this subsection are deliveries, when directed by the department, from householders, farmers and other persons exempted from generator responsibilities under provisions of section 260.380 and deliveries made in emergency situations as specified in sections 260.350 to 260.550 or the rules and regulations adopted hereunder. For such exempted deliveries they shall make a record of any waste accepted, its type, quantity, origin and the identity of the person making the delivery and promptly report this information to the department;

(4) Complete, sign and file the facility operator portion of the manifest as specified in rules and regulations adopted under sections 260.350 to 260.430;

(5) Whenever final disposition is to be achieved at another hazardous waste or exempted facility, initiate a new manifest and comply with the other responsibilities of generators specified in sections 260.350 to 260.430 and in rules and regulations and terms and conditions of their permit adopted or issued hereunder;

(6) Collect and maintain such records, submit such reports and perform such monitoring as specified in sections 260.350 to 260.430 and in rules and regulations and terms and conditions of their permit adopted or issued hereunder;

(7) Make available to the department, upon request, samples of wastes received and all records, for inspection and copying, relating to hazardous waste management and allow the department to make unhampered inspections at any reasonable time of all facilities and equipment.

2. All hazardous waste landfills shall collect, on behalf of the state from each hazardous waste generator or transporter, a tax equal to two percent of the gross charges and fees charged such generator for disposal at the landfill site to be placed in the hazardous waste fund to be used solely for the administration of sections 260.350 to 260.430. The tax shall be accounted for separately on the statement of charges and fees made to the hazardous waste generator and shall be collected at the time of the collection of such charges and fees. All moneys payable under the provisions of this subsection shall be promptly transmitted to the department of revenue, which shall daily deposit the same in the state treasury to the credit of the hazardous waste fund. The hazardous waste management commission shall establish and submit to the department of revenue procedures relating to the collection of the taxes authorized by this subsection. Such procedures shall include, but not be limited to, necessary records identifying the quantities of hazardous waste received, the form and submission of reports to accompany the payment of taxes, the time and manner of payment of taxes, which shall not be more often than quarterly.

3. The owner or operator of a hazardous waste disposal facility must close that facility upon termination of its operation, and shall after closure of the facility provide for protection during a postclosure care period, in accordance with the requirements of the commission, including the funds necessary for same. Protection shall include, but not be limited to, monitoring and maintenance subject to the rules and regulations of the hazardous waste management commission. The owner or operator shall maintain a hazardous waste facility permit for the postclosure care period. The operator and the state may enter into an agreement consistent with the rules and regulations of the hazardous waste management commission where the state may accept deed to, and monitor and maintain the site.

4. All owners or operators of hazardous waste facilities who have obtained, or are required to obtain, a hazardous waste facility permit from the department and who accept, on a commercial basis for remuneration, hazardous waste from off-site sources, but not including wastes generated by the same person at other sites located in Missouri or within a metropolitan statistical area located partially in Missouri and owned or operated by the same person and transferred to the hazardous waste facility, for treatment, storage or disposal, shall pay fees for inspections conducted by the department to determine compliance with sections 260.350 to 260.430 and the rules promulgated thereunder. Hazardous waste facility inspection fees shall be specified by the hazardous waste management commission by rule. The inspection fees shall be used by the department as specified in subsection 3 of section 260.391.

(L. 1977 H.B. 318 § 9, A.L. 1980 2d Ex. Sess. H.B. 5, et al., A.L. 1983 H.B. 528, A.L. 1985 S.B. 110, A.L. 1993 S.B. 80, et al.)

Chapter 260

Environmental Control

Section 260.391

August 28, 2012

Hazardous waste fund created--payments--not to lapse--subaccount created, purpose--transfer of moneys--restrictions on use of moneys--general revenue appropriation to be requested annually.

260.391. 1. There is hereby created in the state treasury a fund to be known as the "Hazardous Waste Fund". All funds received from hazardous waste permit and license fees, generator fees or taxes, penalties, or interest assessed on those fees or taxes, taxes collected by contract hazardous waste landfill operators, general revenue, federal funds, gifts, bequests, donations, or any other moneys so designated shall be paid to the director of revenue and deposited in the state treasury to the credit of the hazardous waste fund. The hazardous waste fund, subject to appropriation by the general assembly, shall be used by the department as provided by appropriations and consistent with rules and regulations established by the hazardous waste management commission for the purpose of carrying out the provisions of sections 260.350 to 260.430 and sections 319.100 to 319.127, and 319.137, and 319.139 for the management of hazardous waste, responses to hazardous substance releases as provided in sections 260.500 to 260.550, corrective actions at regulated facilities and illegal hazardous waste sites, prevention of leaks from underground storage tanks and response to petroleum releases from underground and aboveground storage tanks and other related activities required to carry out provisions of sections 260.350 to 260.575 and sections 319.100 to 319.127, and for payments to other state agencies for such services consistent with sections 260.350 to 260.575 and sections 319.100 to 319.139 upon proper warrant issued by the commissioner of administration, and for any other expenditures which are not covered pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, including but not limited to the following purposes:

- (1) Administrative services as appropriate and necessary for the identification, assessment and cleanup of abandoned or uncontrolled sites pursuant to sections 260.435 to 260.550;
- (2) Payments to other state agencies for such services consistent with sections 260.435 to 260.550, upon proper warrant issued by the commissioner of administration, including, but not limited to, the department of health and senior services for the purpose of conducting health studies of persons exposed to waste from an uncontrolled or abandoned hazardous waste site or exposed to the release of any hazardous substance as defined in section 260.500;
- (3) Acquisition of property as provided in section 260.420;
- (4) The study of the development of a hazardous waste facility in Missouri as authorized in section 260.037;

(5) Financing the nonfederal share of the cost of cleanup and site remediation activities as well as postclosure operation and maintenance costs, pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980; and

(6) Reimbursement of owners or operators who accept waste pursuant to departmental orders pursuant to subdivision (2) of subsection 1 of section 260.420.

2. The unexpended balance in the hazardous waste fund at the end of each fiscal year shall not be transferred to the general revenue fund of the state treasurer, except as directed by the general assembly by appropriation, and shall be invested to generate income to the fund. The provisions of section 33.080 relating to the transfer of funds to the general revenue fund of the state by the state treasurer shall not apply to the hazardous waste fund.

3. There is hereby created within the hazardous waste fund a subaccount known as the "Hazardous Waste Facility Inspection Subaccount". All funds received from hazardous waste facility inspection fees shall be paid to the director of revenue and deposited in the state treasury to the credit of the hazardous waste facility inspection subaccount. Moneys from such subaccount shall be used by the department for conducting inspections at facilities that are permitted or are required to be permitted as hazardous waste facilities by the department.

4. The fund balance remaining in the hazardous waste remedial fund shall be transferred to the hazardous waste fund created in this section.

5. No moneys shall be available from the fund for abandoned site cleanup unless the director has made all reasonable efforts to secure voluntary agreement to pay the costs of necessary remedial actions from owners or operators of abandoned or uncontrolled hazardous waste sites or other responsible persons.

6. The director shall make all reasonable efforts to recover the full amount of any funds expended from the fund for cleanup through litigation or cooperative agreements with responsible persons. All moneys recovered or reimbursed pursuant to this section through voluntary agreements or court orders shall be deposited to the hazardous waste fund created herein.

7. In addition to revenue from all licenses, taxes, fees, penalties, and interest, specified in subsection 1 of this section, the department shall request an annual appropriation of general revenue equal to any state match obligation to the U.S. Environmental Protection Agency for cleanup performed pursuant to the authority of the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

(L. 1980 2d Ex. Sess. H.B. 5, et al., A.L. 1993 S.B. 80, et al., A.L. 2000 S.B. 577, A.L. 2005 S.B. 225

Chapter 260

Environmental Control

Section 260.392

August 28, 2012

Definitions--fees for transport of radioactive waste--deposit of moneys, use--notice of shipments--sunset provision.

260.392. 1. As used in sections 260.392 to 260.399*, the following terms mean:

- (1) "Cask", all the components and systems associated with the container in which spent fuel, high-level radioactive waste, highway route controlled quantity, or transuranic radioactive waste are stored;
- (2) "High-level radioactive waste", the highly radioactive material resulting from the reprocessing of spent nuclear fuel including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations, and other highly radioactive material that the United States Nuclear Regulatory Commission has determined to be high-level radioactive waste requiring permanent isolation;
- (3) "Highway route controlled quantity", as defined in 49 CFR Part 173.403, as amended, a quantity of radioactive material within a single package. Highway route controlled quantity shipments of thirty miles or less within the state are exempt from the provisions of this section;
- (4) "Low-level radioactive waste", any radioactive waste not classified as high-level radioactive waste, transuranic radioactive waste, or spent nuclear fuel by the United States Nuclear Regulatory Commission, consistent with existing law. Shipment of all sealed sources meeting the definition of low-level radioactive waste, shipments of low-level radioactive waste that are within a radius of no more than fifty miles from the point of origin, and all naturally occurring radioactive material given written approval for landfill disposal by the Missouri department of natural resources under 10 CSR 80-3.010 are exempt from the provisions of this section. Any low-level radioactive waste that has a radioactive half-life equal to or less than one hundred twenty days is exempt from the provisions of this section;
- (5) "Shipper", the generator, owner, or company contracting for transportation by truck or rail of the spent fuel, high-level radioactive waste, highway route controlled quantity shipments, transuranic radioactive waste, or low-level radioactive waste;
- (6) "Spent nuclear fuel", fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing;
- (7) "State-funded institutions of higher education", any campus of any university within the state of Missouri that receives state funding and has a nuclear research reactor;

(8) "Transuranic radioactive waste", defined in 40 CFR Part 191.02, as amended, as waste containing more than one hundred nanocuries of alpha-emitting transuranic isotopes with half-lives greater than twenty years, per gram of waste. For the purposes of this section, transuranic waste shall not include:

(a) High-level radioactive wastes;

(b) Any waste determined by the Environmental Protection Agency with the concurrence of the Environmental Protection Agency administrator that does not need the degree of isolation required by this section; or

(c) Any waste that the United States Nuclear Regulatory Commission has approved for disposal on a case-by-case basis in accordance with 10 CFR Part 61, as amended.

2. Any shipper that ships high-level radioactive waste, transuranic radioactive waste, highway route controlled quantity shipments, spent nuclear fuel, or low-level radioactive waste through or within the state shall be subject to the fees established in this subsection, provided that no state-funded institution of higher education that ships nuclear waste shall pay any such fee. These higher education institutions shall reimburse the Missouri state highway patrol directly for all costs related to shipment escorts. The fees for all other shipments shall be:

(1) One thousand eight hundred dollars for each truck transporting through or within the state high-level radioactive waste, transuranic radioactive waste, spent nuclear fuel or highway route controlled quantity shipments. All truck shipments of high-level radioactive waste, transuranic radioactive waste, spent nuclear fuel, or highway route controlled quantity shipments are subject to a surcharge of twenty-five dollars per mile for every mile over two hundred miles traveled within the state;

(2) One thousand three hundred dollars for the first cask and one hundred twenty-five dollars for each additional cask for each rail shipment through or within the state of high-level radioactive waste, transuranic radioactive waste, or spent nuclear fuel;

(3) One hundred twenty-five dollars for each truck or train transporting low-level radioactive waste through or within the state.

The department of natural resources may accept an annual shipment fee as negotiated with a shipper or accept payment per shipment.

3. All revenue generated from the fees established in subsection 2 of this section shall be deposited into the environmental radiation monitoring fund established in section 260.750 and shall be used by the department of natural resources to achieve the following objectives and for purposes related to the shipment of high-level radioactive waste, transuranic radioactive waste, highway route controlled quantity shipments, spent nuclear fuel, or low-level radioactive waste, including, but not limited to:

(1) Inspections, escorts, and security for waste shipment and planning;

- (2) Coordination of emergency response capability;
 - (3) Education and training of state, county, and local emergency responders;
 - (4) Purchase and maintenance of necessary equipment and supplies for state, county, and local emergency responders through grants or other funding mechanisms;
 - (5) Emergency responses to any transportation incident involving the high-level radioactive waste, transuranic radioactive waste, highway route controlled quantity shipments, spent nuclear fuel, or low-level radioactive waste;
 - (6) Oversight of any environmental remediation necessary resulting from an incident involving a shipment of high-level radioactive waste, transuranic radioactive waste, highway route controlled quantity shipments, spent nuclear fuel, or low-level radioactive waste. Reimbursement for oversight of any such incident shall not reduce or eliminate the liability of any party responsible for the incident; such party may be liable for full reimbursement to the state or payment of any other costs associated with the cleanup of contamination related to a transportation incident;
 - (7) Administrative costs attributable to the state agencies which are incurred through their involvement as it relates to the shipment of high-level radioactive waste, transuranic radioactive waste, highway route controlled quantity shipments, spent nuclear fuel, or low-level radioactive waste through or within the state.
4. Nothing in this section shall preclude any other state agency from receiving reimbursement from the department of natural resources and the environmental radiation monitoring fund for services rendered that achieve the objectives and comply with the provisions of this section.
 5. Any unencumbered balance in the environmental radiation monitoring fund that exceeds three hundred thousand dollars in any given fiscal year shall be returned to shippers on a pro rata basis, based on the shipper's contribution into the environmental radiation monitoring fund for that fiscal year.
 6. The department of natural resources, in coordination with the department of health and senior services and the department of public safety, may promulgate rules necessary to carry out the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2009, shall be invalid and void.
 7. All funds deposited in the environmental radiation monitoring fund through fees established in subsection 2 of this section shall be utilized, subject to appropriation by the general assembly, for the administration and enforcement of this section by the department of natural resources. All interest earned by the moneys in the fund shall accrue to the fund.

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

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

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

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

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

13. Under section 23.253 of the Missouri sunset act:

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

(2) If such program is reauthorized, the program authorized under this section shall automatically sunset twelve years after the effective date of the reauthorization of this section; and

(3) This section shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under this section is sunset.

(L. 2009 H.B. 683, A.L. 2012 H.B. 1251 merged with H.B. 1647 merged with S.B. 470 merged with S.B. 480)

*Section 260.399 does not exist.

Sunset date 8-28-15, unless reauthorized

Termination date 9-01-16, unless reauthorized

Chapter 260

Environmental Control

Section 260.393

August 28, 2012

Technology for treatment of hazardous waste, generators to use best available, exceptions.

260.393. 1. This section shall not apply to the storage or treatment of hazardous waste by a generator on-site or to the transportation of hazardous waste out of state for treatment, storage or disposal.

2. Generators shall use, to the maximum extent feasible, the best demonstrated available technology for source reduction, recycling, treatment, stabilization, solidification or destruction, including, but not limited to, biodegradation, detoxification, incineration and neutralization before placing waste in a hazardous waste disposal facility. Such hazardous waste may be placed in a hazardous waste disposal facility only after the generator evaluates appropriate technologies and employs those capable of reducing, recycling, treating, stabilizing, solidifying or destroying the waste. In assessing the best demonstrated available technology proposed by a generator, the department shall give consideration to the relative economic feasibility of the technology, including potential future costs of cleanup and environmental damage. Such technology shall render the hazardous waste sufficiently low in toxicity, reactivity and corrosivity as to present the least possible risk to human health and safety and to the environment in the event of a release from a hazardous waste disposal facility before placing hazardous waste in a disposal facility.

(L. 1988 S.B. 535)

Chapter 260

Environmental Control

Section 260.394

August 28, 2012

Disposal of untreated hazardous waste, prohibited, exceptions--alternative to landfilling, best demonstrated available technology.

260.394. 1. Nothing in this section shall apply to the storage or treatment of hazardous waste by a generator on-site or to the disposal on-site of smelter slag waste from the processing of materials into reclaimed metals if the smelter was in operation prior to August 13, 1988, nor preclude the transportation of hazardous waste out of state for treatment, storage or disposal. After August 13, 1988, no person shall dispose of untreated hazardous waste in a hazardous waste disposal facility permitted in the state of Missouri.

2. Before using a hazardous waste disposal facility permitted under sections 260.350 to 260.432, generators of hazardous waste must prove that they have investigated and reviewed alternatives to landfilling to an extent acceptable to the hazardous waste management commission. The generator shall use, to the maximum extent feasible, the best demonstrated available technology for source reduction, recycling, treatment, stabilization, solidification or destruction, including, but not limited to, biodegradation, detoxification, incineration and neutralization, as determined by the commission. In determining the best demonstrated available technology, the commission shall give consideration to the relative economic feasibility of the technology, including potential future costs of cleanup and environmental damage. Such technology shall render the hazardous waste sufficiently low in toxicity, reactivity and corrosivity as to present the least possible risk to human health and safety and to the environment in the event of a release from a hazardous waste disposal facility.

3. The commission shall determine that the best demonstrated available technology is used at hazardous waste disposal facilities in the state of Missouri in accordance with the provisions of sections 260.350 to 260.432, and the federal Resource Conservation and Recovery Act (P.L. 94-580), as amended.

4. Any hazardous waste diluted below the listed concentration threshold shall remain a listed hazardous waste unless the dilution occurs as a normal part of the manufacturing process.

5. The provisions of this section shall not apply to abandoned or uncontrolled sites as listed under section 260.440, or sites listed in the national priority list pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510), as amended, unless otherwise determined by the department or required by the commission by rule.

(L. 1988 S.B. 485 § 260.393, A.L. 1992 S.B. 480)

Chapter 260

Environmental Control

Section 260.395

August 28, 2012

Transportation of hazardous waste, how permitted--fees, how determined--notice prior to issuance of permit--permit not required of whom--application for certification, when--permit maintained for postclosure care period--leachate collection system required--railroad hazardous waste transportation, fee.

260.395. 1. After six months from the effective date of the standards, rules and regulations adopted by the commission pursuant to section 260.370, it shall be unlawful for any person to transport any hazardous waste in this state without first obtaining a hazardous waste transporter license. Any person transporting hazardous waste in this state shall file an application for a license pursuant to this subsection which shall:

(1) Be submitted on a form provided for this purpose by the department and shall furnish the department with such equipment identification and data as may be necessary to demonstrate to the satisfaction of the department that equipment engaged in such transportation of hazardous waste, and other equipment as designated in rules and regulations pursuant to sections 260.350 to 260.430, is adequate to provide protection of the health of humans and the environment and to comply with the provisions of any federal hazardous waste management act and sections 260.350 to 260.430 and the standards, rules and regulations adopted pursuant to sections 260.350 to 260.430. If approved by the department, this demonstration of protection may be satisfied by providing certification that the equipment so identified meets and will be operated in accordance with the rules and regulations of the Missouri public service commission and the federal Department of Transportation for the transportation of the types of hazardous materials for which it will be used;

(2) Include, as specified by rules and regulations, demonstration of financial responsibility, including, but not limited to, guarantees, liability insurance, posting of bond or any combination thereof which shall be related to the number of units, types and sizes of equipment to be used in the transport of hazardous waste by the applicant;

(3) Include, as specified in rules and regulations, a fee payable to the state of Missouri which shall consist of an annual application fee, plus an annual use fee based upon tonnage, mileage or a combination of tonnage and mileage. The fees established pursuant to this subdivision shall be set to generate, as nearly as is practicable, six hundred thousand dollars annually. No fee shall be collected pursuant to this subdivision from railroads that pay a fee pursuant to subsection 19 of this section. Fees collected pursuant to this subdivision shall be deposited in the hazardous waste fund created pursuant to section 260.391.

2. If the department determines the application conforms to the provisions of any federal hazardous waste management act and sections 260.350 to 260.430 and the standards, rules and regulations adopted pursuant to sections 260.350 to 260.430, it shall issue the hazardous waste transporter license with such terms and conditions as it deems necessary to protect the health of humans and the environment. The department shall act within ninety days after receipt of the application. If the department denies the license, it shall issue a report to the applicant stating the reason for denial of the license.

3. A license may be suspended or revoked whenever the department determines that the equipment is or has been operated in violation of any provision of sections 260.350 to 260.430 or any standard, rule or regulation, order, or license term or condition adopted or issued pursuant to sections 260.350 to 260.430, poses a threat to the health of humans or the environment, or is creating a public nuisance.

4. Whenever a license is issued, renewed, denied, suspended or revoked by the department, any aggrieved person, by petition filed with the department within thirty days of the decision, may appeal such decision and shall be entitled to a hearing as provided in section 260.400.

5. A license shall be issued for a period of one year and shall be renewed upon proper application by the holder and a determination by the department that the applicant is in compliance with all

provisions of sections 260.350 to 260.430 and all standards, rules and regulations, orders and license terms and conditions adopted or issued pursuant to sections 260.350 to 260.430.

6. A license is not required for the transport of any hazardous waste on the premises where it is generated or onto contiguous property owned by the generator thereof, or for those persons exempted in section 260.380. Nothing in this subsection shall be interpreted to preclude the department from inspecting unlicensed hazardous waste transporting equipment and to require that it be adequate to provide protection for the health of humans and the environment.

7. After six months from the effective date of the standards, rules and regulations adopted by the commission pursuant to section 260.370, it shall be unlawful for any person to construct, substantially alter or operate, including postclosure activities and operations specified in the rules and regulations, a hazardous waste facility without first obtaining a hazardous waste facility permit for such construction, alteration or operation from the department. Such person must submit to the department at least ninety days prior to submitting a permit application a letter of intent to construct, substantially alter or operate any hazardous waste disposal facility. The person must file an application within one hundred eighty days of the filing of a letter of intent unless granted an extension by the commission. The department shall publish such letter of intent as specified in section 493.050 within ten days of receipt of such letter. The letter shall be published once each week for four weeks in the county where the hazardous waste disposal facility is proposed. Once such letter is submitted, all conditions for the permit application evaluation purposes in existence as of the date of submission shall be deemed frozen, in that no subsequent action by any person to change such conditions in an attempt to thwart a fair and impartial decision on the application for a permit shall be allowed as grounds for denial of the permit. Any person before constructing, substantially altering or operating a hazardous waste facility in this state shall file an application for a permit which shall:

(1) Be submitted on a form provided for this purpose by the department and shall furnish the department with plans, specifications and such other data as may be necessary to demonstrate to the satisfaction of the department that such facility does or will provide adequate protection of the health of humans and the environment and does or will comply with the provisions of any federal hazardous waste management act and sections 260.350 to 260.430 and the standards, rules and regulations adopted pursuant to sections 260.350 to 260.430;

(2) Include plans, designs, engineering reports and relevant data for construction, alteration or operation of a hazardous waste facility, to be submitted to the department by a registered professional engineer licensed by this state;

(3) Include, as specified by rules and regulations, demonstration of financial responsibility, including, but not limited to, guarantees, liability insurance, posting of bond or any combination thereof, which shall be related to type and size of facility;

(4) Include such environmental and geologic information, assessments and studies as required by the rules and regulations of the commission;

(5) Submit with the application for a hazardous waste disposal or treatment facility a profile of the environmental and economic characteristics of the area as required by the commission, including the extent of air pollution and groundwater contamination; and a profile of the health characteristics of the area which identifies all serious illness, the rate of which exceeds the state average for such illness, which might be attributable to environmental contamination;

(6) Include a fee payable to the state of Missouri which shall not exceed one thousand dollars, which shall cover the first year of the permit, if issued, but which is not refundable. If the permit is issued for more than one year, a fee equal in amount to the first year's fee shall be paid to the state of Missouri prior to issuance of the permit for each year the permit is to be in effect beyond the first year;

(7) The department shall supervise any field work undertaken to collect geologic and engineering data for submission with the application. The state geologist and departmental engineers shall review the geologic and engineering plans, respectively, and attest to their accuracy and adequacy. The applicant shall pay all reasonable costs, as determined by the commission, incurred by the department pursuant to this subsection.

8. (1) Prior to issuing or renewing a hazardous waste facility permit, the department shall issue public notice by press release or advertisement and shall notify all record owners of adjoining property by mail directed to the last known address, and the village, town or city, if any, and the county in which the hazardous waste facility is located; and, upon request, shall hold a public hearing after public notice as required in this subsection at a location convenient to the area affected by the issuance of the permit.

(2) Prior to issuing, reviewing every five years as required in subsection 12 of this section, or renewing a hazardous waste disposal facility permit the department shall issue public notice by press release and advertisement and shall notify all record owners of property, within one mile of the outer boundaries of the site, by mail directed to the last known address; and shall hold a public hearing after public notice as required in this subsection at a location convenient to the area affected by the issuance of the permit.

9. If the department determines that the application conforms to the provisions of any federal hazardous waste management act and sections 260.350 to 260.430 and the standards, rules and regulations adopted pursuant to sections 260.350 to 260.430, it shall issue the hazardous waste facility permit, with such terms and conditions and require such testing and construction supervision as it deems necessary to protect the health of humans or the environment. The department shall act within one hundred and eighty days after receipt of the application. If the department denies the permit, it shall issue a report to the applicant stating the reason for denial of a permit.

10. A permit may be suspended or revoked whenever the department determines that the hazardous waste facility is, or has been, operated in violation of any provision of sections 260.350 to 260.430 or any standard, rule or regulation, order or permit term or condition adopted or issued pursuant to sections 260.350 to 260.430, poses a threat to the health of humans or the environment or is creating a public nuisance.

11. Whenever a permit is issued, renewed, denied, suspended or revoked by the department, any aggrieved person, by petition filed with the department within thirty days of the decision, may appeal such decision and shall be entitled to a hearing as provided in section 260.400.

12. A permit shall be issued for a fixed term, which shall not exceed ten years in the case of any land disposal facility, storage facility, incinerator, or other treatment facility. Each permit for a land disposal facility shall be reviewed five years after the date of its issuance or reissuance and shall be modified as necessary to assure that the facility continues to comply with the currently applicable requirements of federal and state law. Nothing in this subsection shall preclude the department from reviewing and modifying a permit at any time during its term. Review of any application for a permit renewal shall consider improvements in the state of control and measurement technology as well as changes in applicable regulations. Each permit issued pursuant to this section shall contain such terms and conditions as the department determines necessary to protect human health and the environment, and upon proper application by the holder and a determination by the department that the applicant is in compliance with all provisions of sections 260.350 to 260.430 and all standards, rules and regulations, orders and permit terms and conditions adopted or issued pursuant to sections 260.350 to 260.430.

13. A hazardous waste facility permit is not required for:

(1) On-site storage of hazardous wastes where such storage is exempted by the commission by rule or regulation; however, such storage must conform to the provisions of any federal hazardous waste management act and sections 260.350 to 260.430 and the applicable standards, rules and regulations adopted pursuant to sections 260.350 to 260.430 and any other applicable hazardous materials storage and spill-prevention requirements provided by law;

(2) A publicly owned treatment works which has an operating permit pursuant to section 644.051 and is in compliance with that permit;

(3) A resource recovery facility which the department certifies uses hazardous waste as a supplement to, or substitute for, nonwaste material, and that the sole purpose of the facility is manufacture of a product rather than treatment or disposal of hazardous wastes;

(4) That portion of a facility engaged in hazardous waste resource recovery, when the facility is engaged in both resource recovery and hazardous waste treatment or disposal, provided the owner or operator can demonstrate to the department's satisfaction and the department finds that such portion is not intended and is not used for hazardous waste treatment or disposal.

14. Facilities exempted pursuant to subsection 13 of this section must comply with the provisions of subdivisions (3) to (7) of section 260.390 and such other requirements, to be specified by rules and regulations, as are necessary to comply with any federal hazardous waste management act or regulations hereunder. Generators who use such an exempted facility shall keep records of hazardous wastes transported, except by legal flow through sewer lines, to the facility and submit such records to the department in accordance with the provisions of section 260.380 and the standards, rules and regulations adopted pursuant to sections 260.350 to 260.430. Any person,

before constructing, altering or operating a resource recovery facility in this state shall file an application for a certification. Such application shall include:

(1) Plans, designs, engineering reports and other relevant information as specified by rule that demonstrate that the facility is designed and will operate in a manner protective of human health and the environment; and

(2) An application fee of not more than five hundred dollars for a facility that recovers waste generated at the same facility or an application fee of not more than one thousand dollars for a facility that recovers waste generated at off-site sources. Such fees shall be deposited in the hazardous waste fund created in section 260.391. The department shall review such application for conformance with applicable laws, rules and standard engineering principles and practices. The applicant shall pay to the department all reasonable costs, as determined by the commission, incurred by the department pursuant to this subsection. All such funds shall be deposited in the hazardous waste fund created in section 260.391.

15. The owner or operator of any hazardous waste facility in existence on September 28, 1977, who has achieved federal interim status pursuant to 42 U.S.C. 6925(e), and who has submitted to the department Part A of the federal facility permit application, may continue to receive and manage hazardous wastes in the manner as specified in the Part A application, and in accordance with federal interim status requirements, until completion of the administrative disposition of a permit application submitted pursuant to sections 260.350 to 260.430. The department may at any time require submission of, or the owner or operator may at any time voluntarily submit, a complete application for a permit pursuant to sections 260.350 to 260.430 and commission regulations. The authority to operate pursuant to this subsection shall cease one hundred eighty days after the department has notified an owner or operator that an application for permit pursuant to sections 260.350 to 260.430 must be submitted, unless within such time the owner or operator submits a completed application therefor. Upon submission of a complete application, the authority to operate pursuant to this subsection shall continue for such reasonable time as is required to complete the administrative disposition of the permit application. If a facility loses its federal interim status, or the Environmental Protection Agency requires the owner or operator to submit Part B of the federal application, the department shall notify the owner or operator that an application for a permit must be submitted pursuant to this subsection. In addition to compliance with the federal interim status requirements, the commission shall have the authority to adopt regulations requiring persons operating pursuant to this subsection to meet additional state interim status requirements.

16. A license or permit shall not be issued to any person who is determined by the department to habitually engage in or to have habitually engaged in hazardous waste management practices which pose a threat to the health of humans or the environment or who is determined by the department to habitually violate or to have habitually violated the requirements of the Missouri solid or hazardous waste laws, the solid or hazardous waste laws of other states or federal laws pertaining to hazardous waste. Nor shall a license or permit be issued to any person who has been adjudged in contempt of any court order enforcing the provisions of the Missouri solid or hazardous waste laws, the solid or hazardous waste laws of other states or federal laws pertaining to hazardous waste or who has offered, in person or through an agent, any inducement, including

any discussion of potential employment opportunities, to any employee of the department when such person has an application for a permit pending or a permit under review. For the purposes of this subsection, the term "person" shall include any officer or management employee of the applicant, or any officer or management employee of any corporation or business which owns an interest in the applicant, or any officer or management employee of any business which is owned either wholly or in part by any person, corporation, or business which owns an interest in the applicant.

17. No person, otherwise qualified pursuant to sections 260.350 to 260.430 for a license to transport hazardous wastes or for a permit to construct, substantially alter or operate a hazardous waste facility, shall be denied such license or permit on the basis of a lack of need for such transport service or such facility because of the existence of other services or facilities capable of meeting that need; except that permits for hazardous waste facilities may be denied on determination made by the department that the financial resources of the persons applying are such that the continued operation of the sites in accordance with sections 260.350 to 260.430 cannot be reasonably assured or on determination made by the department that the probable volume of business is insufficient to ensure and maintain the solvency of then existing permitted hazardous waste facilities.

18. All hazardous waste landfills constructed after October 31, 1980, shall have a leachate collection system. The rules and regulations of the commission shall treat and protect all aquifers to the same level of protection. The provisions of this subsection shall not apply to the disposal of tailings and slag resulting from mining, milling and primary smelting operations.

19. Any railroad corporation as defined in section 388.010 that transports any hazardous waste as defined in section 260.360 or any hazardous substance as defined in section 260.500 shall pay an annual fee of three hundred fifty dollars. Fees collected pursuant to this subsection shall be deposited in the hazardous waste fund created in section 260.391.

(L. 1977 H.B. 318 § 10, A.L. 1980 2d Ex. Sess. H.B. 5, et al., A.L. 1983 H.B. 528, A.L. 1985 S.B. 110, A.L. 1988 S.B. 535, A.L. 2000 S.B. 577)

CROSS REFERENCES:

Fee for transportation of hazardous waste, used oil, or infectious waste, amount to be established by Missouri hazardous waste management commission, 226.008

Transportation of hazardous waste by motor carriers, regulation of, transferred to highways and transportation commission, 226.008

Chapter 260

Environmental Control

Section 260.396

August 28, 2012

PCB, definition--facilities, regulation of--list of PCB facilities--compliance with requirements, time limitation.

260.396. 1. For the purposes of this section, "PCB" or "polychlorinated biphenyls" shall mean any chemical substance that is limited to the biphenyl molecule which has been chlorinated to varying degrees or any combination of substances which contain such substances at concentrations of fifty parts per million or above; and "PCB facility" shall mean any facility, including brokerage, storage, treatment and disposal facilities, which accepts PCBs and PCB contaminated materials on a commercial basis for remuneration.

2. All commercial PCB facilities located in the state shall be permitted as hazardous waste management facilities in accordance with the provisions of section 260.350 to 260.430, or permitted under the provisions of the federal Toxic Substances Control Act, 15 U.S.C. 2601, et. seq., whichever are more stringent. Such facilities shall require the consignor to prepare a hazardous waste manifest which shall accompany shipments of PCBs and PCB contaminated materials from the point of origin to the final destination.

3. The department of natural resources shall compile and maintain a list of all commercial PCB facilities in the state.

4. All commercial PCB facilities in operation on August 13, 1986, will have one hundred twenty days from August 13, 1986, to meet the requirements of this section. A PCB facility shall be considered in compliance with the provisions of this section if a letter of intent has been filed with the department to construct, alter or operate a commercial PCB facility and the PCB facility otherwise complies with the provisions of subsection 7 of section 260.395, and until such time as the department may grant or deny a permit for the facility.

(L. 1986 H.B. 875 & 1649 § 2

Chapter 260

Environmental Control

Section 260.400

August 28, 2012

Procedure for conducting public hearings.

260.400. 1. At public hearings on variances or appeals of decisions hereunder, all hazardous waste facilities and hazardous waste generators who are involved in such hearings shall have an appropriate person present. All testimony taken before the commission shall be under oath and recorded stenographically. The transcript so recorded, upon payment of the usual charge therefor, shall be made available to any member of the public, the respondent or party to a hearing on a complaint, any party to a hearing on a petition for variance or any party appealing any order or determination of the department or commission.

2. In any hearing, any member of the commission or the hearing officer shall issue in the name of the commission notice of hearing and subpoenas and shall be authorized to require that testimony before such hearing be given under oath. Subpoenas shall be issued and enforced as provided in section 536.077. The rules of discovery that apply in any civil case shall apply to hearings held by the commission.

3. All hearings to adopt standards, rules and regulations, or to adopt the state hazardous waste management plan shall be held before at least four members of the commission. All other hearings may be held before one commission member designated by the commission chairman or by a hearing officer who shall be a member of the Missouri bar and shall be appointed by the commission chairman. The hearing officer or commission member shall preside at the hearing and hear all evidence and rule on the admissibility of evidence. The hearing officer or commission member shall make recommended findings of fact and may make recommended conclusions of law to the commission.

4. All final orders or determinations or other final actions by the commission shall be approved in writing by at least four members of the commission. Any commission member approving in writing any final action of the commission, who did not attend the hearing, shall do so only after reviewing all exhibits and reading the entire transcript.

5. The following requirements shall apply to the adoption, amendment and repeal of standards, rules and regulations:

(1) No standard, rule or regulation or any amendment or repeal thereof shall be adopted except after a public hearing to be held after thirty days prior notice as required by the provisions of chapter 536 pertaining to administrative rulemaking and by press release or public advertisement containing the date, time and place of the hearing and opportunity given to the public to be heard;

(2) At the hearing, opportunity to be heard by the commission with respect to the subject thereof shall be afforded any interested person upon written request to the commission, addressed to the department, not later than seven days prior to the hearing, and may be afforded to other persons if convenient. In addition, any interested persons, whether or not heard, may submit, within seven days subsequent to the hearings, a written statement of their views. The commission may solicit the views, in writing, of persons who may be affected by, knowledgeable concerning or interested in proposed standards, rules and regulations, the state hazardous waste management plan or any license, permit or variance. Any person heard or represented at the hearing or making written request for notice shall be given written notice of the action of the commission with respect to the subject thereof;

(3) Any standard, rule or regulation, amendment or repeal thereof or state hazardous waste management plan shall not be deemed adopted or in force until it has been approved in writing by at least four members of the commission.

(L. 1977 H.B. 318 § 11, A.L. 1980 2d Ex. Sess. H.B. 5, et al., A.L. 1993 S.B. 52)

Chapter 260

Environmental Control

Section 260.405

August 28, 2012

Variations granted, when.

260.405. 1. Unless prohibited by any federal hazardous waste management act, the commission may grant individual variations from the requirements of sections 260.350 to 260.430 whenever it is found, upon presentation of adequate proof, that compliance with any provision of sections 260.350 to 260.430 or any standard, rule or regulation, order or license or permit term or condition adopted or issued hereunder will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity, in either case without sufficient corresponding benefit or advantage to the people; except that, no variance shall be granted where the effect of a variance will permit the continuance of a condition which unreasonably poses a present or potential threat to the health of humans or other living organisms; and except, also, that any variance so granted shall not be so construed as to relieve the person who receives the variance from any liability imposed by other law for the commission or maintenance of a nuisance or damage to the property or rights of any person.

2. In determining under what conditions and to what extent a variance may be granted, the commission shall weigh the equities involved and the advantages and disadvantages to the applicant and to those affected by the hazardous waste management practices of the applicant.

3. Variations shall be granted for a period of time and under such terms and conditions as shall be specified by the commission in its order. In no event shall the variance be granted for a period of

time greater than one year and shall not be renewable unless circumstances can be shown which preclude compliance within the one-year period of the variance and the renewal will not result in an unreasonable risk to the health of humans or the environment.

4. (1) Any person seeking a variance shall file a petition for a variance with the department. A filing fee of fifty dollars shall be paid to the state of Missouri with each petition.

(2) Upon the receipt of a request for a variance deemed substantive by the department, the department shall by mail notify all record owners of property within one mile of the outer boundaries of the site, the county, and the village, town or city within which the facility for which the variance is proposed is located. If the variance is substantive, as determined by regulation, the department shall notify the public through press release and a notice placed in a newspaper of general circulation serving the area within which the facility is located. The department shall promptly investigate the petition and make a recommendation to the commission within sixty days after the petition is received as to whether the variance should be granted or denied. The department shall promptly notify the petitioner of its action and at the same time shall issue public notice by press release or advertisement and shall notify all record owners of adjoining property by mail directed to the last known address and the village, town or city, if any, and the county which is the location of the facility for which the variance is sought.

5. If the variance is deemed to be substantive, the commission shall hold a public hearing on the variance as provided in section 260.400. If the variance is deemed to be nonsubstantive, a hearing as provided in section 260.400 shall be held by the commission if requested by the petitioner within thirty days of the date of notice of the recommendation of the department. If the commission grants the variance without a hearing, the matter shall be passed upon at a public meeting no sooner than thirty days from the date of notice of the recommendation of the department, except that upon petition, filed within thirty days from the date of the recommendation, by any person aggrieved by the granting of the variance, a hearing shall be held and such petitioner shall become a party to the proceeding. In any hearing under this section the burden of proof shall be on the person petitioning for a variance.

6. The commission may require the filing of a bond as a condition for the issuance of a variance in an amount determined by the commission to be sufficient to insure compliance with the terms and conditions of the variance. The bond shall be signed by the applicant as principal and by a corporate surety licensed to do business in the state of Missouri and approved by the commission. The commission may require that the bond shall remain in effect until the terms and conditions of the variance are met and the provisions of sections 260.350 to 260.430 and rules and regulations promulgated hereunder are complied with.

7. Upon failure to comply with the terms and conditions of any bond or of any variance as specified by the commission, the variance may be revoked or modified or the bond may be revoked, or both, by the commission after a hearing held upon not less than thirty days written notice. The notice shall be served upon all persons who will be subjected to greater restrictions if the variance is revoked or modified or who have filed with the department a written request for notification.

8. Any decision of the commission made pursuant to a hearing held under this section is subject to judicial review as provided in section 260.415.

(L. 1977 H.B. 318 § 12, A.L. 1980 2d Ex. Sess. H.B. 5, et al.)

Effective 10-31-80

Chapter 260

Environmental Control

Section 260.410

August 28, 2012

Department to enforce standards, rules and regulations--appeal authorized.

260.410. 1. The department shall cause investigations to be made upon the request of the commission or upon receipt of information concerning alleged violations of sections 260.350 to 260.430 or any standard, rule or regulation, order or license or permit term or condition adopted or issued hereunder, and may cause to be made any other investigations it deems advisable to further the purposes of sections 260.350 to 260.430. Violations shall include obtaining a permit hereunder by misrepresentation or failure to fully disclose all relevant facts.

2. If, in the opinion of the department, the investigation discloses that a violation does exist, it may, by conference, conciliation or persuasion, endeavor to eliminate the violation.

3. In case of the failure by conference, conciliation or persuasion to correct or remedy any claimed violation, or as required to immediately and effectively halt or eliminate any imminent or substantial threats to the health of humans or other living organisms resulting from the claimed violation, the department may order abatement of the violation or may revoke any license, or any hazardous waste transportation vehicle approval or permit which may have been issued hereunder. The department shall cause to have issued and served upon the person complained against a written notice of the order or revocation which shall include a copy of the order or revocation, which shall specify the provision of sections 260.350 to 260.430, or the standard, rule or regulation, order or license or permit term or condition adopted or issued hereunder of which the person is alleged to be in violation and a statement of the manner in which the person is alleged to violate sections 260.350 to 260.430, or the standard, rule or regulation, order or license or permit term or condition. Service may be made upon any person within or without the state by registered or certified mail, return receipt requested. Any person against whom the department issues an order or revocation may appeal it by filing a petition with the commission within thirty days. The appeal shall stay the enforcement of the order or revocation until final determination by the commission. The commission shall set appeals for a hearing at a time not less than thirty days after the date of the receipt of the petition. The commission may sustain, reverse or modify the department's order or revocation or may make such other orders as the commission deems appropriate under the circumstances. If any order or

revocation issued by the department is not appealed within the time herein provided, the order or revocation becomes final and may be enforced as provided in section 260.425.

4. Licenses and permits issued hereunder may be suspended, revoked or modified if obtained in violation of sections 260.350 to 260.430 or by misrepresentation or failing to fully disclose all relevant facts, or when required to prevent violations of any provision of sections 260.350 to 260.430 or any standard, rule or regulation, order or license or permit term or condition adopted or issued hereunder, or to protect the health of humans and other living organisms, when such action is required by a change in conditions or the existence of a condition which requires either a temporary or permanent change in the licensed or permitted hazardous waste management practices, subject to the right of appeal as set forth in section 260.410*.

5. When the commission schedules a matter for hearing, the petitioner on appeal may appear at the hearing in person or by counsel, and may make oral argument, submit written brief, offer testimony and evidence and cross-examine witnesses.

6. After due consideration of the record, or upon default in appearance of the petitioner at any hearing of which he has been given notice by registered or certified mail the commission shall issue and enter such final order, or make such final determination as it deems appropriate under the circumstances. It shall notify the petitioner or respondent thereof in writing by certified or registered mail.

(L. 1977 H.B. 318 § 13)

*Apparently an incorrect reference since appeal procedure is provided in § 260.415.

Chapter 260

Environmental Control

Section 260.412

August 28, 2012

Administrative penalties--not to be assessed for minor violation--conference, conciliation and persuasion--rules and regulations, payment--appeal, effect--unpaid penalty, collection--time limit--review.

260.412. 1. In addition to any other remedy provided by law, upon a determination by the director that a provision of sections 260.350 to 260.481 or a standard, limitation, order, rule or regulation promulgated pursuant thereto, or a term or condition of any permit has been violated, the director may issue an order assessing an administrative penalty upon the violator under this section. An administrative penalty shall not be imposed until the director has sought to resolve the violations through conference, conciliation and persuasion and shall not be imposed for minor violations of sections 260.350 to 260.481 or minor violations of any standard, limitation, order, rule or regulation promulgated pursuant to sections 260.350 to 260.481 or minor violations

of any term or condition of a permit issued pursuant to sections 260.350 to 260.481. If the violation is resolved through conference, conciliation and persuasion, no administrative penalty shall be assessed unless the violation has caused, or has the potential to cause, a risk to human health or to the environment, or has caused or has potential to cause pollution, or was knowingly committed, or is defined by the United States Environmental Protection Agency as other than minor. Any order assessing an administrative penalty shall state that an administrative penalty is being assessed under this section and that the person subject to the penalty may appeal as provided by this section. Any such order that fails to state the statute under which the penalty is being sought, the manner of collection or rights of appeal shall result in the state's waiving any right to collection of the penalty.

2. The commission shall promulgate rules and regulations for the assessment of administrative penalties. The amount of the administrative penalty assessed per day of violation for each violation under this section shall not exceed the amount of the civil penalty specified in section 260.425. Such rules shall reflect the criteria used for the administrative penalty matrix as provided for in the Resource Conservation and Recovery Act, 42 U.S.C. 6928(a), Section 3008(a), and the harm or potential harm which the violation causes, or may cause, the violator's previous compliance record, and any other factors which the commission may reasonably deem relevant. An administrative penalty shall be paid within sixty days from the date of issuance of the order assessing the penalty. Any person subject to an administrative penalty may appeal to the commission in the manner provided by law. Any appeal will stay the due date of such administrative penalty until the appeal is resolved. Any person who fails to pay an administrative penalty by the final due date shall be liable to the state for a surcharge of fifteen percent of the penalty plus ten percent per annum on any amounts owed. Any administrative penalty paid pursuant to this section shall be handled in accordance with section 7 of article IX of the state constitution. An action may be brought in the appropriate circuit court to collect any unpaid administrative penalty, and for attorney's fees and costs incurred directly in the collection thereof.

3. An administrative penalty shall not be increased in those instances where department action, or failure to act, has caused a continuation of the violation that was a basis for the penalty. Any administrative penalty must be assessed within two years following the department's initial discovery of such alleged violation, or from the date the department in the exercise of ordinary diligence should have discovered such alleged violation.

4. Any final order imposing an administrative penalty is subject to judicial review upon the filing of a petition pursuant to section 536.100 by any person subject to the administrative penalty.

5. The state may elect to assess an administrative penalty, or, in lieu thereof, to request that the attorney general or prosecutor file an appropriate legal action seeking a civil penalty in the appropriate circuit court.

(L. 1991 S.B. 45, A.L. 1993 S.B. 80, et al.)

Chapter 260

Environmental Control

Section 260.415

August 28, 2012

Appeals--other remedies available, costs.

260.415. 1. All final orders and determinations of the commission or the department made pursuant to the provisions of sections 260.350 to 260.430 are subject to judicial review pursuant to the provisions of chapter 536. All final orders and determinations shall be deemed "administrative decisions" as that term is defined in chapter 536. No judicial review shall be available, however, unless all administrative remedies are exhausted.

2. In any suit filed pursuant to section 536.050 concerning the validity of the commission's standards, rules or regulations, the court shall review the record made before the commission to determine the validity and reasonableness of such standards, rules or regulations and may hear such additional evidence as it deems necessary.

3. Nothing in this section or in any other provision of sections 260.350 to 260.430 shall exclude or impair any existing civil or criminal remedy, whether statutory or common law, for any wrongful action, including, but not limited to, actions to enjoin public or private nuisances. Any person adversely affected in fact by any violation of sections 260.350 to 260.430 or of any rule or regulation promulgated thereunder may sue for injunctive relief against such violation. The prevailing party in any such action for injunctive relief shall be awarded costs and reasonable attorneys' fees.

(L. 1977 H.B. 318 § 14, A.L. 1980 2d Ex. Sess. H.B. 5, et al.)

Effective 10-31-80

Chapter 260

Environmental Control

Section 260.420

August 28, 2012

Imminent hazard, action to be taken.

260.420. 1. From September 28, 1977, and notwithstanding any other provision of sections 260.350 to 260.430 or any other law to the contrary, upon receipt of information that any activity subject to sections 260.350 to 260.430 may present an imminent hazard, by placing or allowing escape of any hazardous waste into the environment or exposure of people to such waste which may be cause of death, disabling personal injury, serious acute or chronic disease, or serious environmental harm, the department director or the commission may take action necessary to protect the health of humans and the environment from such hazard. The action the department director, commission or the designee of the commission may take includes, but is not limited to:

- (1) Issuing an order directing the hazardous waste generator, transporter, facility operator or any other person who is the custodian or has control of the waste, which constitutes such hazard, to eliminate such hazard. Such action may include, with respect to a site or facility, permanent or temporary cessation of operation;
- (2) Issuing an order directing a permitted commercial hazardous waste facility to treat, store or dispose of any waste cleaned up in accordance with this section;
- (3) Acquiring by purchase, donation, agreement or condemnation any lands, or rights in lands, sites, objects, or facilities necessary to protect the health of humans and the environment in accordance with sections 260.350 to 260.550 only after it is proven cost effective and all other options have been exhausted by the commission. In the event any property is condemned, then the procedures and assessment of damages shall be in accordance with chapter 523;
- (4) Selling or leasing any property that has been cleaned up in accordance with sections 260.350 to 260.550 so as to no longer constitute a threat to the health of people or to the environment. The proceeds of such sales or leases shall be deposited in the hazardous waste fund created in section 260.391; and
- (5) Causing to be filed by the attorney general or a prosecuting attorney in the name of the people of the state of Missouri suit for a temporary restraining order, temporary injunction or permanent injunction which action shall be given precedence over all other matters pending in the circuit courts.

2. In any civil action brought pursuant to this section in which a temporary restraining order or temporary injunction is sought, there must be allegations of the types of injury or harm specified in these imminent hazard provisions; it shall be necessary to allege and prove at the proceeding that irreparable damage will occur and that the remedy at law is inadequate, and the temporary

restraining order or temporary injunction shall not issue without such allegations and without such proof.

3. This section shall not apply to any alleged imminent hazard that is covered by the federal Occupational Safety and Health Act, so long as the hazardous waste is contained on the site so covered. This subsection shall not prevent the department from taking action necessary to prevent escape of the hazardous waste from such site.

(L. 1977 H.B. 318 § 15, A.L. 1980 2d Ex. Sess. H.B. 5, et al., A.L. 1983 H.B. 528, A.L. 2005 S.B. 225)

Chapter 260

Environmental Control

Section 260.423

August 28, 2012

Facility ordered to accept waste, reimbursement rate disagreement, procedure.

260.423. If the director orders a facility to accept waste pursuant to subdivision (2) of subsection 1 of section 260.420, the department shall reimburse the operator at the rate which he normally charges for treating, storing or disposing of similar wastes within sixty days of the treatment, storage or disposal of such waste. In the event of a disagreement about the rate, the director or the operator may appeal to the commission within ninety days. The commission may schedule a hearing within thirty days. No later than thirty days after receipt of the complete record, or following a decision not to hold a hearing, the commission shall provide the operator with a written determination. All final decisions of the commission shall be reviewable under chapter 536.

(L. 1983 H.B. 528)

Effective 6-27-83

Chapter 260

Environmental Control

Section 260.424

August 28, 2012

Underground injection prohibited.

260.424. Notwithstanding any other provision of the law to the contrary, underground injection of hazardous waste is prohibited unless authorized pursuant to section 577.155.

(L. 1985 S.B. 110)

Chapter 260

Environmental Control

Section 260.425

August 28, 2012

Violations, how punished.

260.425. 1. It is unlawful for any person to cause or permit any acts or hazardous waste management practices which violate sections 260.350 to 260.430 or any standard, rule or regulation, order or license or permit term or condition adopted or issued hereunder. In the event the commission or the department determines that any provision of sections 260.350 to 260.430 or any standard, rule or regulation, order or determination, or license or permit term or condition adopted or issued hereunder by the commission or the department, or any filing requirement under sections 260.350 to 260.430 or any provision which this state is required to enforce under any federal hazardous waste management act, is being, was, or is in imminent danger of being violated, the commission or department may, in addition to other remedies under sections 260.350 to 260.430, cause to have instituted a civil action in any court of competent jurisdiction for injunctive relief to prevent any such violation or further violation or for the assessment of a civil penalty not to exceed ten thousand dollars per day for each day, or part thereof, the violation occurred and continues to occur, or both, as the court deems proper. A civil monetary penalty under this section shall not be assessed for a violation where an administrative penalty was assessed under section 260.412. The commission or the department may request either the attorney general or a prosecuting attorney to bring any action authorized in this section in the name of the people of the state of Missouri. Suit may be brought in any county where the defendant's principal place of business is located or was located at the time the violation occurred, or has or may cause injury or threat to the health of humans or the environment. Any offer of settlement to resolve a civil penalty under this section shall be in writing, shall state that an action for imposition of a civil penalty may be initiated by the attorney general or a prosecuting attorney representing the department under authority of this section, and shall identify any dollar amount as an offer of settlement which shall be negotiated in good faith through conference, conciliation and persuasion.

2. Moneys received pursuant to this section which are not required by article IX, section 7, of the constitution to be distributed to schools shall be deposited in the hazardous waste fund created in section 260.391.

3. Any person who knowingly:

(1) Transports any hazardous waste to a facility which is not authorized to receive such waste pursuant to sections 260.350 to 260.430 or permits or causes any other hazardous waste transportation practice in violation of any provision of sections 260.350 to 260.430;

- (2) Treats, stores or disposes of any hazardous waste either:
- (a) Without authorization to do so pursuant to sections 260.350 to 260.430; or
 - (b) In knowing violation of any material condition or requirement of such authorization; or
 - (c) In violation of any provision of sections 260.350 to 260.430;
- (3) Makes any false material statement, representation or certification in any application, label, permit, record, report, manifest or other document filed, maintained, or required to be maintained under sections 260.350 to 260.430;
- (4) Falsifies, tampers with, or renders inaccurate any monitoring device or result therefrom used, filed, maintained, or required to be maintained under sections 260.350 to 260.430;
- (5) Generates, treats, stores, transports, disposes of or otherwise handles any hazardous waste, and who in connection therewith knowingly destroys, alters or conceals any record required to be maintained pursuant to sections 260.350 to 260.430; or
- (6) Owns, maintains or operates any hazardous waste disposal facility in a manner which permits any acts or hazardous waste management practices in violation of sections 260.350 to 260.430, shall, upon conviction, be punished by a fine of not less than twenty-five hundred dollars nor more than twenty-five thousand dollars for each day of violation, or by confinement in the county jail for not more than one year, or by both such fine and confinement. Second and successive convictions for violation of this section shall be punished by a fine of not less than five thousand dollars nor more than fifty thousand dollars for each day of violation, or by imprisonment for not less than ten years, or by both such fine and imprisonment.
4. Whenever the director or his designee observes or has reason to believe any such person is violating or has violated the provisions of sections 260.350 to 260.430 relating to hazardous waste facilities, the director or his designee may request the sheriff or deputy sheriff of the county where the hazardous waste facility is located, or any law enforcement officer otherwise authorized by law to issue a summons, to make investigation. If the officer views any violation of sections 260.350 to 260.430 or has probable cause to believe any violation of sections 260.350 to 260.430 is occurring or has occurred, he shall issue to the owner or operator a summons, in lieu of arrest, which shall state the nature of any alleged violations and shall command the owner or operator to appear in circuit court, associate division, at a stated time and place in answer thereto. If the owner or operator shall fail to appear as commanded by the summons, a warrant of arrest shall be issued.
5. In addition to the authority granted to it under chapter 43, the Missouri state highway patrol, any of its officers, or any other law enforcement officer, who has probable cause to believe that such a violation of sections 260.350 to 260.430 has been committed may detain any equipment involved in the violation and arrest the person controlling or operating such equipment. Any such officer shall also notify the department or the Missouri public service commission as soon as practicable, which shall, in addition, take whatever civil action they determine is necessary to

correct or eliminate such violation or any threat to the health of humans or the environment. It shall be the duty of the Missouri state highway patrol as it pertains to highway use, and all other officers of the state of Missouri charged with enforcement of criminal law, to further the purposes of sections 260.350 to 260.430 and to render and furnish to the department when requested all information and assistance in their possession and in their power.

6. The liabilities which shall be imposed pursuant to any provision of sections 260.350 to 260.430 upon persons violating the provisions of sections 260.350 to 260.430 or any standard, rule or regulation, or license or permit term or condition adopted or issued hereunder shall not be imposed for any violation caused by a strike or an act of God, war, riot or other catastrophe.

7. No provision of sections 260.350 to 260.430 shall be construed to limit any action at law or in equity from being brought by any person or political subdivision aggrieved by any violation of sections 260.350 to 260.430 nor shall any provision be construed to prohibit any person from exercising otherwise existing rights to suppress nuisances.

(L. 1977 H.B. 318 § 16, A.L. 1980 2d Ex. Sess. H.B. 5, et al., A.L. 1983 H.B. 528, A.L. 1993 S.B. 80, et al.)

Chapter 260

Environmental Control

Section 260.429

August 28, 2012

No permit in non-karst area of state over groundwater divide.

260.429. In non-karst areas of the state, the department of natural resources shall not issue a hazardous waste facility permit for a proposed commercial hazardous waste landfill, if such landfill would be located directly over a groundwater divide. The department of natural resources shall review on a site-by-site basis, whether a proposed site is in a non-karst region.

(L. 1993 S.B. 80, et al. § 16)

Chapter 260

Environmental Control

Section 260.430

August 28, 2012

Confidential information--illegal disclosure, penalty.

260.430. 1. Information obtained under sections 260.350 to 260.430 or any rule or regulation, order or license or permit term or condition adopted or issued hereunder, or any investigation authorized thereby, shall be available to the public unless nondisclosure is requested in writing including justification to the satisfaction of the director that such information constitutes trade secrets or information which is entitled to confidential treatment in order to protect any plan, process, tool, mechanism or compound which is known only to the person claiming confidential treatment and where confidential treatment is necessary to protect such person's trade, business or manufacturing process, where such nondisclosure will not result in an unreasonable threat to the health of humans or other living organisms and disclosure is not required under any federal hazardous waste management act. If the director finds the information does not warrant confidential treatment, the person shall be notified by registered mail. The information may be released to the public after thirty days of receipt of the notice from the director unless the person obtains a restraining order prohibiting disclosure. Any action by the director concerning confidential treatment may be appealed to the hazardous waste management commission which may uphold or reverse such action. Any member of the commission or employee of the department, for a period of two years after the termination of such relationship, who is convicted of willful disclosure or conspiracy to disclose trade secrets or information which is entitled to such confidential treatment to any person other than one entitled to the information under sections 260.350 to 260.430 is guilty of a misdemeanor and, upon conviction, shall be punished by fine of not more than one thousand dollars.

2. No action, ordinance or law, with the exception of local option on location, of any county, city, town, village or other political subdivision of this state shall operate to prevent the location or operation of a hazardous waste facility or transporter holding a current hazardous waste facility permit or transporter license issued hereunder within its boundaries. Nothing in this subsection shall, however, prevent any such political subdivision from challenging a facility's or transporter's compliance with sections 260.350 to 260.430 or any rule or regulation, order or permit or license term or condition adopted or issued hereunder. No hazardous waste disposal facility established after September 28, 1977, shall be located within one-fourth mile of any permanent, occupied residential dwelling house completed prior to the receipt by the department of a letter of intent for such hazardous waste disposal facility without the written consent of the owner of such residential house. All hazardous waste disposal facilities shall have a minimum three-hundred-foot buffer zone between the property line of the facility and the permitted area. The provisions of this subsection shall not apply to overburden, rocks, tailings, slag, residue or other wastes resulting from mining, milling and smelting.

3. All pending applicants for the development of a hazardous waste disposal facility shall meet all requirements of this act*.

(L. 1977 H.B. 318 § 17, A.L. 1980 2d Ex. Sess. H.B. 5, et al.)

Effective 10-31-80

*Original rolls contain words "this act". Intent may have been to use "sections 260.350 to 260.430", as that subchapter deals with hazardous waste management. "This act", H.B. 5, et al., contains also §§ 260.035 and 260.040.

Chapter 260

Environmental Control

Section 260.431

August 28, 2012

Buffer zone required, commercial facility, how determined--limitations, requirements, certain facilities.

260.431. 1. The department of natural resources shall not issue a permit to an applicant for a commercial hazardous waste facility for the treatment of such waste by incineration in any county unless the facility meets the conditions established in this section. For the purposes of this section, a commercial hazardous waste facility is a facility designed to treat hazardous waste by incineration for a fee regardless of where such waste is generated. Any commercial hazardous waste facility which treats waste by incineration shall be located so as to provide a health and safety buffer zone. The size and nature of the buffer zone shall be determined by the department but shall extend at least three hundred feet from the facility, on property owned or leased by the applicant. The department shall consider the proximity of schools, businesses and houses, the prevailing winds and other factors which it deems relevant when establishing a buffer zone.

2. In any unincorporated area of any county, where there are no zoning requirements, where a commercial hazardous waste or solid waste facility designed to treat such waste by incineration is to be located in an area where fire and police protection is not provided by a municipality or county, a written agreement to provide for fire and police protection from surrounding municipalities, counties or the state of Missouri, including a provision for the use of special units particularly trained for a hazardous waste or solid waste emergency in the event that such an emergency occurs, shall be approved by the department for the protection of the citizens of the area before a permit may be issued. The department shall at least once a year conduct an unannounced inspection of each commercial hazardous waste and solid waste incinerator to ensure such incinerators are operated in compliance with this chapter.

3. Any hazardous waste treatment facility which is sited as a result of a court settlement or an out-of-court agreement which is designed to treat hazardous waste at a single site or group of sites shall not be granted a permit for greater than a five-year period at any one specific location and no renewal permit shall be issued for a treatment facility located at a site permitted originally

for such a hazardous waste treatment facility. If the department purports to issue such a renewal permit, such action shall be invalid ab initio.

(L. 1990 S.B. 530)

Effective 7-9-90

Chapter 260

Environmental Control

Section 260.432

August 28, 2012

Hazardous waste, collection of small quantities, department to administer--fees--department may enter into contracts for collection--disposal in landfills prohibited, when.

260.432. 1. The department of natural resources shall establish and promote a program for the collection and disposition of small quantities of hazardous waste from persons, firms, corporations, state departments and institutions, and political subdivisions. The program shall provide for the periodic collection of hazardous waste at points reasonably accessible to all parts of the state. The department may allow small quantity hazardous waste generators to utilize the program on a case by case basis.

2. The department shall establish maximum amounts of hazardous waste which may be accepted without fee or charge from any person at any one collection point. The department may accept additional quantities of hazardous waste; however, in such instances a fee shall be charged in an amount up to that which reflects the actual cost of collecting, handling, transporting, and treating or disposing of the additional quantity of hazardous waste.

3. The department may contract for the collection and disposition of hazardous waste as provided by this section with any person or firm authorized to transport, treat, recover or dispose of hazardous waste under sections 260.350 to 260.430, or the federal Resource Conservation and Recovery Act, P.L. 94-580, as amended. The department may use appropriations and accept funds, gifts and services from public and private agencies, businesses or individuals for the purpose of carrying out the provisions of this section.

4. The department shall promulgate rules and regulations necessary to carry out the provisions of this section. The department shall not delegate any authority to promulgate rules and regulations to any person with whom or any firm with which it has executed a contract for services as provided in subsection 3 of this section.

5. (1) The department shall ensure the safe collection and disposal of small quantities of hazardous waste by the date established in this section and shall ensure that such disposal is available to small quantity generators of hazardous waste throughout the state;

(2) After January 1, 1994, small quantities of hazardous waste which are exempt from regulation under the provisions of sections 260.350 to 260.434, except de minimis amounts, shall not be placed in a sanitary landfill;

(3) Any person convicted of knowingly placing small quantities of hazardous waste in a sanitary landfill shall be guilty of an infraction.

(L. 1986 H.B. 875 & 1649 § 1, A.L. 1990 S.B. 530)

Chapter 260

Environmental Control

Section 260.433

August 28, 2012

Commercial hazardous waste facilities, prohibited activities (third or fourth class counties).

260.433. No person or entity shall operate a commercial hazardous waste facility in any third or fourth class counties by engaging in:

(1) Open burning of hazardous waste; or

(2) Open burning of waste explosives; or

(3) Detonation of waste explosives; or

(4) Any other thermal treatment of any hazardous waste or waste explosives, unless in a manner consistent with the department's standards for owners/operators of permitted hazardous waste treatment, storage, and disposal facilities.

(L. 1987 H.B. 375 § 1)

Chapter 260

Environmental Control

Section 260.434

August 28, 2012

Proposed sites, hazardous waste facilities--department to examine transportation routes--department to examine local government's capability to respond to emergency--interagency agreement.

260.434. 1. The department shall assess the transportation system serving a proposed site for a new hazardous waste resource recovery, treatment or disposal facility as a part of its review of the application for a permit. The department shall examine the transportation route or routes to ensure that the design and maintenance of such route or routes provides adequate safety for the public using or living near the route or routes. The department may designate or prohibit specific routes, limit use of approved routes during certain time periods or impose other reasonable restrictions upon the transportation of hazardous waste to or from the facility.

2. The department shall review the capability of local governments near a proposed site to respond to an emergency involving the transportation of hazardous waste or an emergency at the hazardous waste resource recovery, treatment or disposal facility when it reviews an application for a permit. The department shall reassess that capability whenever the operator proposes recovering, treating or disposing of a hazardous waste which is substantially more toxic, corrosive, ignitable or reactive than those wastes approved under the current permit. The department may require the operator to provide supplemental emergency response capability to ensure public safety.

3. The department shall enter into an interagency agreement with the department of transportation and the department of public safety to permit the sharing of information and to assign responsibility for performing the assessment required in this section.

(L. 1988 S.B. 535 §§ 1, 2)

Chapter 260

Environmental Control

Section 260.435

August 28, 2012

Definitions, sections 260.435 to 260.480--definition of hazardous waste not to include certain materials.

260.435. The definitions set forth in section 260.360 shall apply to sections 260.435 to 260.480 and, in addition to such definitions, the term "abandoned or uncontrolled" means any property where hazardous waste has been illegally disposed of, or where hazardous waste was disposed of prior to regulation under sections 260.350 to 260.430. However, the term "hazardous waste" as used in sections 260.350 to 260.480 shall not include:

- (1) Fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;
- (2) Solid waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore; or
- (3) Cement kiln dust waste; unless any such waste becomes subject to regulation under the Federal Hazardous Waste Management Act, then such waste excluded under this section shall be subject to regulation under this act*.

(L. 1983 H.B. 528)

Effective 6-27-83

*"This act" (H.B. 528, 1983) contained numerous sections. Consult Disposition of Sections table for a definitive listing.

Chapter 260

Environmental Control

Section 260.437

August 28, 2012

Rules and regulations, authority.

260.437. In addition to any other powers vested in it by law, the commission shall have the power to adopt, amend or repeal, after due notice and public hearing, standards, rules and regulations to implement sections 260.435 to 260.480.

Chapter 260

Environmental Control

Section 260.440

August 28, 2012

Registry of abandoned or uncontrolled hazardous waste sites, contents-- investigation--department's powers and duties.

260.440. 1. The department shall maintain and make available for public inspection a registry of confirmed abandoned or uncontrolled hazardous waste disposal sites in the state. The department shall take all necessary action to insure that the registry provides a complete listing of all such sites. The registry shall contain the exact location of each site and identify the types of waste found at each site.

2. The department shall investigate all known or suspected abandoned or uncontrolled sites and determine whether each site should be included in the registry. In the evaluation of known or suspected abandoned or uncontrolled sites, the department shall have the power to enter private property and perform tests and analyses in the manner provided in section 260.375.

(L. 1983 H.B. 528)

Effective 6-27-83

Chapter 260

Environmental Control

Section 260.445

August 28, 2012

Abandoned and uncontrolled sites, annual report, content--sent to whom.

260.445. 1. The department shall, on or before January 1, 1984, and annually thereafter on January first of each succeeding year, transmit an updated report to the commission, the general assembly and the governor identifying every abandoned or uncontrolled hazardous waste disposal site in the state listed on the registry. A copy of such report shall also be sent to the governing body of every county containing such a site.

2. Each annual report shall include, but need not be limited to, the following information for each site:

(1) A general description of the site, including the name and address of the site, the type and quantity of the hazardous waste disposed of at the site and the name of the current owners of the site;

(2) A summary of any significant environmental problems at and near the site;

(3) A summary of any serious health problems in the immediate vicinity of the site and any health problems deemed by the department to be related to conditions at the site;

(4) The status of any testing, monitoring or remedial actions in progress or recommended by the department;

(5) The status of any pending legal actions and any federal, state or local government permits concerning the site;

(6) The relative priority for remedial action at each site; and

(7) The proximity of the site to private residences, public buildings or property, school facilities, places of work or other areas where individuals may be regularly present.

3. In developing and maintaining the annual report, the department shall assess by January 1, 1984, and reassess by January first of each year thereafter based upon new information received, the relative priority of the need for action at each site to remedy environmental and health problems resulting from the presence of hazardous wastes at such sites. In making its assessments of relative priority, the department shall place every site in one of the following classifications:

(1) Causing or presenting an imminent danger of causing irreversible or irreparable damage to the public health or environment--immediate action required;

(2) Significant threat to the environment--action required;

(3) Does not present a significant threat to the public health or environment--action may be deferred;

(4) Site properly closed--requires continued management;

(5) Site properly closed, no evidence of present or potential adverse impact--no further action required.

4. Any site classified as properly closed under subdivision (5) of subsection 3 of this section shall be removed from all subsequent annual reports and the register of abandoned or uncontrolled sites.

5. The department shall utilize the department of health and senior services when assessing the effects of an abandoned or uncontrolled site on human health.

Section 260.446.

This section has been repealed. There is no longer any statute data associated with this section number. See the headnote previously listed for the year and the bill number which repealed it.

Chapter 260 Environmental Control Section 260.450

August 28, 2012

Priority of sites, listed in registry, determined by investigation--factors to be considered.

260.450. 1. The director shall investigate each site listed in the registry to determine the relative priority of the site as provided in section 260.445.

2. The director shall for each site identify the:

(1) Address and site boundaries;

(2) Time period of use for disposal of hazardous waste;

(3) Name of the current owner and operator and names of reported owners and operators during the time period of use for disposal of hazardous waste;

(4) Names of persons responsible for the generation and transportation of hazardous waste disposed of; and

(5) Type, quantity and manner of hazardous waste disposal.

3. When preliminary evidence suggests further assessment is necessary, the director may assess the:

(1) Depth of water table at the site;

- (2) Nature of soils at the site;
 - (3) Location, nature and size of aquifers at the site;
 - (4) Direction of present and historic groundwater flows at the site;
 - (5) Location and nature of surface waters at and near the site;
 - (6) Levels of contaminants, if any, in groundwater, surface water, air and soils at and near the site resulting from hazardous wastes disposed of at the site; and
 - (7) Current quality of all drinking water drawn from or distributed through the area in which the site is located, if the department determines that water quality may have been affected by the site.
4. The director shall maintain a site assessment file for each site listed in the registry. The file shall contain all information obtained pursuant to this section and shall be open to the public. The site materials in the file may be reproduced by any person. The department may impose a charge not to exceed the actual cost of reproduction for copies of file information.

(L. 1983 H.B. 528)

Effective 6-27-83

Chapter 260

Environmental Control

Section 260.455

August 28, 2012

Registry, proposed site addition, procedure, notice.

260.455. Within sixty days after June 27, 1983, the department shall notify by certified mail the owner of all or any part of each site or area to be included in the registry required by section 260.440 by mailing notice to the owner's last known address. Thereafter, thirty days before any site is added to the registry, the department shall notify the owner of all or any part of such site by certified mail of the proposed addition to the registry by mailing notice to each such owner at the owner's last known address.

(L. 1983 H.B. 528)

Effective 6-27-83

Chapter 260
Environmental Control
Section 260.460

August 28, 2012

Listing or proposed listing of site in registry, procedure to remove.

260.460. 1. Any owner or operator of a site proposed for listing in the registry, or listed in the registry pursuant to section 260.440, may petition the director for deletion of such site, modification of the site classification or modification of any information regarding such site. No site shall be listed on the registry until after the resolution of any appeal initiated under this section.

2. Within ninety days after the submittal of such petition, the commission may convene a hearing to review the action of the director. No less than thirty days prior to the hearing, the commission shall cause a notice of hearing to be published in a newspaper of general circulation in the county in which the site is located. The commission shall also notify in writing any owner or operator of the site no less than thirty days prior to the hearing.

3. No later than thirty days following receipt of the complete record or following the decision not to hold a hearing, the commission shall provide the owner or operator with a written determination accompanied by reason therefor regarding action taken on the petition. All final decisions of the commission shall be reviewable under chapter 536.

4. The department shall, within ten days of any determination, notify the local governments of jurisdiction whenever a change is made in the registry pursuant to this section.

(L. 1983 H.B. 528)

Effective 6-27-83

Chapter 260
Environmental Control
Section 260.465

August 28, 2012

Change of use or transfer of site property--notice to buyer--appeal--violations, penalty.

260.465. 1. No person may substantially change the manner in which an abandoned or uncontrolled hazardous waste disposal site on the registry prepared and maintained by the department pursuant to section 260.440 is used without the written approval of the director.

2. No person may sell, convey or transfer title to an abandoned or uncontrolled hazardous waste disposal site which is on the registry prepared and maintained by the department pursuant to section 260.440 without disclosing to the buyer early in the negotiation process that the site is on the registry, specifying applicable use restrictions and providing all registry information for the site. The seller shall also notify the buyer that he may be assuming liability for any remedial action at the site; provided, however, the sale, conveyance or transfer of property shall not absolve any person responsible for site contamination, including the seller, of liability for any remedial action at the site. The seller shall notify the department of the transfer of ownership within thirty days after the transfer.

3. Decisions of the director concerning the use of an abandoned or uncontrolled hazardous waste site may be appealed to the commission in the manner provided in section 260.460.

4. If the department has reason to believe that the provisions of this section have been violated, or are in imminent danger of being violated, it may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent such violation and for the assessment of a civil penalty not to exceed one thousand dollars per day for each day of violation.

(L. 1983 H.B. 528, A.L. 1988 S.B. 535)

Chapter 260

Environmental Control

Section 260.470

August 28, 2012

Recording of sites, placed on or removed from registry--removal procedure.

260.470. 1. When the director places a site on the registry as provided in section 260.440, and after the resolution of any appeal under section 260.455, he shall file with the county recorder of deeds the period during which the site was used as a hazardous waste disposal area. When the director finds that a site on the registry has been properly closed under subdivision (5) of subsection 3 of section 260.445 with no evidence of potential adverse impact, he shall file this finding with the county recorder of deeds. The county recorder of deeds shall file this information so that any purchaser will be given notice that the site has been placed on, or removed from, the registry.

2. Any owner of a registry site may petition the department to remove the site from the registry provided that:

(1) Corrective actions have addressed the contamination at the site in accordance with a department-approved risk-based corrective action plan;

(2) The department has issued a letter indicating that no further actions are required to address current risk from contaminants for the site; and

(3) An environmental covenant for the property that meets the requirements of sections 260.1000 to 260.1039 has been filed with the county recorder of deeds.

3. The department shall approve such a request unless the department determines that removal from the registry would result in significant current or future risk of harm to human health, public welfare, or the environment. In making such a determination, the department shall provide a written justification that considers the amount, toxicity, and persistence of any contaminants left in place and the stability of current site conditions. Any denial under this subsection may be appealed to the commission in the manner provided in section 260.460.

(L. 1983 H.B. 528, A.L. 2007 S.B. 54)

Effective 1-01-08

Chapter 260

Environmental Control

Section 260.475

August 28, 2012

Fees to be paid by hazardous waste generators--exceptions--deposit of moneys--violations, penalty--deposit--fee requirement, expiration.

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

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

(2) Fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(3) Solid waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore and smelter slag waste from the processing of materials into reclaimed metals;

(4) Cement kiln dust waste;

(5) Waste oil; or

(6) Hazardous waste that is:

(a) Reclaimed or reused for energy and materials;

(b) Transformed into new products which are not wastes;

(c) Destroyed or treated to render the hazardous waste nonhazardous; or

(d) Waste discharged to a publicly owned treatment works.

2. The fees imposed in this section shall be reported and paid to the department on an annual basis not later than the first of January. The payment shall be accompanied by a return in such form as the department may prescribe.

3. All moneys collected or received by the department pursuant to this section shall be transmitted to the department of revenue for deposit in the state treasury to the credit of the hazardous waste fund created pursuant to section 260.391. Following each annual reporting date, the state treasurer shall certify the amount deposited in the fund to the commission.

4. If any generator or transporter fails or refuses to pay the fees imposed by this section, or fails or refuses to furnish any information reasonably requested by the department relating to such fees, there shall be imposed, in addition to the fee determined to be owed, a penalty of fifteen percent of the fee shall be deposited in the hazardous waste fund.

5. If the fees or any portion of the fees imposed by this section are not paid by the date prescribed for such payment, there shall be imposed interest upon the unpaid amount at the rate of ten percent per annum from the date prescribed for its payment until payment is actually made, all of which shall be deposited in the hazardous waste fund.

6. The state treasurer is authorized to deposit all of the moneys in the hazardous waste fund in any of the qualified depositories of the state. All such deposits shall be secured in such a manner and shall be made upon such terms and conditions as are now or may hereafter be provided for by law relative to state deposits. Interest received on such deposits shall be credited to the hazardous waste fund.

*7. This fee shall expire December 31, 2013, except that the department shall levy and collect this fee for any hazardous waste generated prior to such date and reported to the department.

(L. 1983 H.B. 528, A.L. 1985 S.B. 110, A.L. 1988 S.B. 535, A.L. 1994 H.B. 1156, A.L. 1999 S.B. 353, A.L. 2000 S.B. 577, A.L. 2004 S.B. 1040, A.L. 2005 S.B. 225, A.L. 2011 S.B. 135)

Effective 6-22-11

*Fee expires 12-31-13

Chapter 260
Environmental Control
Section 260.480

August 28, 2012

Transfer of moneys in the hazardous waste remedial fund to hazardous waste fund.

260.480. The fund balance remaining in the hazardous waste remedial fund is hereby transferred to the hazardous waste fund created in section 260.391*, and the moneys may be appropriated for any purpose previously authorized by this section as specified in subsection 1 of section 260.391.

(L. 1983 H.B. 528, A.L. 1985 S.B. 110, A.L. 1988 S.B. 535, A.L. 2000 S.B. 577, A.L. 2005 S.B. 225)

*Words "section 260.491" appear in original rolls, a typographical error.

Chapter 260
Environmental Control
Section 260.482

August 28, 2012

Incineration of certain material by Department of Defense, limitation.

260.482. 1. Incineration or disposal by the United States Department of Defense of any hazardous substance resulting from activities associated with environmental cleanup at a facility not currently involved in the production of weapons, located in any county of the first classification with a charter form of government and a population of less than three hundred thousand inhabitants, shall be limited only to wastes produced and located at the site where such incineration or disposal is conducted.

2. No incineration of any hazardous substance at such facility shall be conducted after five calendar years following the completion of the test burn of such incineration.

(L. 1995 S.B. 407)

Effective 5-16-95

Chapter 260

Environmental Control

Section 260.500

August 28, 2012

Definitions.

260.500. As used in sections 260.500 to 260.550, unless the context clearly indicates otherwise, the following terms mean:

- (1) "Cleanup", all actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove, or dispose of a hazardous substance;
- (2) "Cleanup costs", all costs incurred by the state or any of its political subdivisions, or their agents, or by any other person participating with the approval of the department of natural resources in the prevention or mitigation of damages from a hazardous substance emergency or the cleanup of a hazardous substance involved in a hazardous substance emergency, including a proportionate share of those costs necessary to maintain the services authorized in sections 260.500 to 260.550;
- (3) "Department", the department of natural resources;
- (4) "Director", the director of the department of natural resources;
- (5) "Hazardous substance", any substance or mixture of substances that presents a danger to the public health or safety or the environment and includes:
 - (a) Any hazardous waste identified or listed by the department pursuant to sections 260.350 to 260.430;
 - (b) Any element, compound, mixture, solution, or substance designated pursuant to Sections 101(14) and 102 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and Section 302 of the Superfund Amendments and Reauthorization Act of 1986, as amended; and
 - (c) Any hazardous material designated by the Secretary of the United States Department of Transportation pursuant to the Hazardous Materials Transportation Act;
 - (d) "Hazardous substances" does not include radioactive materials, wastes, emissions or discharges that are licensed or regulated by laws of the federal government or of this state. However, such material released due to a transportation accident shall be considered a hazardous substance;
- (6) "Hazardous substance emergency":

(a) Any release of hazardous substances in quantities equal to or in excess of those determined pursuant to Section 101(14) or 102 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and Section 304 of the Superfund Amendments and Reauthorization Act of 1986, as amended;

(b) Any release of petroleum including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) in excess of fifty gallons for liquids or three hundred cubic feet for gases, except that the notification and reporting of any release of natural gas or natural gas mixtures by or from intrastate facilities, regardless of the quantity of such release, shall be as specified by the public service commission rather than pursuant to the notification and reporting requirements contained in, or authorized by, sections 260.500 to 260.550. Interstate natural gas pipeline facilities shall report natural gas releases to the state and the National Response Center in accordance with federal Department of Transportation regulatory requirements;

(c) Any release of a hazardous waste which is reportable pursuant to sections 260.350 to 260.430;

(d) Any release of a hazardous substance which requires immediate notice pursuant to Part 171 of Title 49 of the Code of Federal Regulations;

(e) The department may promulgate rules and regulations identifying the substances and the quantities thereof which, if released, constitute a hazardous substance emergency;

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

(8) "Person having control over a hazardous substance", any person producing, handling, storing, transporting, refining, or disposing of a hazardous substance when a hazardous substance emergency occurs, including bailees, carriers, and any other person in control of a hazardous substance when a hazardous substance emergency occurs, whether they own the hazardous substance or are operating under a lease, contract, or other agreement with the legal owner thereof;

(9) "Release", any threatened or real emission, discharge, spillage, leakage, pumping, pouring, emptying or dumping of a substance into or onto the land, air or waters of the state unless done in compliance with the conditions of a federal or state permit, unless the substance is confined and is expected to stay confined to property owned, leased or otherwise controlled by the person having control over the substance, or unless, in the case of pesticides, if application is done in accordance with the product label;

(10) "State of Missouri basic emergency operations plan", the state plan, its annexes, and appendices as developed or maintained by the state emergency management agency for response to natural and man-made disasters in this state;

(11) "Waters of the state", all rivers, streams, lakes and other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased or otherwise controlled by a single person or by two or more persons jointly or as tenants in common and includes waters of the United States lying within the state.

(L. 1983 H.B. 528, A.L. 1995 S.B. 3 merged with S.B. 283, A.L. 2000 S.B. 577)

Chapter 260

Environmental Control

Section 260.505

August 28, 2012

Hazardous substance emergency response plan to be developed by department director--contents of plan.

260.505. 1. The director shall develop a "Hazardous Substance Emergency Response Plan", as an appendix to the annex of the "State of Missouri Basic Emergency Operation Plan", part II, "The Missouri Comprehensive Emergency Preparedness and Disaster Relief Plan". The hazardous substance emergency response plan shall be developed in consultation and cooperation with affected industries, and in cooperation and with the approval of the departments of public safety, social services, agriculture, conservation, transportation, and economic development for their areas of responsibility. The plan shall outline the respective responsibilities of the involved agencies in responding to hazardous substances emergencies. The department may enter into agreements with any state agency or unit of local government, with the federal government and with other persons as necessary to develop and implement the hazardous substances emergency response plan and to implement sections 260.005 to 260.550.

2. The hazardous substance emergency response plan shall establish one statewide telephone number to be used to notify the state of Missouri whenever a hazardous substance emergency occurs. Such phone shall be monitored by technical staff capable of advising the person reporting the emergency of the proper immediate actions to take pending the arrival of response personnel or other qualified assistance. The number shall be established by rule by the department in cooperation with the other affected state agencies and in accordance with the hazardous substance emergency response plan.

3. The person monitoring the statewide emergency telephone shall notify the appropriate agencies as designated in the hazardous substance emergency response plan.

4. Any person having control over a hazardous substance shall contact the state of Missouri, as specified in subsection 2 of this section, or the National Response Center, at the earliest practical moment upon discovery of an emergency involving the hazardous substance under his control. If

requested, a written report of particulars of the incident shall be submitted. Failure to notify as required in this section is a class A misdemeanor. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(L. 1983 H.B. 528)

Effective 6-27-83

Chapter 260

Environmental Control

Section 260.510

August 28, 2012

Hazardous substances, director's powers and duties.

260.510. The director:

- (1) Shall provide technical advice and assistance to other state agencies, to political subdivisions of the state and to other persons upon request for the prevention, control and response to hazardous substance emergencies;
- (2) May require the person having control over a hazardous substance involved in a hazardous substance emergency to clean up the hazardous substance and take any reasonable actions necessary to end a hazardous substance emergency;
- (3) May clean up a hazardous substance and take any actions necessary to end a hazardous substance emergency if the person having control over a hazardous substance fails to take reasonable actions required by the director to clean up such hazardous substance or end such hazardous substance emergency;
- (4) Shall take those actions necessary to clean up a hazardous substance or to end a hazardous substance emergency if the person having control over the hazardous substance cannot be contacted within a reasonable amount of time;
- (5) May require a person having control over a hazardous substance involved in a hazardous substance emergency to take such corrective actions as may be reasonably required to prevent a recurrence of hazardous substance emergencies;
- (6) May clean up any release of a substance if such release is a threat to the environment.

(L. 1983 H.B. 528)

Effective 6-27-83

Chapter 260
Environmental Control
Section 260.515

August 28, 2012

Actions to abate, control or clean up not construed as admission of liability.

260.515. Any action taken by any person to abate, control, or clean up a hazardous substance involved in a hazardous substance emergency shall not be construed as an admission of liability for a hazardous substance emergency.

(L. 1983 H.B. 528)

Effective 6-27-83

Chapter 260
Environmental Control
Section 260.520

August 28, 2012

Rules and regulations--procedure.

260.520. The director may adopt, amend, promulgate or repeal, after due notice and hearing, rules and regulations to implement sections 260.500 to 260.550 pursuant to this section and chapter 536. No rule or portion of a rule promulgated under the authority of sections 260.500 to 260.550 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024.

(L. 1983 H.B. 528, A.L. 1993 S.B. 52, A.L. 1995 S.B. 3)

Chapter 260

Environmental Control

Section 260.525

August 28, 2012

Investigation, no person to refuse entry--search warrant to be issued.

260.525. No person shall refuse entry or access for the purpose of investigating or responding to hazardous substance emergencies of an authorized representative of the department who presents appropriate credentials, nor obstruct or hamper the representative. A suitably restricted search warrant, upon showing of probable cause in writing and upon oath, shall be issued by any judge or associate circuit judge having jurisdiction to any such representative for the purpose of enabling the representative to investigate or respond to hazardous substance emergencies.

(L. 1983 H.B. 528)

Effective 6-27-83

Chapter 260

Environmental Control

Section 260.530

August 28, 2012

Cleanup costs, liability--failure to comply, damages, exceptions--records of expense to be kept.

260.530. 1. Any person having control over a hazardous substance shall be strictly liable to the state of Missouri for the reasonable cleanup costs incurred by the state as a result of the failure of such person to clean up a hazardous substance involved in a hazardous substance emergency in accordance with the requirements of sections 260.500 to 260.550 and rules promulgated by the department pursuant thereto. If such failure is willful, the person shall, in addition, be liable for punitive damages not to exceed triple the cleanup costs incurred by the state. Prompt and good faith notification to the director by the person having control over a hazardous substance that such person does not have the resources or managerial capability to begin or continue cleanup activities, or a good faith effort to clean up, relieves the person of liability for punitive damages, but not for actual cleanup costs. The director shall keep a record of all expenses incurred in carrying out any project or activity authorized by sections 260.500 to 260.550.

2. A person otherwise liable under the provisions of sections 260.500 to 260.550 is not liable if he demonstrates that the hazardous substance emergency occurred as the result of an act of God, an act of war, an act of the state of Missouri or the United States or solely the act of a third party.

For the purposes of sections 260.500 to 260.550, no employee, agent of, or independent contractor employed by a person otherwise liable shall be considered a third party.

(L. 1983 H.B. 528)

Effective 6-27-83

Chapter 260

Environmental Control

Section 260.535

August 28, 2012

Hazardous waste fund, deposits to--purpose for use.

260.535. Moneys received pursuant to the provisions of sections 260.500 to 260.550 which are not required by article IX, section 7 of the constitution to be distributed to schools shall be deposited in the hazardous waste fund created in section 260.391 and shall, upon appropriation, be used for control, abatement, analysis, cleanup, investigation and other reasonable costs incurred when responding to hazardous substance emergencies, or shall be used to reimburse the federal government for federal funds expended for the purposes named in this section. All other costs of the department necessary to carry out the provisions of sections 260.500 to 260.550 shall be paid from the hazardous waste fund, appropriated from general revenue or paid from available federal funds.

(L. 1983 H.B. 528, A.L. 1988 S.B. 535, A.L. 2000 S.B. 577)

Chapter 260

Environmental Control

Section 260.540

August 28, 2012

State employees acting in official capacity, liability.

260.540. Persons employed by the state of Missouri shall not be held liable for damages incurred as a result of actions taken by them when acting in their official capacity pursuant to sections 260.500 to 260.550, rules promulgated pursuant thereto and the hazardous substance emergency response plan. However, the state of Missouri may be held liable for any such damages as provided in sections 537.600 and 537.610 or as may be covered by liability insurance or a self-insurance plan.

(L. 1983 H.B. 528)

Chapter 260

Environmental Control

Section 260.545

August 28, 2012

Providing assistance at request of department, political subdivision or volunteer fire protection district, liability for actions, when.

260.545. Any person who provides assistance, including equipment or materials, at the request of the department or a political subdivision or volunteer fire protection district or by previous agreement with the department or political subdivision or volunteer fire protection district in the event of a release of a hazardous substance shall not be held liable in any civil action for damages as a result of that person's acts or omissions in rendering such assistance. Nothing in this section shall relieve any person from civil damages in the following circumstances:

- (1) Where the release referred to is the result of the person's having control of a spilled hazardous substance;
- (2) Where the person rendered assistance for payment beyond reimbursement for out-of-pocket expenses or with the expectation of such payment; or
- (3) For acts or omissions which result from intentional wrongdoing or gross negligence.

(L. 1983 H.B. 528, A.L. 1988 S.B. 535, A.L. 1990 H.B. 1395 & 1448)

Chapter 260

Environmental Control

Section 260.546

August 28, 2012

Emergency assistance--cost, how paid--cost statement, contents--payment, when--amount, appeal procedure--state fund to pay cost but repayment required.

260.546. 1. In the event that a hazardous substance release occurs for which a political subdivision or volunteer fire protection association as defined in section 320.300 provides emergency services, the person having control over a hazardous substance shall be liable for such reasonable and necessary costs incurred by the political subdivision or volunteer fire protection association while securing an emergency situation or cleaning up any hazardous

substances. Such liability includes the cost of materials and supplies actually used to secure the emergency situation. The liability may also include the cost for contractual services which are not routinely provided by the department or political subdivision or volunteer fire protection association. Such liability shall not include the cost of normal services which otherwise would have been provided. Such liability shall not include budgeted administrative costs or the costs for duplicate services if multiple response teams are requested by the department or political subdivision unless, in the opinion of the department or political subdivision, duplication of service was required to protect the public health and environment. No later than sixty days after the completion of the cleanup of the release of a hazardous substance, the political subdivision or volunteer fire protection association shall submit to the person having control of the spilled hazardous substance an itemized statement of costs provided by the political subdivision. The statement of costs shall include but not be limited to an explanation of why the costs were reasonable and necessary. The explanation shall describe how such costs were not duplicative, did not include costs for normal services that would otherwise have been provided, and why contractual services, if any, were utilized in the response to the emergency situation. Response and cleanup costs are eligible for reimbursement if the initial response and assessment to a release of a hazardous substance was based on best practices and in a manner that any prudent political subdivision or volunteer fire protection association would respond to a release of a hazardous substance. Such response and cleanup costs may also include the costs of contractual services which are not routinely provided by the department or political subdivision or volunteer fire protection association. Such costs shall not include the costs of normal services which otherwise would have been provided.

2. Full payment shall be made within thirty days of receipt of the cost statement unless the person having control over the hazardous substance contests the amount of the costs pursuant to this section. If the person having control over the hazardous substance elects to contest the payment of such costs, such person shall file an appeal with the director within thirty days of receipt of the cost statement.

3. Upon receipt of such an appeal, the director shall notify the parties involved of the appeal and collect such evidence from the parties involved as the director deems necessary to make a determination of reasonable cleanup costs. The burden of proof shall be on the political subdivision or volunteer fire protection district to document and justify such costs allowed under subsection 1 of this section. Within sixty days of notification of the appeal, the director shall notify the parties of his or her decision. The director shall direct the person having control over a hazardous substance to pay those costs the director finds to be reasonable and appropriate. The determination of the director shall become final thirty days after receipt of the notice by the parties involved unless prior to such date one of the involved parties files a petition for judicial review pursuant to chapter 536.

4. The political subdivision or volunteer fire protection association may apply to the department for reimbursement from the hazardous waste fund created in section 260.391 for the costs for which the person having control over a hazardous substance shall be liable if the political subdivision or volunteer fire protection association is able to demonstrate a need for immediate relief for such costs and believes it will not receive prompt payment from the person having control over a hazardous substance. When the liability owed to the political subdivision or

volunteer fire protection association by the person having control over a hazardous substance is paid, the political subdivision or volunteer fire protection association shall reimburse the department for any payment it has received from the hazardous waste fund. Such reimbursement to a political subdivision or volunteer fire protection association by the department shall be paid back to the department by the political subdivision or volunteer fire protection association within that time limit imposed by the department notwithstanding failure of the person having control over a hazardous substance to reimburse the political subdivision or volunteer fire protection association within that time.

(L. 1990 H.B. 1395 & 1448, A.L. 2000 S.B. 577, A.L. 2005 S.B. 225, A.L. 2008 S.B. 931)

Chapter 260

Environmental Control

Section 260.550

August 28, 2012

Information to be available to public, exceptions.

260.550. Information obtained under the provisions of sections 260.500 to 260.550 or any rule or regulation, order or condition adopted or issued thereunder, or any investigation authorized thereby, shall be available to the public unless:

- (1) Nondisclosure is requested in writing;
- (2) Such information constitutes trade secrets or information which is entitled to confidential treatment in order to protect any plan, process, tool, mechanism, or compound which is known only to the person claiming confidential treatment and confidential treatment is necessary to protect such person's trade, business or manufacturing process;
- (3) Such nondisclosure will not result in an unreasonable threat to the health of humans or the environment; and
- (4) Disclosure is not required under any federal act. Any employee of a department or any former employee of a department who, for a period of two years after the termination of such relationship, is convicted of willful disclosure or conspiracy to disclose trade secrets or information which is entitled to such confidential treatment to any person other than one entitled to the information under sections 260.500 to 260.550 is guilty of a class A misdemeanor.

(L. 1983 H.B. 528)

Effective 6-27-83

Chapter 260

Environmental Control

Section 260.552

August 28, 2012

Liability limitation for persons in business of hazardous waste cleanup created by others, exceptions--waste cleanup of environmental hazard defined.

260.552. 1. No person engaged in the business of waste cleanup of environmental hazards created by others, including asbestos, shall be liable for any damages arising from the release or discharge of a pollutant, resulting from such activity, in an amount greater than one million dollars to any one person or three million dollars to all persons for a single occurrence. The limitation of liability of this section shall not:

- (1) Affect any right of indemnification which such person has, or may acquire by contract, against any other person who is liable for creating an environmental hazard;
- (2) Apply to persons who intentionally, wantonly, or willfully violate federal or state regulations respecting the clean-up process.

2. For purposes of this* section, the phrase "business of waste cleanup of environmental hazard" shall mean an activity including the investigation, evaluation, planning, design, engineering, removal, construction and ancillary services, which is carried out to abate or clean up a pollutant.

(L. 1987 H.B. 700 § 37)

Effective 7-1-87

*Word "the" appears in original rolls.

Chapter 260

Environmental Control

Section 260.565

August 28, 2012

Definitions.

260.565. As used in sections 260.565 to 260.575, the following terms mean:

- (1) "Hazardous substance", any hazardous substance specified in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601(14) (A)-(F),

as amended, petroleum and petroleum products, except where such petroleum and petroleum products were released to the environment from tanks subject to regulation by the department of natural resources or located on property which is eligible for moneys from the petroleum storage tank insurance fund pursuant to section 319.131, and any hazardous waste as defined in section 260.360 or any rules promulgated under sections 260.350 to 260.480;

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

(3) "Phase I environmental site assessment", a noninvasive physical assessment of the real property and a records review conducted by a technical consultant who is familiar with the nature of the operations and activities that have occurred on the real property;

(4) "Real property", any residential or nonresidential real property;

(5) "Remediation" or "remedial action", all appropriate actions taken to clean up contaminated real property, including but not limited to removal, remedial actions, and response actions as such terms are defined by the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. 9601).

(L. 1993 S.B. 80, et al., A.L. 1999 S.B. 334)

Chapter 260

Environmental Control

Section 260.567

August 28, 2012

Application for voluntary remediation, requirements, form, fee--review by department--duties of applicant, reports--remedial action plan, review of--duties.

260.567. 1. Any person, including but not limited to a person acquiring, disposing of or possessing a lienholder interest on real property or other circumstances as may be established by rule involving real property that is known to be or suspected to be contaminated by hazardous substances, may apply to remediate the real property with oversight by the department of natural resources. Such application shall be made on forms provided by the department and shall include the location of the real property, the legal description of the real property, a general description of the nature of the operations and activities and the dates, if known, that such activities occurred on the real property, the names of known past and present owners of the real property, a description of the nature and extent of known or suspected contamination and an application fee of two hundred dollars.

2. The department shall review the application. The department shall approve or deny all applications received prior to January 1, 1995, by April 1, 1995. The department shall approve or deny all applications received on or after January 1, 1995, within ninety days of receipt of the application. The department shall approve the application unless the department determines that the contamination present or suspected to be present is such as to warrant action under sections 260.350 to 260.480, as amended, the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq., as amended, or the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. section 9601 et seq., as amended, in which case the department shall deny the request. If the applicant chooses to continue to remediate the real property under the provisions of sections 260.565 to 260.575, the department shall execute a site-specific oversight agreement with the applicant following approval of the application.

3. Following the approval of an application and execution of an oversight agreement, the applicant shall submit a copy of all reports prepared concerning the results of any site assessments, investigations, sample collections and sample analyses including, at a minimum, a Phase I environmental site assessment, to the department. The department shall review the reports submitted and comment, within one hundred and eighty days, on the nature and extent of any additional required environmental site assessments to be conducted on the real property. The department shall require the applicant to post a deposit, not to exceed five thousand dollars, which shall be used, upon appropriation, to cover the site-specific costs to the department. Moneys shall be transmitted to the director of the department of revenue for deposit in the state treasury. The deposit may be satisfied by cash or a letter of credit issued by a Missouri bank.

4. Prior to the conducting of any additional environmental site assessments, if any, the department shall approve all work plans appropriate for the scope of the assessment.

5. The department shall review reports of any additional environmental site assessments and make a determination, within one hundred and eighty days, of any required remedial actions. If the department determines that no remedial action is required, the applicant shall submit, if required by the director, a monitoring plan to the department. Upon approval by the director, the plan, if required, shall be implemented by the applicant. If the department determines that remediation is required, the applicant shall submit a remedial action plan to the department for any contamination identified in the environmental site assessments.

6. The department shall review the remedial action plan. Remedial action plans shall include work plans, safety plans, and testing protocols. In addition, remedial action plans shall include appropriate monitoring plans. The department shall, within ninety days, approve the plan if the plan satisfies the requirements of this section.

7. Following approval of the remedial action plan by the department, the applicant shall implement the remedial action plan.

8. During the implementation of the remedial action plan, the applicant shall submit to the department, on forms provided by the department, quarterly progress reports of such remedial action.

9. The applicant shall submit to the department a copy of all reports prepared concerning such remedial action.
10. The department shall review the remedial action conducted in accordance with the provisions of the approved remedial action plan.
11. Nothing in sections 260.565 to 260.575 shall limit the right of an applicant to terminate participation upon providing written notification to the department. Upon receipt of notice of termination from the applicant, the department shall refund any remaining deposit balance, after incurred costs are deducted, within sixty days.
12. Nothing in sections 260.565 to 260.575 shall limit the department's or the commission's authority to administer sections 260.350 to 260.480 or any rules promulgated thereunder.
13. The applicant may appeal any action of the department under sections 260.565 to 260.575 to the hazardous waste management commission within thirty days of such action.

(L. 1993 S.B. 80, et al.)

Chapter 260

Environmental Control

Section 260.569

August 28, 2012

Reimbursement for costs to department, computation--deposit of funds-- termination from participation by department, when--refund of balance, when.

260.569. 1. The department shall be reimbursed for its site-specific costs incurred in administration and oversight of the voluntary cleanup. The department shall bill applicants who conduct the voluntary cleanup at rates established by rule by the hazardous waste management commission. Such rates shall not be more than the lesser of the costs to the department or one hundred dollars per hour. The department shall furnish to the applicant a complete, full and detailed accounting of the costs incurred by the department for which the applicant is charged. The applicant may appeal any charge to the commission within thirty days of receipt of the bill. Appeal to the commission shall stay the required payment date until thirty days following the rendering of the decision of the commission. The department of natural resources shall initially draw down its charges against the application fee. Timely remittance of reimbursements, as provided in subsection 3 of this section, to the department is a condition of continuing participation. If, after the conclusion of the remedial action, a balance remains, the department shall refund that amount within sixty days. If the department fails to render any decision or take any action within the time period specified in sections 260.565 to 260.575, then the applicant shall not be required to reimburse the department for costs incurred for such review or action.

2. All funds remitted by the applicant conducting the voluntary cleanup shall be deposited into the hazardous waste fund created in section 260.391 and shall be used by the department upon appropriation for its administrative and oversight costs.

3. The department may terminate an applicant from further participation for cause. Grounds for termination include, but are not limited to:

(1) Discovery of conditions such as to warrant action pursuant to sections 260.350 to 260.480, as amended, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended, or the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., as amended;

(2) Failure to submit cost reimbursements within sixty days following notice from the department that such reimbursements are due;

(3) Failure to submit required information within ninety days following notice from the department that such information is required;

(4) Failure to submit a remedial action plan within ninety days following notice from the department that such plan is due;

(5) Failure to properly implement the remedial action plan; and

(6) Continuing noncompliance with any of the provisions of sections 260.565 to 260.575 or the rules and regulations promulgated pursuant to sections 260.565 to 260.575.

4. Upon termination pursuant to subdivision (1) of subsection 3 of this section or subsection 11 of section 260.567, if there is a balance in the applicant's application fee after deducting costs incurred by the department of natural resources, such balance shall be refunded within sixty days. Upon termination pursuant to subdivisions (2) to (6) of subsection 3 of this section, if a balance remains in the applicant's application fee, such balance shall be forfeited and deposited in the hazardous waste fund.

(L. 1993 S.B. 80, et al., A.L. 2000 S.B. 577, A.L. 2005 S.B. 225)

Chapter 260

Environmental Control

Section 260.571

August 28, 2012

Hazardous waste management commission may promulgate rules, scope.

260.571. The hazardous waste management commission may promulgate rules to implement sections 260.565 to 260.575. Such rules and regulations may include, but are not limited to, cleanup protocols, cleanup standards, and cost administration.

(L. 1993 S.B. 80, et al.)

Chapter 260

Environmental Control

Section 260.573

August 28, 2012

Completion of plan, department to issue letter, contents--effect.

260.573. If the provisions set forth in sections 260.565 to 260.575 and any rules promulgated thereunder are met, and the applicant has remitted all applicable participation fees, the department shall issue, to the applicant, a letter stating that no further action need be taken at the site related to any contamination identified in the environmental assessments and for which remedial action has been taken in accordance with the approved remedial action plan. Such letter, however, shall provide that the department of natural resources may require the person to conduct additional environmental site assessments or remedial actions in the event that any monitoring conducted at or near the real property or other circumstances indicate that additional contamination is present which was not identified by the environmental site assessments or for which remedial action was not taken according to the remedial action plan.

(L. 1993 S.B. 80, et al.)

Chapter 260
Environmental Control
Section 260.575

August 28, 2012

False information, submission of--penalty.

260.575. Any person who knowingly submits false or fraudulent information to the department in connection with a voluntary cleanup shall be guilty of a class A misdemeanor.

(L. 1993 S.B. 80, et al.)

Appendix B – Section 260.373 RSMo

Rulemaking authority, limitations on--identification of inconsistent rules.

260.373. 1. After August 28, 2012, the authority of the commission to promulgate rules under sections 260.350 to 260.391 and 260.393 to 260.433 is subject to the following:

(1) The commission shall not promulgate rules that are stricter than or implement requirements prior to the requirements of Title 40, U.S. Code of Federal Regulations, Parts 260, 261, 262, 264, 265, 268, and 270, as promulgated pursuant to Subtitle C of the Resource Conservation and Recovery Act, as amended;

(2) Notwithstanding the limitations of subdivision (1) of this subsection, where state statutes expressly prescribe standards or requirements that are stricter than or implement requirements prior to any federal requirements, or where state statutes allow the establishment or collection of fees, costs, or taxes, the commission may promulgate rules as necessary to implement such statutes;

(3) Notwithstanding the limitations of subdivision (1) of this subsection, the commission may retain, modify, or repeal any current rules pertaining to the following:

(a) Thresholds for determining whether a hazardous waste generator is a large quantity generator, small quantity generator, or conditionally exempt small quantity generator;

(b) Descriptions of applicable registration requirements;

(c) The reporting of hazardous waste activities to the department; provided, however, that the commission shall promulgate rules, effective beginning with the reporting period July 1, 2015 - June 30, 2016, that allow for the submittal of reporting data in an electronic format on an annual basis by large quantity generators and treatment storage and disposal facilities;

(d) Rules requiring hazardous waste generators to display hazard labels (e.g., Department of Transportation (DOT) labels) on containers and tanks during the time hazardous waste is stored on-site;

(e) The exclusion for hazardous secondary materials used to make zinc fertilizers in 40 CFR 261.4; and

(f) The exclusions for hazardous secondary materials that are burned for fuel or that are recycled.

2. Nothing in this section shall be construed to repeal any other provision of law, and the commission and the department shall continue to have the authority to implement and enforce other statutes, and the rules promulgated pursuant to their authority.

3. No later than December 31, 2013, the department shall identify rules in Title 10, Missouri Code of State Regulations, Division 25, Chapters 3, 4, 5, and 7 that are inconsistent with the provisions of subsection 1 of this section. The department shall thereafter file with the Missouri secretary of state any amendments necessary to ensure that such rules are not inconsistent with the provisions of subsection 1 of this section. On December 31, 2015, any rule contained in Title 10, Missouri Code of State Regulations, Division 25, Chapters 3, 4, 5, or 7 that remains inconsistent with the provisions of subsection 1 above shall be null and void to the extent that it is inconsistent.

4. Nothing in this section shall be construed to effectuate a modification of any permit. Upon request, the department shall modify as appropriate any permit containing requirements no longer in effect due to this section.

5. The department is prohibited from selectively excluding any rule or portion of a rule promulgated by the commission from any authorization application package, or program revision, submitted to the U.S. Environmental Protection Agency under Title 40, U.S. Code of Federal Regulations, Sections 271.5 or 271.21.

6. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly under chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2012, shall be invalid and void.

(L. 2012 H.B. 1251 merged with H.B. 1647)

Appendix C – Current Rule Text, Title 10, Division 25 of the Code of State Regulations

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 1—Organization

10 CSR 25-1.010 Organization

PURPOSE: This rule complies with section 536.023.3., RSMo which requires each agency to adopt as a rule a description of its organization and general courses and methods of its operation and the methods and procedures where the public may obtain information or make submissions or requests.

(1) Section 260.365 of the Revised Statutes of Missouri (RSMo) establishes the Hazardous Waste Management Commission of Missouri. The commission consists of seven (7) members appointed by the governor. The commission shall hold at least four (4) regular meetings each year and additional meetings as the chairperson deems necessary or desirable at a place and time fixed by the chairperson. Special meetings may be called by three (3) members of the commission upon delivery of written notice to each member of the commission. The public may request that an item be brought before the commission by submitting a written request to the attention of the staff director of the Hazardous Waste Program at the following address: Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102-0176. Such requests should be received no less than fourteen (14) days before the commission meeting and may be considered as “other business,” or placed on the agenda as a separate item. At the discretion of the commission chairperson items may be added to the agenda less than fourteen (14) days prior to the commission meeting but in no case less than twenty-four (24) hours prior to the commission meeting.

(2) The Missouri Hazardous Waste Management Law and standards and rules promulgated under the law govern the management of hazardous waste in a manner which will provide adequate protection of the health of humans or other living organisms and which will provide adequate protection of the environment. The commission’s rulemaking powers are enabled by statutory provisions in sections 260.365, 260.370, 260.400 and 260.437, RSMo. Sections 260.350–

260.480, RSMo describe additional duties of the commission, the department and regulated persons. The commission and department operate in accordance with other statutes including those regarding government bodies and records (Chapter 610, RSMo) and Administrative Procedures and Review (Chapter 536, RSMo).

(3) The Department of Natural Resources is authorized under section 260.375, RSMo to exercise general supervision of the administration and enforcement of sections 260.350–260.434, RSMo and to provide the commission all necessary support the commission may require to carry out its powers and duties. Additional departmental duties are described in sections 260.377–260.480, RSMo. The department has designated the Hazardous Waste Program, Division of Environmental Quality, as the agency within the department responsible for administering the state’s Hazardous Waste Program. The director of the Department of Natural Resources appoints a Hazardous Waste Program director and staff as provided in section 260.375(3), RSMo. The Hazardous Waste Program director and staff provide day-to-day operations of the state Hazardous Waste Management Program in cooperation with other departmental programs, the Office of the Attorney General, the Office of the Secretary of State and the Department of Health. The department enters into agreements and administers grants from the United States Environmental Protection Agency (EPA).

(4) The Hazardous Waste Program staff perform administrative and technical functions including: reviewing, modifying, approving, denying, suspending, revoking or issuing permits and licenses; registering generators; enforcing the hazardous waste management law and rules; conducting inspections, developing facts, issuing orders and settling suits; developing facts as may be required by the commission; developing standards and regulations; applying for and administering grants; participating in variance and enforcement hearings; billing for fees and taxes; developing and managing the Registry of Confirmed Abandoned or Uncontrolled Sites; negotiating cleanups; developing plans, and performing other functions as described in sections 260.375–260.480, RSMo.

(5) Requests for applications, information, copies of these rules and the Missouri Hazardous Waste Management Law, site investigations, technical information and assistance, and public hearing and any submissions are to be made to the Department of Natural Resources, Division of Environmental Quality, Hazardous Waste Program, P.O. Box 176, Jefferson City, MO 65102.

(6) Additional information regarding the program is contained in the department's application to the EPA for authorization to administer the federal hazardous waste management program. Copies of the application are available for review at the department and program offices. The applications contain copies of applicable statutes, rules, forms, policies and procedures, the attorney general's legal opinion and a program description which were in effect at the time of the application. Missouri is authorized under Section 3006 of the federal Resource Conservation and Recovery Act. EPA approved the base program on November 20, 1985 (50 FR 4770), effective December 4, 1985. Program revisions were authorized on February 27, 1989 (54 FR 8190), effective April 28, 1989, January 11, 1993 (58 FR 3497), effective March 12, 1993, May 30, 1997 (62 FR 29301), effective December 30, 1997, May 4, 1999 (64 FR 23780), effective July 6, 1999, and February 28, 2000 (65 FR 10405), effective April 28, 2000. The department continues to seek this authority to fulfill its duty under section 260.375(26), RSMo. (Note: Rules promulgated under 10 CSR 25 do not constitute the full scope of regulations governing persons who generate, transport or manage hazardous waste. Additional federal and state regulations may apply.)

(7) For those subsections in 10 CSR 25-3 through 10 CSR 25-16 where the word "Reserved" follows the title of the subsection, the requirements of the corresponding federal subpart that is incorporated by reference in section (1) of the rule apply without modification. The "Reserved" designation indicates that the state reserves the right to modify the incorporated requirements. Where the word "Reserved" appears without a title, it indicates that the corresponding federal subpart is also reserved in the federal regulations for future additions.

AUTHORITY: sections 260.365 and 260.370 and 260.400, RSMo 2000

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 2—Commission Procedures

10 CSR 25-2.010 Voting Procedures

PURPOSE: The purpose of this rule is to define the procedures that must be followed by commission members when considering hazardous waste management variances, appeals or orders and related issues.

(1) Prior to any vote on any variance, appeal or order, all members of the Hazardous Waste Management Commission of Missouri shall disclose when they—

(A) Hold any official or contractual relationship with the person seeking a variance or appeal or the person subject to an order at issue under the Missouri Hazardous Waste Management Law, sections 260.350–260.550, RSMo;

(B) Utilize the services of any generator, transporter, or the owner/operator of a treatment, storage, resource recovery or disposal facility seeking a variance or appeal or who is subject to an order at issue under the Missouri Hazardous Waste Management Law;

(C) Under license or permit render, directly or through official relationship, service similar to the person seeking a variance or appeal or the person who is subject to an order at issue under the Missouri Hazardous Waste Management Law; or

(D) May have a conflict of interest regulated under sections 105.450–105.482 or section 260.365, RSMo.

(2) The member shall be excluded from voting on the matter at issue unless s/he fully advises the commission of the interest and receives a determination from the commission that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the state expects from him/her. Fully advises means explains in detail in a signed, written statement available for public inspection. Official relationship includes, but is not limited to, corporate officer, employee, retiree or similar affiliation.

(3) Voting procedures governing hearings and other administrative actions are in section 260.365 and 260.400, Chapter 536 and sections 610.010–610.028, RSMo and the Missouri Supreme Court Rules of Civil Procedure.

(4) If one (1) or more exclusions from voting or other abstentions by vote or by absence results in the lack of a quorum of commissioners, the commission will delay its final decision until a simple majority of commissioners who are not excluded from voting are present.

(5) If a quorum of commissioners is not present at the time of a public hearing published for rulemaking and it is necessary to delay the public hearing due to the lack of a quorum, the department shall—

- (A) Issue a news release announcing the new time, date and location of the public hearing; and
- (B) Include in that news release the new submittal date for written public comments.

AUTHORITY: sections 260.365, 260.400 and 260.437, RSMo 1986 and 260.370 RSMo Supp. 1989

10 CSR 25-2.020 Hazardous Waste Management Commission Appeals and Requests for Hearings

PURPOSE: This rule contains all procedural regulations for all contested cases heard by the commission or assigned to a hearing officer by the commission.

(1) Subject. This rule contains procedural regulations for all contested cases before the commission.

(2) Definitions. As used in this rule, the following terms mean:

- (A) Commission—The Missouri Hazardous Waste Management Commission;
- (B) Department—The Department of Natural Resources, which includes the director thereof, or the person or division or program within the department delegated the authority to render the decision, order, determination, finding, or other action that is subject to review by the commission;
- (C) Hearing—Any presentation to, or consideration by, the hearing officer of evidence or argument on a petition seeking the commission's review of an action by the department;
- (D) Hearing officer—Administrative Hearing Commission;
- (E) Person—An individual, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political subdivision or any agency, board, department or bureau of the state or federal government or any other legal entity whatever, which is recognized by law as the subject of rights and duties.

(3) Filing an Appeal or Requesting a Hearing.

(A) Any person adversely affected by a decision of the department or otherwise entitled to ask for a hearing may appeal to have the matter heard by filing a petition with the Administrative Hearing Commission within thirty (30) days after the date the decision was mailed or the date it was delivered, whichever date was earlier.

(B) A petition sent by registered mail or certified mail will be deemed filed on the date it is mailed. If it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the Administrative Hearing Commission.

(4) Procedures.

(A) The hearing shall be conducted in accordance with the provisions of Chapter 536, RSMo, and the regulations of the Administrative Hearing Commission promulgated thereunder.

(B) Upon receipt of the hearing officer's recommendation and the record in the case, the commission shall—

1. Distribute the hearing officer's recommendation to the parties or their counsel;
2. Allow the parties or their counsel an opportunity to submit written arguments regarding the recommendation;
3. Allow the parties or their counsel an opportunity to present oral arguments before the commission makes the final determination;
4. Complete its review of the record and deliberations as soon as practicable;
5. Deliberate and vote upon a final, written determination during an open meeting, except that the commission may confer with its counsel in closed session with respect to legal questions;
6. Issue its final, written determination as soon as practicable, including findings of fact and conclusions of law. The decision of the commission shall be based only on the facts and evidence in the record; and
7. The commission may adopt the recommended decision of the hearing officer as its final decision. The commission may change a finding of fact or conclusion of law made by the hearing officer, or may vacate or modify the recommended decision, only if the commission states in writing the specific reason for a change.

AUTHORITY: sections 260.370, 621.250 and 640.013, RSMo Supp. 2006

10 CSR 25-3.260 Definitions, Modifications to Incorporations and Confidential Business Information

PURPOSE: This rule sets forth definitions and delisting procedures. This rule incorporates the federal regulations in 40 CFR part 260 by reference. This rule also outlines a number of specific substitutions between the state and federal regulations that are necessary for incorporation by reference.

(1) The regulations set forth in 40 CFR part 260, July 1, 2010, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference, except for the changes made at 70 FR 53453, September 8, 2005, and 73 FR 64667 to 73 FR 64788, October 30, 2008, subject to the following additions, modifications, substitutions, or deletions. This rule does not incorporate any subsequent amendments or additions.

(A) Except where otherwise noted in sections (2) and (3) of this rule or elsewhere in 10 CSR 25, any federal agency, administrator, regulation, or statute that is referenced in 40 CFR parts 260–270, 273, and 279, and incorporated by reference in 10 CSR 25, shall be deleted and in its place add the comparable state department, director, rule, or statute. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

1. “Director” shall be substituted for “Administrator” or “Regional Administrator” except where those terms are defined in 40 CFR 260.10 incorporated in this rule and where otherwise indicated in 10 CSR 25. All applications, approvals, petitions, appeals, or other paperwork associated with the United States Environmental Protection Agency’s “National Environmental Performance Track” shall not be submitted to the director in lieu of the administrator or regional administrator.

2. “Missouri Department of Natural Resources” shall be substituted for “EPA,” “U.S. EPA,” or “U.S. Environmental Protection Agency” except where those terms appear in definitions in 40 CFR 260.10 incorporated in this rule and where otherwise indicated in 10 CSR 25.

3. “Section 260.395.15, RSMo,” shall be substituted for “Section 3005(e) of RCRA.”

4. “Sections 260.375(9), 260.380.1(9), 260.385(7), and 260.390(7), RSMo,” shall be substituted for “Section 3007 of RCRA.”

5. “Sections 260.410 and 260.425, RSMo,” shall be substituted for “Section 3008 of RCRA.”

6. “10 CSR 25-3.260” shall be substituted for any reference to 40 CFR part 260.

7. “10 CSR 25-4.261” shall be substituted for any reference to 40 CFR part 261.

8. “10 CSR 25-5.262” shall be substituted for any reference to 40 CFR part 262.

9. “10 CSR 25-6.263” shall be substituted for any reference to 40 CFR part 263.

10. “10 CSR 25-7.264” shall be substituted for any reference to 40 CFR part 264.

11. “10 CSR 25-7.265” shall be substituted for any reference to 40 CFR part 265.

12. “10 CSR 25-7.266” shall be substituted for any reference to 40 CFR part 266.

13. “10 CSR 25-7.268” shall be substituted for any reference to 40 CFR part 268.

14. “10 CSR 25-7.270” shall be substituted for any reference to 40 CFR part 270.

15. “10 CSR 25-8.124” shall be substituted for any reference to 40 CFR part 124.

16. “10 CSR 25-11.279” shall be substituted for any reference to 40 CFR part 279.

17. “10 CSR 25-16.273” shall be substituted for any reference to 40 CFR part 273.

18. “Sections 260.350–260.434, RSMo,” shall be substituted for “Subtitle C of RCRA Act,” or “RCRA,” except where those terms are defined in 40 CFR 260.10, incorporated in this rule.

19. “Section 260.380.1(1), RSMo” shall be substituted for “Section 3010 of RCRA.”

20. “Section 260.420, RSMo” shall be substituted for “Section 7003 of RCRA.”

21. “Waste within the meaning of section 260.360(21), RSMo,” shall be substituted for “solid waste within the meaning of section 1004(27) of RCRA.” Residual materials specified as wastes under section 260.360(21), RSMo, shall mean any spent materials, sludges, by-products, commercial chemical products, or scrap metal that are solid wastes under 40 CFR 261.2, as incorporated in 10 CSR 25-4.261.

22. “Section 260.360(9), RSMo,” shall be substituted for “Section 1004(5) of RCRA.”

23. “Chapter 610, RSMo, sections 260.430 and 260.550, RSMo, 10 CSR 25-3.260(1)(B), and 10 CSR 25-7.270(2)(B)” shall be substituted for any reference to the Federal Freedom of Information Act (5 U.S.C. 552(a) and (b)), 40 CFR part 2, or Section 3007(b) of RCRA.

24. “Owner/operator” shall be substituted for each reference to “owner and operator” and “owner or operator” in the 40 CFR parts incorporated in 10 CSR 25.

25. All quantities of solid waste which are defined as hazardous waste pursuant to 10 CSR 25-4 are hazardous waste and are regulated under sections 260.350–260.434, RSMo, and 10 CSR 25. A person shall manage all hazardous waste which is not subject to requirements in 10 CSR 25 in accordance with subsection 260.380.2, RSMo. When a person accumulates one hundred kilograms (100 kg) of nonacute hazardous waste or one kilogram (1 kg) of acutely hazardous waste or one gram (1 g) of 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD), or the aggregate of one hundred kilograms (100 kg) of acute and nonacute hazardous waste, whichever first occurs, that person is subject to the provisions in 10 CSR 25. This provision is in addition to the calendar-month generation provisions in 40 CFR 261.5 which are incorporated by reference and modified in 10 CSR 25-4.261(2)(A).

26. The term variance in 10 CSR 25 means an action of the commission pursuant to section 260.405, RSMo. In any case where a federal rule that is incorporated by reference in 10 CSR 25 uses the term variance but the case-by-case decision or action of the department or commission does not meet the description of a variance pursuant to section 260.405, RSMo, the decision or action shall be considered an exception or exemption based on the conditions set forth in the federal regulation incorporated by reference or the omission from regulation.

27. The rules of grammatical construction in 40 CFR 260.3 incorporated by reference in this rule shall also apply to the incorporated text of 40 CFR parts 266 and 270 and to 10 CSR 25.

(2) This section sets forth specific modifications to the regulations incorporated in section (1) of this rule. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, changes to 40 CFR part 260 subpart A will be located in subsection (2)(A) of this rule.)

(A) The following are changes to 40 CFR part 260 subpart A incorporated in this rule:

1. Confidential business information and availability of information. 40 CFR 260.2 is not incorporated in this rule. In lieu of those provisions, the following shall apply to confidential business information and the availability of information:

A. Any information provided to the department under 10 CSR 25 will be made available to the extent and in the manner authorized by Chapter 610, RSMo, sections 260.430 and 260.550, RSMo, subsection (1)(B) and 10 CSR 25-7.270(2)(B)2. as applicable;

B. Any person who submits information to the department in accordance with 10 CSR 25 may assert a claim of business confidentiality covering a part or all of that information by including a letter with the information which requests protection of specific information from disclosure. Information covered by this claim will be disclosed by the department to the extent and by means of the procedures set forth in Chapter 610, RSMo. However, if no claim accompanies the information when it is received by the department, the information may be made available to the public without further notice to the person submitting it. The department will respond to requests for protection of business information within twenty (20) business days; and

C. The department will respond to requests for information within three (3) business days except as provided in Chapter 610, RSMo, and except as allowed for reasonable cause in accordance with Chapter 610, RSMo. When the period for document production must exceed three (3) business days for reasonable cause, the department will provide the document within no more than twenty (20) business days.

(B) Definitions. (*Reserved*)

(C) 40 CFR part 260 subpart C, Rulemaking Petitions, is not incorporated in this rule. Not more than sixty (60) days after promulgation of the final federal determination, the department shall approve or disapprove all delistings granted under 40 CFR 260.20 or 40 CFR 260.22. If the department fails to take action within that sixty (60)-day time frame, the delistings shall be deemed approved.

(D) 40 CFR part 260 Appendix I is not incorporated in this rule.

(3) Missouri Specific Definitions. Definitions of terms used in 10 CSR 25. This section sets forth definitions which modify or add to those definitions in 40 CFR parts 60, 260–270, 273, and 279 and 49 CFR parts 40, 171–180, 383, 387, and 390–397.

(A) Definitions beginning with the letter A.

1. ASTM means the American Society for Testing and Materials.

2. Abandoned or uncontrolled means any property where hazardous waste has been disposed of illegally or where hazardous waste was disposed of prior to regulation under sections 260.350–260.434, RSMo.

3. Active fault means a fault which, according to substantial geologic evidence, is capable of movement along a fault trace. A fault which, according to historical records, has moved along a fault trace is considered an active fault.

4. Attenuation means any physical, chemical, or biological reaction, or a combination of both, transformation occurring in the zone of aeration or zone of saturation that brings about a temporary or permanent decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled.

(B) Definitions beginning with the letter B. (*Reserved*)

(C) Definitions beginning with the letter C.

1. CFR means the *Code of Federal Regulations*.

2. CSR means the *Missouri Code of State Regulations*.

3. Commission means the Hazardous Waste Management Commission of Missouri created by section 260.365, RSMo.

4. Compliance procedure means any proceeding instituted under sections 260.350–260.434, RSMo, which seeks to require compliance with, or which is in the nature of an enforcement action or an action to cure a violation of, sections 260.350–260.434, RSMo, or rules adopted under those sections, or permits, licenses, or certifications issued under those sections. A compliance procedure includes, without limitation, an order issued pursuant to section 260.410, RSMo, or any denial or revocation of or notice of intent to revoke a license, permit, or certification pursuant to, or any civil or criminal action filed in the courts of Missouri pursuant to, sections 260.350–260.434, RSMo. A compliance procedure is considered to be pending from the time an order, denial, revocation, or notice of intent to revoke is issued by the director or judicial proceedings begin, until the director notifies the person subject to the compliance procedure in writing that the violation has been corrected or that the procedure has been withdrawn or dismissed.

(D) Definitions beginning with the letter D.

1. Department means the Missouri Department of Natural Resources.
2. Director means the director of the Missouri Department of Natural Resources.
3. Displacement means the relative movement of any two (2) sides of a fault measured in any direction.
4. DOT means the United States Department of Transportation.

(E) Definitions beginning with the letter E.

1. Extended reporting period means a declaration or endorsement in a liability insurance policy required by 10 CSR 25-7 which provides an extension of the coverage of the policy to claims otherwise covered by the policy and first made during a specified period immediately following the effective date of cancellation or nonrenewal of the policy. The specified period shall be of at least twelve (12) months duration.

(F) Definitions beginning with the letter F.

1. Farmer means a person primarily engaged in the production of crops or livestock for agricultural purposes, or both.
2. Fault means a fracture along which rocks on one (1) side have been displaced with respect to those on the other side.

(G) Definitions beginning with the letter G.

1. Generation means the act or process of producing hazardous waste.

(H) Definitions beginning with the letter H.

1. HSWA means the Hazardous and Solid Waste Amendments of 1984. These amendments were made to the Resource Conservation and Recovery Act by P.L. 98-616, November 8, 1984.

2. Hazardous constituent means any chemical compound listed in 40 CFR part 261 Appendix VIII as incorporated in 10 CSR 25-4.261. (This is different than the term hazardous waste constituent as defined in 40 CFR 260.10.)

3. Hazardous waste means any waste or combination of wastes as defined by or listed in 10 CSR 25-4, which, because of its quantity, concentration, or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a threat to the health of humans or other living organisms.

4. Hazardous waste transporter means any person or company conducting activities in Missouri which require a hazardous waste transporter license pursuant to 10 CSR 25-6.263. These activities may include, but are not limited to, transportation of hazardous wastes, used oil, and infectious wastes by highway, railway, or waterway.

5. Holocene means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene period to the present, approximately the previous twelve thousand (12,000) years.

6. Household hazardous waste means any household waste excluded from regulation as hazardous waste by 40 CFR 261.4(b)(1) but otherwise meets the definition of hazardous waste in paragraph (2)(H)3. of this rule.

(I) Definitions beginning with the letter I.

1. Identification number means the unique code assigned to each hazardous waste, each hazardous waste generator, transporter, facility, or resource recovery facility pursuant to these rules.

2. International Registration Plan, referred to as IRP, is a system of reporting and apportioning fees to states and other jurisdictions based on the percentage of mileage accumulated while conducting business in those states or jurisdictions.

(J) Definitions beginning with the letter J. (*Reserved*)

(K) Definitions beginning with the letter K. (*Reserved*)

(L) Definitions beginning with the letter L.

1. Land-based management facility means any hazardous waste landfill, land treatment unit, surface impoundment, or waste pile.

(M) Definitions beginning with the letter M.

1. Missouri hazardous waste mileage means the total fleet miles that materials requiring a hazardous waste transporter license are transported in Missouri over a period specified by rule. Additionally, all miles traveled transporting containers with residues of these materials, as defined at 49 CFR 171.8, will be included in the Missouri hazardous waste mileage.

2. Motor vehicle means a vehicle, machine, tractor, trailer, or semitrailer, or any combination of them, propelled or drawn by mechanical power and used upon the highways in transportation. It does not include a vehicle, locomotive, or car operated exclusively on a rail(s).

(N) Definitions beginning with the letter N. (*Reserved*)

(O) Definitions beginning with the letter O.

1. One hundred (100)-year flood means a flood that has a one percent (1%) chance of recurring in any year or a flood of magnitude equaled or exceeded once in one hundred (100) years on the average over a significantly long period. In any given one hundred (100)-year interval, a flood of that magnitude may or may not occur, or more than one (1) flood of that magnitude may occur.

2. One hundred (100)-year floodplain means any land area which is subject to a one percent (1%) or greater chance of flooding in any given year from any source.

3. Operating disposal facility means a hazardous waste management facility permitted or seeking a permit for the construction, operation, or both, including receipt of hazardous waste, of surface impoundment, waste pile, land treatment unit, or landfill.

4. Owner/operator means owner and operator. For the purposes of performing the activities required by these rules, where not specifically required of the owner, the owner may designate in writing that the operator has the authority to perform the duties of the owner/operator. This designation does not relieve the owner of his/her joint liability that these activities are performed.

(P) Definitions beginning with the letter P.

1. Post-closure disposal facility means a hazardous waste management facility which has disposed of hazardous waste, and which is required by applicable state and federal laws and regulations to have a permit to conduct post-closure activities, or to perform necessary post-closure activities under an enforceable document, as defined in 40 CFR 270.1(c)(7) and incorporated by reference in 10 CSR 25-7.270(1).

2. Professional engineer or registered engineer means a professional engineer licensed to practice by the Missouri Board of Architects, Professional Engineers and Land Surveyors.

3. Power unit for the purpose of this regulation is a truck with at least two (2) axles, regardless of licensed vehicle weight or configuration.

4. Preceding year is defined as the period of twelve (12) consecutive months immediately prior to July 1 immediately preceding the commencement of the license year for which license is sought.

(Q) Definitions beginning with the letter Q. (*Reserved*)

(R) Definitions beginning with the letter R.

1. RCRA means the Resource Conservation and Recovery Act, 42 U.S.C. sections 6901–6991.

2. Regional aquifer means a geologic formation, group of formations or part of a formation that contains sufficient saturated permeable material to yield or be capable of yielding water at a sufficient rate to serve as a practical source of water supply.

3. Registry means the Missouri Registry of Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites.

4. Remedial action means any action at a hazardous waste site to protect the public health and environment. These actions may include, but are not limited to: storage; confinement; perimeter protection using dikes, trenches, or ditches; clay cover; neutralization; cleanup of hazardous waste, hazardous substances, or contaminated materials; recycling or reuse; diversion; destruction; segregation of reactive materials; repair or replacement of leaking containers; collection of leachate and runoff; on-site treatment or incineration; provision of alternative water supplies; any monitoring reasonably required to assure that these actions protect the public health and environment; or any combination of these actions.

5. Remedial action plan means the specific procedures to be followed in implementation of any remedial action and all necessary, related procedures including, but not limited to, safety, analysis, sampling, handling, packaging, storing, removing, transporting, labeling, registering, and site security. A remedial action plan has a defined endpoint, agreed to in advance, which will complete the plan. Additional remedial actions may be necessary after completion of a remedial action plan dependent upon results of sample analysis or development of new information.

6. Residual materials means any spent materials, sludges, by-products, commercial chemical products, or scrap metals that are solid wastes under 40 CFR 261.2, as incorporated in 10 CSR 25-4.261.

7. Resource recovery means the reclamation of energy or materials from waste, its reuse, or its transformation into new products which are not wastes.

8. Responsible party means any person(s) liable for costs of removal actions or remedial action or other response costs or damages pursuant to Section 107 of the federal Comprehensive Environmental Re-sponse, Compensation and Liability Act of 1980, 42 U.S.C. 9607–9657 as amended by P.L. 99-499 Superfund Amendments, and Reauthorization Act of 1986, or any current owners or other person willing to assume responsibility.

(S) Definitions beginning with the letter S.

1. Site, for purposes of 10 CSR 25-10, means the smallest geographic boundary which contains known chemical contamination. A buffer zone may be included within the area.

2. Standby trust fund means a trust fund which must be established by the owner or operator who obtains a surety bond or provides other security as specified in these rules.

3. Substantial change means any change in use of a site which may result in a spread of contamination over additional portions of a site or off-site, an increase in human exposure to hazardous materials, an increase in adverse environmental impacts, or a situation making potential remedial actions to correct problems at the site more difficult to undertake or complete.

(T) Definitions beginning with the letter T.

1. Training means formal instruction which supplements an employee's existing job knowledge and is designed to protect human health and the environment through increased awareness and improved job proficiency.

2. Transporter; see hazardous waste transporter.

3. True vapor pressure means the pressure exerted when a solid or liquid is in equilibrium with its own vapor. The vapor pressure is a function of the substance and of the temperature.

4. Twenty-four (24)-hour, twenty-five (25)-year storm means a storm of twenty-four (24)-hour duration for which the frequency of occurrence is once in twenty-five (25) years.

(U) Definitions beginning with the letter U.

1. Universal waste means any of the hazardous wastes that are defined under the universal waste requirements of 10 CSR 25-16.273(2)(A).

2. Used oil.

A. The definition of used oil at 40 CFR 260.10 is amended to include, but not be limited to, petroleum-derived and synthetic oils which have been spilled into the environment or used for any of the following:

(I) Lubrication/cutting oil;

(II) Heat transfer;

(III) Hydraulic power; or

(IV) Insulation in dielectric transformers.

B. The definition of used oil at 40 CFR 260.10 is amended to exclude used petroleum-derived or synthetic oils which have been used as solvents. (Note: Used ethylene glycol is not regulated as used oil under 10 CSR 25.)

C. Except for used oil that meets the used oil specifications found in 40 CFR 279.11, any amount of used oil that exhibits a hazardous characteristic and is released into the environment is a hazardous waste and shall be managed in compliance with the requirements of 10 CSR 25, Chapters 3–9 and 13. Any exclusions from the definition of solid waste or hazardous waste will apply.

3. USGS means United States Geological Survey.

4. U.S. importer means a United States-based person who is in corporate good standing with the U.S. state in which they are registered to conduct business and who will be assuming all generator responsibilities and liabilities specified in sections 260.350–260.430, RSMo, for wastes which the U.S. importer has arranged to be imported from a foreign country.

(V) Definitions beginning with the letter V.

1. Vapor recovery system means a system capable of collecting vapors and discharged gases and a vapor processing system capable of processing those vapors and gases so as to control emission of contaminants to the atmosphere. Emission not retained by vapor recovery systems, except for emissions regulated in 10 CSR 25, are regulated by rules adopted by the Missouri Air Conservation Commission, 10 CSR 10.

2. Vehicle, for the purpose of this regulation, refers to a power unit.

(W) Definitions beginning with the letter W.

1. Washout means the fluvial transport of hazardous waste from a hazardous waste management unit as a result of flooding.

2. Waste means any material for which no use or sale is intended and which will be discarded or any material which has been or is being discarded. Waste shall also mean certain residual materials which may be sold for purposes of energy or materials reclamation, reuse, or transformation into new products which are not wastes. Waste shall also mean hazardous waste fuels.

- (X) Definitions beginning with the letter X. *(Reserved)*
- (Y) Definitions beginning with the letter Y.
(Reserved)
- (Z) Definitions beginning with the letter Z.
(Reserved)

AUTHORITY: section 260.370, RSMo Supp. 2010, and section 260.395, RSMo 2000

**Title 10--DEPARTMENT OF NATURAL RESOURCES
Division 25--Hazardous Waste Management Commission
Chapter 4--Methods for Identifying Hazardous Waste**

10 CSR 25-4.261 Methods for Identifying Hazardous Waste

PURPOSE: This rule sets forth characteristics and lists by which a generator can determine whether his/her waste is hazardous. This rule defines hazardous waste under sections 260.475–260.479, RSMo. The federal regulations in 40 CFR part 261 are incorporated by reference, subject to the modifications set forth in this rule.

*Editor's Note: Pursuant to **American Mining Wastes v. the U.S. EPA**, cited as 907 F2d 1179 (D.C. Cir. 1990), the following waste streams are not incorporated by reference in this rule: K064, K065, K066, K090, and K091. These waste streams were remanded to the Environmental Protection Agency (EPA) by the United States Court of Appeals until the EPA provides adequate justification to the court for the listing of the wastes as hazardous. Suspension of these wastes from the state rule was effective February 28, 1991.*

(1) The regulations set forth in 40 CFR part 261, July 1, 2010, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference, except for the changes made at 55 FR 50450, December 6, 1990, 56 FR 27332, June 13, 1991, 60 FR 7366, February 7, 1995, 63 FR 33823, June 19, 1998, 70 FR 53453, September 8, 2005, 73 FR 64667 to 73 FR 64788, October 30, 2008, and 73 FR 77954, December 19, 2008. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) This section sets forth specific modifications of the regulations incorporated in section (1) of this rule. A person required to identify a hazardous waste shall comply with this section as it modifies 40 CFR part 261 as incorporated in this rule. (Comment: This section has been organized in order that all Missouri additions, changes, or deletions to any subpart of the federal regulation are noted within the corresponding subsection of this section. For example, changes to 40 CFR part 261 subpart A will be located in subsection (2)(A) of this rule.)

(A) General. The following are changes to 40 CFR part 261 subpart A incorporated in this rule:

1. Material that is stored or accumulated in surface impoundments or waste piles is inherently waste-like as provided in 40 CFR 261.2(d) incorporated in this rule, and is a solid waste, regardless of whether the material is recycled;

2. A solid waste, as defined in 40 CFR 261.2, as incorporated in this rule, is a hazardous waste if it is a mixture of solid waste and one (1) or more hazardous wastes listed in 40 CFR part 261 subpart D, as incorporated in this rule, and has not been excluded from 40 CFR 261.3(a)(2), as incorporated in this rule, under 40 CFR 260.20 and 260.22, as incorporated in 10 CSR 25-3.260. However, mixtures of solid wastes and hazardous wastes listed in 40 CFR part 261 subpart D, as incorporated in this rule, are not hazardous wastes (except by application of 40 CFR part 261.3(a)(2)(i) or (ii), as incorporated in this rule) if the generator can demonstrate that the mixture consists of wastewater, the discharge of which is regulated under Chapter 644, RSMo, the Missouri Clean Water Law;

3. In Table 1 of 40 CFR 261.2, add an asterisk in column 3, row 6, Reclamation of Commercial Chemical Products listed in 40 CFR 261.33 and add the following additional footnote: "Note 2. Commercial chemical products listed in 40 CFR 261.33 are not solid wastes when the original manufacturer uses, reuses, or legitimately recycles the material in his/her manufacturing process";

4. *(Reserved)*

5. In addition to the requirements in 40 CFR 261.3 incorporated in this rule, hazardous waste may not be diluted solely for the purpose of rendering the waste nonhazardous unless dilution is warranted in an emergency response situation or where the dilution is part of a hazardous waste treatment process regulated or exempted under 10 CSR 25-7 or 10 CSR 25-9;

6. Fly ash that is not regulated under sections 260.200–260.245, RSMo, or sections 644.006–644.564, RSMo, or is not beneficially reused as allowed under 10 CSR 80-2.020(9)(B), and fails Toxicity Characteristic Leaching Procedure (TCLP) is not subject to the exclusion at 40 CFR 261.4(b)(4) and shall be disposed of in a permitted hazardous waste facility;

7. In 40 CFR 261.4(a)(8)(i) incorporated in this rule, substitute “is a totally enclosed treatment facility” for “through completion of reclamation is closed”;

8. 40 CFR 261.4(a)(11) is not incorporated in this rule;

9. 40 CFR 261.4(a)(16) is not incorporated in this rule (Note: The paragraph at 40 CFR 261.4(a)(16) added by 63 FR 33823, June 19, 1998, is the paragraph not incorporated by 10 CSR 25-4.261(2)(A)9.);

10. Household hazardous waste which is segregated from the solid waste stream becomes a regulated hazardous waste upon acceptance by delivery at a commercial hazardous waste treatment, storage, or disposal facility. Any waste for which the commercial facility becomes the generator in this way shall not be subject to waste minimization requirements under 40 CFR 264.73(b)(9), as incorporated by 10 CSR 25-7.264(1), nor shall that facility be required to pay hazardous waste fees and taxes on that waste pursuant to 10 CSR 25-12.010;

11. A generator shall submit the information required in 40 CFR 261.4(e)(2)(v)(C) as incorporated in this rule to the department along with the Generator’s Hazardous Waste Summary Report required in 10 CSR 25-5.262(2)(D)1.;

12. The changes to 40 CFR 261.5, special requirements for hazardous waste generated by small quantity generators, incorporated in this rule are as follows:

A. The modification set forth in 10 CSR 25-3.260(1)(A)25. applies in this rule in addition to other modifications set forth;

B. 40 CFR 261.5(g)(2) is not incorporated in this rule;

C. A process, procedure, method, or technology is considered to be on-site treatment for the purposes of 40 CFR 261.5(f)(3) and 40 CFR 261.5(g)(3), as incorporated in this rule, only if it meets the following criteria:

(I) The process, procedure, method, or technology reduces the hazardous characteristic(s) and/or the quantity of a hazardous waste; and

(II) The process, procedure, method, or technology does not result in off-site emissions of any hazardous waste or constituent; and

D. If a conditionally exempt small quantity generator’s wastes are mixed with used oil, the mixture is subject to 40 CFR 279.10(b)(3) as incorporated in 10 CSR 25-11.279;

13. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 261.6(a)(3)(i), as incorporated in this rule. The state may not assume authority from the Environmental Protection Agency (EPA) to receive notifications of intent to export or to transmit this information to other countries through the Department of State or to transmit Acknowledgments of Consent to the exporter. This modification does not relieve the regulated person of the responsibility to comply with the Resource Conservation and Recovery Act (RCRA) or other pertinent export control laws and regulations issued by other agencies;

14. 40 CFR 261.6(a)(4) is amended by adding the following sentence: “Used oil that exhibits a hazardous characteristic and that is released into the environment is subject to the requirements of 10 CSR 25-3, 4, 5, 6, 7, 8, 9, and 13.”;

15. *(Reserved)*

16. Recyclable materials that meet the definition of used oil in 40 CFR 260.10 as incorporated in 10 CSR 25-3.260(1) shall be managed in accordance with 10 CSR 25-11.279 and applicable portions of 10 CSR 25-3.260–10 CSR 25-9.020;

17. The resource recovery of hazardous waste is regulated by 10 CSR 25-9.020. An owner/operator of a facility that uses, reuses, or recycles hazardous waste shall be certified under 10 CSR 25-9 or permitted under 10 CSR 25-7, unless otherwise excluded. Therefore, the parenthetical text in 40 CFR 261.6(c)(1) is not incorporated in this rule; and

18. In accordance with section 260.432.5(2), RSMo, used cathode ray tubes (CRTs) may not be placed in a sanitary landfill, except as permitted by section 260.380.3, RSMo.

(B) Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Wastes. *(Reserved)*

(C) Characteristics of Hazardous Waste. *(Reserved)*

(D) Lists of Hazardous Wastes. The following are additions or changes to the lists in 40 CFR part 261 subpart D, incorporated in this rule:

1. Hazardous waste identified by the Environmental Protection Agency (EPA) hazardous waste number F020, F023, or F027 is hazardous waste even if highly purified 2,4,5-trichlorophenol is used. Therefore, the following language is deleted from 40 CFR 261.31 incorporated in this rule:

A. In F020, delete the words “(This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)”;

B. In F023, delete the words “(This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)”; and

C. In F027, delete the words “(This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.)”;

2. Any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill of waste listed in F020, F021, F022, F023, F026, or F027 (including the changes made in 10 CSR 25-4.261(2)(D)1.), regardless of the quantity or time of the spill or release, is an acutely hazardous waste and is designated the Missouri hazardous waste number MH01. Note: This does not include hexachlorophene soap rinses resulting from medicinal uses.);

3. 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) is an acutely hazardous waste and is designated the Missouri hazardous waste number MH02. Without regard to any quantity specified in 40 CFR 261.5, as incorporated and modified in paragraph (2)(A)10. of this rule, if a generator generates less than one gram (1 g) of 2,3,7,8-TCDD in a calendar month and does not accumulate one gram (1 g) of 2,3,7,8-TCDD at any one time, that generator shall manage that hazardous waste in accordance with subsection 260.380.2, RSMo. When a generator generates one gram (1 g) of 2,3,7,8-TCDD in a calendar month or accumulates at least one gram (1 g) of 2,3,7,8-TCDD at any one time, that generator shall manage that hazardous waste in accordance with the provisions in 10 CSR 25;

4. 40 CFR 261.38 is not incorporated in this rule.

(E) Exclusions/Exemptions.

1. The substitution of the director of the Department of Natural Resources for the regional administrator discussed in 10 CSR 25-3.260(1)A.1. does not apply to the requirement for notification of the export of used CRTs established in 40 CFR 261.41.

AUTHORITY: section 260.370, RSMo Supp. 2010

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 5—Rules Applicable to Generators of Hazardous Waste

10 CSR 25-5.262 Standards Applicable to Generators of Hazardous Waste

PURPOSE: This rule sets forth standards for generators of hazardous waste, incorporates 40 CFR part 262 by reference, and sets forth additional state standards.

(1) The regulations set forth in 49 CFR part 172, October 1, 1999, 40 CFR 302.4 and .5, July 1, 2006, and 40 CFR part 262, July 1, 2010, except Subpart H, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) A generator located in Missouri, except as conditionally exempted in accordance with 10 CSR 25-4.261, shall comply with the requirements of this section in addition to the requirements incorporated in section (1). Where contradictory or conflicting requirements exist in 10 CSR 25, the more stringent shall control. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the additional storage standards which are added to 40 CFR part 262 subpart C are found in subsection (2)(C) of this rule.)

(A) General. The following registration requirements are additional requirements to, or modifications of, the requirements specified in 40 CFR part 262 subpart A:

1. In lieu of 40 CFR 262.12(a) and (c), a generator located in Missouri shall comply with the following requirements:

A. A person generating in one (1) month or accumulating at any one (1) time the quantities of hazardous waste specified in 10 CSR 25-4.261 and a transporter who is required to register as a generator under 10 CSR 25-6.263 shall register and is subject to applicable rules under 10 CSR 25-3.260–10 CSR 25-9.020 and 10 CSR 25-12.010; and

B. Conditionally exempt generators may choose to register and obtain Environmental Protection Agency (EPA) and Missouri identification numbers, but in doing so will be subject to any initial registration fee and annual renewal fee outlined in this chapter;

2. An owner/operator of a treatment, storage, disposal, or resource recovery facility who ships hazardous waste from the facility shall comply with this rule;

3. The following constitutes the procedure for registering:

A. A person who is required to register shall file a completed registration form furnished by the department. The department shall require an original ink signature on all registration forms before processing. In the event the department develops the ability to accept electronic submission of the registration form, the signature requirement will be consistent with the legally-accepted standards in Missouri for an electronic signature on documents. All generators located in Missouri shall use only the Missouri version of the registration form;

B. A person required to register shall also complete and file an updated generator registration form if the information filed with the department changes;

C. The department may request additional information, including information concerning the nature and hazards associated with a particular waste or any information or reports concerning the quantities and disposition of any hazardous wastes as necessary to authorize storage, treatment, or disposal and to ensure proper hazardous waste management;

D. A person who is required to register, and those conditionally-exempt generators who choose to register, shall pay a one-hundred-dollar (\$100) initial or reactivation registration fee at the time their registration form is filed with the department. If a generator site has an inactive registration, and a generator required to register reactivates that registration, the generator shall file a registration form and pay the one-hundred-dollar (\$100) registration reactivation fee. The department shall not process any form for an initial registration or reactivation of a registration if the one-hundred-dollar (\$100) fee is not included. Generators required to register shall thereafter pay an annual renewal fee of one hundred dollars (\$100) in order to maintain their registration in good standing; and

E. Any person who pays the registration fee with what is found to be an insufficient check shall have their registration immediately revoked;

4. The following constitutes the procedure for registration renewal:

A. The calendar year shall constitute the annual registration period;

B. Annual registration renewal billings will be sent by December 1 of each year to all generators holding an active registration;

C. Any generator initially registering between October 1 and December 31 of any given year shall pay the initial registration fee, but shall not pay the annual renewal fee for the calendar year immediately following their initial registration. From that year forward, they shall pay the annual renewal fee;

D. Any generator required to register who fails to pay the annual renewal fee by the due date specified on the billing shall be administratively inactivated and subject to enforcement action for failure to properly maintain their registration;

E. Generators administratively inactivated for failure to pay the renewal fee in a timely manner, who later in the same registration year pay the annual renewal fee, shall pay the fifteen-percent (15%) late fee required by section 260.380.4, RSMo, in addition to the one-hundred-dollar (\$100) annual renewal fee for each applicable registration year and shall file an updated generator registration form with the department before their registration is reactivated by the department;

F. Generators who request that their registration be made inactive rather than pay the renewal fee, who later in that same renewal year pay the annual renewal fee to reactivate their registration, shall pay the fifteen-percent (15%) late fee required by section 260.380.4, RSMo, in addition to the one-hundred-dollar (\$100) annual renewal fee and file an updated generator registration form with the department before their registration is reactivated by the department; and

G. Any person who pays the annual renewal fee with what is found to be an insufficient check shall have their registration immediately revoked; and

5. The department may administratively inactivate the registration of generators that fail to pay any applicable hazardous waste fees and taxes in a timely manner after appropriate notice to do so.

(B) The Manifest. Additional manifest and reporting requirements are set forth in subsections (2)(D) and (E). This subsection is applicable to all Missouri generators and to all other generators who deposit hazardous waste in Missouri. (Note: This section is not applicable to an out-of-state or international generator who is shipping hazardous waste through, in less than ten (10) days, but not depositing hazardous waste in Missouri. This subsection does not prevent a transporter from voluntarily carrying information in addition to the manifest. Any reference to the United States Environmental Protection Agency (EPA) form 8700-22 means the form as revised by EPA and approved by the federal Office of Management and Budget (OMB)).

1. Generators must list the Missouri waste code MH02 if the hazardous waste is 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) as listed in 10 CSR 25-4.261(2)(D)3.

2. If the waste contains MH02 or MH01, these must be one (1) of the six (6) waste codes listed on the manifest.

3. Generators must list the Missouri waste code D098 if the hazardous waste is a used oil as described in 10 CSR 25-11.279(2)(I)1.B.

4. Generators must record either the total weight in kilograms or pounds or the specific gravity for wastes listed or measured in gallons, liters, or cubic yards.

5. Manifest reporting. This paragraph sets forth additional requirements for manifest reporting. The generator shall contract with the designated facility to return the completed manifest to the generator within thirty-five (35) days after the hazardous waste was accepted by the initial transporter. A generator, in addition to this requirement, and where applicable under paragraph (2)(D)2. of this rule, shall file exception reports.

(C) Pretransport, Containerization, and Labeling Requirements.

1. During the entire time hazardous waste is accumulated in storage on-site, generators shall package, mark, and label hazardous waste containers in compliance with the requirements of 40 CFR 262.32 and 40 CFR part 262 subpart C, as incorporated and modified within these regulations. The generator is not required to mark the manifest document number for the shipment on the container until it is prepared for off-site shipment.

2. This paragraph sets forth requirements for storage of hazardous waste based on the quantity of waste generated or accumulated.

A. Notwithstanding any other provisions of this rule to the contrary, a person who generates one hundred kilograms (100 kg) or more, but fewer than one thousand kilograms (1000 kg) of nonacute hazardous waste in a calendar month may store these hazardous wastes in quantities, according to time frames and under the conditions specified in 40 CFR 262.34(d) as incorporated in this rule. However, upon accumulating one thousand kilograms (1000 kg) of nonacute hazardous waste, the generator must also comply with 40 CFR 262.34(a)(1) incorporated in this rule rather than 40 CFR 262.34(d)(3) incorporated in this rule, 40 CFR part 265 subpart D as incorporated in 10 CSR 25-7.265(1) and modified in 10 CSR 25-7.265(2)(D) rather than 40 CFR 262.34(d)(5) incorporated in this rule, and 40 CFR 265.16 as incorporated in 10 CSR 25-7.265(1) and modified in 10 CSR 25-7.265(2)(D) in addition to the requirements of 40 CFR 262.34(d) incorporated in this rule.

B. A person who generates one kilogram (1 kg) of acutely hazardous waste defined by or listed in 10 CSR 25-4.261 or one gram (1 g) of 2,3,7,8-TCDD or one thousand kilograms (1000 kg) of nonacute hazardous waste, or an aggregate of one thousand kilograms (1000 kg) of hazardous waste, as listed in 10 CSR 25-4.261 shall comply with 40 CFR 262.34(a) and (b) as incorporated in this rule.

C. General inspection requirements. In addition to the requirements in 40 CFR Part 262, a generator shall also comply with the following requirements.

(I) The owner/operator shall inspect his/her facility for malfunction, deterioration, or both, operator error, and any evidence of discharges which may be causing or could cause the release of hazardous waste constituents to the environment or could pose a threat to human health. The owner/operator shall conduct these inspections often enough to identify and correct any problems of that nature before they cause harm to human health or the environment.

(II) The frequency of inspection may vary for the items that require inspection. However, it should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, shall be inspected daily when in use. At a minimum, the inspection schedule shall include the terms and frequencies set forth in the applicable regulations in 40 CFR 265.174 and 40 CFR 265.195, incorporated in 10 CSR 25-7.265; and

(III) The owner/operator shall remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.

D. Containment for storage in containers. This subparagraph sets forth additional requirements for storage of hazardous waste in containers.

(I) Container storage areas shall have a containment system that is designed and operated in accordance with part (2)(C)2. D.(III) of this rule, except as provided in part (2)(C)2.D.(II) of this rule.

(II) Storage areas that store containers holding only wastes that do not contain free liquids or storage areas that store less than one thousand kilograms (1000 kg) of nonacute hazardous waste containing free liquids need not have a containment system as described in part (2)(C)2.D.(I) of this rule, provided that the storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation, or the containers are elevated or are otherwise protected from contact with accumulated liquid.

(III) A containment system shall be designed, maintained, and operated as follows:

(a) The containment system shall include a base which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed. The base shall be under the container;

(b) The base shall be sloped or the containment system shall be designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(c) The containment system shall have a capacity equal to ten percent (10%) of the containerized waste volume or the volume of the largest container, whichever is greater. (Containers that do not contain free liquids need not be considered in this calculation);

(d) Run-on into the containment system shall be prevented unless the collection system has sufficient excess capacity in addition to that required in subpart (2)(C)2.B.(III)(c) of this rule to contain any run-on which might enter the system; and

(e) Spilled or leaked waste and accumulated precipitation shall be removed from the sump or collection area as necessary to prevent overflow of the collection system.

(IV) The containment system must also be inspected as part of the weekly inspections required by 40 CFR 265.174 as incorporated in 10 CSR 25-7.265.

E. Tanks. This subparagraph sets forth additional requirements for storage of hazardous waste in tanks. Additional requirements set forth in paragraph (2)(C)2. apply to storage of hazardous waste in tank systems.

F. General requirements for ignitable, reactive, incompatible, or volatile wastes.

(I) Volatile waste having a true vapor pressure of greater than seventy-eight millimeters (78 mm) of mercury at twenty-five degrees Celsius (25°C) shall not be placed in an open tank.

(II) The owner/operator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. These hazardous wastes shall be separated and protected from sources of ignition or reaction including, but not limited to, open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (that is, from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner/operator shall confine smoking and open flame to specially designated locations. No Smoking signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

G. Preparedness and prevention. In addition to the required equipment specified in 40 CFR 265.32, incorporated in 10 CSR 25-7.265, a generator shall also provide safety equipment such as fire blankets, gas masks, and self-contained breathing apparatus.

3. Satellite accumulation. In addition to the requirements in 40 CFR 262.34(c), the generator shall comply with the following requirements: Within one (1) year from the date satellite storage begins, irrespective of the quantity of hazardous waste in the satellite storage area, the hazardous waste shall be transferred to the area where hazardous waste is stored during the ninety (90)-, one hundred eighty (180)-, or two hundred seventy (270)-day storage period. And in 40 CFR 262.34(c)(1)(ii), add the words "Mark his containers either with the words 'Hazardous Waste' or with other words that identify the contents of the containers and the beginning date of satellite storage."

4. 40 CFR 262.34(a)(1)(iii) is not incorporated in this rule.

5. In addition to requirements in 40 CFR 262.34(d), a generator, upon generating one thousand kilograms (1000 kg) of nonacute hazardous waste, in a calendar month or accumulating one thousand kilograms (1000 kg) of nonacute hazardous waste, shall comply with paragraph (2)(C)2. of this rule.

6. All generators shall meet the special requirements for ignitable or reactive waste set forth in 40 CFR 265.176 incorporated in 10 CSR 25-7.265 and, therefore, the following language in 40 CFR 262.34(d)(2) is not incorporated in this rule: "except the generator need not comply with subsection 265.176."

7. Closure. At closure of the storage area, the generator shall remove and properly dispose of all hazardous waste and hazardous residues. For the purpose of this paragraph, closure shall occur when the storage of hazardous wastes has not occurred or is not expected to occur for one (1) year.

(D) Record Keeping and Reporting. In addition to requirements in 40 CFR 262.40, generators shall retain registration information required in subsection (2)(A) of this rule and the Generator's Hazardous Waste Summary Report required in paragraph (2)(D)1. of this rule for no fewer than three (3) years. The period of record retention referred to in 40 CFR 262.40(d) begins the day the initial transporter signs the manifest. The period of record retention referred to extends upon the written requests of the department or automatically during the course of any unresolved enforcement action regarding the regulated activity.

1. This paragraph establishes requirements for quarterly Generator's Hazardous Waste Summary Reports.

A. All generators who are required to register in accordance with subsection (2)(A) of this rule shall complete a Generator's Hazardous Waste Summary Report. This report shall be completed on a form provided by the department or on a reproduction of the form provided by the department or in the same format as the form provided by the department after review and approval by the department.

B. Persons who do not ship any hazardous wastes or who make only one (1) shipment of hazardous waste during the entire reporting year, July 1 through June 30, or are defined as a small quantity generator for the entire reporting year, may file an annual report by August 14 following the reporting year period. However, persons who are defined as a large quantity generator and have more than one (1) shipment of hazardous waste during the reporting years shall file quarterly.

C. A generator who is registered with the department shall report the quantity, type, and status of all hazardous waste(s) shipped off-site during the reporting period on the Generator's Hazardous Waste Summary Report regardless of the destination of the shipment(s).

D. The Generator's Hazardous Waste Summary Report shall be signed and certified by an authorized representative as defined in 40 CFR 260.10 incorporated by reference in 10 CSR 25-3. The certification statement shall read as follows: "CERTIFICATION: I certify under penalty of law that I personally examined and am familiar with the information submitted on this form and all attached documents and, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment." The handwritten signature of the authorized representatives shall follow this certification.

E. The generator shall submit the completed Generator's Hazardous Waste Summary Report within forty-five (45) days after the end of each reporting period. The reporting periods and submittal dates are as follows: January 1 through March 31, with a submittal date of May 14 of the same year; April 1 through June 30, with a submittal date of August 14 of the same year; July 1 through September 30, with a submittal date of November 14 of the same year; and October 1 through December 31, with a submittal date of February 14 of the following year.

F. A generator shall submit the information required in 40 CFR 261.4(e)(2)(v)(C) incorporated by reference in 10 CSR 25-4.261(1) to the department along with the completed Generator's Hazardous Waste Summary Report.

G. Generators failing to file the reports required by this rule shall have their registration administratively inactivated. Their registration shall be reactivated after all required reporting is filed, applicable fees are paid, and an updated generator registration form is submitted to the department.

2. Exception reporting. 40 CFR 262.42 is not incorporated in this rule. In lieu of those requirements, a generator shall comply with the following requirements:

A. A generator shall contract with the designated facility to return the completed manifest to the generator within thirty-five (35) days after the date the waste was accepted by the initial transporter. A generator, in addition to the requirements of this subsection, shall comply with manifest reporting requirements in paragraph (2)(B)6. of this rule;

B. A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within thirty-five (35) days of the date the waste was accepted by the initial transporter shall contact the transporter, the owner, or both, or operator of the designated facility, to determine the status of the hazardous waste;

C. A generator who has not received the completed manifest with the handwritten signature of the designated facility operator within thirty-five (35) days from the date the waste was accepted by the initial transporter shall submit a completed exception report to the department within forty-five (45) days from the date the waste was accepted by the initial transporter; and

D. The exception report may be completed on the exception report form provided by the department or in a format which shall include the following: the generator's EPA identification number (if applicable), the Missouri generator identification number and the generator's name, address, and telephone number; the name, address, phone number, EPA identification number (if applicable), and Missouri transporter license number for each transporter; the EPA identification number of the facility (if applicable), the Missouri facility identification number, the facility telephone number, and the designated facility's name and address; the Missouri and EPA hazardous waste manifest document numbers followed by the date of shipment; the waste description and EPA waste code identification number as listed in 10 CSR 25-4 for each hazardous waste appearing on the manifest; the total quantity of each hazardous waste and the appropriate abbreviation for units of measure as follows: G—gallons (liquids only); P—pounds; T—tons (2,000 lbs.); Y—cubic yards; L—liters (liquids only); K—kilograms; M—metric tons (1,000 kg); N—cubic meters; the following certification statement, signed and dated by an authorized representative of the generator: "I have personally examined and am familiar with the information submitted on this form. I hereby certify that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information which include fine and imprisonment"; a legible copy of the manifest document originated by the generator and signed by the initial transporter which was retained by the generator and for which the generator does not have confirmation of delivery; and a cover letter signed by the generator or his/her authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts. The director may require a generator to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 10 CSR 25-4.261 as the director deems necessary under section 260.375(7), RSMo.

3. Reporting requirements for small quantity generators. 40 CFR 262.44 is not incorporated in this rule.

(E) Exports of Hazardous Waste. This subsection modifies the incorporation of 40 CFR part 262 subpart E. The state cannot assume authority from the EPA to receive notifications of intent to export or to transmit this information to other countries through the Department of State or to transmit acknowledgements of consent to the exporter. In addition, the annual reports and exception reports required in 40 CFR 262.55 and 262.56, incorporated in this rule, shall be filed with the EPA administrator and copies shall be provided to the department. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 262.51, 262.52, 262.53, 262.54, 262.55, 262.56, and 262.57, as incorporated in this rule. This modification does not relieve the regulated person of his/her responsibility to comply with the Resource Conservation and Recovery Act (RCRA) or other pertinent export control laws and regulations issued by other agencies (for example, the federal Department of Transportation and the Bureau of the Census of the Department of Commerce).

(F) Imports of Hazardous Waste. The United States importer shall also comply with the following requirements:

1. In addition to registration requirements specified in this section, the United States importer shall register as generator in accordance with this section and shall be responsible for compliance with all applicable requirements specified in this section. The United States importer shall register with the department as a generator, and four (4) weeks in advance of the date the waste is expected to enter the United States, shall specifically identify hazardous waste(s) intended to be imported by their EPA waste number(s) found in 40 CFR 261 and this section; and

2. The United States importer shall keep and maintain the following information on each shipment which is imported and make available upon departmental request:

A. If the waste is a mixed bulk shipment of multi-generator wastes, the individual original foreign generator's names and addresses and the wastes' technical chemical names from each source;

B. Quantity of waste from each imported source; and

C. List of EPA waste numbers found in 40 CFR 261 and this section which are applicable to the waste(s) from each source.

(G) Farmers. (*Reserved*)

(H) 40 CFR 262, subpart H, Transfrontier shipments of hazardous waste for recovery within the OECD, is not incorporated in this rule.

(I) Emergency Procedures. In the event of a spill of hazardous waste at the generator's site, where there is clear and imminent danger to humans or the environment, the generator shall take reasonable action to eliminate the danger. In the event of a spill of a reportable quantity of material under 40 CFR 302.4 and 302.5 (Note: this includes table 302.4), a generator shall notify the department in accordance with the notification procedure set forth in 10 CSR 24-3.010.

(J) Generator Fee and Taxes. A generator who is required to register under this rule, unless otherwise exempted, shall pay fees and taxes in accordance with 10 CSR 25-12.010. Generators failing to pay the fees, taxes, or applicable late fees outlined in 10 CSR 25-12.010 by the due date shall have their registration administratively inactivated. Their registration shall be reactivated after all applicable fees, taxes, and late fees are paid and an updated generator registration form is submitted to the department.

AUTHORITY: sections 260.370 and 260.380, RSMo Supp. 2010

**Title 10--DEPARTMENT OF NATURAL RESOURCES
Division 25--Hazardous Waste Management Commission
Chapter 6--Rules Applicable to Transporters of Hazardous Waste**

10 CSR 25-6.263 Standards for Transporters of Hazardous Waste

PURPOSE: This rule sets forth standards for transporters of hazardous waste, incorporates 40 CFR part 263 and certain regulations in 49 CFR by reference, and sets forth additional state standards.

(1) The regulations set forth in 40 CFR part 263, July 1, 2010; 49 CFR parts 171–180, November 1, 1990, and December 1, 1997; and 49 CFR parts 40, 383, 387, 390–397, October 1, 1990, and October 1, 1997, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference, except for 49 CFR 390.3(f)(2), which is not incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule except that the modifications do not apply to the 49 CFR parts incorporated in this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) A hazardous waste transporter shall comply with the requirements of this section in addition to those set forth in section (1). Any reference to a 40 CFR cite in this section shall mean as that provision is incorporated in 10 CSR 25. Where contradictory or conflicting requirements exist in 10 CSR 25, the more stringent shall control. (Comment: This section has been organized in order within the corresponding subsection of this section. For example, the additional requirements being added to 40 CFR part 263 subpart A are found in subsection (2)(A).)

(A) In addition to the requirements in 40 CFR part 263 subpart A, the following shall apply:

1. In 40 CFR 263.10(a) and (c)(1), incorporated in this rule, substitute “the state of Missouri” for “United States”;

2. In the last paragraph of the note following 40 CFR 263.10(a), change “49 CFR parts 171 through 179” to “49 CFR parts 171 through 180 and parts 383, 387, and 390–397” and add the following to the note: “The parts of 49 CFR are incorporated to the extent that these regulations do not conflict with the laws and regulations of the state of Missouri, or, in the event the regulations conflict, the more stringent shall control. The equipment used in the transportation of hazardous waste shall meet the standards of the Missouri Department of Economic Development’s Division of Motor Carrier and Railroad Safety, the United States Department of Transportation, or any combination of them, the Federal Railroad Administration, as applicable for the types of hazardous materials for which it will be used. The equipment to be used in the transportation of hazardous waste shall be compatible with that waste and shall be adequate to protect the health of humans and prevent damage to the environment”;

3. License requirements for power unit transporters of hazardous waste, used oil, or infectious waste. Transporters required by 10 CSR 25-6.263, 10 CSR 25-11.279(2)(E)1., or 10 CSR 80-7.010(4) to be licensed by the department shall comply with the following requirements:

A. Power unit transporters shall submit to the department an application for a license on a form furnished by the department. The form shall be completed with the following information:

(I) The applicant’s name, address, location of the principal office, or place of business, and the legal owner of the applicant company;

(II) A description of the service proposed to be rendered;

(III) The applicant’s Environmental Protection Agency (EPA) identification number;

(IV) The number of power units to be used;

(V) A certification that the applicant’s equipment and operating procedures meet the standards of the Missouri Division of Motor Carrier and Railroad Safety, the Federal Department of Transportation (DOT), or the Federal Railroad Administration, or both;

(VI) A description of each power unit to include make, model, year, vehicle identification number (VIN), licensed vehicle weight, and state and number of the license plate. Also required is a description of the trailers (cargo box, van, tank) and maximum trailer capacities used by the transporter;

(VII) A disclosure statement for the applicant, principal corporate officers, and the holders of more than twenty percent (20%) of the applicant company. If any of these persons were involved in hazardous waste management before their association with the applicant company, the applicant shall submit this information to the department including the names of these persons and the names and locations of the companies with which they were associated; and (20%) of the applicant company. If any of these persons were involved in hazardous waste management before their association with the applicant company, the applicant shall submit this information to the department including the names of these persons and the names and locations of the companies with which they were associated; and

(VIII) For applicants who are not residents of Missouri, a written statement designating the director of the department as the authorized agent upon whom legal service may be made for all actions arising in Missouri from any operation of motor vehicles under authority of the department.

B. In addition to the completed application, an applicant shall submit each of the following:

(I) A fee as specified in 10 CSR 25-12.010;

(II) The insurance document(s) as specified in paragraph (2)(A)4. of this rule; and

(III) Statements, documents, or both, of the following, where applicable:

(a) If the applicant is a partnership, include an affidavit to this effect signed by the proprietor or include a copy of the partnership agreement. If no written partnership agreement has been entered into, include a statement summarizing the agreement between the parties which is signed by each of the partners and certified by a notary public;

(b) If the applicant is a Missouri corporation or a foreign corporation with authority to conduct business in Missouri or is a foreign corporation with facilities or employees in Missouri, a Certificate of Corporate Good Standing from the Missouri secretary of state shall be included. If the applicant is a nonresident corporation without facilities or employees in Missouri, a Certificate of Good Standing from the state or country of residence shall be included; and

(c) If the applicant is conducting its business under an assumed or fictitious name, a certified copy of the registration with the Missouri secretary of state of the assumed or fictitious name shall be included.

C. License renewal.

(I) A hazardous waste transporter wishing to renew his/her license shall submit a license renewal application on a form furnished by the department and shall submit other applicable information, as specified in this section, to the department at least sixty (60) days prior to the expiration date of his/her current license. A Certificate of Corporate Good Standing must be submitted with the renewal. This certificate must have been issued in the twelve (12) months preceding the license expiration date. Insurance requirements must be satisfied as specified in paragraph (2)(A)4. of this rule except for other than power unit carriers. The renewal application shall be accompanied by a fee as specified in 10 CSR 25-12.

D. Power unit additions, replacements, and temporary permits. Changes made to the power unit listings as shown on the current license application or renewal form shall be reported to the department as follows: A power unit can be added by submitting a written description of the power unit to be added and paying a fee in accordance with 10 CSR 25-12.010. A power unit can be replaced for another without any charge by submitting a description of the original power unit and its replacement. A power unit can be issued a temporary permit for a thirty (30)-day period by submitting a written description of the power unit and paying a fee in accordance with 10 CSR 25-12.010.

E. Proof of license. A transporter shall carry proof of license with each power unit transporting hazardous waste within Missouri. A legible copy of this certificate shall be in the possession of the driver of the power unit and shall be shown to representatives of the department, officers of the Missouri State Highway Patrol, and other law enforcement officials upon demand;

4. Insurance.

A. Transporters licensed in accordance with this chapter shall at all times have on file with the department a certification of public liability (bodily injury and property damage) insurance which shall include the required, uniform endorsements covering each motor vehicle in accordance with 49 CFR part 387 incorporated by reference in this rule. The minimum level of insurance coverage shall not be less than one (1) million dollars combined single limit. (Comment: The federal regulations at 49 CFR 387.9 set forth certain conditions which require five (5) million dollars coverage.)

B. The certificate of insurance shall state that the insurer has issued to the motor carrier a policy of insurance which, by endorsement, provides automobile bodily injury and property damage liability insurance covering the obligations imposed upon the motor carrier by the provisions of the law of Missouri. The certificate shall be duly completed and executed by the insurer on Form E—Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance. The endorsements shall be attached to the insurance policy and shall form a part of that policy. The endorsements shall be made on Form F—Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsements. The certificate shall be duly completed and executed by the insurer. The surety bond shall be in the form set forth in Form G—Uniform Motor Carrier Bodily Injury and Property Damage Surety Bond. The bond shall be duly completed and executed by the surety and principal.

C. An insurer under the provisions of this rule shall submit to the department not fewer than thirty (30) days' notice of cancellation of motor carrier bodily injury and property damage liability insurance by filing with the department the form of notice set forth in Form K—Uniform Notice of Cancellation of Motor Carrier Insurance Policies. The notice shall be duly completed and executed by the insurer. A surety under the provisions of this rule shall give the department not fewer than thirty (30) days' notice of the cancellation of motor carrier bodily injury and property damage liability surety bond by filing with the department the form of notice set forth in Form L—Uniform Notice of Cancellation of Motor Carrier Surety Bond. The notice shall be duly completed and executed by the surety or motor carrier.

D. Forms E, F, G, K and L referred to in subparagraphs (2)(A)4.B. and C. of this rule are the standard forms determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act, 49 U.S.C. section 302(b)(2), 1994.

E. Before any policy of insurance will be accepted by the department, the insurance company issuing the policy or the carrier offering the same, upon request of the department, shall furnish evidence satisfactory to the department that the insurance company issuing the policy is duly authorized to transact business in Missouri and that it is financially able to meet the obligations of the policy offered.

F. All insurance certificates and surety bonds filed with the department shall remain on file with the department and shall not be removed except with the written permission of the director.

G. A new certificate of insurance shall be filed for reinstatement of insurance which has been canceled;

5. Vehicle marking. The transportation vehicle used to ship hazardous waste shall be marked in accordance with 49 CFR 390.21(b) and (c);

6. No hazardous waste shall be accepted for transport unless it has been properly loaded and secured in accordance with 49 CFR 177.834;

7. Incompatible wastes. A waste shall not be added to an unwashed or uncleaned container that previously held an incompatible material;

8. In addition to the requirements in 40 CFR 263.10(c)(1), add the following requirements: A transporter who accepts shipments of hazardous waste from a person not required to register as a generator in accordance with 10 CSR 25-5.262, and in so doing accumulates one hundred kilograms (100 kg) or more of hazardous waste, becomes a generator and shall comply with 10 CSR 25-5.262 in addition to the requirements of this rule. (Note: This provision is not intended to apply to municipal waste haulers who may unknowingly pick up small quantities of hazardous waste that may have been deposited in solid waste containers along their routes.);

9. In addition to the requirements in 40 CFR 263.11, add the following: "In the event that an EPA identification number has not been assigned, the department will assign an EPA identification number." The applicant shall also submit an application for license in accordance with this rule at the time of notification; and

10. In addition to the requirements in 40 CFR 263.12, the following rules apply to transfer facilities (Note: Used oil transfer facilities are regulated under 10 CSR 25-11.279.):

A. A hazardous waste transported intrastate or into the state by motor carrier shall arrive at its destination in ten (10) calendar days or less from the date the initial transporter signs the manifest, or when the waste first enters the state, unless departmental approval is obtained prior to the expiration of the ten (10)-day period;

B. A hazardous waste destined for out-of-state treatment, storage, or disposal shall leave the state in ten (10) calendar days or less from the date the initial transporter signs the manifest unless departmental approval is obtained prior to the expiration of the ten (10)-day period;

C. A hazardous waste transported through the state by motor carrier shall pass through the state in ten (10) calendar days or less unless departmental approval is obtained prior to the expiration of the ten (10)-day period;

D. A secondary containment system for storage of hazardous waste in containers at a transfer facility shall meet the following requirements:

(I) A containment system shall be designed, maintained, and operated as follows:

(a) The containment system shall include a base which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed. The base shall be under the container;

(b) The base shall be sloped or the containment system shall be designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(c) The containment system shall have a capacity equal to ten percent (10%) of the containerized waste volume or the volume of the largest container, whichever is greater (Containers that do not contain free liquids need not be considered in this calculation.);

(d) Run-on into the containment system shall be prevented unless the collection system has sufficient excess capacity in addition to that required in part (2)(A)10.D.(I) of this rule to contain any run-on which might enter the system; and

(e) Spilled or leaked waste and accumulated precipitation shall be removed from the sump or collection area as necessary to prevent overflow of the collection system; and

(II) The containment system shall be inspected as part of the weekly inspections required by 40 CFR 265.174 incorporated by reference in 10 CSR 25-7.265(1);

E. The following requirements apply to the management of ignitable, reactive, incompatible, or volatile wastes at a transfer facility: A transporter shall take precautions to prevent accidental ignition or reaction of ignitable or reactive wastes. These hazardous wastes shall be separated and protected from sources of ignition or reaction including, but not limited to, open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (that is, from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, a transporter shall confine smoking and open flame to specially designated locations. No Smoking signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste;

F. Preparedness and prevention. A transporter shall equip the transfer station as specified in 40 CFR 265.32 incorporated by reference in 10 CSR 25-7.265(1). In addition, a transporter shall also provide safety equipment such as fire blankets, gas masks, and self-contained breathing apparatus;

G. Closure. At closure of the storage area, a transporter shall remove and properly dispose of all hazardous waste and hazardous residues. For the purpose of this subparagraph, closure shall occur when the storage of hazardous wastes has not occurred, or is not expected to occur for one (1) year, or when the transporter's license lapses, whichever first occurs;

H. The contents of separate containers of hazardous waste may not be combined at a transfer facility. When containers are overpacked, the transporter shall affix labels to the overpack container, which are identical to the labels on the original shipping container; and

I. A transfer facility shall not be the same facility as designated in item 9 of the manifest.

(B) Compliance with the Manifest System and Record Keeping. This subsection sets forth requirements in addition to or in lieu of the requirements set forth in 40 CFR part 263 subpart B.

1. Manifests.

A. In lieu of the requirements in 40 CFR 263.20(a), the following shall apply:

(I) In addition to the requirements in 10 CSR 25-5.262, a transporter shall not accept hazardous waste from a generator unless it is accompanied by a manifest signed and dated by the generator which contains federally-required information in accordance with 10 CSR 25-5.262, except that the transporter may accept shipments of hazardous waste without a manifest from persons not required to register as provided in 10 CSR 25-5.262(2)(A) provided that the waste is transported only to a facility which is permitted or certified to accept the waste. The transporter shall maintain records on wastes accepted from those generators which contain information including the type or identity of each waste, the source of each waste, and disposition of each waste. (Note: This paragraph is not intended to apply to municipal waste haulers who may unknowingly pick up small quantities of hazardous waste that may have been deposited in solid waste containers along their routes.)

(II) Hazardous waste shall be transferred between licensed transporters only; and

(III) For exports, the transporter shall also comply with the following requirements: A transporter may not accept hazardous waste from a primary exporter or other person—1) if s/he knows the shipment does not conform to the EPA Acknowledgement of Consent, and 2) unless, in addition to a manifest signed in accordance with 10 CSR 25-5, the waste is also accompanied by an EPA Acknowledgement of Consent which, except for shipment by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)). The shipping paper for exports by water (bulk shipment) shall contain all the information required on the manifest and, for exports, an EPA Acknowledgement of Consent shall accompany the hazardous waste. Rail transporters shall ensure that a shipping paper contains all the information required on the manifest and, for exports, an EPA Acknowledgement of Consent accompanies the hazardous waste at all times. A transporter shall also provide a copy of the manifest to a United States Customs official at the point of departure from the United States.

B. In addition to requirements in 40 CFR 263.22, the following shall apply: Each day that a vehicle is used for the transportation of hazardous waste, the driver of that vehicle, prior to the transportation, shall inspect the vehicle to meet the requirements of 49 CFR 396.11 incorporated by reference in section (1) of this rule. The vehicle inspection shall be documented in writing. At a minimum once annually, transporters shall provide and document hazardous waste/materials training for each driver employee who transports hazardous waste. Records relating to hazardous waste transportation shall be available to representatives of the department for inspection and copying during regular business hours. Current files on driver vehicle inspections, vehicle maintenance, annual employee training, and records of incident reports shall also be maintained for a period of three (3) years by the licensed transporter regardless of whether the vehicle(s) is owned or leased. The period of record retention for these records also extends automatically during the course of any unresolved enforcement action, and the records shall be available to authorized representatives of the department for inspection and copying during regular business hours.

2. *(Reserved)*

(C) Immediate Action. In addition to the requirements in 40 CFR part 263 subpart C, the following shall apply:

1. In addition to requirements in 40 CFR 263.30(c)(1), the transporter shall also notify the department at the earliest practical moment by calling the department's emergency number, (573) 634-2436 (634-CHEM); and

2. In addition to requirements in 40 CFR 263.30(c)(2), the transporter shall also submit a copy of that report to the department.

(D) Operations of Transporters by Modes Other Than Power Unit.

1. A person who transports hazardous waste by a mode other than power unit shall comply with paragraphs (2)(A)1. and 2., parts (2)(A)3.A.(V), (2)(A)3.B.(I) and

(III), subparagraph (2)(A)3.C., paragraphs (2)(A)7., 8., 9., and 10., and subsections (2)(B) and (C) of this rule.

2. Application form. An applicant shall submit a completed, department-furnished form which shall contain the following information: name, address, type of transport vehicles to be used in hazardous waste transport, and EPA identification number. If an EPA identification number has not been assigned by the EPA, the department will assign an identification number as provided to the department by the EPA.

3. An applicant shall complete and submit a Non-Motor Carrier Certification of Financial Responsibility form provided by the department to satisfy the transporter insurance requirement.

(E) Transportation of Universal Waste.

1. The requirements of this chapter are not applicable to those transporting only universal waste as defined in 10 CSR 25-16.273.

2. Universal waste transporters shall comply with the universal waste transporter standards at 10 CSR 25-16.273(2)(D).

AUTHORITY: section 260.370, RSMo Supp. 2010, and sections 260.385 and 260.395, RSMo 2000.

Title 10--DEPARTMENT OF NATURAL RESOURCES
Division 25--Hazardous Waste Management Commission
Chapter 7--Rules Applicable to Owners/Operators of Hazardous Waste Facilities

10 CSR 25-7.264 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

PURPOSE: This rule incorporates and modifies the federal regulations in 40 CFR part 264 by reference and sets forth additional state requirements.

(1) The regulations set forth in 40 CFR part 264, July 1, 2010, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modification set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control. "Owner/operator," as defined in 10 CSR 25-3.260(2)(O)3., shall be substituted for any reference to "owner and operator" or "owner or operator" in 40 CFR part 264 incorporated in this rule.

(2) The owner/operator of a permitted hazardous waste treatment, storage, or disposal facility shall comply with this section in addition to the regulations of 40 CFR part 264. In the case of contradictory or conflicting requirements, the more stringent shall control. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the requirements to be added to 40 CFR part 264 subpart E are found in subsection (2)(E) of this rule.)

(A) General. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 264 subpart A.

1. A treatment permit is not required under this rule for a resource recovery process that has been certified by the department in accordance with 10 CSR 25-9.020. Storage of hazardous waste prior to resource recovery must be in compliance with this rule.

2. A permit is not required under this rule for an elementary neutralization unit or a wastewater treatment unit receiving only hazardous waste that is generated on-site or generated by its operator or only one (1) generator if the owner/operator, upon request, can demonstrate to the satisfaction of the department compliance with the requirements in 10 CSR 25-7.270(2)(A)3.

3. Hazardous waste which must be managed in a permitted unit (for example, waste generated on-site and stored beyond the time frames allowed without a permit pursuant to 10 CSR 25-5.262, waste received from off-site, certain hazardous waste fuels, etc.) shall not be stored or managed outside an area or unit which does not have a permit or interim status for that waste for a period which exceeds twenty-four (24) hours. This provision shall not apply to railcars held for the period allowed by, and managed in accordance with, 10 CSR 25-7.264(3) of this regulation. (Comment: The purpose of this paragraph is to allow necessary movement of hazardous waste into, out of, and through facilities, and not to evade permit requirements.)

(B) General Facility Standards. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 264 subpart B.

1. The substitution of terms at 10 CSR 25-3.260(1)(A)1. does not apply to 40 CFR 264.12(a), incorporated by reference in this rule. In addition to the requirements in 40 CFR 264.12(a) incorporated in this rule, an owner/operator shall submit to the department a separate analysis for each hazardous waste that s/he intends to import. Each analysis shall contain the following information: the foreign generator's name, site address, and telephone number; a list of applicable United States Environmental Protection Agency (EPA) waste codes and a percentage of each for each hazardous waste; the flash point determined in accordance with 40 CFR 261.21 incorporated by reference in 10 CSR 25-4; a list of reactive waste(s) as defined in 40 CFR 261.23 incorporated by reference in 10 CSR 25-4; and results of toxicity tests conducted in accordance with 40 CFR 261.24 incorporated by reference in 10 CSR 25-4.261, if applicable.

2. Information describing the frequency and type of analysis performed on run off and leachate generated at the hazardous waste management units shall be included as part of the waste analysis plan required in 40 CFR 264.13(b) incorporated in this rule.

3. 40 CFR 264.15(b)(5) is not incorporated in this rule.

4. The comment following 40 CFR 264.18(a) is not incorporated in this rule.

(C) Preparedness and Prevention. (*Reserved*)

(D) Contingency Plan and Emergency Procedures. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 264 subpart D.

1. The government official described in 40 CFR 264.56(d)(2) incorporated in this rule as the on-scene coordinator shall be contacted and further identified in the report as one (1) of the following:

A. The department's Emergency Response Coordinator (573) 634-2436 or (573) 634-CHEM;

B. The EPA Region VII Emergency Planning and Response Branch (913) 236-3778; or

C. The National Response Center identified in 40 CFR 264.56(d)(2), incorporated in this rule.

(E) Manifest System, Record Keeping, and Reporting. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 264 subpart E.

1. Missouri requires an original copy of the manifest to be submitted to the department by all in-state and out-of-state Treatment, Storage, or Disposal Facilities (TSDFs) in accordance with 40 CFR 264.71(e).

2. As it becomes available, the following additional information shall be maintained in the operating record described in 40 CFR 264.73 incorporated in this rule until final closure, at which time the operating record shall be submitted to the department:

A. The information from each manifest shall be maintained in the operating record;

B. In addition to the requirements in 40 CFR 264.73(b)(2) incorporated in this rule, an owner/operator of a hazardous waste disposal facility shall record the location and quantity of each hazardous waste shipment on a map or diagram of each cell or disposal area with respect to a surveyed permanent benchmark and baseline;

C. In addition to the requirements in 40 CFR 264.73(b)(2) incorporated in this rule, an owner/operator of a facility which has had a release or which has hazardous waste or hazardous waste constituent migration beyond the hazardous waste management unit shall record the locations and concentrations of contamination on a map or diagram with respect to a surveyed permanent benchmark and baseline;

D. If applicable, information regarding volumes, dates of removal, and disposition of leachate removed from collection points shall be maintained in the operating record; and

E. A complete copy of the final, approved permit application, including all approved engineering plans, shall be maintained in the operating record.

3. The owner/operator of a hazardous waste management facility shall submit a report to the department as set forth in this paragraph.

A. All owners/operators shall comply with the reporting requirements in 10 CSR 25-5.262(2)(D) regardless of whether the owner/operator is required to register as a generator pursuant to 10 CSR 25-5.262(2)(A)1.

B. In addition to the requirements in 10 CSR 25-5.262(2)(D) for hazardous waste generated on-site and shipped off-site for treatment, storage, resource recovery, or disposal, the owner/operator shall meet the same requirements for the following:

(I) All hazardous waste generated on-site during the reporting period that is managed on-site; and

(II) All hazardous waste received from off-site during the reporting period, including hazardous waste generated by another generator and hazardous waste generated at other sites under the control of the owner/operator.

C. In addition to the information required in 10 CSR 25-5.262(2)(D), an owner/operator shall include the following information in the summary report:

(I) A description and the quantity of each hazardous waste that was both generated and managed on-site during the reporting period;

(II) For each hazardous waste that was received from off-site, a description and the quantity of each hazardous waste, the corresponding state, and EPA identification numbers of each generator;

(III) For imports, the name and address of the foreign generator;

(IV) The corresponding method of treatment, storage, resource recovery, disposal, or other approved management method used for each hazardous waste;

(V) The quantity and description of hazardous waste residue generated by the facility; and

(VI) A summary of both quantitative and qualitative groundwater monitoring data that was received during the reporting period, as required in 40 CFR part 264 subpart F incorporated in this rule and subsection (2)(F) of this rule. (Comment: This does not change the frequency of monitoring required by rules or in specific permit conditions. It only changes the frequency of reporting.)

4. As outlined in section 260.380.2, RSMo, all owners/operators shall pay a fee to the department of two dollars (\$2) per ton or portion thereof for any and all hazardous waste received from outside of Missouri. This fee shall be referred to as the Out-of-State Waste Fee and shall not be paid on hazardous waste received directly from other permitted treatment, storage, and disposal facilities located in Missouri.

A. For each owner/operator, this fee shall be paid on or before January 1 of each year and shall be based on the total tons of hazardous waste received in the aggregate by that owner/operator for the twelve (12)-month period ending the previous June 30. As outlined in section 260.380.4, RSMo, failure to pay this fee in full by the due date shall result in imposition of a late fee equal to fifteen percent (15%) of the total original fee. Each twelve (12)-month period ending on June 30 shall be referred to as a reporting year.

B. Owners/operators may elect, but are not required, to pay this fee on a quarterly basis at the time they file the reporting required in subparagraphs (2)(E)3.B. and C. of this rule. If they do not choose to pay the fee quarterly, owners/operators may elect, but are not required, to pay the fee at the time they file their final quarterly report of each reporting year. However, the total fee for each reporting year must be paid on or before January 1 immediately following the end of each reporting year.

EXAMPLES OF OUT-OF-STATE WASTE FEE CALCULATION

Example 1. ABC Company reports receiving 250 tons of hazardous waste from outside of Missouri:

$$\$2 \times 250 \text{ tons} = \$500 \text{ fee}$$

Example 2. ABC Company reports receiving 410.6 tons of hazardous waste from outside of Missouri.

The number of tons would be rounded to 411:

$$\$2 \times 411 \text{ tons} = \$822 \text{ fee}$$

Example 3. ABC Company reports receiving 52,149.3 tons of hazardous waste from outside of Missouri.

The number of tons would be rounded to 52,150:

$$\$2 \times 52,150 \text{ tons} = \$104,300 \text{ fee}$$

EXAMPLES OF OUT-OF-STATE WASTE FEE CALCULATION

Example 1. ABC Company reports receiving 250 tons of hazardous waste from outside of Missouri:

$$\$2 \times 250 \text{ tons} = \$500 \text{ fee}$$

Example 2. ABC Company reports receiving 410.6 tons of hazardous waste from outside of Missouri.

The number of tons would be rounded to 411:

$$\$2 \times 411 \text{ tons} = \$822 \text{ fee}$$

Example 3. ABC Company reports receiving 52,149.3 tons of hazardous waste from outside of Missouri.

The number of tons would be rounded to 52,150:

$$\$2 \times 52,150 \text{ tons} = \$104,300 \text{ fee}$$

(F) Releases From Solid Waste Management Units. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 264 subpart F.

1. If the department determines that there is a significant risk to human health or the environment resulting from ground or surface water contamination from operation of any hazardous waste management facility or solid waste management unit, the department may condition the permit for a facility or unit; or upon issuance or reissuance or by modification of a permit, the department may require that an owner/operator of the facility comply with the requirements of this section. An owner/operator shall furnish to the department, within a reasonable time period, any information which the department requests to comply with this subsection.

2. In addition to requirements in 40 CFR 264.91(a)(3) and 40 CFR 264.100(e)(2) incorporated in this rule, the owner/operator shall document in the operating record all efforts taken to monitor groundwater or take corrective action beyond the facility boundary.

3. The facility permit will include, as described in 40 CFR 264.100(b) incorporated in this rule, a course of action to implement remedial procedures. The corrective action program may include, if necessary, closure of the appropriate units to prevent further leachate generation and transport.

4. This paragraph sets forth requirements for surface water monitoring.

A. The owner/operator is exempt from regulations under this paragraph if—

(I) S/he is exempted under this subsection and 40 CFR part 264 subpart F, incorporated in this rule; or

(II) The department finds based upon a demonstration by the owner/operator, that there is low potential for migration of liquid from the facility or unit to surface water bodies throughout the post-closure care period. This demonstration shall be certified by a registered geologist or professional engineer registered in Missouri; or

(III) The surface water runoff from the regulated unit(s) is being monitored in accordance with the facility's National Pollutant Discharges Elimination System (NPDES) or state operating stormwater discharge permit and the NPDES or state operating permit is substantially equivalent to that which would otherwise be required under this section.

B. An owner/operator shall establish a surface water monitoring program, except as provided otherwise in subparagraph (2)(F)4.A. of this rule. This program shall be designed to protect human health and the environment. The owner/operator, at a minimum, shall fulfill the following requirements:

(I) The surface water monitoring system shall consist of a sufficient number of points at appropriate locations to yield surface water samples that—

(a) Represent the quality of background surface water that has not been affected by any contamination from the facility (for example, upgradient); and

(b) Represent the quality of surface water hydrologically downgradient of the facility or regulated units;

(II) The surface water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results which provide a reliable indication of surface water quality at the facility and changes in the water quality due to the impact of the facility or regulated units;

(III) The owner/operator shall report to the department the surface water analysis by including it in the routine reports required by part (2)(E)3.C.(VI) of this rule; and

(IV) If the department determines, based upon the findings in the reports submitted under part III of this subparagraph, that there is a substantial threat to human health or the environment, it will direct the owner/operator, through modification of the facility permit, to take corrective and preventative measures.

5. The department may require additional monitoring to protect human health and the environment.

(G) Closure and Post-Closure. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 264 subpart G.

1. The incorporation by reference of 40 CFR 264.113(d) and (e) does not relieve the owner/operator of his/her responsibility to comply with 10 CSR 80.

2. The owner/operator of a hazardous waste unit which is certifying closure with residues left in place, regardless of the level of treatment to render the residue nonhazardous, shall meet the requirements in 40 CFR 264.116 incorporated in this rule.

3. In addition to requirements in 40 CFR 264.116, when an owner/operator certifies a closure which did not result in the removal of wastes to background levels, the owner/operator shall record, in accordance with state law, a notation on an instrument which is normally examined during title search that in perpetuity will notify any potential purchaser of the property that the land has been used to manage hazardous waste.

4. In addition to requirements in 40 CFR 264.116 and 264.119 as incorporated in this rule, an owner/operator shall submit a notarized statement to the department certifying that the owner/operator has caused the notation(s) to be recorded. The notation shall be recorded with the recorder(s) of deeds in all counties in which the facility is located.

(H) Financial Assurance Requirements. This subsection sets forth the requirements which modify or add to those requirements in 40 CFR part 264 subpart H.

1. For purposes of this subsection, commercial treatment, storage, or disposal (TSD) facility means any facility that would be considered a commercial hazardous waste TSD facility for the purposes of 10 CSR 25-12.020, or any facility that is certified as an R2 resource recovery facility according to 10 CSR 25-9.020, or any facility that receives for remuneration polychlorinated biphenyls (PCB) material or PCB units as defined by 10 CSR 25-13.010.

2. In 40 CFR 264.143(a)(3), incorporated by reference in this rule, delete "the term of the initial RCRA permit" and insert in its place "a period of five (5) years, beginning with the date the permit is issued."

3. In 40 CFR 264.145(a)(3), incorporated by reference in this rule, delete “the term of the initial RCRA permit” and insert in its place “a period of five (5) years, beginning with the date the permit is issued.”

4. This paragraph modifies the requirements for surety bonds guaranteeing payment into a closure trust fund or post-closure trust fund per 40 CFR 264.143(b) or 40 CFR 264.145(b), incorporated in this rule.

A. Any surety company issuing a surety bond guaranteeing payment into a closure trust fund or post-closure trust fund shall be authorized to do business in Missouri.

B. Any surety company issuing a surety bond guaranteeing payment into a closure trust fund or post-closure trust fund shall not cancel, terminate, or fail to renew a surety bond guaranteeing payment into a closure or post-closure trust fund, and the surety bond shall remain in full force and effect in the event that on or before the date of cancellation:

(I) The director deems the facility abandoned; or

(II) The permit is terminated or revoked, or a new permit is denied; or

(III) Closure is ordered by the department or a court of competent jurisdiction; or

(IV) The owner/operator is named as a debtor in a voluntary or involuntary proceeding under 11 U.S.C. section 1, et seq.; or

(V) The premium due is paid; or

(VI) An appeal of an order to close the facility as specified in part (4)(H)4.B.(III) of this subparagraph is pending.

C. Facilities that have a surety bond or bond(s) guaranteeing payment into a closure trust fund or a post-closure trust fund as of the effective date of this subparagraph shall modify their surety instruments to comply with this paragraph within twelve (12) months of the effective date of this subparagraph.

5. This paragraph modifies the requirements for surety bonds guaranteeing performance of closure or performance of post-closure care per 40 CFR 264.143(c) or 40 CFR 264.145(c), incorporated in this rule.

A. A surety company issuing a surety bond for closure or post-closure performance shall be authorized to do business in Missouri.

B. Any surety company issuing a surety bond for closure or post-closure performance shall not cancel, terminate, or fail to renew a surety bond guaranteeing performance of closure or post-closure care and the surety bond shall remain in full force and effect in the event that on or before the date of cancellation:

(I) The director deems the facility abandoned; or

(II) The permit is terminated or revoked, or a new permit is denied; or

(III) Closure is ordered by the department or a court of competent jurisdiction; or

(IV) The owner/operator is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), *United States Code*; or

(V) The premium due is paid; or

(VI) An appeal of an order to close the facility as specified in part (4)(H)5.B.(III) of this subparagraph is pending.

C. Facilities that have a surety bond or bonds guaranteeing performance of closure or performance of post-closure care as of the effective date of this subparagraph shall modify their surety instruments to comply with this paragraph within twelve (12) months of the effective date of this subparagraph.

6. This paragraph modifies the requirements for letters of credit per 40 CFR 264.143(d), 40 CFR 264.145(d), and 40 CFR 264.147(h), incorporated in this rule. Letters of credit shall be issued by a state- or federally-chartered and regulated bank or trust association.

7. An owner/operator of a facility that is a commercial TSD facility may not satisfy financial assurance requirements for closure, post-closure, or liability coverage, or any combination of these, by the use of a financial test as specified in 40 CFR 264.143(f), 40 CFR 264.145(f), or 264.147(f), incorporated in this rule.

8. This paragraph modifies the requirements for closure insurance per 40 CFR 264.143(e), incorporated in this rule, post-closure insurance per 40 CFR 264.145(e), incorporated in this rule, liability coverage for sudden accidental occurrences per 40 CFR 264.147(a)(1), incorporated in this rule, and liability coverage for non-sudden accidental occurrences per 40 CFR 264.147(b)(1), incorporated in this rule. Each insurance policy shall be issued by an insurer who, at a minimum, is licensed to transact the business of insurance or is eligible to provide insurance as an excess or surplus lines insurer in Missouri.

9. In 40 CFR 264.143(f), incorporated in this rule, delete “or a firm with a ‘substantial business relationship’ with the owner or operator.”

10. In 40 CFR 264.145(f), incorporated in this rule, delete “or a firm with ‘a substantial business relationship’ with the owner or operator.”

11. In 40 CFR 264.147(g), incorporated in this rule, delete “or a firm with a ‘substantial business relationship’ with the owner or operator.”

(I) Containers. This subsection sets forth requirements in addition to 40 CFR part 264 subpart I incorporated in this rule.

1. An owner/operator of a facility which treats hazardous waste in containers shall meet the requirements of 40 CFR 264.601–264.603 incorporated in this rule and subsection (2)(X) of this rule.

2. Containers storing hazardous waste must be marked and labeled in accordance with 10 CSR 25-5.262(2)(C) during the entire storage period.

3. Container storage areas which close without removing all hazardous waste and/or hazardous waste constituents to below background levels may pursue either a risk-based closure if there is no evidence of groundwater or surface water contamination or, in the absence of such evidence, close in accordance with 10 CSR 25-7.264(2)(N) and 40 CFR part 264 subpart N as incorporated in subsection (2)(N). The owner/operator shall also comply with the requirements of 10 CSR 25-7.264(2)(G).

4. Containers holding ignitable or reactive waste that are stored outdoors or in buildings not equipped with sprinkler systems shall be located at least fifty feet (50') from the facility's property line.

5. Containers holding ignitable or reactive waste that are stored indoors shall be located at least fifty feet (50') from the facility's property line unless the following requirements are satisfied:

A. Exposing walls that are located more than ten feet (10') but less than fifty feet (50') from a boundary line of adjoining property that can be built upon shall have a fire-resistance rating of at least two (2) hours, with each opening protected by an automatically-closing listed one and one-half (1.5) hour (B) fire door;

B. Exposing walls that are located less than ten feet (10') from a boundary line of adjoining property, that can be built upon, shall have a fire-resistance rating of at least four (4) hours, with each opening protected by an automatically-closing listed three (3)-hour (A) fire door (Comment: All fire doors, closure devices, and windows shall be installed in accordance with the National Fire Protection Agency (NFPA) Code 80, *Standards for Fire Doors and Windows*, 1995 edition);

C. The construction design of exterior walls shall provide ready accessibility for fire-fighting operations through the provision of access openings, windows, or lightweight noncombustible wall panels;

D. Container storage areas shall be provided with automatic fire suppression systems designed and installed in accordance with the NFPA 14 (1996 edition), NFPA 15 (1996 edition), NFPA 16 (1995 edition), NFPA 16A (1994 edition), NFPA 17 (1998 edition), NFPA 17A (1998 edition), NFPA 18 (1995 edition), NFPA 20 (1996 edition), NFPA 22 (1996 edition), and NFPA 24 (1995 edition) standards. Final design of these systems shall be approved by a qualified, registered professional engineer in Missouri;

E. Each container storage area shall have preconnected hose lines capable of reaching the entire area. The fire hose shall be either a one and one-half (1.5)-inch line or a one-inch (1") hard rubber line. Where a one and one-half (1.5)-inch fire hose is used, it shall be installed in accordance with NFPA 14 (1996 edition). Hand-held fire extinguishers rated for the appropriate class of fire shall be available at each storage area;

F. Only containers meeting the requirements of, and containing products authorized by, Chapter I, Title 49 of the *Code of Federal Regulations* (DOT Regulations) or NFPA 386, *Standard for Portable Shipping Tanks* shall be used;

G. All storage of ignitable or reactive materials shall be organized in a manner which will not physically obstruct a means of egress. Materials shall not be placed in a manner that a fire would preclude egress from the area. Evacuation plans shall recognize the locations of any automatically-closing fire doors;

H. All containers shall be arranged so there is a minimum aisle space of four feet (4') between rows, allowing accessibility to each individual container. Double rows can be utilized. Containers shall not be stacked or placed closer than three feet (3') from ceilings or any roof members, or both; and

I. Explosive gas levels in the facility shall be monitored continuously. If the facility is not manned twenty-four (24) hours per day, a telemetry system shall be provided to alarm designated response personnel.

(J) Tanks. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 264 subpart J.

1. Hazardous waste that has a true vapor pressure of greater than seventy-eight millimeters of mercury (78 mm Hg) at twenty-five degrees Celsius (25 °C) is considered to be volatile and shall not be placed in an open tank.

2. 40 CFR 264.190(c) is not incorporated by reference.

3. In 40 CFR 264.193(g) incorporated in this rule, delete “or that in the event of a release that does migrate to ground water or surface water, no substantial present or potential hazard will be posed to human health or the environment.” 40 CFR 264.193(g)(2) and its subdivisions are not incorporated in this rule.

4. For purposes of 40 CFR 264.193(h) incorporated in this rule, “variance” means exception.

5. In 40 CFR 264.196(c) and 40 CFR 264.196(c)(1) incorporated in this rule, delete “visible” and “visual.” Tank storage areas which close without removing all hazardous waste and/or hazardous waste constituents to below background levels may pursue either a risk-based closure if there is no evidence of groundwater or surface water contamination or in the absence of such evidence, close in accordance with 10 CSR 25-7.264(2)(N) and 40 CFR part 264 subpart N as incorporated in subsection (2)(N). The owner/operator shall also comply with the requirements of 10 CSR 25-7.264(2)(G).

6. An owner/operator of a facility which treats hazardous waste in a tank system shall meet the requirements of 40 CFR 264.601–40 CFR 264.603 incorporated in this rule and subsection (2)(X) of this rule.

(K) Surface Impoundments. This subsection sets forth standards and requirements which modify or add to those requirements in 40 CFR part 264 subpart K.

1. Design and operating requirements are as follows:

A. Any existing surface impoundment or existing portion of a surface impoundment shall be replaced with a new surface impoundment in compliance with 40 CFR part 264 subpart K, incorporated in this rule, and this subsection prior to permit issuance;

B. Each new surface impoundment shall be constructed with a double liner as required in 40 CFR 264.221(c), incorporated in this rule, and subparagraphs (2)(K)1.C. and D. of this rule;

C. The lower component of the composite liner required by 40 CFR 264.221(c) shall, at a minimum, consist of at least three feet (3') of clay, recompact to ninety-five percent (95%) of Standard Proctor Density with the moisture content between two percent (2%) below and four percent (4%) above the optimum moisture content. The soils used for this purpose shall meet the following minimum specifications:

(I) Be classified under the United Soil Classification Systems as CL, CH, or SC (American Society for Testing and Materials (ASTM) Standard D2487-93, current edition approved September 15, 1993, published November 1993);

(II) Allow more than thirty percent (30%) passable through a No. 200 sieve (ASTM Test D1140-54 (reapproved 1971), current edition approved September 15, 1954);

(III) Have a liquid limit equal to or greater than thirty (30) (ASTM Test D4318-95a, current edition approved December 10, 1995, published April 1996);

(IV) Have a plasticity index equal to or greater than fifteen (15) (ASTM Test D4318-95a, as previously referenced in this rule); and

(V) Have a coefficient of permeability equal to or less than 1×10^{-8} cm/sec when compacted to ninety-five percent (95%) of Standard Proctor Density with the moisture content between two percent (2%) below and four percent (4%) above the optimum moisture content, and when tested by using the indirect calculation from the one (1)-dimensional consolidation test for clay rich soils (ASTM D2435-96, current edition approved June 10, 1996, published August 1996) or other procedures approved by the department;

D. The leak detection system required by 40 CFR 264.221(c)(2) shall cover the entire sides and bottom of the surface impoundment;

E. When liquids are detected in the leak detection system installed to comply with subparagraph (2)(K)1.D. of this rule and 40 CFR 264.221(c)(2), the owner/operator shall—

(I) Notify the department in writing within thirty (30) days of the event;

(II) Continue to operate and maintain the leak detection system so that the liquids are removed as they accumulate or with sufficient frequency to prevent backwater within the system; and

(III) Implement leachate monitoring in accordance with paragraph (2)(K)1.F. of this rule and the facility permit;

F. This paragraph sets forth requirements for leachate monitoring at surface impoundments. An owner/operator that is required under subparagraph (2)(K)1.E. of this rule to initiate leachate monitoring shall comply with parts (2)(K)1.F.(I)–(IV) of this rule.

(I) The owner/operator shall remove any accumulated leachate in the leak detection system collection sumps at least weekly during the active life and closure period. After the final cover is installed, accumulated leachate shall be removed at least as often as the owner/operator is required by 40 CFR 264.226(d)(2) to record the amount of liquids removed from the system.

(II) The owner/operator shall analyze the leachate at least annually. At a minimum, the annual leachate analyses shall be conducted for indicator parameters (that is pH, specific conductance, dissolved organic carbon, and total organic halogen) and selected hazardous waste constituents. The hazardous waste constituents selected must provide a reliable indication of the presence of hazardous constituents that are reasonably expected to be in or derived from wastes contained in each unit.

(III) The owner/operator shall calculate the average daily flow rate for each sump as required by 40 CFR 264.222(b). If the department determines that the leachate generation rate is greater than reasonably expected for any unit, the department may require the owner/operator to provide additional information to evaluate the existing conditions.

(IV) In accordance with subsection (2)(E) of this rule and 40 CFR part 264 subpart E incorporated in this rule, the owner/operator shall submit to the department all information required to comply with parts (2)(K)1.F.(I)–(III) of this rule.

(V) The department may require more frequent leachate collection and analysis than that outlined in parts (2)(K)1.F.(I)–(III) of this rule if determined necessary. The frequency of leachate collection and analysis will be specified in the facility permit.

(VI) Indicator parameters and constituents to be monitored as required by part (2)(K)1.F.(II) of this rule will be specified by the department in the facility permit. If the department determines that results of the chemical analyses are outside of the range that is reasonably expected for any unit, the department may require the owner/operator to provide additional information to evaluate the existing conditions;

G. The owner/operator shall measure daily precipitation at the facility until final closure is certified. During the post-closure care period of the facility, the owner/operator shall also record and report regional precipitation from the nearest weather recording station in accordance with the schedule established for the maintenance of the facility. The information required under this paragraph shall be submitted to the department in accordance with subsection (2)(E) of this rule and 40 CFR part 264 subpart E incorporated in this rule; and

H. If the leachate monitoring (implemented in accordance with subparagraph (2)(K)1.F. of this rule) detects hazardous waste(s) constituents in the leak detection system, a leak in the surface impoundment liner is indicated and the owner/operator shall—

(I) Within seven (7) days after detecting the leak, notify the department in writing of the leak;

(II) Remove, within the period of time specified in the permit, accumulated liquid, repair or replace the leaking liner to prevent the migration of hazardous waste liquids through the liner and obtain a certification from a registered professional engineer that, to the best of his/her knowledge and opinion, the leak has been stopped; and

(III) Obtain, after performing the necessary repairs, written approval from the department prior to placing the surface impoundment in service again.

2. Those surface impoundments which are intended to be closed without removing the hazardous waste shall meet the requirements of subparagraph (2)(N)1.A. and 40 CFR part 264 subpart N, incorporated in this rule. If the site cannot meet these requirements and contamination exists beyond the liner of the surface impoundment, the owner/operator shall clean up contaminated residues and hazardous constituents to the greatest extent practical during closure. If the department determines, based on the potential impact on human health and the environment, that it is not necessary or feasible to remove contaminated material down to background concentrations during closure, the owner/operator shall—

A. Comply with subsection 40 CFR 264.228(b) incorporated in this rule; or

B. Submit and obtain approval for a delisting petition pursuant to 40 CFR 260.20 and 40 CFR 260.22 for the contaminated material not removed during closure.

3. An owner/operator of a facility which treats hazardous waste in a surface impoundment shall meet the requirements of 40 CFR 264.601–40 CFR 264.603 incorporated in this rule and subsection (2)(X) of this rule.

(L) Waste Piles. This subsection sets forth standards which modify or add to those requirements in 40 CFR part 264 subpart L.

1. In addition to the requirements in 40 CFR part 264.250(c) incorporated in this rule, the waste pile must be at least ten feet (10') above the historical high groundwater table to be exempt from the regulatory requirements in 40 CFR 264.251 incorporated in this rule, 40 CFR part 264 subpart F incorporated in this rule, and subsection (2)(F) of this rule.

2. Design and operating requirements are as follows:

A. Any existing waste pile or existing portion of a waste pile shall be replaced with a new waste pile in compliance with 40 CFR 264 subpart L, incorporated in this rule, and this subsection prior to permit issuance;

B. Each new waste pile shall be constructed with a double liner as required in 40 CFR 264.251(c), incorporated in this rule, and subparagraphs (2)(L)2.C. and D. of this rule;

C. The lower component of the composite liner required by 40 CFR 264.251(c), at a minimum, shall consist of at least three feet (3') of clay, recompacted to ninety-five percent (95%) of Standard Proctor Density with the moisture content between two percent (2%) below and four percent (4%) above the optimum moisture content. The soils used for this purpose shall meet the following minimum specifications:

(I) Be classified under the United Soil Classification Systems as CL, CH, or SC (ASTM Standard D2487-93, as previously referenced in this rule);

(II) Allow more than thirty percent (30%) passable through a No. 200 sieve (ASTM Test D1140, as previously referenced in this rule);

(III) Have a liquid limit equal to or greater than thirty (30) (ASTM Test D4318-95a, as previously referenced in this rule);

(IV) Have a plasticity index equal to or greater than fifteen (15) (ASTM Test D4318-95a, as previously referenced in this rule); and

(V) Have a coefficient of permeability equal to or less than 1×10^{-8} cm/sec when compacted to ninety-five percent (95%) of Standard Proctor Density with the moisture content between two percent (2%) below and four percent (4%) above the optimum moisture content, and when tested by using the indirect calculation from the one (1) dimensional consolidation test for clay rich soils (ASTM D2435-96, as previously referenced in this rule) or other procedures approved by the department;

D. The leak detection system required by 40 CFR 264.251(c)(3) shall be capable of detecting leaks from the entire area of the waste pile;

E. When liquids are detected in the leachate collection/removal system installed to comply with 40 CFR 264.251(c)(2), the owner/operator shall—

(I) Notify the department in writing within thirty (30) days of the event;

(II) Continue to operate and maintain the leachate collection/removal and leak detection systems so that the liquids are removed as they accumulate or with sufficient frequency to prevent backwater within the system; and

(III) Implement leachate monitoring in accordance with subparagraph (2)(L)2.F. of this rule and the facility permit;

F. This paragraph sets forth requirements for leachate monitoring at waste piles. An owner/operator that is required under subparagraph (2)(L)2.E. to initiate leachate monitoring shall comply with parts (2)(L)2.F.(I)–(IV) of this rule.

(I) The owner/operator shall remove any accumulated leachate in the leachate collection/removal and leak detection system collection sumps at least weekly during the active life and closure period. After the final cover is installed, accumulated leachate shall be removed at least as often as the owner/operator is required by subparagraph (2)(L)3.A. of this rule to record the amount of liquids removed from the system.

(II) The owner/operator shall analyze leachate from the leak detection system at least annually. If leachate has not yet been discovered in the leak detection system, the annual analysis shall be completed on leachate collected from the leachate collection/removal system. At a minimum, the annual leachate analyses shall be conducted for indicator parameters (that is pH, specific conductance, dissolved organic carbon, and total organic halogen) and selected hazardous waste constituents. The hazardous waste constituents selected must provide a reliable indication of the presence of hazardous constituents that are reasonably expected to be in or derived from wastes contained in each unit.

(III) The owner/operator shall calculate the average daily flow rate for each sump in the leak detection system as required by 40 CFR 264.252(b), in addition the average daily flow rate for each sump calculated in a similar manner. If the unit is closed in accordance with 40 CFR 264.258(b), the average daily flow rates shall be calculated at the same frequency as the recording of leachate removal as required by subparagraph (2)(L)3.B. of this rule. If the department determines that the leachate generation rate is greater than reasonably expected for any unit, the department may require the owner/operator to provide additional information to evaluate the existing conditions.

(IV) The owner/operator shall submit all information required to comply with parts (2)(L)2.F.(I)–(III) of this rule to the department in accordance with subsection (2)(E) of this rule and 40 CFR part 264 subpart E incorporated in this rule.

(V) The department may require more frequent leachate collection and analysis than that outlined in parts (2)(L)2.F.(I)–(III) of this rule if determined necessary. The frequency of leachate collection and analysis will be specified in the facility permit.

(VI) Indicator parameters and constituents to be monitored, as required by part (2)(L)2.F.(II) of this rule, will be specified by the department in the facility permit. If the department determines that results of the chemical analyses are outside of the range that is reasonably expected for any unit, the department may require the owner/operator to provide additional information to evaluate the existing conditions;

G. The owner/operator shall measure daily precipitation at the facility until final closure is certified. During the post-closure care period of the facility, the owner/operator shall also record and report regional precipitation from the nearest weather recording station in accordance with the schedule established for the maintenance of the facility. The information required under this paragraph shall be submitted to the department in accordance with subsection (2)(E) of this rule and 40 CFR part 264 subpart E incorporated in this rule; and

H. If the leachate monitoring (implemented in accordance with subparagraph (2)(L)2.F. of this rule) detects hazardous waste constituents in the leak detection system, a leak in the waste pile liner is indicated, and the owner/operator shall—

(I) Notify the department in writing of the leak within seven (7) days after detecting the leak;

(II) Remove, within the period of time specified in the permits, accumulated liquid, repair or replace the leaking liner to prevent the migration of hazardous waste liquids through the liner and obtain a certification from a registered professional engineer that, to the best of his/her knowledge and opinion, the leak has been stopped; and

(III) Obtain, after performing the necessary repairs, written approval from the department prior to placing the waste pile in service again.

3. This paragraph sets forth standards which modify or add to those requirements in 40 CFR 264.254(c) for monitoring and inspection.

A. In addition to recording the amount of liquids removed from each leak detection system sump at least once per week during the active live and closure period, the owner/operator shall record the amount of liquids removed from each leachate collection/removal system sump at the same frequency.

B. If the waste pile is closed in accordance with 40 CFR 264.258(b), following closure the amount of liquids removed from each leachate collection/removal and leak detection system sump shall be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two (2) consecutive months, the amount of liquids in the sump must be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two (2) consecutive quarters, the amount of liquids in the sump shall be recorded at least semiannually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semiannual recording schedules, the owner/operator must return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two (2) consecutive months.

(M) Land Treatment. (*Reserved*)

(N) Landfills. This subsection sets forth standards which modify or add to those requirements in 40 CFR part 264 subpart N.

1. This paragraph sets forth standards for a site suitability demonstration.

A. Location standards.

(I) A landfill shall be located so as to minimize discharges and the potential for harm to human health and the environment.

(II) A landfill shall be located so that a total of no less than thirty feet (30') of soil or other material, which has a coefficient of permeability of less than 1×10^{-7} cm/sec, when tested according to subpart (2)(N)1.B.(II)(d) of this rule, lies between the bottom of the lowest artificial liner or lowest engineered soil liner and the uppermost regional aquifer.

(III) The requirements of part (2)(N)1.A.(II) of this rule do not apply to a landfill which meets the following criteria:

(a) Demonstrates to the satisfaction of the department by a combination of laboratory tests, field test and development of models that naturally occurring materials between the lowest artificial liner or lowest engineered soil liner and the uppermost regional aquifer would retard the migration of hazardous constituents contained in the waste to at least the same degree that thirty feet (30') of material having a coefficient of permeability of 1×10^{-7} cm/sec when tested according to subpart (2)(N)1.B.(II)(d) would retard the migration of water, but in no case shall the thickness of the naturally occurring material be less than twenty feet (20');

(b) Receives only wastes generated by its operator(s); and

(c) Meeting the criteria in subparts (2)(N)1.A.(III)(a) and (b) shall not waive compliance with any regulations except those set forth in part (2)(N)1.A.(II) of this rule.

(IV) No landfill shall be located in the following areas:

(a) In a wetland;

(b) Within two hundred feet (200') of a fault which has had surface displacement in Holocene time;

(c) In a one hundred (100)-year flood plain;

(d) In an area of unstable soil deposits or area(s) containing landslides; or

(e) In an area subject to catastrophic collapse as evaluated by the Division of Geology and Land Survey.

B. The permit application shall include the following engineering reports:

(I) A geologic description of the region in which the site is located, which description shall be prepared by a qualified geologist familiar with the region;

(II) A description of the natural soils and bedrock underlying the site including a representative number of borings that indicate the type, depth and thickness of soils, bedrock, and other materials underlying the site and test results that indicate the following parameters for soils or other materials underlying the site. The following test methods shall be utilized unless other procedures have been evaluated and approved by the department:

- (a) Atterberg limits (ASTM D4318-95a, as previously referenced in this rule);
- (b) pH (*Methods of Soil Analysis Part II, Chemical and Microbiological Properties*, A.L. Page, Ed. American Society of Agronomy, 2nd Ed., 1982, pp. 200–209);
- (c) Maximum dry density at optimum moisture content (ASTM D1557-91, current edition approved November 18, 1991, published January 1992);
- (d) Coefficient of permeability, which is the indirect calculation from the one (1)-dimensional consolidation test for clay rich soils (ASTM D2435-96, as previously referenced in this rule) or other laboratory procedures found in the professional literature and approved by the department;
- (e) Grain size distribution, Unified Soil Classification System designation (ASTM Standards D2487-93, as previously referenced in this rule and D422-63 (reapproved 1990) current edition approved November 21, 1963); and
- (f) Cation exchange capacity (*Methods of Soil Analysis Part II, Chemical and Microbiological Properties*, A.L. Page, Ed., American Society of Agronomy, 2nd Ed., 1982, pp. 149–157);

(III) A hydrogeologic study conducted at the site to determine the potential for transport of groundwater and contaminants. This study shall include:

- (a) Piezometric contours of groundwater;
 - (b) Potential direction(s) of groundwater movement and estimated rate(s);
 - (c) Identification and description of the aquifer(s);
 - (d) Background water quality data; and
 - (e) Field permeability tests as found in the professional literature and approved by the department;
- (IV) A present water balance which shall be determined as outlined in *Use of the Water Balance Method for Predicting Leachate Generation from Solid Waste Disposal Sites*, EPA/530/SW-168 or an equivalent method approved by the department;
- (V) Engineering and geologic drawings that delineate—
- (a) Typical disposal cells for each hazardous waste type;
 - (b) Structures for surface water control;
 - (c) Locations of borings and monitoring systems;
 - (d) Leachate collection systems, bottom elevations, and cover elevations for each disposal area; and
 - (e) Stratigraphic cross-sections of the geologic setting showing, at a minimum, boring locations and depths, trench design and depths, and piezometric surfaces and water tables where present; and
- (VI) Any other applicable details.

2. This paragraph sets forth additional design and operating requirements.

A. Any existing landfill or existing portion of a landfill shall be replaced with a new landfill in compliance with 40 CFR part 264 subpart N, incorporated in this rule, and this subsection prior to permit issuance;

B. Each new landfill shall be constructed with a double liner as required in 40 CFR 264.301(c), incorporated in this rule, and subparagraphs (2)(N)2.C. of this rule;

C. The lower component of the composite liner required by 40 CFR 264.301(c), at a minimum, shall consist of at least three feet (3') of clay, recompacted to ninety-five percent (95%) of Standard Proctor Density with the moisture content between two percent (2%) below and four percent (4%) above the optimum moisture content. The soils used for this purpose shall meet the following minimum specifications:

(I) Be classified under the United Soil Classification Systems as CL, CH, or SC (ASTM Standard D2487-93, as previously referenced in this rule);

(II) Allow more than thirty percent (30%) passable through a No. 200 sieve (ASTM Test D1140, as previously referenced in this rule);

(III) Have a liquid limit equal to or greater than thirty (30) (ASTM Test D4318-95a, as previously referenced in this rule);

(IV) Have a plasticity index equal to or greater than fifteen (15) (ASTM Test D4318-95a, as previously referenced by this rule); and

(V) Have a coefficient of permeability equal to or less than 1×10^{-8} cm/sec when compacted to ninety-five percent (95%) of Standard Proctor Density with the moisture content between two percent (2%) below and four percent (4%) above the optimum moisture content, and when tested by using the indirect calculation from the one (1)-dimensional consolidation test for clay rich soils (ASTM D2435-96, as previously referenced by this rule) or other procedures approved by the department;

D. Each detection or collection and removal system shall meet the requirements of 40 CFR 264.301(c)(3)(I)–(V), incorporated in this rule.

E. The leak detection system required by 40 CFR 264.301(c)(3) shall be capable of detecting leaks from the entire sides and bottom of each cell.

F. When liquids are detected in the leachate collection/removal system installed to comply with 40 CFR 264.301(c)(2), the owner/operator shall—

(I) Notify the department in writing within thirty (30) days of the event;

(II) Continue to operate and maintain the leachate collection/removal and leak detection systems so that the liquids are removed as they accumulate or with sufficient frequency to prevent backwater within the system; and

(III) Implement leachate monitoring in accordance with subparagraph (2)(N)2.G. of this rule and the facility permit;

G. This paragraph sets forth requirements for leachate monitoring at landfills. An owner/operator that is required under subparagraph (2)(N)2.F. to initiate leachate monitoring shall comply with parts (2)(N)2.G.(I)–(V) of this rule.

(I) The owner/operator shall remove any accumulated leachate in the leachate collection/removal and leak detection system collection sumps at least weekly during the active life and closure period. After the final cover is installed, accumulated leachate shall be removed at least as often as the owner/operator is required by 40 CFR 264.303(c)(2) to record the amount of liquids removed from the systems.

(II) The owner/operator shall analyze leachate from the leak detection system at least annually. If leachate has not yet been discovered in the leak detection system, the annual analysis shall be completed on leachate collected from the leachate collection/removal system. At a minimum, the annual leachate analyses shall be conducted for indicator parameters (that is pH, specific conductance, dissolved organic carbon, and total organic halogen) and selected hazardous waste constituents. The hazardous waste constituents selected must provide a reliable indication of the presence of hazardous constituents that are reasonably expected to be in or derived from wastes contained in each unit.

(III) At the first occurrence of leachate in the leak detection system, the owner/operator shall analyze leachate from that system for the complete list of parameters identified in 40 CFR part 264 Appendix IX.

(IV) The owner/operator shall calculate the average daily flow rate for each sump in the leak detection system as required by 40 CFR 264.302(b). In addition, the average daily flow rate for each sump in each of the leachate collection/removal systems shall also be calculated in a similar manner. Following closure, the average daily flow rates shall be calculated at the same frequency as the recording of leachate removal as required by 40 CFR 264.303(c)(2). If the department determines that the leachate generation rate is greater than reasonably expected for any unit, the department may require the owner/operator to provide additional information to evaluate the existing conditions.

(V) The owner/operator shall submit all information required to comply with parts (2)(N)2.G.(I)–(IV) of this rule to the department in accordance with subsection (2)(E) of this rule and 40 CFR part 264 subpart E incorporated in this rule.

(VI) The department may require more frequent leachate collection and analysis than that outlined in parts (2)(N)2.G.(I)–(IV) of this rule if determined necessary. The frequency of leachate collection and analysis will be specified in the facility permit.

(VII) Indicator parameters and constituents to be monitored as required by part (2)(N)2.G.(II) of this rule will be specified by the department in the facility permit. If the department determines that results of the chemical analyses are outside of the range that is reasonably expected for any unit, the department may require the owner/operator to provide additional information to evaluate the existing conditions.

H. The owner/operator shall measure daily precipitation at the facility until final closure is certified. During the post-closure care period of the facility, the owner/operator shall also record and report regional precipitation from the nearest weather recording station in accordance with the schedule established for the maintenance of the facility. The information required under this paragraph shall be submitted to the department in accordance with subsection (2)(E) of this rule and 40 CFR part 264 subpart E incorporated in this rule.

I. If the volume or rate of flow of leachate contained in the leak detection system (implemented in accordance with subparagraph (2)(N)2.G. of this rule) exceeds ten percent (10%) of the action leakage rate as defined in 40 CFR 264.302, incorporated in this rule, then the owner/operator shall analyze the leachate for the indicator parameters and constituents outlined in the facility permit. If the analyzed leachate exceeds the detection limits outlined in the facility permit, the owner/operator shall—

(I) Notify the department in writing of the leak within seven (7) days after detecting the leak;

(II) Remove, within the period of time specified in the permit, accumulated liquid, conduct an assessment of the leakage to determine the cause and extent of the leak, and, if necessary, initiate repairs or replace the leaking liner to prevent the migration of hazardous waste liquids through the liner; and

(III) Submit to the department the assessment and a certification from a registered professional engineer describing any repairs or replacement of the liner system within thirty (30) days of completion.

J. A landfill shall be designed, constructed, and operated to minimize erosion, landslides and sloughing.

K. Where necessary, features shall be provided around closed units or, when leachate is detected in the lower leachate collection system, features shall control horizontal migration of leachate from the disposal unit. These features may include, but are not limited to, recompacted trench walls, slurry trenches, and interceptor trenches.

L. There shall be a minimum of three hundred feet (300') of buffer between the property line of the disposal facility and the permitted area.

M. If the owner/operator accepts any odoriferous waste, the owner/operator shall apply cover or otherwise manage the landfill to control odor dispersal.

N. If gases are generated within the landfill, a gas collection and control system shall be installed to control the vertical and horizontal escape of gases from the landfill.

3. All hazardous wastes accepted for disposal shall be listed in the permit application in accordance with 40 CFR 270.13(j) as incorporated by reference in 10 CSR 25-7.270. In addition, departmental approval of individual waste streams may be required prior to allowing the disposal of the waste streams in the landfill.

4. Wastes having a true vapor pressure greater than seventy-eight millimeters of mercury (78 mm Hg) at twenty-five degrees Celsius (25 °C) are volatile wastes and shall not be landfilled.

(O) Incinerators. This subsection sets forth standards which modify or add to those requirements in 40 CFR part 264 subpart O.

1. Sampling methods to determine compliance with 40 CFR 264.343 incorporated in this rule will be specified by the department in the permit and shall consist of any of the following methods:

A. The methods described in the *Engineering Handbook for Hazardous Waste Incineration*, SW-889, by the United States EPA or equivalent; or

B. The methods specified in 40 CFR part 60 Appendix A (July 1, 1989). For facilities subject to paragraph (2)(O)2. of this rule, the methods referenced in this paragraph shall be used exclusively to determine compliance with the emission limitations required in this subsection.

2. The provisions of 40 CFR part 60 subpart E, July 1, 1989, shall apply and are incorporated by reference as part of this rule. An owner/operator of a hazardous waste incinerator which is regulated under the New Source Performance Standards in that subpart shall comply with the provisions in addition to complying with all other applicable provisions in this rule.

3. Where emission limitations found in both paragraph (2)(O)2. of this rule and in another provision of this rule are applicable to a hazardous waste incinerator, the more stringent shall control.

(P) Health Profiles.

1. An owner/operator shall submit a health profile, as required by section 260.395.7(5), RSMo, with the initial application for a hazardous waste treatment or land disposal facility. A health profile is not necessary for facilities that must obtain a permit for only post-closure care and/or corrective action activities. A health profile shall identify any potential serious illnesses, the rate of which exceeds the state average for the illnesses, which might be attributable to environmental contamination from any hazardous waste treatment or land disposal unit at the hazardous waste facility applying for the permit. The purpose of the information in the health profile is to document the potential for exposure from the applicable hazardous waste treatment or land disposal units and to determine whether additional permit controls are necessary for these units to ensure protection of human health beyond the facility property boundaries. One of the following for each applicable unit or combination of units as approved by the department may constitute a health profile for the purposes of this subsection:

A. For combustion units—

(I) The evaluation described in 40 CFR 270.10(1)(1) for hazardous waste combustion units;

(II) An evaluation of the potential risk to human health resulting from both direct and indirect exposure pathways. In selecting this option, the applicant shall submit a workplan to conduct the evaluation with the initial application; however, the permit shall not be issued until the evaluation is final; or

(III) A Health Evaluation by the Missouri Department of Health and Senior Services requested by the facility according to paragraph (2)(P)4;

B. For other treatment units—

(I) An evaluation of the potential risk to human health resulting from both direct and indirect exposure pathways. In selecting this option, the applicant shall submit a workplan to conduct the evaluation with the initial application; however, the permit shall not be issued until the evaluation is final; or

(II) A Health Evaluation by the Missouri Department of Health and Senior Services requested by the facility according to paragraph (2)(P)4.; and

C. For land disposal units—

- (I) The information required by 40 CFR 270.10(j);
- (II) An evaluation of the potential risk to human health resulting from both direct and indirect exposure pathways. In selecting this option, the applicant shall submit a workplan to conduct the evaluation with the initial application; however, the permit shall not be issued until the evaluation is final; or
- (III) A Health Evaluation by the Missouri Department of Health and Senior Services requested by the facility according to paragraph (2)(P)4.

2. This paragraph sets forth requirements which shall be met subsequent to the initial permit application for hazardous waste treatment and/or land disposal activities.

A. If changes occur after permit issuance that may increase the potential for human exposure to hazardous waste or hazardous constituents from the treatment or land disposal unit, an updated health profile shall be part of a facility application for permit renewal or permit modifications that include addition or modification of a hazardous waste treatment or land disposal unit.

B. Appropriate documentation to be submitted as the updated health profile shall include one (1) of the options set out in subparagraphs (2)(P)1.A. through C., or an update of a previous submittal under those requirements.

3. Additional epidemiological investigations by the Missouri Department of Health and Senior Services may be required if the information provided pursuant to subparagraph (2)(P)2.B. indicates the presence of potentially unacceptable human health risks.

4. A Health Evaluation by the Missouri Department of Health and Senior Services will assess the potential for exposure and adverse health effects to the public from materials released by the applicable hazardous waste units. If the owner or operator chooses to request a Health Evaluation by the Missouri Department of Health and Senior Services to meet the requirements of this subsection, the request shall be submitted with the initial application; however, a permit shall not be issued until the evaluation is final.

(Q) *(Reserved)*

(R) *(Reserved)*

(S) Corrective Action for Solid Waste Management Units. *(Reserved)*

(T) *(Reserved)*

(U) *(Reserved)*

(V) *(Reserved)*

(W) Drip Pads. 40 CFR part 264 subpart W is not incorporated by reference.

(X) Miscellaneous Units. This subsection sets forth requirements in addition to 40 CFR part 264 subpart X incorporated in this rule.

1. A facility which continuously feeds hazardous waste into the treatment process shall be equipped with an automatic waste feed cutoff or a bypass system that is activated when a malfunction in the treatment process occurs. A bypass system shall return hazardous wastefeed to storage and shall not allow a discharge or release of hazardous waste.

2. Residuals of by-products from a treatment process (for example, sludges, spent resins) shall be analyzed during a trial period to determine the effectiveness of the treatment process.

(Y) *(Reserved)*

(Z) *(Reserved)*

(AA) Air Emission Standards for Process Vents. *(Reserved)*

(BB) Air Emission Standards for Equipment Leaks. *(Reserved)*

(CC) Air Emission Standards for Tanks, Surface Impoundments, and Containers. *(Reserved)*

(DD) Containment Buildings. *(Reserved)*

(EE) Hazardous Waste Munitions and Explosive Storage. *(Reserved)*

(3) The following requirements apply to hazardous waste TSD facilities that accept and/or ship hazardous waste via railroad tank car (railcar).

(A) The owner/operator shall submit a railcar management plan with the application for a hazardous waste treatment, storage, or disposal facility permit. Permitted facilities that currently accept and/or ship hazardous waste via railcars shall request a Class I permit modification that requires prior director approval for the railcar management plan according to the procedures defined in 10 CSR 25-7.270 within one hundred eighty (180) days of the effective date of this paragraph. Permitted facilities that fail to apply for a permit modification in compliance with this subsection shall cease all operations involved in the acceptance and/or shipment of hazardous waste via railcar. The permitted facility that has fully complied with this subsection has authorization to conduct the operations involved in the acceptance and/or shipment of hazardous waste via railcar, pending action by the director.

1. The railcar management plan shall describe steps to be taken by the facility in order to comply with the requirements of subsections (3)(B)–(3)(F).

2. The railcar management plan shall be maintained at the facility.

(B) Railcars shall not be used as container or tank storage units at a facility unless the owner/operator complies with the standards for container storage set forth in 40 CFR part 264 subpart I as incorporated in this rule and 40 CFR 270.15 as incorporated in 10 CSR 25-7.270. During the time allowed for loading and unloading as set forth in this section, the railcar shall not be considered to be in storage.

1. The owner/operator shall ship hazardous wastes loaded onto a railcar within seventy-two (72) hours after loading is initiated. For the purposes of this section, shipment occurs when—

- A. The transporter signs and dates the manifest acknowledging acceptance of the hazardous waste;
- B. The transporter returns a signed copy of the manifest to the facility; and
- C. The railcar crosses the property boundary line of the TSD facility.

2. The owner/operator shall have a maximum of ten (10) days following receipt of a shipment to unload hazardous waste from incoming railcars. The amount of time allowed for unloading shall be specified in the approved railcar management plan for each facility as part of the permit. The department will review and approve each railcar management plan on a case-by-case basis and will base its decision regarding the time allowed for unloading on factors including, but not limited to, the size of the rail siding, surveillance and security standards, enclosure of the facility, type and amount of emergency response equipment, and the facility's capacity to handle incidents. Unless more time is allowed by an approved railcar management plan, the owner/operator shall unload hazardous waste from an incoming railcar within seventy-two (72) hours of receipt of the shipment. For the purposes of this section, receipt of the shipment occurs when—

- A. The owner/operator signs the shipping paper; or
- B. The owner/operator signs the manifest; or
- C. The railcar crosses the property boundary line of the TSD facility.

3. The time limits in this subsection may be extended for up to an additional twenty-four (24) hours for Saturdays, Sundays, or public holidays as defined in section 9.010, RSMo 2000, that fall within the time period approved in the railcar management plan.

4. If the owner/operator finds that a railcar shipment must be rejected, the railcar shall be shipped within twenty-four (24) hours of that determination, or within the time period approved in the railcar management plan, whichever is later. The rejection and the reasons for the rejection shall be documented in the facility's operating record.

5. The owner/operator shall attempt to arrange for the rail carrier to provide the owner/operator a notification detailing when a railcar was picked up from the facility or when a railcar was delivered to the facility. If the rail carrier declines to enter into such arrangements, the owner/operator must document the refusal in the operating record. The time limitations set forth in this subsection must be documented by recording dates and times in the facility's operating record.

6. If the loading and unloading time frames specified in this section are exceeded, then the owner/operators utilizing railcars shall comply with the standards for container storage in 40 CFR part 264 subpart I, as incorporated in this rule, and with 40 CFR 270.15, as incorporated in 10 CSR 25-7.270.

(C) The owner/operator shall comply with 40 CFR 264.17, incorporated in this rule, during railcar loading and unloading. Additional specific precautions to be taken shall include facility design, construction, operation and maintenance standards as specified in "Loading and Unloading Operations: Tank Vehicles and Tank Cars" in section 5-4.4.1 of the 1993 Edition of the *National Fire Protection Association Flammable and Combustible Liquids Code* (NFPA 30).

(D) The owner/operator shall provide security for railcars at the facility by utilizing one of the alternatives specified in 40 CFR 264.14(b), as incorporated in this rule. If the owner/operator demonstrates that it is not practical to provide security for railcars at the facility as specified in 40 CFR 264.14(b), incorporated in this rule, railcars shall be secured by locking all fill and drain posts upon receipt of a loaded railcar or upon completion of the owner/operator's loading procedures. The locks must remain in place until the owner/operator begins unloading procedures or until the rail carrier picks up the loaded or rejected railcar for transport off-site.

(E) In accordance with 40 CFR 264.15, incorporated in this rule, the owner/operator shall inspect railcars and surrounding areas, at least daily, looking for leaks and for deterioration caused by corrosion or other factors.

(F) In accordance with 40 CFR part 264 subpart C and 40 CFR part 264 subpart D, as incorporated in this rule, the owner/operator shall develop preparedness and prevention procedures and a contingency plan for railcars. If the owner/operator has not prepared a Spill Prevention Control and Countermeasures (SPCC) Plan for hazardous waste, then one must be developed that parallels requirements and guidelines as specified in 40 CFR part 112 for oil. At a minimum, the SPCC Plan must include adequate spill response equipment and preventative measures, such as dikes, curbing, and containment systems.

AUTHORITY: section 260.370, RSMo Supp. 2010 and sections 260.390 and 260.395, RSMo 2000

10 CSR 25-7.265 Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

PURPOSE: This rule incorporates 40 CFR part 265 by reference and sets forth additional state standards.

(1) The regulations set forth in 40 CFR part 265, July 1, 2010, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) The owner/operator of a treatment, storage, or disposal (TSD) facility shall comply with the requirements noted in this section in addition to requirements set forth in 40 CFR part 265 incorporated in this rule. In the case of contradictory or conflicting requirements in 10 CSR 25, the more stringent shall control. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the additional requirements to be added to 40 CFR part 265 subpart A are found in subsection (2)(A) of this rule.)

(A) General. In addition to the requirements in 40 CFR part 265 subpart A, the following regulations also apply:

1. This rule does not apply to an owner/operator of an elementary neutralization unit or a wastewater treatment unit receiving only hazardous waste generated on-site or generated by its operator or only one (1) operator if the unit meets the standards set forth in 10 CSR 25-7.270(2)(A)3.;

2. This rule does not apply to an owner/operator for that portion of or process at the facility which is in compliance with 10 CSR 25-9.020 Hazardous Waste Resource Recovery Processes. (Note: Underground injection wells are prohibited in Missouri by section 577.155, RSMo.);

3. State interim status is authorization to operate a hazardous waste treatment, storage, or disposal facility pursuant to section 260.395.15, RSMo, 10 CSR 25-7.265, and 10 CSR 25-7.270 until the final administrative disposition of the permit application is made or until interim status is terminated pursuant to 10 CSR 25-7.270. The owner/operator of a facility or unit operating under state interim status shall comply with the requirements of this rule and 10 CSR 25-7.270. In addition to providing notification to the Environmental Protection Agency (EPA), the owner/operator is required to provide state notification in accordance with 10 CSR 25-7.270; and

4. Hazardous waste which must be managed in a permitted unit (e.g., waste generated on-site and stored beyond the time frames allowed without a permit pursuant to 10 CSR 25-5.262, waste received from off-site, certain hazardous waste fuels, etc.) shall not be stored or managed outside an area or unit which does not have a permit or interim status for that waste for a period which exceeds twenty-four (24) hours. This provision shall not apply to railcars held in areas for handling during the time period allowed by, and managed in accordance with, 10 CSR 25-7.264(3) of this regulation. (Comment: The purpose of this paragraph is to allow the necessary movement of hazardous waste into, out of, and through facilities, and not to evade permit requirements.)

(B) General Facility Standards. This subsection sets forth requirements that modify or add to the requirements in 40 CFR part 265 subpart B.

1. In addition to the requirements in 40 CFR 265.12(a) incorporated in this rule, an owner/operator shall submit to the department a separate analysis for each hazardous waste that s/he intends to import. Each analysis shall contain the following information: the foreign generator's name, site address, and telephone number; a list of applicable EPA waste codes and a percentage of each for each hazardous waste; the flash point determined in accordance with 40 CFR 261.21, incorporated by reference in 10 CSR 25-4; a list of reactive waste(s) as defined in 40 CFR 261.23, incorporated by reference in 10 CSR 25-4; and results of toxicity tests conducted in accordance with 40 CFR 261.24, incorporated by reference in 10 CSR 25-4.261, if applicable.

2. 40 CFR 265.15(b)(5) is not incorporated in this rule.

(C) Preparedness and Prevention. (*Reserved*)

(D) Contingency Plan and Emergency Procedures. (*Reserved*)

(E) Manifest System, Record Keeping, and Reporting. This subsection sets forth standards which modify or add to those requirements in 40 CFR part 265 subpart E.

1. All owners/operators shall comply with the reporting requirements in 10 CSR 25-5.262(2)(D) regardless of whether the owner/operator is required to register as a generator pursuant to 10 CSR 25-5.262(2)(A)1.

2. In addition to the requirements in 10 CSR 25-5.262(2)(D) for hazardous waste generated on-site and shipped off-site for treatment, storage, resource recovery, or disposal, the owner/operator shall meet the same requirements for the following:

A. All hazardous waste generated on-site during the reporting period that is managed on-site; and

B. All hazardous waste received from off-site during the reporting period, including hazardous waste generated by another generator and hazardous waste generated at other sites under the control of the owner/operator.

3. In addition to the information required in 10 CSR 25-5.262(2)(D), an owner/operator shall include the following information in the summary report:

A. A description and the quantity of each hazardous waste that was both generated and managed on-site during the reporting period;

B. For each hazardous waste that is received from off-site, a description and the quantity of each hazardous waste and the corresponding state and EPA identification numbers of each generator;

C. For imports, the name and address of the foreign generator;

D. The corresponding method of treatment, storage, resource recovery, disposal, or other approved management method used for each hazardous waste.

4. As outlined in section 260.380.2, RSMo, all owners/operators shall pay a fee to the department of two dollars (\$2) per ton or portion thereof for any and all hazardous waste received from outside of Missouri. This fee shall be referred to as the Out-of-State Waste Fee and shall not be paid on hazardous waste received directly from other permitted treatment, storage, and disposal facilities located in Missouri.

A. For each owner/operator, this fee shall be paid on or before January 1 of each year and shall be based on the total tons of hazardous waste received in the aggregate by that owner/operator for the twelve (12)-month period ending the previous June 30. As outlined in section 260.380.4, RSMo, failure to pay this fee in full by the due date shall result in imposition of a late fee equal to fifteen percent (15%) of the total original fee. Each twelve (12)-month period ending on June 30 shall be referred to as a reporting year.

B. Owners/operators may elect, but are not required, to pay this fee on a quarterly basis at the time they file the reporting required in subparagraphs (2)(E)3.B. and C. of this rule. If they do not choose to pay the fee quarterly, owners/operators may elect, but are not required, to pay the fee at the time they file their final quarterly report of each reporting year. However, the total fee for each reporting year must be paid on or before January 1 immediately following the end of each reporting year.

EXAMPLES OF OUT-OF-STATE WASTE FEE CALCULATION

Example 1. ABC Company reports receiving 250 tons of hazardous waste from outside of Missouri:

$$\$2 \times 250 \text{ tons} = \$500 \text{ fee}$$

Example 2. ABC Company reports receiving 410.6 tons of hazardous waste from outside of Missouri.

The number of tons would be rounded to 411.

$$\$2 \times 411 \text{ tons} = \$822 \text{ fee}$$

Example 3. ABC Company reports receiving 52,149.3 tons of hazardous waste from outside of Missouri.

The number of tons would be rounded to 52,150.

$$\$2 \times 52,150 \text{ tons} = \$104,300 \text{ fee}$$

(F) Groundwater Monitoring. (*Reserved*)

(F) Groundwater Monitoring. (*Reserved*)

(G) Closure and Post-Closure. This subsection sets forth additional requirements to 40 CFR part 265 subpart G, incorporated in this rule.

1. The incorporation by reference of 40 CFR 265.113(d) and (e) does not relieve the owner/operator of his/her responsibility to comply with 10 CSR 80 if a solid waste permit is required under those rules.

2. The owner/operator of a hazardous waste unit which is certifying closure with residues left in place, regardless of the level of treatment to render the residue nonhazardous, shall meet the requirements in 40 CFR 265.116 incorporated in this rule.

3. In addition to requirements in 40 CFR 265.116, when an owner/operator certifies a closure which did not result in removal of hazardous wastes to background levels, the owner/operator shall record, in accordance with state law, a notation on an instrument which is normally examined during title search that will notify, in perpetuity, a potential purchaser of the property that the land has been used to manage hazardous waste.

4. In addition to the requirements in 40 CFR 265.116 and 265.119 as incorporated in this rule, an owner/operator shall submit a notarized statement to the department certifying that the owner/operator has caused the notation(s) to be recorded. The notation(s) shall be recorded with the recorder(s) of deeds in all counties in which the facility or part of the facility is located.

(H) Financial Assurance Requirements. This subsection sets forth the requirements which modify or add to those requirements in 40 CFR part 265 subpart H.

1. For purposes of this subsection, commercial treatment, storage, or disposal (TSD) facility means any facility that would be considered a commercial hazardous waste treatment, storage, and disposal facility for purposes of 10 CSR 25-12.020, or any facility that is certified as an R2 resource recovery facility according to 10 CSR 25-9.020, or any facility that receives for remuneration polychlorinated biphenyls (PCB) material or PCB units as defined by 10 CSR 25-13.010.

2. In 40 CFR 265.143(a)(3), incorporated by reference in this rule, delete “the 20 years” and insert in its place “a period of five (5) years.”

3. In 40 CFR 265.145(a)(3), incorporated by reference in this rule, delete “the 20 years” and insert in its place “a period of five (5) years.”

4. This paragraph modifies the requirements for surety bonds guaranteeing payment into a closure trust fund or post-closure trust fund per 40 CFR 265.143(b) or 40 CFR 265.145(b), incorporated in this rule.

A. Any surety company issuing a surety bond guaranteeing payment into a closure trust fund or post-closure trust fund shall be authorized to do business in Missouri.

B. Any surety company issuing a surety bond guaranteeing payment into a closure trust fund or post-closure trust fund shall not cancel, terminate, or fail to renew a surety bond guaranteeing payment into a closure or post-closure trust fund and the surety bond shall remain in full force and effect in the event that on or before the date of cancellation—

(I) The director deems the facility abandoned; or

(II) Interim status is terminated or revoked; or

(III) Closure is ordered by the department or a court of competent jurisdiction; or

(IV) The owner/operator is named as a debtor in a voluntary or involuntary proceeding under 11 U.S.C. section 1, et seq.; or

(V) The premium due is paid; or

(VI) An appeal of an order to close the facility as specified in part (2)(H)4.B.(III) of this subparagraph is pending.

C. Facilities that have a surety bond or bonds guaranteeing payment into a closure trust fund or a post-closure trust fund as of the effective date of this subparagraph shall modify their surety instruments to comply with this paragraph within twelve (12) months of the effective date of this subparagraph.

5. This paragraph modifies the requirements for letters of credit per 40 CFR 265.143(c), incorporated in this rule, 40 CFR 265.145(c), incorporated in this rule, and 40 CFR 265.147(h), incorporated in this rule. Letters of credit shall be issued by a state- or federally-chartered and regulated bank or trust association.

6. An owner/operator of a facility that is a commercial TSD facility may not satisfy financial assurance requirements for closure, post-closure, or liability coverage, or any combination of these, by the use of a financial test as specified in 40 CFR 265.143(e), incorporated in this rule, 40 CFR 265.145(e), incorporated in this rule, or 40 CFR 265.147(f), incorporated in this rule.

7. This paragraph modifies the requirements for closure insurance per 40 CFR 265.143(d), incorporated in this rule, post-closure insurance per 40 CFR 265.145(d), incorporated in this rule, liability coverage for sudden accidental occurrences per 40 CFR 265.147(a)(1), incorporated in this rule, and liability coverage for non-sudden accidental occurrences per 40 CFR 265.147(b)(1), incorporated in this rule. Each insurance policy shall be issued by an insurer which, at a minimum, is licensed to transact the business of insurance or is eligible to provide insurance as an excess or surplus lines insurer in Missouri.

8. In 40 CFR 265.143(e), incorporated in this rule, delete “or a firm with a ‘substantial business relationship’ with the owner or operator.”

9. In 40 CFR 265.145(e), incorporated in this rule, delete “or a firm with a ‘substantial business relationship’ with the owner or operator.”

10. In 40 CFR 265.147(g), incorporated in this rule, delete “or a firm with a ‘substantial business relationship’ with the owner or operator.”

(I) Use and Management of Containers. This subsection sets forth additional standards for container storage areas.

1. Container storage areas shall have a containment system that is designed and operated in accordance with paragraph (2)(I)2. of this rule except as provided by paragraph (2)(I)4. of this rule.

2. A containment system shall be designed, maintained, and operated as follows:

A. A containment system shall have a base which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;

B. The base shall be sloped or the containment system shall be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or otherwise protected from contact with accumulated liquids;

C. The containment system shall have a capacity equal to ten percent (10%) of the containerized waste volume or the volume of the largest container, whichever is greater. Containers that do not contain free liquids need not be considered in this calculation;

D. Run-on into the containment system shall be prevented unless the collection system has sufficient excess capacity in addition to that required in subparagraph (2)(I)2.C. of this rule to contain any run-on which might enter the system; and

E. Spilled or leaked waste and accumulated precipitation shall be removed from the sump or collection area in as timely a manner as is necessary to prevent overflow of the collection system.

3. The containment system shall also be inspected as part of the weekly inspections required by 40 CFR 265.174, incorporated in this rule.

4. Storage areas that store containers holding only wastes that do not contain free liquids or storage facilities that store less than one thousand kilograms (1,000 kg) of nonacute hazardous waste containing free liquids need not have a containment system described in paragraph (2)(I)2. of this rule provided that—

A. The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation; or

B. The containers are elevated or are otherwise protected from contact with accumulated liquid.

5. Containers storing hazardous waste must be marked and labeled in accordance with 10 CSR 25-5.262(2)(C) during the entire storage period.

6. Container storage areas which close without removing all hazardous waste and/or hazardous waste constituents to below background levels may pursue either a risk-based closure if there is no evidence of groundwater or surface water contamination or, in the absence of such evidence, close in accordance with 10 CSR 25-7.264(2)(N) and 40 CFR part 264 subpart N, as incorporated in subsection (2)(N). The owner/operator shall also comply with the requirements of 10 CSR 25-7.265(2)(G).

7. Containers holding ignitable or reactive waste which are stored outdoors or in buildings not equipped with sprinkler systems shall be located at least fifty feet (50') from the facility's property line.

8. Containers holding ignitable or reactive waste which are stored indoors shall be located at least fifty feet (50') from the facility's property line, unless the following requirements are satisfied:

A. Exposing walls that are located more than ten feet (10') but less than fifty feet (50') from a boundary line of adjoining property that can be built upon shall have a fire-resistance rating of at least two (2) hours, with each opening protected by an automatically-closing listed one and one-half (1.5)-hour (B) fire door;

B. Exposing walls that are located less than ten feet (10') from a boundary line of adjoining property that can be built upon shall have a fire-resistance rating of at least four (4) hours, with each opening protected by an automatically-closing listed three (3)-hour (A) fire door (Comment: All fire doors, closure devices, and windows shall be installed in accordance with the National Fire Protection Association (NFPA) Code 80, *Standards for Fire Doors and Windows*, 1995 edition);

C. The construction design of exterior walls shall provide ready accessibility for fire-fighting operations through the provision of access openings, windows, or lightweight noncombustible wall panels;

D. Container storage areas shall be provided with automatic fire suppression systems designed and installed in accordance with NFPA 14 (1996 edition), NFPA 15 (1996 edition), NFPA 16 (1995 edition), NFPA 16A (1994 edition), NFPA 17 (1998 edition), NFPA 17A (1998 edition), NFPA 18 (1995 edition), NFPA 20 (1996 edition), NFPA 22 (1996 edition), and NFPA 24 (1995 edition) Standards. Final design of these systems shall be approved by a qualified, registered professional engineer in Missouri;

E. Each container storage area shall have preconnected hose lines capable of reaching the entire area. The fire hose shall be a one and one-half (1.5)-inch line or one-inch (1") hard rubber line. Where a one and one-half (1.5)-inch fire hose is used, it shall be installed in accordance with NFPA 14 (1996 edition). Hand-held fire extinguishers rated for the appropriate class of fire shall be available at each storage area;

F. Only containers meeting the requirements of, and containing products authorized by, Chapter I, Title 49 of the *Code of Federal Regulations* (DOT Regulations) or NFPA 386, *Standard for Portable Shipping Tanks* (1990 edition) shall be used;

G. All storage of ignitable or reactive materials shall be organized in a manner which will not physically obstruct a means of egress. Materials shall not be placed in a manner that a fire would preclude egress from the area. Evacuation plans shall recognize the locations of any automatically-closing fire doors;

H. All containers shall be arranged so that there is a minimum aisle space of four feet (4') between rows, allowing accessibility to each individual container. Double rows can be utilized. Containers shall not be stacked, placed, or both, closer than three feet (3') from ceilings or any roof members; and

I. Explosive gas levels in the facility shall be monitored continuously. If the facility is not manned twenty-four (24) hours per day, a telemetry system shall be provided to alarm designated response personnel.

(J) Tanks. This subsection modifies and adds to the incorporation of 40 CFR part 265 subpart J.

1. 40 CFR 264.190(c) is not incorporated by reference.

2. In 40 CFR 265.193(g)(1) incorporated in this rule, delete "or that in the event of a release that does migrate to ground water or surface water, no substantial present or potential hazard will be posed to human health or the environment." 40 CFR 265.193(g)(2) is not incorporated by reference in this rule. In 40 CFR 265.193(g)(4)(ii) incorporated in this rule, substitute "264.197(b)" for "265.197(b)." For purposes of 40 CFR 265.193(h) incorporated in this rule, "variance" means exception.

3. In 40 CFR 265.196(c) and (c)(2) incorporated in this rule, delete "visible" and "visual." Tank storage areas which close without removing all hazardous waste and/or hazardous waste constituents to below background levels may pursue either a risk-based closure if there is no evidence of groundwater or surface water contamination or in the absence of such evidence, close in accordance with 10 CSR 25-7.264(2)(N) and 40 CFR part 264 subpart N as incorporated in subsection (2)(N). The owner/operator shall also comply with the requirements of 10 CSR 25-7.265(2)(G).

(K) Surface Impoundments. In addition to the requirements in 40 CFR part 265 subpart K, those surface impoundments which are intended to be closed without removing the hazardous waste shall meet the requirements of 10 CSR 25-7.264(2)(N)1.A. and 40 CFR part 264 subpart N as incorporated in 10 CSR 25-7.264. If the site location for any such impoundment cannot meet these site specific location requirements and contamination exists beyond the liner of the surface impoundment, the owner/operator shall clean up contaminated residues and hazardous constituents to the greatest extent practical during closure. If the department determines, based on the potential impact on human health and the environment, that it is not necessary or not feasible to remove contaminated material down to background concentrations during closure, the owner/operator shall comply with 40 CFR 264.228(b) incorporated in 10 CSR 25-7.264 or shall submit a delisting petition and obtain approval from EPA for that delisting petition pursuant to 40 CFR 260.20 and 40 CFR 260.22 for the contaminated material not removed during closure.

(L) Waste Piles. *(Reserved)*

(M) Land Treatment. *(Reserved)*

(N) Landfills. *(Reserved)*

(O) Incinerators. *(Reserved)*

(P) Thermal Treatment. *(Reserved)*

(Q) Chemical, Physical, and Biological Treatment. *(Reserved)*

(R) Underground Injection. 40 CFR part 265 subpart R is not incorporated by reference.

(S) *(Reserved)*

(T) *(Reserved)*

(U) *(Reserved)*

(V) *(Reserved)*

(W) Drip Pads. 40 CFR part 265 subpart W is not incorporated by reference.

(X) *(Reserved)*

(Y) *(Reserved)*

(Z) *(Reserved)*

(AA) Air Emission Standards for Process Vents. *(Reserved)*

(BB) Air Emission Standards for Equipment Leaks. *(Reserved)*

(CC) Air Emission Standards for Tanks, Surface Impoundments, and Containers. *(Reserved)*

(DD) Containment Buildings. *(Reserved)*

(EE) Hazardous Waste Munitions and Explosives Storage. *(Reserved)*

(3) This section applies to TSD facilities that accept and/or ship hazardous waste via railroad tank cars (railcars). The owner/operator of a TSD facility shall comply with requirements set forth in 10 CSR 25-7.264(3) and shall submit a rail car management plan for inclusion in their part B permit application within one hundred eighty (180) days of the effective date of this section.

AUTHORITY: section 260.370, RSMo Supp. 2010 and sections 260.390 and 260.395, RSMo 2000

10 CSR 25-7.266 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

PURPOSE: This rule incorporates federal regulations in 40 CFR part 266 by reference and provides Missouri specific additions, deletions, or changes to the federal regulations. This rule provides limited standards for certain hazardous waste management practices, particularly in regard to recyclable materials and sets forth standards for recyclable materials used in a manner constituting disposal, hazardous waste burned in boilers and industrial furnaces recyclable materials utilized for precious metals recovery and spent lead-acid batteries being reclaimed.

(1) The regulations set forth in 40 CFR part 266, July 1, 2010, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) Persons subject to the regulations in 40 CFR part 266 shall comply with the requirements, changes, additions, or deletions noted in this section in addition to 40 CFR part 266 incorporated in this rule. (Comment: This section has been organized so that all Missouri additions or changes to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the changes to the management requirements for hazardous waste fuels, 40 CFR part 266 subpart D, are found in subsection (2)(D) of this rule.)

(A) *Reserved*

(B) *Reserved*

(C) **Recyclable Materials Used in a Manner Constituting Disposal.** In addition to the requirements in 40 CFR part 266 subpart C incorporated in this rule, a person who is marketing hazardous waste recyclable materials which would be used in a manner constituting disposal must obtain a hazardous waste resource recovery certification pursuant to 10 CSR 25-9.020.

(D) *Reserved*

(E) *Reserved*

(F) **Recyclable Materials Used for Precious Metals Recovery.** *Reserved*

(G) **Spent Lead-Acid Batteries Being Reclaimed.** In addition to the requirements in 40 CFR part 266 subpart G a person who reclaims materials from spent lead-acid batteries shall obtain a hazardous waste resource recovery certification pursuant to 10 CSR 25-9.020.

1. Owners or operators of facilities that store spent batteries before reclaiming them are subject to the following requirements:

A. Notification requirements under section 3010 of RCRA;

B. All applicable provisions in subparts A, B (but not 40 CFR 264.13 (waste analysis)), C, D, E (but not 264.71 or 264.72 (dealing with the use of the manifest and manifest discrepancies)), and F through L of 40 CFR part 264, as incorporated by reference in 10 CSR 25-7.264(1) and modified in 10 CSR 25-7.264(2)(A) through 10 CSR 25-7.264(2)(L);

C. All applicable provisions in subparts A, B (but not 40 CFR 265.13 (waste analysis)), C, D, E (but not 265.71 or 265.72 (dealing with the use of the manifest and manifest discrepancies)), and F through L of 40 CFR part 265, as incorporated by reference in 10 CSR 25-7.265(1) and modified in 10 CSR 25-7.265(2)(A) through 10 CSR 25-7.265(2)(L);

D. All applicable provisions in parts 270 and 124 of the CFR, as incorporated by reference in 10 CSR 25-7.270 and 10 CSR 25-8.124. (Note: The language printed at 10 CSR 25-7.266(2)(G)1.A.–D. above was originally incorporated by reference from 40 CFR 266.80(b), 1994 edition. The language is reprinted here because it was mistakenly omitted from subsequent editions of the *Code of Federal Regulations*.)

(H) **Hazardous Waste Burned in Boilers and Industrial Furnaces.** Additions, modifications, and deletions to 40 CFR part 266 subpart H “Hazardous Waste Burned in Boilers and Industrial Furnaces” are as follows:

1. 40 CFR 266.100(c)(1) is not incorporated by reference in this rule;

2. Add the following provision to 40 CFR 266.100(d) incorporated in this rule: “The owner/operator of facilities that process hazardous waste solely for metal recovery in accordance with 40 CFR 266.100(d) shall be certified for resource recovery pursuant to 10 CSR 25-9.020”;

3. In 40 CFR 266.101(c)(2) incorporated in this rule, replace “paragraph (c)(1)” with “paragraphs (c)(1) and (d)(1)”; and

4. 40 CFR 266.101 is amended by adding a new subsection (d) to 266.101 incorporated in this rule as follows:
(d)(1) **Treatment facilities.** Owners/operators of permitted facilities that thermally, chemically, physically (that is, shredding, grinding, etc.), or biologically treat hazardous waste prior to burning must comply with 10 CSR 25-7.264(2)(X), and owners/operators of interim status facilities that thermally, chemically, physically (that is, shredding, grinding, etc.), or biologically treat hazardous waste prior to burning shall comply with 10 CSR 25-7.265(2)(P) and (Q). Owners/operators of permitted facilities which blend hazardous waste in tanks or containers prior to burning must comply with 10 CSR 25-7.264(2)(J)6., and owners/operators of interim status facilities that blend hazardous waste in tanks or containers prior to burning shall comply with 10 CSR 25-7.265(2)(J).

(I) *Reserved*.

(J) *Reserved*.

(K) *Reserved*.

(L) *Reserved*.

(M) **Military Munitions.** Additions, modifications, and deletions to 40 CFR part 266 subpart M “Military Munitions” are:

1. Oral and written notifications re-quired by 40 CFR 266.203(a)(1) shall be submitted to the department’s emergency response coordinator at (573) 634-2436 or (573) 634-CHEM, in lieu of the director; and

2. Oral and written notifications re-quired by 40 CFR 266.205(a)(1) shall be submitted to the department's emergency re-sponse coordinator at (573) 634-2436 or (573) 634-CHEM, in lieu of the director.

AUTHORITY: section 260.370, RSMo Supp. 2010 and sections 260.390 and 260.395, RSMo 2000

10 CSR 25-7.268 Land Disposal Restrictions

PURPOSE: This rule establishes standards and requirements that identify hazardous wastes that are restricted from land disposal.

(1) The regulations set forth in 40 CFR part 268, July 1, 2010, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) Persons who generate or transport hazardous waste and owners/operators of hazardous waste treatment, storage, and disposal facilities shall comply with this section in addition to the regulations in 40 CFR part 268. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the changes to 40 CFR part 268 subpart A are found in subsection (2)(A) of this rule.)

(A) General. This subsection sets forth modifications to 40 CFR part 268 subpart A incorporated by reference in section (1) of this rule.

1. *(Reserved)*

2. The state cannot be delegated the authority from the United States Environmental Protection Agency (EPA) to approve extensions to effective dates of any applicable restrictions, as provided in 40 CFR 268.5 incorporated in this rule. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 268.5 as incorporated in this rule. This modification does not relieve the regulated person of his/her responsibility to comply with 40 CFR 268.5 of the federal hazardous waste management regulations.

3. The state cannot be delegated the authority from the EPA to approve exemptions from prohibitions for the disposal of a restricted hazardous waste in a particular unit(s) based upon a petition demonstrating, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit(s) for as long as the wastes remain hazardous as provided in 40 CFR 268.6 incorporated in this rule. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 268.6 as incorporated in this rule. This modification does not relieve the regulated person of his/her responsibility to comply with 40 CFR 268.6 of the federal hazardous waste management regulations.

(B) 40 CFR part 268 subpart B, Schedule for Land Disposal Prohibition and Establishment of Treatment Standards, is not incorporated in this rule.

(C) Prohibitions on Land Disposal. This subsection sets forth modifications to 40 CFR part 268 subpart C incorporated by reference in section (1) of this rule.

1. The waste specific prohibitions in 40 CFR 268.31 apply to the hazardous wastes identified by EPA hazardous waste numbers F020, F023, and F027 as amended in 10 CSR 25-4.261(2)(D)1.A.-C.

2. The waste specific prohibitions in 40 CFR 268.31 apply to the EPA hazardous waste numbers F020, F021, F022, F023, F026, and F027 as amended in 10 CSR 25-4.261(2)(D)2.

3. The hazardous waste identified by the Missouri hazardous waste number MH02 in 10 CSR 25-4.261(2)(D)3. may be disposed in a landfill or surface impoundment only if that unit is in compliance with the requirements specified in 40 CFR 268.5(h)(2) as incorporated in section (1) of this rule and all other applicable requirements of 10 CSR 25-7.264(1) incorporating by reference 40 CFR part 264 and 10 CSR 25-7.265(1) incorporating by reference 40 CFR part 265.

(D) Treatment Standards. This subsection sets forth modifications to 40 CFR part 268 subpart D incorporated by reference in section (1) of this rule.

1. The treatment standards in 40 CFR part 268 subpart D for the hazardous wastes identified by EPA hazardous waste numbers F020, F023, and F027 apply to F020, F023, and F027 hazardous wastes as amended in 10 CSR 25-4.261(2)(D)1.A.-C.

2. The treatment standard in 40 CFR part 268 subpart D for the hazardous wastes identified by EPA hazardous waste numbers F020, F021, F022, F023, F026, and F027 apply to these listed wastes as amended in 10 CSR 25-4.261(2)(D)2.

3. The state cannot be delegated the authority from the U.S. EPA to allow the use of alternative treatment methods as provided in 40 CFR 268.42(b) incorporated in this rule. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 268.42(b) as incorporated in this rule. This modification does not relieve the regulated person of his/her responsibility to comply with 40 CFR 268.42(b) of the federal hazardous waste management regulations.

4. The state cannot be delegated the authority from the U.S. EPA to approve variances from treatment standards as provided in 40 CFR 268.44 incorporated in this rule. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 268.44, as incorporated in this rule. This modification does not relieve the regulated person of his/her responsibility to comply with 40 CFR 268.44 of the federal hazardous waste management regulations.

(E) Prohibitions on Storage. (*Reserved*)

AUTHORITY: section 260.370, RSMo Supp. 2010 and sections 260.390, 260.395, and 260.400, RSMo 2000

10 CSR 25-7.270 Missouri Administered Permit Programs: The Hazardous Waste Permit Program

PURPOSE: This rule incorporates the federal regulations in 40 CFR part 270 by reference and sets forth additional state requirements.

(1) The regulations set forth in 40 CFR part 270, July 1, 2010, except for the changes made at 70 FR 53453 September 8, 2005, and 73 FR 64667 to 73 FR 64788, October 30, 2008, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(A) Any federal agency, administrator, regulation, or statute that is referenced in 40 CFR part 270 shall be deleted and the comparable state department, director, rule, or statute as provided in 10 CSR 25-3.260(1)(A) shall be added in its place except as specified in paragraph (2)(A)6. of this rule. The additional substitutions or changes noted in this subsection shall also apply.

1. "Owner/operator" as defined by 10 CSR 25-3.260(2)(O)3. shall be substituted for any reference to "owner and operator" or "owner or operator" in 40 CFR part 270.

(2) The owner/operator of a permitted hazardous waste treatment, storage, or disposal (TSD) facility shall comply with the requirements noted in this rule along with 40 CFR part 270, incorporated in this rule. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the changes to 40 CFR part 270 subpart A are found in subsection (2)(A) of this rule.)

(A) General Information. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 270 subpart A.

1. When a facility is owned by one (1) person but is operated by another person, both the owner and operator shall sign the permit application, and the permit shall be issued to both.

2. The owner/operator of a new hazardous waste management facility shall contact the department and obtain a United States Environmental Protection Agency (EPA) identification number before commencing treatment, storage, or disposal of hazardous waste.

3. A permit is not required under this rule for an elementary neutralization unit or a wastewater treatment unit receiving only hazardous waste that is generated on-site or generated by its operator or only one (1) generator if the owner/operator, upon request, can demonstrate to the satisfaction of the department the following:

A. There is sufficient evidence that the unit is not leaking;

B. The unit is structurally sound and there is no evidence that the unit will fail or collapse;

C. There are no incompatible wastes being placed in the unit;

D. The owner/operator has been and is in compliance with all present and prior permits and authorizations issued to the owner/operator; and

E. There is no evidence of any past releases from the unit.

4. In addition to the requirements in 40 CFR 270.1(b) incorporated in this rule, the owner/operator shall provide state notification to the department within sixty (60) days after the effective date of a state rule that first requires him/her to comply with 10 CSR 25 where that notification is required.

5. *(Reserved)*

6. In 40 CFR 270.2, substitute "Facility mailing list means the mailing list required of the permittee or applicant in accordance with 10 CSR 25-7.270(2)(B)10." for the definition of "Facility mailing list" given in the incorporated regulation.

7. In 40 CFR 270.3 "Considerations Under Federal Law," do not substitute any comparable Missouri statute or administrative rule for the federal acts and regulations. This does not relieve the owner/operator of his/her responsibility to comply with any applicable and comparable state law or rule in addition to complying with the federal acts and regulations.

(B) Permit Application. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 270 subpart B.

1. Existing hazardous waste management facilities must submit a state Part A permit application to the department no later than sixty (60) days after the effective date of state rules which first require them to comply with the requirements set forth in 10 CSR 25-7.265 or 10 CSR 25-7.266. A facility which did not meet federal notification and Part A submittal requirements under the Hazardous and Solid Waste Amendments (HSWA) shall not qualify for state interim status. State interim status is granted to those facilities which either meet federal interim status requirements, are required to meet state interim status requirements because no federal interim status requirements affect the filing, or become subject to regulations under state rules which are not promulgated to meet the requirements of 40 CFR part 271.

2. Confidentiality may be requested for the information required in 40 CFR 270.13(a)-(m) incorporated in this rule. 10 CSR 25-3.260(1)(B) sets forth requirements for protection of confidential business information and the availability of information provided under 10 CSR 25. Therefore, 40 CFR 270.12 is not incorporated by reference in this rule.

3. The topographic map required in 40 CFR 270.13(l) incorporated in this rule shall also depict surrounding land uses such as residential, commercial, agricultural, and recreational.

4. Seismic evaluation requirements for hazardous waste management facility permit applicants. 40 CFR 270.14(b)(11)(i) and (ii) are not incorporated in this rule. An applicant for a hazardous waste management facility permit (excluding post-closure) shall design and construct the facility to withstand stresses due to earthquake loading or certify that the existing facility is able to withstand stresses due to earthquake loading. In the event that the regulated unit cannot withstand stresses, the facility shall certify that a release or situation which will endanger human health and/or the environment is not likely to occur. The applicant shall submit as part of the permit application a certification of the adequacy of the design or the ability of the existing facility to withstand stresses due to earthquake loading. The certification shall consider the location of the facility (e.g., the proximity of the facility to an active seismic zone) and must be completed by a qualified professional engineer registered in Missouri.

5. In addition to the topographic map required in 40 CFR 270.14(b)(19) incorporated in this rule, an applicant for a land-based hazardous waste management facility permit shall submit drawings which depict at a minimum—

A. Original contours;

B. Proposed final contours;

C. Original surface water drainage patterns;

D. Proposed final surface water drainage patterns;

E. Layout of the leachate collection system;

F. Layout of the monitoring system;

G. Access roads;

H. Location of soil borings and trenches;

I. Major rock outcrops and sinkholes within the map area;

J. Occupied permanent residential dwelling houses within one-fourth (1/4) mile of the disposal facility boundaries;

K. All available information on private and public wells, public water supply lines, and any aquifers, seeps, sinkholes, caves, or mining areas within one-fourth (1/4) mile of the facility; and

L. For landfills only, a coordinate system referenced to a benchmark and baseline that have been permanently established on the site and referenced to Government Land Office corners and the legal boundaries of the facility as described by a registered land surveyor licensed by Missouri.

6. All submitted engineering plans and reports shall be approved by a registered professional engineer licensed by Missouri. The engineering plans and reports shall specify the materials, equipment, construction methods, design standards, and specifications for hazardous waste management facilities, and processes that will be utilized in the construction and operation of the facility. The engineering plans and reports shall also include a diagram of any piping, instrumentation or process flows, and descriptions of any feed systems, safety cutoffs, bypass systems, and pressure controls (for example, vents).

7. The applicant for a hazardous waste facility permit to construct or operate a facility shall submit the application to the department in triplicate (quadruplicate, if application is made for a land-based management facility). If a permit is issued, the permittee shall submit two (2) copies of the entire approved application to the department.

8. The permit application fee set forth in 10 CSR 25-12.010 shall be submitted with the application.

9. The department will supervise any field work undertaken to collect geologic and engineering data which is to be submitted with the application. The applicant shall contact the department at least five (5) working days prior to conducting any field work that is undertaken to collect geologic and engineering data which is to be submitted with the application. A fee shall also be assessed pursuant to 10 CSR 25-12.010 for all costs incurred by the department in the observation of field work, engineering and geological review of the application, and all other review necessary by the department to verify that the application complies with section 260.395.7., RSMo.

10. The permit application shall include the following information for the purpose of notification:

A. Names and address of all persons listed on the facility mailing list as defined in 10 CSR 25-8.124(1)(A)10.C.(I)(c) shall be submitted in the form of an alphabetical list with five (5) sets of addressed, self-adhesive mailing labels also included; and

B. The name, address, and telephone number of the location where the permit application and supporting documents are to be placed, as described in 10 CSR 25-8.124(1)(B)3.B.(II)(c) and the name of the person at that location who may be contacted to schedule a review of the documents.

11. The applicant shall submit the information required by subsection (2)(H) of this rule in the form of a disclosure statement as part of the permit application.

12. An applicant may be required to submit other information as may be necessary to enable the department to carry out its duties.

13. In addition to the requirements in 40 CFR 270.15 incorporated in this rule, an owner/operator of a facility that treats hazardous waste in containers shall meet the requirements in 40 CFR 270.23 incorporated in this rule.

14. In addition to the requirements in 40 CFR 270.16 incorporated in this rule, an owner/operator of a facility that treats hazardous waste in a tank system shall meet the requirements in 40 CFR 270.23 incorporated in this rule.

15. 40 CFR 270.16(h)(2) is not incorporated in this rule.

16. An owner/operator who stores, treats, or disposes of hazardous waste in surface impoundments shall provide the following information in addition to the requirements of 40 CFR 270.17 incorporated in this rule: detailed plans and an engineering report explaining the location of the saturated zone in relation to the surface impoundment and the design of a double-liner system that incorporates a leak detection system between liners.

17. An owner/operator who disposes of hazardous waste in landfills shall provide the following information in addition to the requirements of 40 CFR 270.21 incorporated in this rule:

A. Engineering reports which describe the geology and hydrology of the site and demonstrate the site suitability as required in 10 CSR 25-7.264(2)(N)1.;

B. Detailed plans and an engineering report addressing the following items:

(I) Management of run off from the disposal facility or unit;

(II) Minimization of erosion, landslides, and sloughing;

(III) Control of horizontal migration of leachate where applicable;

(IV) Delineation of a three hundred foot (300') buffer between the property line of the disposal facility and area to be permitted;

(V) Control of wind dispersal of waste particulate matter where applicable;

(VI) Control of odor dispersal where applicable; and

(VII) Control of escape of gases where applicable.

C. Detailed plans and engineering report explaining the location of the saturated zone in relation to the landfill and the design of a double-liner system that incorporates a leachate collection and removal system above and between the liners; and

D. An explanation of how the volatile waste standards in 10 CSR 25-7.264(2)(N)4. are met.

18. An owner/operator of a hazardous waste treatment facility or operating disposal facility shall submit a health profile as set forth in 10 CSR 25-7.264(2)(P).

19. The person applying for a permit under sections 260.350–260.434, RSMo, shall notify the department in the permit application of any convictions for any acts occurring after July 9, 1990, which would have the effect of limiting competition. The applicant, after submission of the permit application and prior to permit issuance, shall notify the department in writing within thirty (30) days of any conviction for any act which would have the effect of limiting competition.

20. 40 CFR 270.26 is not incorporated in this rule.

21. The owner/operator of a TSD facility that accepts and/or ships hazardous waste via railroad tank car (railcar) shall submit a railcar management plan in accordance with the requirements set forth in 10 CSR 25-7.264(3).

22. The person applying for a permit under sections 260.350–260.434, RSMo, shall comply with the requirements of 10 CSR 25-8.124(1).

(C) Permit Conditions. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 270 subpart C.

1. This paragraph sets forth the procedures for issuance of a hazardous waste facility permit, construction certification, and authorization to begin operation.

A. If, after public notice in accordance with 10 CSR 25-8.124 and review of the application, the department determines that the application conforms with the provisions of sections 260.350–260.434, RSMo, and all standards and rules corresponding, the department shall issue the hazardous waste facility permit to the applicant upon payment of a fee of one thousand dollars (\$1000) for each facility for each year the permit is to be in effect beyond the first year. The department will issue an EPA identification number to the facility at the time.

B. The applicant may begin construction or alterations at the facility in accordance with the approved plans, reports, design specifications, and procedures after receiving the facility permit. When construction is completed as approved in the permit and the financial requirements of this chapter have been fulfilled, the owner/operator shall submit a written request as required in 40 CFR 270.30(1)(2) incorporated in this rule to the department for authorization to begin operation.

C. If the permit is for a facility operating under interim status, the department may deny authority to operate under the permit if the construction required under the permit is not completed in accordance with the approved plans within the time period specified in the permit or within the time period as extended by the department for cause due to circumstances beyond the permittee's control.

D. The appeal period for a permit or any condition of a permit shall begin on the date of issuance of the permit as required in subparagraph (2)(C)1.A. of this rule. However, for the purposes of termination of interim status pursuant to 40 CFR 270.73(a) incorporated in this rule, final administrative disposition of the permit application shall occur either—

(I) Thirty (30) days after issuance of a letter of authorization pursuant to subparagraph (2)(C)1.B. of this rule, unless a notice of appeal is filed with the commission within that time;

(II) Thirty (30) days after denial of authorization to operate pursuant to subparagraph (2)(C)1.C. of this rule, unless a notice of appeal is filed with the commission within that time; or

(III) Upon the issuance of a decision by the commission, after timely appeal of an action under subparagraph (2)(C)1.B. or C. of this rule.

2. The department may deny the permit application if—

A. The applicant fails to submit a complete application in accordance with, and within the time specified in, a notice of deficiency issued pursuant to 10 CSR 25-8.124(1)(A)3.;

B. The applicant has failed to fully disclose all relevant information in the application or during the permit issuance process or has misrepresented facts at any time;

C. The department determines that the application does not conform with the provisions of sections 260.350–260.434, RSMo, and all corresponding standards and rules, or that the facility cannot be effectively operated and maintained in full compliance with sections 260.350–260.434, RSMo, and all corresponding standards and rules, or that the facility is being operated or maintained in violation of a present permit, or that continued operation of the facility presents an unreasonable threat to human health or the environment or will create or allow for the continuance of a public nuisance;

D. The department determines that the applicant owner/operator is a habitual violator as defined in subsection (2)(H) of this rule;

E. The department determines that one (1) of the conditions specified in section 260.395.17., RSMo, is present;

or
F. The applicant owner/operator fails to submit the permit fees required by subparagraph (2)(C)1.A. of this rule within thirty (30) days of receipt of notice from the department that the fees are due.

3. In 40 CFR 270.30(1)(2) introductory text incorporated in this rule, delete “except as provided in 270.42.”

4. The owner/operator of a facility permitted under sections 260.350–260.434, RSMo, shall notify the department in writing of any conviction for any act occurring after July 9, 1990, which would have the effect of limiting competition. This written notification shall be provided within thirty (30) days of the conviction or plea and shall comply with the requirements at subsection (2)(I) of this rule.

(D) Changes to Permit. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 270 subpart D.

1. In addition to the requirements of 40 CFR 270.40(b), the department shall determine, in accordance with subsection (2)(H) of this rule, whether the proposed owner or operator, including an officer or management employee of the proposed owner or operator, is a person described in section 260.395.16, RSMo, and whether any of the conditions specified in section 260.395.17, RSMo, would exist if the proposed transfer were to take place.

2. “Revocation and reissuance” of a permit, as that term is used in 40 CFR part 270 incorporated in this rule, shall mean the same as “total modification” as that term is used in 10 CSR 25-8.124.

3. The “termination” of a permit, as used in 40 CFR part 270 incorporated in this rule, shall mean the same as “revocation” of a permit as used in 10 CSR 25-8.124.

4. The director shall suspend, revoke, or not renew the permit of any person to treat, store, and dispose of hazardous waste if that person has had two (2) or more convictions in any court of the United States or of any state other than Missouri, or two (2) or more convictions within a Missouri court for crimes or criminal acts occurring after July 9, 1990, an element of which involves restraint of trade, price fixing, intimidation of the customers of any person, or for engaging in any other acts which may have the effect of restraining or limiting competition concerning activities regulated under Chapter 260, RSMo, the Resource Conservation and Recovery Act, or similar laws of other states within any five (5)-year period. Convictions by entities which occurred prior to the purchase or acquisition by a permittee shall not be included. The permittee shall submit a written report to the department within thirty (30) days of the conviction or plea. The report shall include information explaining the charge(s) on which the permittee was convicted, the date(s) of the conviction(s), and the date(s) and charge(s) of previous convictions.

5. The owner/operator of a facility that has had his/her permit (issued under the provisions of sections 260.350–260.434, RSMo) revoked under section 260.379, RSMo, may apply to the department for reinstatement of his/her permit after five (5) years have elapsed from the date of the last conviction of crimes or criminal acts as described in section 260.379, RSMo. The application must be in writing and accompanied by a reapplication fee, updated permit application, and any other information the department deems necessary in order to reinstate the permit.

6. 40 CFR 270.42(j)(1) and 40 CFR 270.42(j)(2) are not incorporated in this rule.

7. 40 CFR 270.42(l) is not incorporated into this rule.

(E) Expiration and Continuation of Permits. The director will review all permits for operating disposal facilities every five (5) years after issuance for conformance with applicable current hazardous waste rules and laws. The permit will be modified as necessary to conform with the applicable rules and laws.

(F) Special Forms of Permits. *(Reserved)*

(G) Interim Status. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 270 subpart G.

1. An owner/operator who becomes regulated under 10 CSR 25-7 shall operate in compliance with interim status in accordance with paragraphs (2)(A)4. and (2)(B)1. of this rule.

2. In addition to the items in 40 CFR 270.73 incorporated in this rule, interim status terminates when the department issues an order or commences an action pursuant to paragraph (2)(G)4. of this rule requiring the owner/operator to cease operations and undertake closure actions at the facility or at a unit.

3. The owner/operator, at any time, voluntarily may submit a permit application pursuant to this rule.

4. Upon a determination by the department that the facility is not being operated or cannot be operated in full compliance with the requirements of 10 CSR 25-7.265, the department, in lieu of or in addition to requiring the submittal of a permit application pursuant to paragraph (2)(G)1. of this rule, may take an enforcement action pursuant to sections 260.410, 260.420, and 260.425, RSMo, as it deems appropriate under the circumstances in order to fully and effectively protect public health and the environment.

(H) Habitual Violators. This subsection describes how the department shall determine whether a hazardous waste management facility permit applicant is a habitual violator for purposes of implementing section 260.395.16, RSMo. This subsection applies to the issuance, reissuance, or total modification of hazardous waste management facility permits, excluding post-closure and corrective action only permits, and to hazardous waste resource recovery facilities for the activities subject to permit requirements in 10 CSR 25-7.264.

1. The department shall consider the applicant's prior operating history pursuant to section 260.395.16, RSMo, during the review of an application for a permit to operate a hazardous waste management or commercial polychlorinated biphenyl (PCB) facility. All documentation required by this subsection shall be submitted along with the information specified in 40 CFR part 270 subparts B and D incorporated by reference in section (1) of this rule and modified in subsection (2)(B) of this rule, paragraph (2)(D)1. of this rule, and 10 CSR 25-13.010(9)(B).

2. Definitions. The definitions in this paragraph apply to subsection (2)(H) of this rule.

A. Facility, for purposes of calculating violations as required in paragraph (2)(H)5. of this rule, means each permitted, licensed interim status, unpermitted or unlicensed hazardous waste management or commercial PCB facility, solid waste disposal area, solid waste processing facility, certified hazardous waste resource recovery facility, or solid or hazardous waste transporter or transfer station.

B. Person, in addition to the definition in section 260.360(17) RSMo, shall mean an officer or management employee of the applicant, any officer or management employee of any corporation or business which owns an interest in the applicant, any officer or management employee of any business in which an interest is owned by any person, corporation, or business which owns an interest in the applicant, or any officer or management employee of any corporation or business in which an interest is owned by the applicant.

C. Management employee means any individual, including a supervisor, who has the authority to serve as an agent for the employer in that the employee has the authority to perform or effectively recommend any one (1) or more of the following actions: hiring, firing, assigning, or directing other employees with respect to waste management operations.

D. Violation means any one (1) or more of the following actions or an equivalent action by this or another regulatory agency or competent authority in response to any violation of the Missouri solid or hazardous waste management law, the solid or hazardous waste management law of another state, or any federal law governing the management of solid waste, hazardous waste, PCB material, or PCB units:

- (I) Final administrative order;
- (II) Final permit revocation;
- (III) Final permit suspension;
- (IV) Civil judgment against the applicant;
- (V) Criminal conviction; or
- (VI) Settlement agreement in connection with a civil action which has been filed in court.

E. Interest, as used in "owning an interest in," means having control of at least seven and one-half percent (7.5%) of an applicant or person as defined in subparagraph (2)(H)2.B. of this rule. This is determined by multiplying the percentages of ownership at each successive level and comparing this result to a seven and one-half percent (7.5%) cutoff level. For city, county, state, federal, and military-owned facilities, interest, or owning an interest in, is defined as one (1) level above or below the facility applying for the permit. (For example, a military-owned facility shall consider one (1) command level above the base on which the facility will be operated as having an interest in the facility. Likewise, the "command" shall consider itself as having an interest in all facilities within the command).

F. Habitual violator means a person who has failed the habitual violator test set out in paragraph (2)(H)5. of this rule.

3. For the purpose of this subsection, any administrative action or order, judgment, or criminal conviction that has been ruled on appeal in favor of the applicant by a final decision of a competent authority will not be considered to be a violation. If the applicant has an appeal pending, the outcome of which will affect the issuance of a permit, the department shall delay issuance of the permit until a final decision is rendered.

4. The permit applicant shall submit the following information on the Habitual Violator Disclosure Statement form provided by the department, incorporated by reference in this rule, and published in the appendix to this rule as part of the permit application:

A. Names and addresses of all persons meeting any of the following criteria:

- (I) Any person who owns an interest in the applicant;
- (II) Any person in whom an interest is owned by any person who owns an interest in the applicant; and
- (III) Any person in whom the applicant owns an interest;

B. A list of all solid waste management, infectious waste management, commercial PCB management and hazardous waste management permits (Part A and Part B), licenses, certifications, or equivalent documents held within the last ten (10) years by the applicant or any person(s) reported under subparagraph (2)(H)4.A. of this rule, for the operation or post-closure of a solid waste management, infectious waste management, commercial PCB or hazardous waste management facility, or a combination of these, as defined in subparagraph (2)(H)2.A. of this rule, in Missouri or in the United States and for each provide the following information:

- (I) Permit or identification number;

- (II) Type of permit, license, certification, or equivalent document and dates held;
- (III) Name(s) of the person(s) to whom each permit, license, certification, or equivalent document was issued;
- (IV) Address or location of each facility; and
- (V) Issuing agency;

C. The structure of the applicant in relation to any person(s) reported in accordance with subparagraph (2)(H)4.A.;

D. Names and addresses of the officers and management employees of any person(s) reported in accordance with subparagraph (2)(H)4.A.;

E. A list of all violations, including the identification of any action for which an appeal or final judgment is pending, as defined in subparagraph (2)(H)2.D. of this rule cited within ten (10) years preceding the date of the permit application incurred by any persons required to be reported under subparagraph (2)(H)4.A. or (2)(H)4.D. of this rule. Each listing shall include the following information:

- (I) Dates of violations;
- (II) A brief description of each violation, including the type of regulatory action taken;
- (III) Statutory or regulatory references, or both, to each specific statute or administrative rule that was violated;
- (IV) Name and location of the facility cited; and
- (V) Name and address of the issuing agency, and name and address of any competent authority with final jurisdiction regarding each violation;

F. A brief description of all incidents in which any person(s) reported under subparagraph (2)(H)4.A or (2)(H)4.D. of this rule have been adjudged in contempt of any court order enforcing the provisions of any state's solid or hazardous waste laws, or federal laws pertaining to hazardous waste;

G. A listing of all facilities as defined at (2)(H)2.A. owned or operated by any person required to be reported at (2)(H)4.A. or (2)(H)4.D. A brief justification as to why the facility has been included on the listing; and

H. All other information requested by the department necessary for the department to conduct an evaluation of the overall operating history of the applicant.

5. The habitual violator test.

A. A total of calculated violations shall be determined by the following formula:

Number of violations (as defined in subparagraph (2)(H)2.D. of this rule), occurring within the ten (10) years preceding the date of the permit application, incurred by any person required to be reported under (2)(H)4.A. or (2)(H)4.D., divided by the total number of facilities (as defined in subparagraph (2)(H)2.A. of this rule) equals the number of calculated violations.

=

Number of Violations Calculated
Total Number of Facilities Violations

B. If the total of calculated violations is two (2.0) or less, the applicant has passed the habitual violator test. If the total of calculated violations is greater than two (2.0), the department will notify the applicant of his/her score. Upon receipt of notification, the applicant shall have thirty (30) days to produce clear and convincing evidence to the department which demonstrates that the applicant is not a habitual violator. The department shall determine whether the evidence is clear and convincing for the purpose of the habitual violator determination. If the evidence produced by the applicant is not found to be clear and convincing, or if no evidence is produced, the department will determine the applicant to be a habitual violator, and the department will notify the applicant of permit denial. If the evidence produced by the applicant is found to be clear and convincing, the department may determine that the applicant has not failed the habitual violator test (if the department determines the applicant has failed, a notice of denial will be sent to the applicant by the department) only after the department has considered the following factors:

- (I) The nature and severity of violations;
- (II) Any substantial realignment of corporate structure or corporate philosophy, or both;
- (III) Any significant pattern of improved environmental compliance;
- (IV) The complexity of the facilities and the volume of waste handled; and
- (V) Any other relevant factors presented as evidence.

6. The department shall deny a permit for failure of the applicant to provide the required information or for submission of false information.

7. The department may deny a permit for failure of the applicant to provide complete information when submission of the information is required by this rule.

8. The department shall deny a permit if the applicant has failed the habitual violator test specified in paragraph (2)(H)5. of this rule.

9. The department shall not issue a permit to an applicant or a person who has offered in person or through an agent any inducement, including any discussion of possible employment opportunities, to any department employee when that person has an application for a permit pending or a permit under review. Distribution of job announcements from an applicant to the department, which are made in the regular course of business and are intended for general dissemination, shall not be considered improper inducements.

10. The department shall deny a permit if any person(s) reported in accordance with subparagraph (2)(H)4.A. or (2)(H)4.D. of this rule has been adjudged in contempt of any court order enforcing the provisions of any state's solid or hazardous waste management laws, or federal laws pertaining to hazardous waste.

11. Any person aggrieved by a permit denial under this subsection may appeal the decision by filing a petition with the Missouri Hazardous Waste Management Commission within thirty (30) days of notice of denial. The appeal hearing shall be conducted in accordance with section 260.400, RSMo, and 10 CSR 25-8.124(2).

(I) Restraint of Trade.

1. Any person, as defined in section 260.379.1, RSMo, applying for a permit to operate a hazardous waste treatment, storage, or disposal facility shall notify the director of any conviction occurring after July 9, 1990, for any crimes or criminal acts specified in section 260.379, RSMo. The person shall include any crimes or criminal acts for which an appeal or about which a final judgment is pending. The applicant shall submit this information with the permit application. Any person with a permit application pending, or to whom a permit has been granted, shall notify the department within thirty (30) days of the conviction or plea. The information shall be submitted in the form of a disclosure statement worded as specified in paragraph (2)(I)4. and shall include the following information:

- A. Date of conviction or plea;
- B. The specific charge and statutory citation;
- C. Statutory or regulatory references, or both, and citations to each specific statute or administrative rule that was violated;
- D. Name and location of each facility or person cited;
- E. Name and address of the court; and
- F. Any other information requested by the department.

2. The department shall deny, suspend, revoke, or not renew a permit if the applicant or permittee fails to submit the required information, the information submitted is false, or the applicant or permittee exceeds the number of convictions allowed under section 260.379, RSMo.

3. Rehabilitation and reinstatement.

A. A person may apply to the department for reinstatement of a permit that has been revoked under the provisions of subsection (2)(I) of this rule and section 260.379, RSMo, no sooner than five (5) years after revocation. The person shall demonstrate to the department that s/he had no convictions or pleas for any crimes or criminal acts as specified in section 260.379, RSMo, in any court in any state, or any federal court, within five (5) years preceding the request for reinstatement. The person shall also prove that no litigation or appeal is pending against the person for any crimes or criminal acts specified in section 260.379, RSMo.

B. If the permit is reinstated, the permittee, for a period of five (5) years from the date of reinstatement, shall file semi-annual disclosure statements prepared in accordance with the requirements of this subsection (2)(I).

C. If any conviction or plea for the acts specified in section 260.379, RSMo, is entered in any court in any state during the five (5)-year period immediately following reinstatement, the reinstated permit shall be revoked for a period of at least five (5) years. Following this five (5)-year period, the person may reapply for reinstatement of the permit.

4. The disclosure statement specified in paragraph (2)(I)1. of this rule shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information, and the parentheses deleted:

(Name of permit applicant) (insert, "EPA Identification Number _____," if applicable) hereby certifies that the following list contains all instances in which any person, as defined by section 260.379.1, RSMo, has been convicted or pled to any crimes or criminal acts an element of which involves restraint of trade, price-fixing, intimidation of the customers of any person, or for engaging in any other acts which may have the effect of restraining or limiting competition concerning activities regulated under Chapter 260, RSMo, or similar laws of other states or the federal government; except that convictions for violations by entities purchased or acquired by an applicant or permittee which occurred prior to the purchase or acquisition, shall not be included. (For each conviction or plea required to be reported, provide a listing of the information required in 10 CSR 25-7.270(2)(I)1.A.-F. If no conviction or plea is required to be reported, so state.)

I hereby certify the following:

- a) The above information is complete and truthful as of the date this statement was signed;
 - b) The wording of this disclosure statement is identical to the wording specified in 10 CSR 25-7.270(2)(I)4. on the date this statement was signed; and
 - c) In such matters, I, the undersigned, do have the authority to act as agent for the permit applicant.
- (Signature)
(Name)
(Title)
(Date)
(Seal)
(Notary seal and signature)

AUTHORITY: section 260.370, RSMo Supp. 2010 and sections 260.390 and 260.395, RSMo 2000.

**Title 10--DEPARTMENT OF NATURAL RESOURCES
Division 25--Hazardous Waste Management Commission
Chapter 8--Public Participation and General Procedural Requirements**

10 CSR 25-8.124 Procedures for Decision Making

PURPOSE: This rule reflects the requirements of the federal regulations in 40 CFR part 124 July 1, 2010, with modifications and additional requirements established by the Revised Statutes of Missouri. This rule establishes the requirements for public notice and public participation in the issuance, denial, modification, and revocation of hazardous waste management facility permits, appeal hearings, variance petitions, and closure and post-closure activities. This rule also specifies procedures for the issuance, modification, and revocation of resource recovery facility certifications and the issuance and revocation of transporter licenses.

(1) Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule, in addition to any other modifications established in paragraph (1)(A)2. of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control. (Comment: This section has been organized so that Missouri requirements analogous to a particular lettered subpart in 40 CFR part 124 are set forth in the corresponding lettered subsection of section (1) of this rule. For example, the general program requirements in 40 CFR part 124 subpart A, with Missouri modifications, are found in subsection (1)(A) of this rule.)

(A) This subsection sets forth requirements that correspond to those requirements in 40 CFR part 124 subpart A.

1. Purpose and scope. This subsection contains procedures for the review, issuance, class 3 or department-initiated modification, total modification, or revocation of all permits issued pursuant to sections 260.350 through 260.434, RSMo. This subsection also contains procedures for the denial of a permit, either in its entirety or as to the active life of a hazardous waste management facility or unit, under 40 CFR 270.29, as incorporated in 10 CSR 25-7.270. Interim status is not a permit and is covered by specific provisions in 10 CSR 25-7.265 and 10 CSR 25-7.270. Class 1 or class 2 permit modifications, as defined in 40 CFR 270.42 as incorporated in 10 CSR 25-7.270, are not subject to the requirements of this subsection.

2. Definitions. In addition to the definitions given in 40 CFR 270.2, as incorporated in 10 CSR 25-7.270, the definitions below apply to this rule—

A. “Draft permit” means a document prepared under paragraph (1)(A)6. of this rule indicating the department’s tentative decision to issue, deny, modify in part or in total, revoke, or reissue a “permit.” A notice of intent to revoke, as discussed in subparagraph (1)(A)5.D. of this rule, and a notice of intent to deny, as discussed in subparagraph (1)(A)6.B. of this rule, are types of draft permits. A denial of a request for modification, total modification, or revocation of a permit, as discussed in subparagraph (1)(A)5.B. of this rule, is not a type of “draft permit”;

B. “Formal hearing” means any contested case held under section 260.400, RSMo;

C. “Permit application” means the U.S. Environmental Protection Agency standard national forms for applying for a permit, including any additions, revisions, or modifications to the forms; or forms approved by the U.S. Environmental Protection Agency for use in Missouri, including any approved modifications or revisions. It also includes the information required by the department under 40 CFR 270.14–270.29, as incorporated into 10 CSR 25-7.270;

D. "Public hearing" means any hearing on a tentative decision at which any member of the public is invited to give oral or written comments;

E. "Revocation" means the termination of a permit;

F. "Schedule of compliance" means a schedule of remedial measures in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with sections 260.350 through 260.434, RSMo;

G. "Total modification" means the revocation and reissuance of a permit;

H. "Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity; and

I. "Variance" means any variation from the Missouri Hazardous Waste Management Law as defined in section 260.405, RSMo.

3. Application for a permit.

A. Any person who requires a permit shall complete, sign, and submit to the department a permit application for each permit required under 40 CFR 270.1, as incorporated in 10 CSR 25-7.270. Permit applications are not required for permits by rule per 40 CFR 270.60, as incorporated in 10 CSR 25-7.270. The department shall not begin the processing of a permit until the applicant has fully complied with the permit application requirements for that permit, as provided under 40 CFR 270.10 and 270.13, as incorporated in 10 CSR 25-7.270. Permit applications shall comply with the signature and certification requirements of 40 CFR 270.11, as incorporated in 10 CSR 25-7.270.

B. The department shall review for completeness every permit application. Each permit application submitted by a new facility should be reviewed for completeness by the department within thirty (30) days of its receipt. Each permit application submitted by an existing facility should be reviewed for completeness by the department within sixty (60) days of its receipt. Upon completing the review, the department will notify the applicant in writing whether the permit application is complete. If the permit application is incomplete, the department will list the information necessary to make the permit application complete. When the permit application is for an existing facility, the department will specify in the notice of deficiency a date for submitting the necessary information. The department will notify the applicant that the permit application is complete upon receiving the required information. After the permit application is complete, the department may request additional information from an applicant, but only as necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render a permit application incomplete.

C. If an applicant fails or refuses to correct deficiencies in the permit application, the permit may be denied and enforcement actions may be taken under the applicable statutory provisions of sections 260.350 through 260.434, RSMo.

D. The effective date of a permit application is the date the department notifies the applicant that the permit application is complete, as provided in subparagraph (1)(A)3.B. of this rule.

E. For each permit application the department will, no later than the effective date of the permit application, prepare and mail to the applicant a project decision schedule. The schedule will specify target dates by which the department intends to—

(I) Prepare a draft permit;

(II) Give public notice;

(III) Complete the public comment period, including any public hearing; and

(IV) Issue a final permit decision.

F. If the department decides that a site visit is necessary for any reason in conjunction with the processing of a permit application, the department will notify the applicant and a date will be scheduled.

G. Whenever a facility or activity requires more than one (1) type of environmental permit from the state, the applicant may request, or the department may offer, a unified permitting schedule that covers the timing and order to obtain such permits, as provided in section 640.017, RSMo, and 10 CSR 1-3.010.

4. *Reserved.*

5. Modification, total modification, or revocation of permits.

A. Permits may be modified in part or in total, or revoked, either at the request of the permittee or of any interested person or upon the department's initiative. However, permits may only be modified or revoked for the reasons specified in 40 CFR 270.41 or 40 CFR 270.43, as incorporated in 10 CSR 25-7.270. All requests shall be in writing and shall contain facts and reasons supporting the request.

B. If the department decides the request is not justified, a brief written response giving a reason for the decision shall be sent to the person requesting the permit modification and to the permittee. Denial of a request for modification, in part or in total, or revocation of a permit is not subject to public notice, comment, or hearing, and is not appealable under section (2) of this rule.

C. Tentative decision to modify.

(I) If the department tentatively decides to modify a permit in part or in total, a draft permit incorporating the proposed changes will be prepared according to paragraph (1)(A)6. of this rule. The department may request additional information and, in the case of a partial permit modification, may require the submission of an updated permit application. In the case of a total permit modification, the department will require the submission of a new permit application.

(II) When a permit is partially modified under this paragraph, only the conditions being modified shall be reopened. All other conditions of the original permit shall remain in effect for the duration of the original permit. When a permit is totally modified under this paragraph, the entire permit is reopened just as if the permit had expired and was being reissued. During any total modification, the permittee shall comply with all conditions of the original permit until a new, final permit is issued.

(III) "Class 1 and class 2 permit modifications" as defined in 40 CFR 270.42, as incorporated in 10 CSR 25-7.270, are not subject to the requirements of this paragraph.

D. If the department tentatively decides to revoke a permit, the department will issue a notice of intent to revoke. A notice of intent to revoke is a type of draft permit and follows the same procedures as any draft permit decision prepared under paragraph (1)(A)6. of this rule.

6. Draft permits.

A. Once the technical review of a permit application is complete, the department shall tentatively decide whether to prepare a draft permit, or deny the permit application.

B. If the department decides to deny the permit application, a notice of intent to deny shall be issued. A notice of intent to deny is a type of draft permit and follows the same procedures as any draft permit decision prepared under this paragraph. If the department's final decision under paragraph (1)(A)15. of this rule is that the decision to deny the permit application was incorrect, the department shall withdraw the notice of intent to deny and prepare a draft permit under this paragraph.

C. If the department tentatively decides to prepare a draft permit, the department will prepare a draft permit that contains the following information:

(I) All conditions under 40 CFR 270.30 and 270.32, as incorporated in 10 CSR 25-7.270;

(II) All compliance schedules under 40 CFR 270.33, as incorporated in 10 CSR 25-7.270;

(III) All monitoring requirements under 40 CFR 270.31, as incorporated in 10 CSR 25-7.270; and

(IV) Standards for treatment, storage, and/or disposal and other permit conditions under 40 CFR 270.30, as incorporated in 10 CSR 25-7.270.

D. All draft permits prepared under this paragraph will be accompanied by a fact sheet per paragraph (1)(A)8. of this rule, publicly noticed per paragraph (1)(A)10. of this rule, and made available for public comment per paragraph (1)(A)11. of this rule. The department will give notice of opportunity for a public hearing per paragraph (1)(A)12. of this rule, issue a final decision per paragraph (1)(A)15. of this rule, and respond to comments per paragraph (1)(A)17. of this rule. An appeal may be filed under section (2) of this rule.

E. Prior to making the draft permit available for public comment, the department shall deliver the draft permit to the applicant for review, as provided in section 640.016.2, RSMo. The applicant shall have ten (10) days to review the draft permit for nonsubstantive drafting errors. The department shall make the applicant's changes to the draft permit within ten (10) days of receiving the applicant's review and then submit the draft permit for public comment. The applicant may waive the opportunity to review the draft permit prior to public notice.

7. *Reserved.*

8. Fact sheet.

A. A fact sheet will be prepared for every draft permit. The fact sheet will briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The department will send this fact sheet to the applicant and to any person who requests a copy.

B. The fact sheet shall include, when applicable:

(I) A brief description of the type of facility or activity which is the subject of the draft permit;

(II) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(III) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(IV) A description of the procedures for reaching a final decision on the draft permit including:

(a) The beginning and ending dates of the public comment period under paragraph (1)(A)10. of this rule and the address where comments will be received;

(b) Procedures for requesting a hearing and the nature of that hearing; and

(c) Any other procedures by which the public may participate in the final decision; and

(V) Name and telephone number of a department contact for additional information.

9. *Reserved.*

10. Public notice of permit actions and public comment period.

A. Scope.

(I) The department will give public notice that the following actions have occurred:

(a) A notice of intent to deny a permit application has been prepared under subparagraph (1)(A)6.B. of this rule;

(b) A draft permit has been prepared under subparagraph (1)(A)6.C. of this rule;

(c) A hearing has been scheduled under paragraph (1)(A)12. of this rule;

(d) An appeal hearing has been scheduled under section (2) of this rule; or

(e) A notice of intent to revoke a permit has been prepared under subparagraph (1)(A)5.D. of this rule.

(II) No public notice is required when a request for permit modification, in part or in total, or revocation is denied. A brief written response giving a reason for the decision will be sent to the requester and to the permittee.

B. Timing.

(I) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application and a notice of intent to revoke a permit) required under subparagraph (1)(A)10.A. of this rule will allow at least forty-five (45) days for public comment.

(II) Public notice of a public hearing will be given at least thirty (30) days before the hearing. Public notice of the hearing may be given at the same time as the public notice of the draft permit, and the two (2) notices may be combined.

C. Methods. Public notice of activities described in part (1)(A)10.A.(I) of this rule will be given by the following methods:

(I) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this part may waive their rights to receive notice for any permit):

(a) The applicant;

(b) Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, natural resource management plans, and state historic preservation officers, including any affected states (Indian tribes); and

(c) Persons on a mailing list maintained by the facility which is developed by—

I. Including those who request to be on the list;

II. Soliciting persons for “area lists” from participants in past permit proceedings in that area;

III. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals. The facility shall be responsible for maintaining and updating the mailing list. The department may require the facility to update the mailing list from time-to-time by requesting written indication of continued interest from those listed. The facility may remove from the list the name of any person who fails to respond to such a request;

IV. Including all record owners of real property adjacent to the current or proposed facility, in accordance with section 260.395.8, RSMo;

V. Including, for a post-closure disposal facility, all record owners of real property which overlie any known plume of contamination originating from the facility; and

VI. Including, for an operating disposal facility, all record owners of real property located within one (1) mile of the outer boundaries of the current or proposed facility, in accordance with section 260.395.8, RSMo;

(d) A copy of the notice shall also be sent to the highest elected official of the county and the highest elected official of the city, town, or village having jurisdiction over the area where the facility is currently or proposed to be located, in accordance with section 260.395.8, RSMo, and each state agency having any authority under state law with respect to the construction or operation of such facility;

(e) The department will mail a copy of the legal notice, fact sheet, and draft permit to the location where the permit application was placed for public review under subpart (1)(B)2.B.(II)(d) of this rule; and

(f) A copy of the notice shall also be sent to any other department program or federal agency which the department knows has issued or is required to issue a Resource Conservation and Recovery Act (RCRA), Hazardous and Solid Waste Amendments (HSWA), Underground Injection Control (UIC), Prevention of Significant Deterioration (PSD), (or other permit issued under the Clean Air Act), National Pollutant Discharge Elimination System (NPDES), 404, or sludge management permit for the same facility or activity (including the U.S. Environmental Protection Agency);

(II) Other publication.

(a) Publish a legal notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

(b) For any draft permit that includes active land disposal of hazardous waste, issue a news release to the media serving the area where the facility is currently or proposed to be located, in accordance with section 260.395.8, RSMo; and

(III) Any other method reasonably calculated to give actual notice of the activity to the persons potentially affected by it, including news releases or any other forum or medium to elicit public participation.

D. Contents. All notices issued under this paragraph shall contain the following minimum information:

(I) Name and address of the department;

(II) Name and address of the permittee or applicant and, if different, of the facility or activity regulated by the permit;

(III) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

(IV) Name, address, and telephone number of a department contact person from whom interested persons may obtain additional information;

(V) A brief description of the comment procedures, the date, time, and place of any hearing that will be held, a statement of procedures for requesting a hearing (unless a hearing has already been scheduled), and any other procedures by which the public may participate in the final permit decision;

(VI) Any additional information considered necessary or proper by the department;

(VII) The location where the information listed in subpart (1)(A)10.C.(I)(e) of this rule was placed for public review; and

(VIII) In addition to the information listed above, the public notice of a public hearing under paragraph (1)(A)12. of this rule shall contain the following information:

(a) Reference to the date of previous public notices relating to the draft permit;

(b) Date, time, and place of the hearing; and

(c) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

E. In addition to the notice described in subparagraph (1)(A)10.D. of this rule, the department shall mail a copy of the permit application (if any), draft permit, and fact sheet to all persons identified in subparts (1)(A)10.C.(I)(a), (b), and (f) of this rule.

11. Public comments and requests for public hearings. During the public comment period provided under paragraph (1)(A)10. of this rule, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues to be raised in the hearing. All written comments and oral comments given at the public hearing, if one is held, shall be considered by the department in making the final permit decision and shall be answered as provided in paragraph (1)(A)17. of this rule.

12. Public hearings.

A. In accordance with section 260.395.8, RSMo, the department will hold a public hearing whenever a written request for a hearing is received within forty-five (45) days of the public notice under part (1)(A)10.B.(I) of this rule. For any permit that includes active land disposal of hazardous waste, the department shall hold a public hearing after public notice, as required in paragraph (1)(A)10. of this rule, before issuing, modifying in total, or renewing the permit; and before any Class 3 or department-initiated permit modification related to the hazardous waste land disposal unit(s), including those necessary due to the department's five (5)-year review.

B. The department may hold a public hearing at its own discretion whenever there is significant public interest in a draft permit or when one (1) or more issues involved in the permit decision requires clarification.

C. Whenever possible, the department will schedule a public hearing under this paragraph at a location convenient to the nearest population center to the current or proposed facility.

D. Public notice of the public hearing will be given as specified in paragraph (1)(A)10. of this rule.

E. Any person may submit written comments or data concerning the draft permit. The department will accept oral comments during the public hearing. Reasonable limits may be set on the time allowed for oral comments. Any person who cannot present oral comments due to time limitations will be provided an opportunity to present written comments. The public comment period under paragraph (1)(A)10. of this rule will automatically be extended to the close of any public hearing if the public hearing is held later than forty-five (45) days after the start of the public comment period.

F. A tape recording or written transcript of the public hearing shall be made available to the public.

13. Obligation to raise issues and provide information during the public comment period. All persons, including the applicant, who believes any condition of a draft permit is inappropriate or that the department's tentative decision to deny a permit application, prepare a draft permit, or revoke a permit is inappropriate, shall raise all ascertainable issues and submit all relevant arguments supporting their position by the close of the public comment period under paragraph (1)(A)10. of this rule. Any supporting materials that are submitted shall be included in full and may not be incorporated by reference, unless the supporting materials are state or federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials.

14. *Reserved.*

15. Issuance and effective date of permit.

A. For purposes of this paragraph, a final permit decision means the issuance, denial, Class 3 or department-initiated modification, total modification, or revocation of a permit. After the close of the public comment period under paragraph (1)(A)10. of this rule, the department will issue a final permit decision (or a decision to deny a permit for the active life of a hazardous waste management facility or unit under 40 CFR 270.29, as incorporated in 10 CSR 25-7.270). The department will notify the applicant and each person who submitted written comments, gave oral comments at the public hearing, or requested notice of the final permit decision. This notice will include reference to the procedures for appealing a final permit decision under section (2) of this rule. The department will also send a news release announcing the final permit decision to the media serving the area where the facility is currently or proposed to be located, in accordance with section 260.395.8, RSMo.

B. A final permit issuance, denial, or modification decision (or a decision to deny a permit either in its entirety or as to the active life of a hazardous waste management facility or unit under 40 CFR 270.29, as incorporated in 10 CSR 25-7.270) will become effective on the date the decision is signed by the department. A final permit revocation decision will become effective thirty (30) days after the department signs the decision, unless no comments requested a change in the draft permit revocation decision, in which case the final permit revocation decision will become effective on the date the decision is signed by the department.

16. *Reserved.*

17. Response to comments.

A. At the same time that any final permit decision is issued under paragraph (1)(A)15. of this rule, the department will issue a response to comments. This response shall—

(I) Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the change; and

(II) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period and public hearing, if one was held.

B. The response to comments will be made available to the public.

18. *Reserved.*

19. *Reserved.*

20. Computation of time.

A. Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

B. Any time period scheduled to end before the occurrence of an act or event shall end on the last working day before the act or event.

C. If the last day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

D. Whenever a party or interested person has the right or is required to act within a specific time period after he or she receives notice by mail, three (3) days shall be added to the time period to allow for mail delivery.

(B) This subsection sets forth requirements that correspond to the requirements in 40 CFR part 124 subpart B.

1. Applicable permit procedures.

A. The requirements of this paragraph shall apply to all new permit applications and permit applications for renewal of permits where a significant change in facility operations is proposed. For purposes of this paragraph, a "significant change" is any change that would qualify as a class 3 permit modification under 40 CFR 270.42, as incorporated in 10 CSR 25-7.270. The requirements of this paragraph do not apply to class 1 or class 2 permit modifications, as defined in 40 CFR 270.42, as incorporated in 10 CSR 25-7.270, or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

B. At least ninety (90) days prior to submitting a permit application for a disposal facility, the applicant shall submit to the department a letter of intent to construct, substantially alter, or operate a hazardous waste disposal facility, in accordance with section 260.395.7, RSMo. The department will publish the letter within ten (10) days of receipt. The letter will be published as specified in section 493.050, RSMo. The letter will be published once a week for four (4) consecutive weeks in a newspaper of general circulation serving the county in which the facility is currently or proposed to be located.

C. Prior to submitting a permit application for a facility, the applicant shall hold at least one (1) public meeting to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide an opportunity for attendees to voluntarily provide their names and addresses.

D. The applicant shall submit a summary of the meeting, the list of attendees and their addresses developed under subparagraph (1)(B)1.C. of this rule, and copies of any written comments or materials submitted at the meeting to the department as a part of the permit application, in accordance with 40 CFR 270.14(b), as incorporated in 10 CSR 25-7.270.

E. The applicant shall provide public notice of the pre-application meeting at least thirty (30) days prior to the meeting. The applicant shall maintain, and provide to the department as part of the permit application, documentation of the notice.

(I) The applicant shall provide public notice in all of the following forms:

(a) A newspaper advertisement. The applicant shall publish a notice as a display advertisement in a newspaper of general circulation serving the county or equivalent jurisdiction where the current or proposed facility is located. In addition, the applicant shall publish the notice in newspapers of general circulation serving adjacent counties or equivalent jurisdictions;

(b) A visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility. If the applicant places the sign on the facility property, the sign shall be large enough to be read from the nearest point where the public would pass by the site;

(c) A broadcast media announcement. The applicant shall broadcast a notice as a paid advertisement at least once on at least one (1) local radio station or television station. The applicant may employ another medium with the prior written approval of the department; and

(d) In addition to the department, the applicant shall send a copy of the newspaper advertisement to the units of state and local government described in subpart (1)(A)10.C.(I)(d) of this rule.

(II) All notices required under this subparagraph shall include:

(a) The date, time, and location of the meeting;

(b) A brief description of the purpose of the meeting;

(c) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the current or proposed facility location;

(d) A statement encouraging people to contact the facility at least seventy-two (72) hours before the meeting if they need special access to participate in the meeting; and

(e) The name, address, and telephone number of a contact person for the applicant.

2. Public notice requirements at the permit application stage.

A. Applicability. The requirements of this paragraph shall apply to all new permit applications for hazardous waste management units and permit applications for renewal of permits for such units under 40 CFR 270.51, as incorporated in 10 CSR 25-7.270. The requirements of this paragraph do not apply to permit modifications, as defined in 40 CFR 270.42, as incorporated in 10 CSR 25-7.270, or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

B. Notification at permit application submittal.

(I) The department shall provide public notice as set forth in subpart (1)(A)10.C.(I)(c) of this rule, and notice to the appropriate units of state and local government as set forth in subpart (1)(A)10.C.(I)(d) of this rule, that a complete permit application has been submitted to the department and is available for review.

(II) The notice will be published within a reasonable period of time after the department determines that the permit application is complete. The notice must include:

(a) The name and telephone number of the applicant's contact person;

(b) The name and telephone number of the department contact person and a mailing address to which information and inquiries may be directed throughout the permitting process;

(c) An address to which people can write in order to be put on the facility mailing list;

(d) A location where copies of the permit application and any supporting documents can be viewed and copied;

(e) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the current or proposed facility location on the front page of the notice; and

(f) The date that the permit application was submitted.

C. Concurrent with the notice required under subparagraph (1)(B)2.B. of this rule, the department will place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the department's office as identified in the notice.

3. Information repository.

A. Applicability. The requirements of this paragraph apply to all applicants seeking hazardous waste management facility permits.

B. The department shall assess the need, on a case-by-case basis, for a local information repository. When assessing the need for a local information repository, the department will consider a variety of factors, including the level of public interest, the type of facility, and the presence of an existing repository. If the department determines, at any time after submittal of a permit application, that there is a need for a local repository, then the department will notify the facility that it must establish and maintain a local information repository.

C. The information repository shall contain all documents, reports, data, and information deemed necessary by the department to fulfill the purposes for which the repository is established. The department will have the discretion to limit the contents of the repository.

D. The information repository shall be located and maintained at a location chosen by the facility. If the department finds the location unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, the department will specify a more appropriate location.

E. The department will specify requirements the applicant must meet for informing the public about the local information repository. At a minimum, the department will require the applicant to provide a written notice about the information repository to all individuals on the facility mailing list.

F. The applicant shall be responsible for maintaining and updating the repository with appropriate information throughout the time period specified by the department. The department may close the repository at its discretion, based on the factors in subparagraph (1)(B)3.B. of this rule.

(2) Appeal of Final Decision.

(A) For purposes of this section, a final permit decision means the issuance, denial, partial or total modification, or revocation of a permit. The requirements of this section apply to final permit decisions, closure plan approvals, post-closure plan approvals, and any condition of a final permit decision or approval.

(B) The applicant or any aggrieved person may appeal to have the matter heard by the Administrative Hearing Commission. To initiate the appeal, the aggrieved party must follow the procedure established in 10 CSR 25-2.020 and sections 260.395.11 and 621.250, RSMo. Written petitions must be filed within thirty (30) days after the date the final permit decision or approval was mailed or the date it was delivered, whichever was earlier. If the written petition is sent by registered or certified mail, the petition will be deemed filed on the date it was mailed. If the written petition is sent by any other method, the petition will be deemed filed on the date it is received by the Administrative Hearing Commission. The written petition shall set forth the grounds for the appeal. The appeal shall be limited to issues raised during the public comment period and not resolved in the final permit decision or approval to the applicant's or aggrieved person's satisfaction. Issues included in the written petition outside those raised during the public comment period shall not be considered; however, the Administrative Hearing Commission may consider an appeal of a condition in the final permit decision or approval that was not part of the draft permit or proposal and therefore could not have been commented on during the public comment period.

(C) Any appeal under this section shall be a contested case and shall be conducted under section 260.400, RSMo.

(D) Any party described in subsection (2)(G) of this rule may petition the Administrative Hearing Commission for an interlocutory order staying the effectiveness of a final permit decision, a closure plan approval, a post-closure plan approval, or any condition of a final permit decision or approval which is subject to an appeal, until the Missouri Hazardous Waste Management Commission enters its final order upon the appeal. At any time during the proceeding, the applicant may apply to the Administrative Hearing Commission for relief from a stay order previously issued.

1. In determining whether to grant a stay or relief from a stay, the Administrative Hearing Commission will consider the likelihood that the petition will eventually succeed on the merits, the potential for harm to the applicant, business, industry, public health, or the environment if the requested stay or relief is or is not granted, and the potential magnitude of the harm.

2. Any decision concerning a petition for a stay or relief from a stay shall not be considered a contested case or a final order and shall be made by a majority of the sitting quorum of the Administrative Hearing Commission.

3. The stay of any final permit decision pending appeal to the Administrative Hearing Commission shall have the effect of continuing the effect and enforceability of any existing permit until the Missouri Hazardous Waste Management Commission issues a final order upon the appeal, unless the stay is lifted sooner by the Administrative Hearing Commission. During the appeal proceeding, the stay of any condition of a final permit decision pending appeal shall not relieve the applicant of complying with all conditions of the final permit decision not stayed.

4. No petition for a stay order or relief from a stay order shall be presented to the Administrative Hearing Commission on less than ten (10) days' notice to all other parties to the proceeding.

(E) A timely written petition of appeal stays the effectiveness of a final permit revocation decision. If a timely written petition of appeal is not filed, the final permit revocation becomes effective thirty (30) days after the department signs the decision.

(F) Public notice of the appeal hearing, including the time, date, and place of the appeal hearing, shall be given in accordance with part (1)(A)10.C.(II) of this rule. The department will mail a copy of the notice to all persons identified in subparts (1)(A)10.C.(I)(a) and (c) of this rule. After the Hazardous Waste Management Commission issues a final appeal decision, the department will notify the participants in the appeal hearing and each person who requested notice of the final appeal decision. The department will also send a news release announcing the final appeal decision to the media serving the area where the facility is currently or proposed to be located.

(G) The participants in an appeal hearing shall be—

1. The department;

2. The applicant;

3. Any aggrieved person filing a timely written petition of appeal; and

4. Any person who files a timely application for intervention and is granted leave to intervene of right or permissive intervention. Any person desiring to intervene in an appeal shall file with the Administrative Hearing Commission, an application to intervene according to the procedures of Rule 52.12, Supreme Court Rules of Civil Procedure.

A. The application to intervene shall state the interests of the intervener, the grounds upon which intervention is sought, and a statement of the position which the intervener desires to take in the proceeding. The intervener shall serve a copy of the application to intervene on each of the parties to the proceeding as determined under part (1)(A)10.C.(II) of this rule.

B. The Administrative Hearing Commission or duly appointed hearing officer will grant or deny the application to intervene pursuant to Rule 52.12, Supreme Court Rules of Civil Procedure. The Administrative Hearing Commission or hearing officer may condition any grant of intervention as the circumstances may warrant.

(H) A tape recording or written transcript of the appeal hearing shall be made available to the public.

(3) Transporter License.

(A) Issuance or Denial of a Transporter License.

1. Upon receipt of a complete application for a transporter license, the department will determine whether the application conforms to the requirements of sections 260.385 and 260.395, RSMo, and 10 CSR 25-6. The department will notify the applicant of its decision to issue, with or without conditions, or denying the license. If the license is denied, the department will specify the reasons for the denial. No license will be issued until the fees required by section 260.395.1, RSMo, have been paid.

2. The procedure for appealing a license issuance, denial, or any condition of a license shall be the same as the procedure for appealing a final permit decision under section (2) of this rule.

(B) Revocation of a Transporter License.

1. Transporter licenses may be revoked for the reasons specified in sections 260.379.2, 260.395.3, 260.410.3, and 260.410.4, RSMo, or for failure to comply with sections 260.395.1(2) and 260.395.1(3), RSMo.

2. The department may initiate proceedings to revoke a transporter license. If the department proposes to revoke a transporter license, it will send a notice of intent to revoke by certified mail to the licensee, specifying the provisions of sections 260.350–260.434, RSMo, 10 CSR 25-6, the conditions of the license or the provisions of an order issued to the licensee that the licensee has violated, the manner in which the licensee misrepresented or failed to fully disclose relevant facts, or the manner in which the activities of the licensee endanger human health or the environment or are creating a public nuisance.

3. The procedure for appealing a license revocation shall be the same as the procedure for appealing a permit revocation under section (2) of this rule. A timely written petition for appeal stays the effectiveness of a license revocation. If a timely written petition for appeal is not filed, the revocation shall become effective thirty (30) days after the department signs the revocation decision.

(4) Resource Recovery Facility Certifications.

(A) Issuance of Resource Recovery Facility Certifications. Upon receipt of a complete application for resource recovery facility certification, the department will determine whether the application conforms to the requirements of section 260.395.13, RSMo, and 10 CSR 25-9.020. The department will notify the applicant of its decision to issue, with or without conditions, or deny the certification. If the certification is denied, the department will specify the reasons for the denial. The procedure for appealing a certification issuance, denial, or any condition of a certification will be the same as the procedure for appealing a final permit decision under section (2) of this rule.

(B) Modification of Resource Recovery Facility Certifications.

1. The department may modify a resource recovery facility certification under any of the following circumstances:

- A. When required to prevent violations of the requirements of section 260.395.14, RSMo, or 10 CSR 25-9.020;
- B. When relevant facts have been misrepresented or not fully disclosed;
- C. When required to protect the health of humans or the environment or to prevent or abate a public nuisance;
- D. When the facility proposes changing any waste stream(s) managed by the facility; or
- E. When the facility proposes changing any processes or equipment utilized for resource recovery operations at the facility.

2. If the department proposes to modify the resource recovery facility certification, it will send a notice of intent to modify by certified mail to the certificate holder, specifying the reasons for the proposed modification and the manner in which the certificate is proposed to be modified.

3. The facility may appeal any certification modifications, except those requested by the facility that were approved as proposed without further modification. The procedure for appealing a certification modification shall be the same as the procedure for appealing a final permit decision under section (2) of this rule.

(C) Revocation of Resource Recovery Facility Certifications.

1. The department may initiate proceedings to revoke a resource recovery facility certification. If the department decides to revoke a resource recovery facility certification, it will send a final revocation by certified mail to the certificate holder, specifying the provisions of section 260.395.14, RSMo, 10 CSR 25-9.020, or an order issued to the certificate holder that have been violated, the manner in which the certificate holder misrepresented or failed to fully disclose relevant facts, or the manner in which the activities at the facility endanger human health or the environment or are creating a public nuisance.

2. Resource recovery facility certifications may be revoked for the reasons specified in paragraph (4)(B)1. of this rule.

3. The procedure for appealing a certification revocation shall be the same as the procedure for appealing a permit revocation under section (2) of this rule. A timely written petition for appeal stays the effectiveness of a certification revocation. If a timely written petition for appeal is not filed, the revocation shall become effective thirty (30) days after the department signs the revocation decision.

(5) Variances.

(A) Applicability. According to section 260.405.1, RSMo, unless prohibited by any federal hazardous waste management act, the Hazardous Waste Management Commission may grant individual variances from the requirements of sections 260.350 to 260.430, RSMo, whenever it is found, upon presentation of adequate proof, that compliance will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation, or activity, in either case without sufficient corresponding benefit or advantage to the people. The commission will not consider any petition for variance that would permit the occurrence or continuance of a condition that unreasonably poses a present or potential threat to the health of humans or other living organisms. The department may require any petitioner for a variance to submit mailing lists and mailing labels required to accomplish the public notice requirements of this section.

(B) Evaluation. Upon receipt of any petition for a variance, the department will evaluate the petition to determine whether the request is substantive or non-substantive based upon the effect of the proposed variance on facility operations, types of waste, type and volume of hazardous waste management units, location of facility, public interest, and compliance history. Variances from generator or transporter requirements will be deemed non-substantive provided all conditions of subsection (3)(A) of this rule are met.

(C) Substantive Variance. If a variance petition is deemed substantive, the department will—

1. Upon receipt—

A. Mail a notice to all record owners of real property located within one (1) mile of the outer boundaries of the facility, the highest elected official of the county, and the highest elected official of the city, town, or village having jurisdiction over the area where the facility is located; and

B. Issue a news release to the media and publish a legal notice in a newspaper of general circulation serving the area where the facility is located;

2. Within sixty (60) days of receipt—

A. Prepare a recommendation as to whether the variance should be granted, granted with conditions, or denied;

B. Submit the recommendation to the Missouri Hazardous Waste Management Commission;

C. Notify the petitioner of the recommendation;

D. Publish a legal notice regarding the recommendation in a newspaper of general circulation serving the area where the facility is located; and

E. Mail a notice regarding the recommendation to all record owners of real property adjacent to the facility, the highest elected official of the county, and the highest elected official of the city, town, or village having jurisdiction over the area where the facility is located; and

3. Request a formal hearing before the Missouri Hazardous Waste Management Commission or a duly appointed hearing officer on the variance petition and the department's recommendation, as provided in section 260.400, RSMo.

(D) Non-Substantive Variance. If a variance petition is deemed non-substantive, the department will comply with paragraph (5)(C)2. of this rule. The Missouri Hazardous Waste Management Commission will hold a formal hearing as provided in section 260.400, RSMo, if requested by the petitioner. A request for a formal hearing may also be made by any aggrieved person if the department's recommendation is to grant the variance with or without conditions. Any request by the petitioner or aggrieved person for a formal hearing shall be made in writing within thirty (30) days of the date the legal notice regarding the recommendation is published.

(E) Final Decision. If no formal hearing is requested, the Missouri Hazardous Waste Management Commission shall make a decision on the variance at a public meeting held no earlier than thirty (30) days from the date the legal notice regarding the recommendation was published.

(F) Hearing Procedures. Any hearings under this section shall be a contested case pursuant to section 260.400 and Chapter 536, RSMo. The participants shall be the department, the petitioner, any aggrieved person who requests a formal hearing, and any person who files a timely application for intervention and is granted leave to intervene. Any person desiring to intervene shall file an application to intervene with the Missouri Hazardous Waste Management Commission secretary within thirty (30) days from the date the legal notice regarding the recommendation is published.

1. The application to intervene shall state the interests of the intervener, the grounds upon which intervention is sought, and a statement of the position that the intervener desires to take in the proceeding. The intervener shall serve a copy of the application to intervene on each of the parties listed in subsection (5)(F) of this rule.

2. The Missouri Hazardous Waste Management Commission or duly appointed hearing officer will grant or deny the application to intervene pursuant to Rule 52.12, Supreme Court Rules of Civil Procedure. The Missouri Hazardous Waste Management Commission or hearing officer may condition any grant of intervention as the circumstances may warrant.

(G) If the applicant fails to comply with the terms and conditions of the variance as specified by the Missouri Hazardous Waste Management Commission, the variance may be revoked or modified by the commission after a formal hearing held after no less than thirty (30) days' written notice. The department will notify all persons who will be subjected to greater restrictions if the variance is revoked or modified and each person who requested notice from the department.

AUTHORITY: section 260.370, RSMo Supp. 2010, and sections 260.400, 260.405, and 260.437, RSMo 2000.

Title 10--DEPARTMENT OF NATURAL RESOURCES
Division 25--Hazardous Waste Management Commission
Chapter 9--Resource Recovery

10 CSR 25-9.020 Hazardous Waste Resource Recovery Processes

PURPOSE: This rule requires resource recovery facilities that generate small quantities of hazardous waste to notify the department of their resource recovery activities. Resource recovery facilities that accept hazardous waste from off-site are required to comply with certification requirements and to provide financial assurance. This rule further describes the standards for various resource recovery facilities, the certification procedures and the duties of generators and transporters who use hazardous waste resource recovery facilities.

(1) Applicability.

(A) This rule applies to the owner/operator of the facility which reclaims or reuses hazardous waste defined or listed in 10 CSR 25-4.261 for materials, or transforms hazardous waste into new products which are not hazardous waste. This rule does not apply to facilities managing recyclable materials used for precious metal recovery in accordance with 40 CFR 266.70 as incorporated by reference in 10 CSR 25-7.266(1), and hazardous waste processes required to be permitted in accordance with 40 CFR part 264 subpart M, O or X as incorporated in 10 CSR 25-7.264 or 40 CFR part 266 subpart H as incorporated in 10 CSR 25-7.266. This rule does not apply to the owner/operator of a totally enclosed treatment facility referenced in 40 CFR 264.1(g)(5) incorporated by reference in 10 CSR 25-7.264(1) and 40 CFR 265.1(c)(9) incorporated by reference in 10 CSR 25-7.265(1). A certification is not required under this rule for the owner/operator of a facility managing used oil in accordance with 40 CFR part 279 as incorporated in 10 CSR 25-11.279. Hazardous waste shall be stored in accordance with 10 CSR 25-5.262—10 CSR 25-12.010.

1. A generator, not exempted by section (2) of this rule, who utilizes a certified resource recovery facility shall comply with 10 CSR 25-5.262 but is exempt from certain generator fees and taxes to the extent specified in 10 CSR 25-12.

2. Transportation of hazardous waste to a resource recovery facility shall be in compliance with 10 CSR 25-6.

3. The owner/operator of a facility which uses, reuses, legitimately recycles or reclaims hazardous waste shall apply for and operate in accordance with a resource recovery facility certification issued by the department except as provided otherwise in this rule.

4. The owner/operator of a facility that recycles hazardous wastes in units defined in 10 CSR 25-7.264(2)(AA) and (BB) and 10 CSR 25-7.265(2)(AA) and (BB), and is subject to the permitting requirements in 10 CSR 25-7.270 shall comply with 10 CSR 25-7.264(2)(AA) and (BB), and 10 CSR 25-7.265(2)(AA) and (BB).

5. The owner/operator of a facility exempt from permitting requirements in 40 CFR part 266 subpart H, as incorporated in 10 CSR 25-7.266(1), that recycles materials used for precious metal recovery in units defined in 40 CFR 266.100, as incorporated in 10 CSR 25-7.266(1), shall comply with the requirements in 40 CFR 266.100(f) as incorporated in 10 CSR 25-7.266.

(B) *(Reserved)*

(2) Exempt Resource Recovery Facilities.

(A) Applicability. A resource recovery facility is an exempt resource recovery facility in a calendar month if the facility uses, reuses, legitimately reclaims or recycles less than one thousand kilograms (1000 kg) of hazardous waste from on-site in a calendar month.

(B) Exempt resource recovery facilities shall notify the Missouri Department of Natural Resources (MDNR), Hazardous Waste Program, P.O. Box 176, Jefferson City, MO 65102 of their resource recovery activities. This notification shall identify the owner/operator, the name and location of the facility, an identification of the waste(s) recovered, method(s) of recovery and approximate annual quantity of waste recovered.

(C) These facilities are exempt from other sections of this rule until the time the facility no longer qualifies as an exempt resource recovery facility.

(3) The owner/operator of a facility which uses, reuses, legitimately recycles or reclaims hazardous waste and is not exempted from certification requirements under section (2) of this rule shall apply for and operate in accordance with a resource recovery facility certification issued by the department.

(A) Based on the hazardous wastes accepted and the method of management, resource recovery facilities not exempted under section (2) will be certified as a U, R1 or R2 facility. This designation will be made as follows:

1. U—This classification applies to facilities that use, reuse, legitimately reclaim or recycle more than one thousand kilograms (1000 kg) of hazardous waste on-site in a calendar month;

2. R1—This classification applies to the owner/operator of mobile recycling processes that recycles hazardous waste for reuse at the site of generation and does not involve the recycling of hazardous waste to be reused off-site of generation; and

3. R2—This classification applies to a facility which accepts hazardous waste from off-site.

A. R2 facilities must meet and provide verification of adequate financial assurances to close the resource recovery facility in accordance with paragraphs (3)(C)3. and 4. of this rule.

B. *(Reserved)*

(B) The owner/operator of a resource recovery facility not exempt under subsection (2)(A) of this rule, shall submit an application to the department for a resource recovery facility certificate which includes, as applicable, the following information:

1. A certified resource recovery facility application form provided by the department and completed according to directions;

2. A flowsheet depicting the flow of waste throughout the process. The flowsheet shall commence at the point of generation of the MDNR waste and shall continue through the reclamation process;

3. A quality control plan which includes the following unless determined by the department not to be applicable:

A. A plan to insure that the quality and type of waste processed are compatible with the successful operation of the resource recovery unit so that—

(I) Specific waste streams are defined in this plan;

(II) Test results are maintained at the facility for a period of at least three (3) years; and

(III) A contingency plan is formulated for incoming shipments which do not meet the specified limitations provided;

B. A plan outlining all tests performed on the product of the reclamation unit(s); and

C. A plan for treatment or disposal, or both, of any residues generated as a result of the process;

4. A legible drawing having a scale adequate to delineate the following:

A. The boundary of the facility;

B. The different facility segments or processes which generate hazardous waste(s);

C. Areas where hazardous waste is stored;

D. The location(s) of resource recovery unit(s) or process(es), or both;

E. Areas where the reclaimed product of the facility is stored; and

F. Any spill control equipment located at the facility; and

5. Identification of emergency response procedures and capabilities at the facility.

(C) In addition to the requirements in subsection (3)(B) of this rule, the owner/operator of an R2 facility shall comply with the following:

1. Submit a sampling and analysis plan for incoming shipments to assure that the quality and type of wastes accepted are compatible with the successful operation of the facility;

2. Maintain a daily log which indicates the manifest number associated with each hazardous waste received and the immediate disposition of those wastes as part of its operating record in compliance with paragraph (3)(E)5. of this rule. The analytical data obtained as a result of the sampling and analysis plan shall correspond directly with the manifest;

3. Provide a closure plan and cost estimate for closure of the resource recovery activity at the facility prepared in accordance with 10 CSR 25-7.264(2)(G); and

4. Provide, as specified in 10 CSR 25-7.264, a financial assurance mechanism to cover the closure cost estimate.

(D) The owner/operator of a certified resource recovery facility shall submit a complete application for renewal of certification or a notification of intent to cease operations and close at least ninety (90) days prior to expiration of the prior certification. The owner/operator of a proposed non-exempt resource recovery facility shall submit a complete application at least ninety (90) days prior to construction and operation of the facility. Upon receipt of a complete application, the department will have ninety (90) days to issue a certificate for operation or to reject the application for stated cause. The resource recovery certification may be issued for no longer than two (2) years. The applicant may appeal the decision in accordance with 10 CSR 25-8. Operation of the resource recovery facility shall not occur until the resource recovery certification has been issued.

(E) Operating Standards for All Certified Resource Recovery Facilities.

1. At least sixty (60) days prior to a major change at the resource recovery facility, the owner/operator of the certified resource recovery facility shall submit a written request to the department for approval of that change. A major change shall include, but not be limited to, a change in a recovery process, the addition of a new recovery process, a ten percent (10%) or greater increase in the monthly quantity of any hazardous waste recovered, a change in ownership or operational control, or the closure of a resource recovery unit.

A. If any reclamation unit is removed from use, a plan addressing the disposition of the unit and the hazardous waste shall accompany the written request.

B. Within thirty (30) days after closure of any resource recovery unit, the owner/operator must submit written notice to the department that the resource recovery unit has been closed and all hazardous waste or hazardous waste residue which was not recovered or recycled prior to the closure was disposed of in accordance with 10 CSR 25-3—10 CSR 25-7.

2. The owner/operator shall submit a written request to the department for approval of a minor change at least thirty (30) days prior to the change. A minor change shall include, but not be limited to, the addition or deletion of a recyclable waste stream or a change in the operational procedures of the recycling process.

3. The owner/operator shall maintain a copy of the certification and all approved modifications in an orderly manner at the facility. Modification of the resource recovery facility shall not occur until approval has been obtained from the department. The owner/operator shall operate in accordance with the certification as it was approved or modified by the department.

4. The owner/operator shall comply with manifest system requirements in 40 CFR 264.71 and 264.72 as incorporated in 10 CSR 25-7.264.

5. The owner/operator shall comply with requirements for the operating record in 10 CSR 25-7.264(2)(E)2. and 40 CFR 264.73(b)(1) and (2) as incorporated in 10 CSR 25-7.264.

6. The owner/operator shall comply with reporting requirements in 10 CSR 25-7.264(2)(E)3. and 40 CFR 264.76 as incorporated in 10 CSR 25-7.264.

7. Storage of hazardous waste as defined in 10 CSR 25-4.261, prior to resource recovery, does not require a permit or interim status pursuant to 10 CSR 25-7 if the following conditions are met:

A. Interim status or a permit for this storage is not required under 40 CFR part 270 as incorporated in 10 CSR 25-7.270;

B. Still bottoms produced from resource recovery processes may be stored in accordance with the satellite accumulation provisions of 10 CSR 25-5.262(2)(C)3. until necessary to move to a storage area prior to shipment or disposal, or both. Once satellite accumulation ends, the facility has ninety (90) days to ship or dispose, or both of the still bottoms, irrespective of any accumulation times of the waste solvents prior to reclamation; and

C. Storage of hazardous waste shall be in compliance with 10 CSR 25-5—10 CSR 25-9.020. (Note: Underground storage tanks may need to meet additional requirements (that is, 40 CFR part 280) as directed by the United States Environmental Protection Agency and MDNR Water Pollution Control Program.)

(4) The applicant for a resource recovery certificate shall submit a fee with the application per 10 CSR 25-12.010(3)(F). The fee shall cover each application for issuance or renewal and is not refundable. If the certificate is issued, the fee shall cover the full term of the original or renewal certificate.

(5) The applicant for a new or renewal resource recovery certificate shall pay all applicable costs for engineering and geological review per 10 CSR 25-12.010(3)(D).

AUTHORITY: sections 260.370, 260.395 and 260.437, RSMo 2000.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 10—Abandoned or Uncontrolled Hazardous Waste Disposal Sites

10 CSR 25-10.010 Abandoned or Uncontrolled Hazardous Waste Disposal Sites

PURPOSE: This rule establishes procedures for adding sites to, removing sites from and modifying site classifications in the Missouri Registry of Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites and establishes procedures to be used by responsible parties to obtain state approval for remedial actions at abandoned or uncontrolled sites.

(1) Proposing Sites for the Registry.

(A) When the department proposes to list a site on the registry, it will notify each owner of record of the site of the proposal. Notice shall be given by certified mail directed to the last known address of the person being notified.

1. The notice shall contain a general description of the site proposed to be listed on the registry, a general description of the nature of the waste found at the site and a statement that the owner or operator may request a hearing before the commission in accordance with section (2) of this rule regarding the proposal by filing a notice of appeal by certified mail with the director within thirty (30) days of the notice.

(B) No abandoned or uncontrolled site may be listed on the registry until the notice set forth in this subsection has been given and any timely appeal to the commission has been finally resolved. If an owner or operator does not file a notice of appeal within the time specified in paragraph (1)(A)1. of this rule, the department will list the site on the registry as proposed.

(2) Appeals to the Commission.

(A) Within the ninety (90) days following the filing of a timely notice of appeal, the commission may convene a hearing, or refer the matter to a hearing officer or handle any pretrial matters that comes before it. After hearing, or upon receipt of the recommendation of the hearing officer, and after any briefing or argument of the parties, the commission shall issue its findings of fact, conclusions of law and order affirming, modifying or reversing, in whole or in part, the action or proposed action of the department or director, and giving the appellant any relief warranted under the circumstances.

1. In any hearing under this rule, the provisions of sections 260.400.2–260.400.4, RSMo shall apply.

2. In any hearing under this rule, any party may move the commission for summary judgment upon the same procedure and terms as in a motion filed pursuant to Rule 74.04, Missouri Rules of Civil Procedure. If the matter has been referred to a hearing officer, the hearing officer shall recommend to the commission a proposed order upon the motion.

(B) No hearing shall be held under this rule upon less than thirty (30) days' written notice to the appellant. In addition, the department, at least thirty (30) days prior to the hearing, shall publish in a newspaper of general circulation in the county in which the site is located, a notice of the date and place of the hearing.

(C) The parties to a hearing shall be the appellant, the department and any person who upon proper motion shall be allowed to intervene in the proceeding. The granting or denial of a motion to intervene shall be governed by the considerations set forth in Rule 52.12, Missouri Rules of Civil Procedure. In any matter before a hearing officer, the hearing officer shall rule on any motion to intervene.

(D) Within ten (10) days after the rendition of any decision by the director or the commission to make any change in the registry, the department will notify by mail the local governments with jurisdiction over the site of any change.

(E) Opportunity to Allow Responsible Party Cleanups.

1. Within thirty (30) days of notice under section (1) of this rule, a responsible party may commit in writing to investigate the site and implement an approved remedial action.

2. A consent agreement developed under this section must be signed by the department and the responsible party and must contain, but not be limited to, the following commitments:

A. A schedule and specific responsibilities for completion of any site investigation and remedial action;

B. The responsible party will obtain departmental approval before implementation of any remedial action;

C. The responsible party shall be responsible for off-site migration;

D. The responsible party shall reimburse the department for all response and oversight costs incurred by the department.

3. In the case that either party to the consent agreement refuses or fails to carry out the terms of the agreement, either party may request a hearing before the commission on the matter to be handled as an appeal to the commission under section (2) of this rule.

4. Remedial actions undertaken at a site according to terms of a consent agreement developed under this section must include all necessary actions to achieve a classification pursuant to paragraph (7)(B)5. of this rule in order for the department to withdraw its proposed listing of the site on the registry.

5. When the department determines that a remedial action results in a site receiving a classification of 1, 2, 3, or 4 pursuant to subsection (7)(B) of this rule, the department will notify each owner and the party to the consent agreement developed under this section. This notification will be according to procedures established in section (1) of this rule and will include the classification of the site pursuant to subsection (7)(B) of this rule.

(3) Change of Use or Transfer of Site Property.

(A) No person may substantially change the manner in which a site listed on the registry is used without the prior written approval of the director.

1. Requests for approval for changes in use must be submitted in writing to the director at least sixty (60) days prior to any planned substantial change in use.

2. The request must include a detailed site description, a detailed description of the change in use planned and an analysis concerning whether the change in use might result in any of the conditions described in subparagraph (3)(A)4.A. through D. of this rule. Any plans, specifications or designs prepared for the change in use shall be submitted to the director with the request.

3. The director will evaluate the request to determine whether the change in use is substantial. If the change in use is not substantial, the director will notify the owner that departmental approval is not required.

4. If the director determines that the change in use is a substantial change, the request will be evaluated to determine whether the change in use may result in any of the following:

A. A spread of contamination over additional portions of the site or off-site;

B. An increase in human exposure to the hazardous materials;

C. An increase in adverse environmental impacts; or

D. A situation making potential remedial actions to correct problems at the site more difficult to undertake or complete.

5. Requests for changes in use which may result in conditions described in subparagraphs (3)(A)4.A. through D., of this rule will be denied by the director. Requests which do not result in any of the conditions in subparagraphs (3)(A)4.A. through D., of this rule will be approved.

(B) No person may sell, convey or transfer title to an abandoned or uncontrolled hazardous waste disposal site which is on the registry prepared and maintained by the department pursuant to section 260.440, RSMo without disclosing to the buyer early in the negotiation process that the site is on the registry.

1. Prior to the execution of any contracts for sale, conveyance or transfer of title to a site which is on the registry, the seller shall provide to the buyer a copy of the letter from the department notifying the owner of the department's intent to list the property on the Registry of Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites in Missouri.

2. Prior to the execution of any contracts for sale, conveyance or transfer of title to a site which is listed on the registry, the seller shall provide to the buyer a copy of the letter from the department notifying the owner that the property has been listed on the Registry of Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites in Missouri along with any applicable use restrictions and other registry information for the site.

3. The seller, within thirty (30) days after the transfer of title, shall notify the department in writing of the transfer. At that time the seller shall also provide to the department a notarized statement signed by the buyer which states that the buyer has received and read the information specified in paragraphs (3)(B)1. and 2. of this rule and that the buyer understands that s/he may be assuming liability for any remedial action at the site; provided, however, the sale, conveyance or transfer of property shall not absolve any person responsible for site contamination, including the seller, of liability for any remedial action at the site.

(C) Decisions of the director concerning requests for a change in use of a site on the registry may be appealed to the commission. Any appeals filed under this part will be handled according to the procedures in section (2) of this rule.

(4) Recording of Sites, Listing Them On or Removing Them From the Registry.

(A) When the director lists a site on the registry as provided in section 260.440, RSMo, s/he shall file with the recorder of deeds of the county where the site, or each portion of the site, is located a notice describing the site so that the notice will appear in the chain of title of the site, and stating the period during which the site was used as a hazardous waste disposal site, the hazardous waste(s) for which the site is being listed, and that the site has been listed on the Registry of Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites. The notice shall be recorded and indexed in the manner which is provided for deeds of real property.

(B) When the director finds that a site listed on the registry has been properly closed under paragraph (7)(B)5. of this rule, s/he shall file with the county recorder of deeds a notice that the site has been removed from the Registry of Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites. The notice shall describe the site so that the notice will appear in the chain of title of the site and shall be recorded and indexed in the same manner as the notice filed under subsection (4)(A) of this rule.

(5) Petitions for Deletion From the Registry, Change in Site Classification or Modification of Information.

(A) The record owner of any portion of a site listed on the registry, or any operator of any portion of the site, may petition the director of the department in writing by certified mail to delete the site from the registry, to modify the site classification or to modify information included in the registry, annual report, site assessment file or filed with the county recorder of deeds. The petition shall state the interests of the petitioner in the site and shall state what relief the petitioner is requesting, and shall contain a summary of the factual and legal reasons why the petitioner believes the requested relief is warranted.

1. The director shall investigate the matters raised in the petition and shall respond in writing within thirty (30) days to the petitioner, stating his/her decision whether and to what extent the relief requested is or is not granted or shall request information or site accesses pursuant to paragraph (5)(A)2. of this rule. The response shall be sent by certified mail to the address of the petitioner or his/her attorneys as shown on the petition.

2. The director may request additional information from the petitioner, and access to the site, in order to evaluate the merits of the petition. Failure to provide the requested information or site access within thirty (30) days shall be grounds for denial of the petition.

3. The petitioner may appeal to the commission any decision by the director upon a petition under section (5) of this rule, by filing a written notice of appeal by certified mail with the commission's staff director within thirty (30) days of the director's final response to the petition. If a timely notice of appeal is not filed under this paragraph, no issue determined by the director adverse to the petitioner may be considered as grounds for relief in any subsequent petition by the same person, or by any person in privity with the person, in any subsequent petition under section (5) of this rule.

(6) Survey of Sites to Reduce the Area to be Listed or Already Listed on the Registry.

(A) The owner or a responsible party may submit to the department in writing a commitment to survey the site and reduce the area to be or which has been listed on the registry.

1. For sites which have been proposed for listing on the registry, the written commitment to survey the site must be received within thirty (30) days of notice under section (1) of this rule or within thirty (30) days of the commission's decision pursuant to section (2) of this rule. In no event may a survey for this purpose be accepted beyond one hundred twenty (120) days of the department's receipt of written commitment pursuant to subsection (6)(A) of this rule.

2. If the owner or a responsible party chooses to reduce the area of the site, a written commitment to do so under subsection (6)(A) of this rule must include the instructions or plan to be given the surveyor describing the area to be surveyed.

3. The plan or instructions must be approved by the department prior to implementation.

4. The surveyor must install permanent survey markers at the corners of the surveyed area.

5. The site must include a one hundred foot (100') minimum buffer zone extending laterally in all directions from the known edge of the contamination, either on or below the ground surface. The dimensions of the buffer zone may be modified upon approval of the department.

6. The owner or a responsible party must submit to the department a survey sealed by a land surveyor, who is registered to practice in Missouri and in compliance with the current Minimum Standards for Property Boundary Surveys in 10 CSR 30-2.010 depicting the legal description of the site.

(B) *(Reserved)*

(7) Site Assessment.

(A) Site Assessment Committee.

1. A five (5)-member voting committee shall be established with one qualified representative each from the Missouri Department of Health; the department's Division of Geology and Land Survey; and one (1) representative each from the Division of Environmental Quality's Hazardous Waste Program, Public Drinking Water Program and one (1) other environmental program. Three (3) yes votes are required to initially classify or reclassify a site.

2. The committee shall meet at least once annually to assess or reassess the classification of each abandoned or uncontrolled hazardous waste registry site as required in section 260.445.3, RSMo. The classification shall be determined in accordance with criteria contained in subsection (7)(B) of this rule.

(B) Classifications and Criteria for Determining Site Classifications.

1. Class 1—sites that are causing or presenting an imminent danger of causing irreversible or irreparable damage to the public health or environment. Sites present a high risk to public health and/or the environment, and the following criteria for determining this site classification shall apply:

A. Hazardous waste on the site is highly concentrated and readily accessible by ingestion and/or inhalation and/or dermal contact; and/or

B. Immediate remediation or action is required to prevent irreparable damage to public health and/or the environment.

2. Class 2—sites that are a significant threat to the environment. Sites present a moderate risk to public health and/or the environment, and the following criteria for determining this site classification shall apply:

A. Hazardous waste on the site exhibits one (1) or more of the following:

(I) Moderately concentrated and accessible by ingestion and/or inhalation and/or dermal contact;

(II) Highly concentrated, but not openly accessible due to the nature of the site and the contamination and/or any remedial action taken; and

(III) Likely to adversely impact human health and/or the environment if not treated.

B. Remediation or action is required to reduce adverse impacts to public health and/or the environment.

3. Class 3—sites that do not present a significant threat to the public health or environment. Sites present a low risk to public health and/or the environment, and the following criteria for determining this site classification shall apply:

A. Hazardous waste on the site exhibits one (1) or more of the following:

(I) Low to moderately concentrated and are not readily accessible by ingestion and/or inhalation and/or dermal contact due to the nature of the site and the contamination and/or any remedial action taken; and

(II) Exceeding established regulatory guidelines; however, are not significantly impacting public health and/or the environment at this time.

B. Action may be deferred; however, hazardous waste remains on-site, and remediation is needed.

4. Class 4—sites that have been properly closed. All department required response actions have been implemented on the sites, and the response actions have been approved by the department. The following criteria for determining this site classification shall apply:

A. Hazardous waste remains on-site; and

B. The site requires continued treatment, containment, or other operation and maintenance until it meets established regulatory guidelines.

5. Class 5—sites that have been properly closed with no evidence of present or potential adverse impact. Sites proposed for the registry or on the registry meet all department requirements and regulatory guidelines for a residential or industrial cleanup as defined in subparagraphs (7)(B)5.A. and B. of this rule.

A. Residential cleanup.

(I) A site is remediated to standards determined on a site-specific basis by the department in consultation with the Missouri Department of Health, considering toxicity and typical residential exposure factors which may include years of exposure, body weight, exposure dose and/or other risk factors.

(II) A site is cleaned up for the hazardous wastes identified and remediated, and the site is not placed on the registry, or may be removed from the registry. A letter may be sent to the landowner authorizing residential use of the site. The county recorder of deeds shall be notified of the removal of a site from the registry.

B. Industrial/commercial cleanup.

(I) A site is—

(a) Remediated to standards determined on a site-specific basis by a method approved by the department in consultation with the Department of Health which considers toxicity and typical industrial exposure factors which may include years of exposure, body weight, exposure dose and/or other risk factors;

(b) Used only for industrial or commercial purposes as long as any remaining hazardous wastes exceed the department's residential or any-use standards; and

(c) Not a source for off-site releases of contaminants in concentrations exceeding residential or any-use standards for any media.

(II) A consent agreement, as defined in subsection (2)(E), shall be signed by the department and the property owner which establishes a schedule and specific responsibilities for completion of a site investigation and remedial action.

(a) The property owner shall—

I. Comply with the terms of the consent agreement; and

II. Continue to comply with the terms of the consent agreement.

(b) The consent agreement shall contain the requirement that the property owner file a deed restriction with the recorder of deeds in the county in which the site is located. One (1) or more of the following deed restrictions shall be filed so as to appear on the chain of title for the site, along with any other restrictions specific to the site:

I. Prohibiting the construction or placement of potable water wells on the property without the approval of the Missouri Department of Natural Resources;

II. Prohibiting excavation or construction work in areas of known soil contamination without the approval of the Missouri Department of Natural Resources;

III. Prohibiting the disruption or alteration of a cap, containment system or barrier in an area of known contamination without the approval of the Missouri Department of Natural Resources; and/or

IV. Prohibiting the property from being used for anything but an industrial use.

(III) The deed restriction and consent agreement are required before a site is withdrawn from the registry, or before a proposal to list a site is withdrawn.

(IV) The property owner must provide the department with evidence that the property owner has notified the political subdivision exercising jurisdiction over land use planning of the proposed industrial/commercial cleanup level classification.

(C) When the department proposes to initially classify or reclassify a site on the registry in accordance with criteria contained in subsection (7)(B) of this rule, it will notify each owner of record of the proposed site classification.

1. The notice shall contain the classification being proposed by the site assessment committee and a statement that the owner or operator may petition the director of the department in accordance with subsection (5)(A) of this rule and appeal the director's final decision in accordance with section 260.460, RSMo and this rule.

2. If an owner or operator does not file a notice of appeal within thirty (30) days of the mailing date of the notice specified in paragraph (7)(C)1. of this rule, the department will classify the site on the registry as proposed.

3. No registry classification or reclassification may be made until the notice set forth in subsection (7)(C) of this rule has been mailed, and any appeal to the commission in accordance with section (2) of this rule has been finally resolved.

4. Pending petitions or appeals of registered sites pursuant to subsection (5)(A) of this rule will not prevent the site from being listed in the annual report. Appeals to the commission under subsection (5)(A) of this rule will be noted in the annual report.

AUTHORITY: sections 260.370, 260.437, 260.440, 260.445 and 260.455, RSMo Supp. 2000

**Title 10--DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 11—Used Oil**

10 CSR 25-11.279 Recycled Used Oil Management Standards

PURPOSE: This rule incorporates by reference and modifies the federal regulations in 40 CFR part 279 and sets forth additional state requirements.

(1) The regulations set forth in 40 CFR parts 110.1, 112, and 279, July 1, 2010, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) This section sets forth specific modification to 40 CFR part 279, incorporated by reference in section (1) of this rule. A person managing used oil shall comply with this section in addition to the regulations in 40 CFR part 279. In the case of contradictory or conflicting requirements, the more stringent shall control. (Comment: This section has been organized so that Missouri additions, changes, or deletions to a particular lettered subpart in 40 CFR part 279 are noted in the corresponding lettered subsection of this section. For example, changes to 40 CFR part 279 subpart A are found in subsection (2)(A) of this rule.)

(A) Definitions. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 279 subpart A.

1. The definition of do-it-yourselfer used oil collection center at 40 CFR 279.1 is amended to allow these sites or facilities to accept/aggregate and store used oil collected from household do-it-yourselfers and farmers not regulated by 40 CFR part 279 subpart C as incorporated in this rule.

2. The definition of used oil at 40 CFR 279.1 is amended as follows:

A. Used oil includes, but is not limited to, petroleum-derived and synthetic oils which have been spilled into the environment or used for lubrication/cutting oil, heat transfer, hydraulic power, or insulation in dielectric transformers;

B. Used oil does not include petroleum-derived or synthetic oils which have been used as solvents. (Note: Used ethylene glycol is not regulated as used oil under this chapter.); and

C. Except for used oil that meets the used oil specifications found in 40 CFR 279.11, any amount of used oil that exhibits a hazardous characteristic and is released into the environment is a hazardous waste and shall be managed in compliance with the requirements of 10 CSR 25, Chapters 3, 4, 5, 6, 7, 8, 9, and 13. Any exclusions from the definition of solid waste or hazardous waste will apply.

3. The definition of “used oil aggregation point” at 40 CFR 279.1 is amended to allow these sites or facilities to accept/aggregate and store used oil from household do-it-yourselfers and farmers not regulated by 40 CFR part 279 subpart C as incorporated in this rule.

4. The definition of used oil collection center at 40 CFR 279.1 is amended to allow these centers to accept/aggregate and store used oil from household do-it-yourselfers and farmers not regulated by 40 CFR part 279 subpart C as incorporated in this rule.

(B) Applicability. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 279 subpart B.

1. 40 CFR 279.10(b)(2) is not incorporated in this rule.

2. Mixtures of used oil and hazardous waste are subject to the following:

A. Except as provided for in subparagraphs (2)(B)2.B. and C. of this rule, used oil that is mixed with hazardous waste shall be handled according to 10 CSR 25-3, 4, 5, 6, 7, 8, 9, and 13;

B. Used oil that is mixed with hazardous waste that solely exhibits the characteristic of ignitability or is mixed with a listed hazardous waste that is listed solely because it exhibits the characteristic of ignitability shall be managed as a used oil; provided that the subsequent mixture does not exhibit the characteristic of ignitability; and

C. A generator who generates and accumulates hazardous waste in amounts less than those described in 10 CSR 25-3.260(1)(A)25. shall handle mixtures of used oil with hazardous waste as a used oil.

3. 40 CFR 279.10(c) is modified as follows. Used oil drained or removed from materials containing or otherwise contaminated with used oil shall be managed as a hazardous waste if the used oil exhibits a hazardous characteristic. Any exclusions from the definition of solid waste or hazardous waste will apply.

4. In 40 CFR 279.10(f), incorporated by reference in this rule, delete “subject to regulation under either section 402 or section 307(b) of the Clean Water Act (including wastewaters at facilities which have eliminated the discharge of wastewater)” and in its place substitute “regulated under Chapter 644, RSMo, the Missouri Clean Water Law.”

5. In addition to the prohibitions of 40 CFR 279.12, incorporated by reference in this rule, the following shall apply:

A. All used oil is prohibited from disposal in a solid waste disposal area; and

B. Used oil shall not be disposed of into the environment or cause a public nuisance.

(C) Standards for Used Oil Generators. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 279 subpart C.

1. In addition to the requirements of 40 CFR 279.20(a)(2), incorporated by reference in this rule, vessels on navigable waters, as defined in 40 CFR 110.1, shall not dispose of used oil into waters of the state except as allowed by Chapter 644, RSMo.

2. *(Reserved)*

3. In 40 CFR 279.22(d), incorporated by reference in this rule, delete “the effective date of the authorized used oil program for the State in which the release is located,” and insert in its place “the original effective date of 10 CSR 25-11.279.”

4. In addition to the requirements at 40 CFR 279.23(a), generators also may burn in used oil space heaters used oil from farmers not regulated by 40 CFR part 279 subpart C.

5. In addition to the requirements at 40 CFR 279.23, incorporated in this rule, burning in a used oil space heater any mixture of used oil with a hazardous waste is prohibited, except that mixtures of used oil with hazardous waste originating from conditionally exempt small quantity generators of hazardous waste may be burned in used oil-fired space heaters, so long as the hazardous waste is hazardous solely because it exhibits the characteristic of ignitability.

6. Used oil generators shall keep all tanks and containers that are exposed to rainfall closed at all times except when adding or removing used oil.

(D) Standards for Used Oil Collection Centers and Aggregation Points. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 279 subpart D.

1. Do-it-yourselfer used oil collection centers, used oil collection centers, and used oil aggregation points owned by the generator may accept used oil from farmers not regulated under 40 CFR part 279 subpart C.

2. In addition to the requirements of 40 CFR part 279 subpart D, do-it-yourselfer used oil collection centers, used oil aggregation points, and used oil collection centers shall notify the solid waste district in which they operate or the department's Hazardous Waste Program of their used oil collection activities.

A. Notification shall be by letter and shall include the following:

(I) The name and location of the collection center;

(II) The name and telephone number of the owner/operator;

(III) The name and telephone number of the facility contact, if different from the owner/operator;

(IV) The type of collection center; and

(V) The dates and hours of operation.

B. The notification submitted by a used oil collection center will satisfy the requirement of 40 CFR 279.31(b)(2) that the used oil collection center be recognized by the state.

C. Do-it-yourselfer used oil collection centers, used oil collection centers, and used oil aggregation points shall notify the solid waste district in which they operate or the department's Hazardous Waste Program when their used oil collection activities cease.

D. The notifications to operate or cease to operate received by a solid waste district shall be transmitted to the department's Hazardous Waste Program for public information purposes or be incorporated in the information submitted to the department as part of their regular reporting requirements.

3. No quantity of used oil collected by do-it-yourselfer oil collection centers, used oil collection centers, and used oil aggregation points shall be stored for more than twelve (12) months at the collection center or aggregation point.

4. Do-it-yourselfer used oil collection centers, used oil collection centers, and used oil aggregation points shall keep all tanks and containers that are exposed to rainfall closed at all times except when adding or removing used oil.

5. Used oil collection centers, do-it-yourselfer used oil collection centers, and used oil aggregation points shall have a means of controlling public access to the used oil storage area.

A. Access control may be an artificial or natural barrier which completely surrounds the storage area or access control may be achieved by storing the used oil inside a locked building.

B. An attendant shall be present when the public has access to the do-it-yourselfer used oil collection center, used oil collection center, and used oil aggregation point. No public access shall be allowed to the stored used oil when the collection center or aggregation point is unattended.

(E) Standards for Used Oil Transporters and Transfer Facilities. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 279 subpart E.

1. In addition to the requirements of 40 CFR 279.42, transporters of used oil shall be licensed in accordance with the requirements in 10 CSR 25-6.263.

2. In addition to the requirements of 40 CFR 279.45(d)-(f), incorporated by reference in this rule, secondary containment systems shall have a capacity equal to or greater than ten percent (10%) of the containerized waste volume, or the volume of the largest container, whichever is greater. (Note: Facilities that store used oil in tanks near navigable waters may be subject to the spill prevention, control, and counter-measures standards found in 40 CFR 112.)

3. In addition to the requirements of 40 CFR 279.46, incorporated by reference in this rule, the following shall apply:

A. The information described in 40 CFR 279.46(a)-(c), incorporated by reference in this rule, shall be recorded on form MO 780-1449(11-93), the Transporter's Used Oil Shipment Record, incorporated by reference in this rule and provided by the department; and

B. All transporters who transport one thousand (1,000) gallons or more used oil in a reporting period must submit the information described in 40 CFR 279.46(a) and (b) to the director of the department's Hazardous Waste Program annually, on form MO 780-1555, the Transporter's Annual Report Form, incorporated by reference in this rule and provided by the department. The form shall include information for a reporting period from July 1 to June 30, and shall be submitted by August 31 following the reporting period.

4. In addition to the requirements of 40 CFR 279.46 incorporated in this rule, transporters of used oil operating a transfer facility shall maintain an inventory log to assure the off-site shipment of used oil within thirty-five (35) days.

5. In addition to the requirements of 40 CFR 279.46(d), incorporated in this rule, the inventory log described in paragraph (2)(E)4. of this rule shall be maintained for at least three (3) years, or longer if required by the department.

6. In addition to the requirement of 40 CFR 279.47, used oil transporters who operate a transfer facility shall close the transfer facility in accordance with 10 CSR 25-6.263(2)(A)10.G.

7. Used oil transfer facilities shall keep all tanks and containers that are exposed to rainfall closed at all times except when adding or removing used oil.

8. For shipments involving rail transportation, the initial rail transporter shall forward copies of the shipping record to—

A. The next nonrail transporter, if any;

B. The receiving facility if the shipment is delivered by rail; or

C. The last rail transporter handling the used oil in the United States.

(F) Standards for Used Oil Processors and Re-Refiners. This subsection sets forth requirements which modify or add to those required by 40 CFR part 279 subpart F.

1. In 40 CFR 279.52(b)(6)(iv)(B), incorporated in this rule, the government official described as the on-scene coordinator shall be either the department's emergency response coordinator or the EPA Region VII emergency planning and response branch.

2. In addition to the requirements at 40 CFR 279.54(c) and (d), secondary containment systems shall have a capacity equal to or greater than ten percent (10%) of the containerized waste volume or the volume of the largest container, whichever is greater. (Note: Facilities that store used oil in tanks near navigable waters may be subject to the spill prevention, control, and counter-measures standards found in 40 CFR 112.)

3. In 40 CFR 279.54(g), incorporated by reference in this rule, delete "the effective date of the authorized used oil program for the State in which the release is located," and insert in its place "the original effective date of 10 CSR 25-11.279."

4. In 40 CFR 279.52(b)(6)(viii)(C), incorporated in this rule, the state authority to be notified is the director of the department's Hazardous Waste Program.

5. Used oil processors and re-refiners shall keep all tanks and containers that are exposed to rainfall closed at all times except when adding or removing used oil.

(G) Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 279 subpart G.

1. In addition to the requirements of 40 CFR 279.64(c)–(e), secondary containment systems shall have a capacity equal to or greater than ten percent (10%) of the containerized waste volume or the volume of the largest container, whichever is greater. (Note: Facilities that store used oil in tanks near navigable waters may be subject to the spill prevention, control, and counter-measures standards found in 40 CFR 112.)

2. In 40 CFR 279.64(g), incorporated in this rule, delete "the effective date of the authorized used oil program for the State in which the release is located," and insert in its place "the original effective date of 10 CSR 25-11.279."

3. Used oil burners shall provide the transporter who delivers each shipment of used oil with the information required in 40 CFR 279.65, incorporated in this rule, and shall retain for three (3) years a copy of the completed form MO 780-1449(4-94), the Transporter's Used Oil Shipment Record for each shipment received. The period of record retention shall extend automatically during the course of any pending enforcement action, or upon the director's request. The records shall be available to authorized representatives of the department for inspection and copying during regular business hours.

4. Used oil burners shall keep all tanks and containers that are exposed to rainfall closed at all times except when adding or removing used oil.

(H) Standards for Used Oil Fuel Marketers. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 279 subpart H.

1. Used oil marketers subject to 40 CFR 279.74, incorporated in this rule, shall provide the transporter who delivers each shipment of used oil with the information required in 40 CFR 279.74 and shall retain for three (3) years a copy of the completed form MO 780-1449(4-94), the Transporter's Used Oil Shipment Record for each shipment received. The period of record retention shall extend automatically during the course of any pending enforcement action, or upon the director's request. The records shall be available to authorized representatives of the department for inspection and copying during regular business hours.

(I) Standards for Use as a Dust Suppressant and Disposal of Used Oil. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 279 subpart I.

1. 40 CFR 279.81 is not incorporated in this rule. Instead of the requirements in 40 CFR 279.81, the following shall apply:

A. Used oil that cannot be or is not intended to be recycled in accordance with this rule shall be managed in accordance with 10 CSR 25-5, 6, 7, 9, and 13, and release of even non-hazardous used oil into the environment is prohibited; and

B. Used oil that cannot be or is not intended to be recycled in accordance with this rule shall be assigned the Missouri waste code number D098.

2. The use of used oil as a dust suppressant on a road, parking lot, driveway, or other similar surface is prohibited.

3. 40 CFR 279.82 is not incorporated in this rule.

(3) Requirements for Low Concentration Polychlorinated Biphenyls (PCB) Used Oil.

(A) Low concentration PCB used oil is defined as any used oil that contains equal to or greater than two parts per million (2 ppm) PCBs but less than fifty parts per million (50 ppm) PCBs; provided that the used oil is not PCB material as defined in 10 CSR 25-13.010. Sections (1) and (2) of this rule apply to low concentration PCB used oil, subject to the additions and modifications in this section.

(B) This section does not apply to electrical equipment that has been drained of all free-flowing low concentration PCB used oil.

(C) Low concentration PCB used oil that cannot be or is not intended to be recycled in accordance with this rule shall be assigned Missouri waste code number D096. The generator shall record this waste code as any shipment record or manifest that accompanies a consignment of low concentration PCB used oil that is destined for disposal.

(D) A generator, transporter, or own-er/operator of a hazardous waste management facility, certified resource recovery facility or PCB facility that manages low concentration PCB used oil may be required to verify by analysis or investigation, or both, that the used oil is not PCB material as defined in 10 CSR 25-13.010.

(E) No person shall dispose of oily waste resulting from a spill or leak of low concentration PCB used oil in a solid waste landfill if the oily waste contains equal to or greater than one (1) pound of PCBs.

AUTHORITY: section 260.370, RSMo Supp. 2010.

Division 25—Hazardous Waste Management Commission

Chapter 12—Hazardous Waste Fees and Taxes

10 CSR 25-12.010 Fees and Taxes

PURPOSE: This rule identifies fees and taxes assessed generators; transporters; applicants for licenses, certifications and permits; owners/operators of hazardous waste treatment, storage, resource recovery and disposal facilities; and persons seeking variances. (Note: The department bills for the Department of Revenue but is not the collector of fees or taxes for Missouri.) This rule is in addition to federal requirements.

(1) Hazardous Waste Fees Applicable to Generators of Hazardous Waste.

(A) A generator of hazardous waste shall pay a fee annually in accordance with section 260.380.1(10), RSMo. This fee shall be referred to as the In-State Waste Fee. The fee shall be paid annually, on or before January 1 of each year, at the rate of five dollars (\$5) per ton or portion thereof for the hazardous waste reported to the department for the twelve (12)-month period ending June 30 of the previous year. The fee shall not be less than one hundred fifty dollars (\$150) and not more than fifty-two thousand dollars (\$52,000) annually per generator site. As outlined in section 260.380.4, RSMo, failure to pay this fee in full by the due date shall result in imposition of a late fee equal to fifteen percent (15%) of the total original fee.

EXAMPLES OF IN-STATE WASTE FEE CALCULATION

Example 1. ABC Company reports 25 tons of hazardous waste:

$$\$5 \times 25 \text{ tons} = \$125 \text{ fee}$$

The fee would be \$150, because that is the minimum annual fee.

Example 2. ABC Company reports 41.3 tons of hazardous waste.
The number of tons would be rounded to 42:

$$\$5 \times 42 \text{ tons} = \$210 \text{ fee}$$

Example 3. ABC Company reports 11,000 tons of hazardous waste:

$$\$5 \times 11,000 \text{ tons} = \$55,000 \text{ fee}$$

The fee would be \$52,000, because that is the maximum annual fee.

1. Hazardous waste that is discharged by a generator to a municipal wastewater treatment plant, which is regulated by a permit issued by the Missouri Clean Water Commission, shall be assessed a fee of zero cents per ton (0¢/ton) of hazardous waste so managed.

1. Hazardous waste that is discharged by a generator to a municipal wastewater treatment plant, which is regulated by a permit issued by the Missouri Clean Water Commission, shall be assessed a fee of zero cents per ton (0¢/ton) of hazardous waste so managed.

(B) A generator required to register in accordance with 10 CSR 25-5.262 shall pay a land disposal tax in accordance with section 260.475, RSMo.

(C) A generator required to register in accordance with 10 CSR 25-5.262, in accordance with section 260.390.2, RSMo, shall pay a landfill tax which is collected by the landfill owner/operator when depositing waste at a hazardous waste landfill.

(D) The department will bill those generators whose records on file indicate that they are subject to taxes or fees in section (1). However, if a generator does not receive a billing, it does not relieve the generator of the responsibility to pay fees or taxes imposed by this rule.

(2) Fees and Taxes Applicable to Transporters of Hazardous Waste.

(A) A transporter required to register as a generator under 10 CSR 25-6.263 and, in accordance with 10 CSR 25-5.262, shall pay fees and taxes required under section (1) of this rule.

(B) A transporter depositing hazardous waste at a hazardous waste landfill who pays the gross fee on behalf of a generator or who pays the gross fee due to the transporter's status as a generator shall pay a landfill tax to the owner/operator of the landfill, in accordance with subdivision 260.390(8), RSMo when depositing that waste at the landfill.

(C) A hazardous waste transporter as defined at 10 CSR 25-3.260, except those exempted in subsection (E) of this section, requesting a hazardous waste transporter license in accordance with 10 CSR 25-6.263 shall submit to the department along with their license application the following fees:

1. An annual application fee of two hundred dollars (\$200); and

2. A use-based fee, calculated by adding the total licensed vehicle weight (LVW) of power units, and multiplying by the percentage of Missouri International Registration Plan (IRP) mileage (MOIRP) by the percent hazardous waste (HW) times a use rate of .0425. The formula is: $LVW \times \%MOIRP \times \%HW \times .0425 = \text{Use Fee}$. Fee calculations shall be submitted on forms furnished by the department in its application packet. Transporters shall base all calculations on the period of twelve (12) consecutive months immediately prior to July 1 immediately preceding the date of the license application. This time frame is known as the “previous year.”

A. *For those power units which utilize the International Registration Plan (IRP) or 12 CSR 20-3.010 for apportioned registration, the transporter shall use the reported Missouri IRP mileage for the previous year.*

B. *For those power units not required to track IRP miles, the transporter shall calculate MOIRP mileage by dividing the Missouri mileage of their power units by total mileage for the previous year.*

C. *The percentage of hazardous waste will be the number of hazardous waste, used oil, or infectious waste truckloads from, to or through Missouri, divided by the total truckloads from, to or through Missouri, in the form of a percentage, for the previous year.*

D. *New transporters who wish to obtain a hazardous waste license and have no “previous year” history of hauling hazardous waste, shall calculate license fees based on estimates of MOIRP mileage and percent hazardous waste.*

(I) If an estimate is used to calculate the license fee, the transporter shall, within sixty (60) days of the expiration of the license, report the actual Missouri mileage and percent hazardous waste for the current license year. The renewal fee will include the license fee for the next year, plus any money owed the department due to an underestimation of the current year, plus ten percent (10%).

(II) *The department shall not issue refunds but will issue credit for license fees in excess of ten percent (10%) (overestimation) for the next license year.*

E. *A transporter who wishes to add another power unit other than when applying for the annual license shall submit, along with power unit descriptions, a fee computed from this formula: $LVW \text{ of power unit} \times \%MOIRP \times \%HW \times .0425 = \text{Use Fee}$. Divide this figure by twelve (12), then multiply by the number of months remaining in the license year to derive the fee.*

F. *To replace one (1) power unit for another (due to accident, sale, or extended maintenance) submit all the required information for the replacement and a license certificate will be issued for that power unit for a limited period.*

G. *A temporary permit can be issued for thirty (30)-days for a fee of fifty dollars (\$50) for a power unit that is, for example, a temporary lease that is added to the fleet.*

3. *The total fee shall not exceed twenty-five thousand dollars (\$25,000) per transporter per year.*

(D) Record Keeping and Reporting.

1. *Licensed transporters, except those exempted in subsection (E) of this section, shall maintain all documentation used in calculating Missouri hazardous waste transporter license fees for a period of three (3) years following the expiration of the license. Transporters who reach the maximum payment are relieved of record keeping requirements and are also free to add or replace power units as necessary during the license year.*

2. *All documentation used to calculate Missouri hazardous waste transporter license fees must be provided to the department, upon request, within fifteen (15) calendar days from the date of receipt.*

(E) Other than power unit transporters are not subject to the requirements of subsections (C) and (D) of this section. The license fee for each mode of transport other than power units shall be three hundred fifty dollars (\$350) per transporter per year. An other than power unit transporter shall not originally include, nor add, more than one (1) mode on the same license. For example, a license for rail transport shall not include power unit hazardous waste transportation.

(F) License renewals submitted within twelve (12) months of the effective date of this rule may be considered a new license and therefore subject to the provisions of 10 CSR 25-12.010(2)(C)2.D.(I) and (II) applicable to newly licensed transporters. The determining factor will be whether or not the transporter has been keeping accurate records of MOIRP mileage and Missouri hazardous waste percentage for the previous year. If the transporter has accurate figures for the previous year, then the license will be an actual renewal.

(3) Fees and Taxes Applicable to Applicants for Permits or Certifications and to Owners/Operators of Treatment, Storage, Disposal, or Resource Recovery Facilities.

(A) An owner/operator of hazardous waste treatment, storage, or disposal facility shall pay fees and taxes required in subsections (1)(A), (B), and (C) of this rule. An owner/operator of a hazardous waste treatment, storage, disposal, or resource recovery facility also shall pay fees and taxes required in section (1) of this rule for hazardous waste which is transported off-site for final disposition. (Note: These fees are not applicable to waste transported off-site for storage only; however, the fees are applicable to the waste transported from the storage facility to the point of final disposition except as provided in section (1).)

(B) A permit applicant shall pay the following fees upon application as required in subdivision 260.395.7(6), RSMo and in accordance with 10 CSR 25-7.270(2)(B)8.: One thousand dollars (\$1,000) for each hazardous waste management treatment, storage or disposal facility. The fee shall be submitted with the application. The fee shall cover the first year of the permit, if issued, but the fee is not refundable if the permit is not issued. If the permit is to be issued for more than one (1) year, the applicant shall pay fees as required in subsection (3)(C) of this rule.

(C) A permit applicant shall pay the following fees as required in subdivision 260.395.7(6), RSMo, and in accordance with 10 CSR 25-7.270(2)(C)1.A.: One thousand dollars (\$1,000) for each hazardous waste management treatment, storage or disposal facility for each year the permit is to be in effect beyond the first year.

(D) An applicant for a hazardous waste treatment, storage or disposal facility permit or resource recovery certification shall pay all applicable costs in accordance with 10 CSR 25-7.270(2)(B)9., 10 CSR 25-9.020(5), and as required by subdivisions 260.395.7(7) and 260.395.14(2), RSMo for engineering and geological review. Those costs for engineering and geological review will be billed in the following categories:

1. The project engineer's and geologist's time expended in the following areas:

A. Supervision of field work undertaken to collect geologic and engineering data for submission with the permit application or resource recovery certification application;

B. Review of geologic and engineering plans submitted in relation to the permit application or resource recovery certification application;

C. Assessment and attesting to the accuracy and adequacy of the geologic and engineering plans submitted in relation to the permit application or resource recovery certification application; and

D. The project engineer's and geologist's time billed at the engineer's and geologist's hourly rates multiplied by a fixed factor of three and one-half (3 1/2). This fixed factor is comprised of direct labor; fringe benefits including, but not limited to, insurance, medical coverage, Social Security, Workers' Compensation and retirement; direct overhead, including, but not limited to, clerical support and supervisory engineering review and Hazardous Waste Program administrative and management support; general overhead, including, but not limited to, utilities, janitorial services, building expenses, supplies, expenses and equipment, and department indirect costs; and engineering support, including, but not limited to, training, peer review, tracking and coordination;

2. The direct costs associated with travel to the facility site to supervise any field work undertaken to collect geologic and engineering data or to ascertain the accuracy and adequacy of geologic and engineering plans, or both, including, but not limited to, expenses actually incurred for lodging, meals and mileage based on the rate established by the state of Missouri. These costs are in addition to the costs in paragraph (3)(D)1. of this rule; and

3. Costs directly associated with public notification and departmental public hearings, including legal notice costs, media broadcast costs, mailing costs, hearing officer costs, court reporter costs, hearing room costs, and security costs, will be billed to the applicant. In a contested case as defined in section 536.070(4), RSMo, costs related to preparing and supplying one (1) copy of the transcript(s) of the case shall not be charged to the applicant.

(E) An owner/operator of a hazardous waste landfill shall collect, on behalf of the state, from each generator or transporter, a tax equal to two percent (2%) of the gross charges and fees charged the generator for disposal at the landfill. The tax shall be accounted for separately on the statement of charges and fees made to the hazardous waste generator and shall be collected at the time of collection of the charges and fees.

(F) The applicant for a resource recovery certificate shall pay the following fee in accordance with 10 CSR 25-9.020(4) and subdivision 260.395.14(2), RSMo when submitting the application: Five hundred dollars (\$500) if the application is for a resource recovery facility which legitimately reclaims or recycles hazardous waste on-site in accordance with 10 CSR 25-9 or one thousand dollars (\$1,000) if the application is for a resource recovery facility which receives hazardous waste from off-site for legitimate reclamation or recycling in accordance with 10 CSR 25-9.

(4) Corrective Action Oversight Cost Recovery.

(A) In accordance with subdivision 260.375(30), RSMo, owners/operators of hazardous waste facilities performing corrective action pursuant to sections 260.350 to 260.430, RSMo, and the rules promulgated thereunder shall pay to the department all reasonable costs, as determined by the commission, incurred by the department in the oversight of corrective action investigations, monitoring or cleanup of releases of hazardous waste or hazardous constituents at hazardous waste facilities. Oversight shall include review of the technical and regulatory aspects of corrective action plans, reports, documents, and associated field activities, including attesting to their accuracy and adequacy. All corrective action plans approved by the department pursuant to sections 260.350 to 260.430, RSMo, shall require the department, upon notice by the owner/operator that the approved plan has been completed, to verify within ninety (90) days that the corrective action plan has been complied with and completed. Within thirty (30) business days thereafter and provided that the department agrees that the corrective plan has been complied with and completed, the department shall issue a letter to the owner/operator certifying the completion and compliance.

(B) Corrective action cost recovery billing shall be based on the hourly rate(s) of departmental staff performing corrective action oversight multiplied by a fixed factor of three and one-half (3 1/2). This fixed factor is comprised of direct labor; fringe benefits including, but not limited to, insurance, medical coverage, Social Security, Workers' Compensation, and retirement; direct overhead, including, but not limited to, clerical support and supervisory review and Hazardous Waste Program administrative and management support; general overhead, including, but not limited to, utilities, janitorial services, building expenses, supplies, expenses and equipment, and department indirect costs; and other support activities, including, but not limited to, training, peer review, tracking, and coordination.

(C) The direct costs associated with travel to hazardous waste facilities for the purpose of corrective action oversight including, but not limited to, expenses actually incurred for lodging, meals, and mileage based on the rates established by the state of Missouri shall be recoverable. These direct costs shall be billed to the owner/operator and are in addition to the costs in subsection (4)(B) of this rule.

(D) Corrective action-related costs directly associated with public notification and departmental public hearings, including legal notice costs, media broadcast costs, mailing costs, hearing officer costs, court reporter costs, hearing room costs, and security costs, shall be billed to the owner/operator. In a contested case as defined in section 536.070(4), RSMo, costs related to preparing and supplying one (1) copy of the transcript(s) of the case shall not be charged to the owner/operator.

(E) All funds remitted by owners/operators of hazardous waste facilities performing corrective action shall be deposited in the hazardous waste fund created in section 260.391, RSMo.

(5) Variance Fee. Any person seeking a variance under 10 CSR 25 shall include a filing fee of fifty dollars (\$50) payable to Missouri with each petition as required by subdivision 260.405.4(1), RSMo.

AUTHORITY: sections 260.370, 260.380, and 260.391, RSMo Supp. 2008 and sections 260.390, 260.395, and 260.437, RSMo 2000.

10 CSR 25-12.020--Hazardous Waste Compliance Inspection Fees

PURPOSE: This rule sets fees to be paid to the department by owners/operators of commercial hazardous waste treatment, storage and disposal facilities. The fees will fund hazardous waste compliance inspections at these facilities. This rule also establishes procedures for billing and payment of the fees.

(1) Applicability. Pursuant to section 260.370.2, RSMo, this rule is applicable to owners/operators of hazardous waste facilities who have obtained, or are required to obtain, a hazardous waste facility permit and who accept, on a commercial basis for remuneration, hazardous waste from off-site sources for treatment, storage or disposal. If multiple facilities with unique United States Environmental Protection Agency (U.S. EPA) identification numbers are owned/operated by a person or company, the inspection fees applicable under this rule shall be paid by the owner/operator for each facility with a unique U.S. EPA identification number.

(2) Fees Applicable to Commercial Hazardous Waste Treatment, Storage and Disposal Facilities for Compliance Inspections.

(A) An annual fee not to exceed the values in Table 1 of this rule shall be assessed to each operating commercial hazardous waste treatment, storage or disposal facility for hazardous waste compliance inspections. The applicable inspection fee in Table 1 shall be based on the volume of hazardous waste managed by the facility that was received from off-site sources during the period of July 1 of each year through June 30 of the following year. The department will use the data reported in the facility quarterly manifest summary reports that are submitted by the facility as required by 10 CSR 25-7.264(2)(E) and 10 CSR 25-7.265(2)(E) to determine the amount of off-site waste managed by each facility.

(B) For new facilities for which there is no facility quarterly manifest summary report data available, the facility shall submit to the department an estimate of the volume of hazardous waste that will be managed during the period from the date hazardous waste is first received from off-site to the following June 30. This estimate shall be provided to the department no later than thirty (30) days prior to the first expected receipt of hazardous waste from off-site. This estimate shall be submitted to the Director, Hazardous Waste Program, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102. The inspection fee for new facilities shall be determined from Table 1 using the estimated volume of waste to be received from off-site for treatment, storage or disposal during the first year of operation. Existing facilities which have not received hazardous waste from off-site sources during the period of July 1 of each year through June 30 of the following year, and facilities which have changed ownership, will be considered new facilities for purposes of determining the applicable inspection fee from Table 1.

Table 1
Yearly Inspection Fees Based on Volume of Hazardous Waste Accepted

Metric Tons (kkg) of Hazardous Waste Received from Off-site Sources	Annual Fee
Greater Than 10,000 kkg	\$12,000
2500 to 9999 kkg	\$10,800
0 to 2499 kkg	\$9800

(3) Billing and Payment of Compliance Inspection Fees.

(A) The department shall bill each facility after December 15 of each year for payment of inspection fees. The facility shall pay the inspection fees no later than thirty (30) days following the billing date. (Note: The inspection fee money collected from hazardous waste facilities, which has been determined from the facility quarterly manifest summary

report data as specified in subsection (2)(A) and Table 1 of this rule, will fund compliance inspections for the following calendar year.)

(B) For new facilities for which there is no facility quarterly manifest summary report data available, the inspection fee bill shall be based on an estimate of the volume of hazardous waste to be accepted from off-site sources. The facility shall provide this estimate to the department as specified in subsection (2)(B) of this rule. The department shall issue a bill to the facility based on the volume estimate provided by the facility in accordance with subsection (2)(B) and Table 1 of this rule within thirty (30) days of receipt of this information. The facility shall submit payment of the required inspection fees within thirty (30) days of the department billing. (Note: The inspection fee money collected in accordance with this subsection will fund compliance inspections for the remainder of the following calendar year in which the fee is billed.)

1. If, at the time of the next scheduled billing cycle, the department determines that the facility has overestimated inspection fees based on the actual amount of off-site hazardous waste managed during the initial period of operation, the facility will be credited for the amount of the overestimate for the following year. No refunds of inspection fee overestimates will be made.

2. If, at the time of the next scheduled billing cycle, the department determines that the facility has underestimated inspection fees based on the actual amount of off-site hazardous waste managed during the initial period of operation, the facility will be billed by the department for the amount of the underestimate. Payment of this fee shall be required within thirty (30) days of the facility's receipt of the department's billing.

(C) Inspection fee payments shall be made payable to Missouri, Director of Revenue. Inspection fee money shall be deposited into the hazardous waste fund as specified in section 260.391.3, RSMo.

(D) Any facility which fails to pay inspection fees by the applicable date specified in this rule shall be required to pay a penalty in addition to the inspection fee. The penalty shall be equal to fifteen percent (15%) of the fees due. In addition, if the fees are not paid by the required date, the facility shall pay interest at a rate of twelve percent (12%) per annum on any amounts owed.

(4) This rule does not preclude the department from seeking from commercial hazardous waste facilities recovery of costs incurred by the department as a result of any enforcement action against any hazardous waste facility.

AUTHORITY: sections 260.370, 260.390 and 260.391, RSMo 1994

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 13—Polychlorinated Biphenyls

10 CSR 25-13.010 Polychlorinated Biphenyls

PURPOSE: This rule establishes standards for the management of waste materials or waste manufactured items containing polychlorinated biphenyls at concentrations of fifty parts per million (50 ppm) or more.

(1) The regulations set forth in 40 CFR parts 761.3, 761.30(a)(2)(v), 761.60(b)(1)(i)(B), 761.60(g), 761.65(b), 761.71, 761.79, 761.72, and 761.180(b), July 1, 2010, as published by the Office of Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) Applicability.

(A) This rule shall apply in the state of Missouri to all polychlorinated biphenyls (PCB) material and PCB units as defined in subsection (3)(A) in shipment to or from or managed at a Missouri PCB facility.

(B) Waste oil containing PCBs at a concentration of less than fifty parts per million (50 ppm) and not otherwise meeting the definition of PCB material shall be managed in accordance with 10 CSR 25-11.

(C) Where conflicting regulations exist in 10 CSR 25, the more stringent shall control.

(D) This rule does not relieve a regulated person from his/her responsibility to comply with the federal Toxic Substances Control Act, 15 USC 2601–2629 (December 22, 1987) or the corresponding regulations.

(3) Definitions and Substitution of Terms. This section supplements and modifies the definitions in 10 CSR 25-3 and 10 CSR 25-7.

(A) Additional Definitions.

1. Consignor means an owner/operator who transfers control of a shipment of PCB material, PCB units, or both to a transporter for conveyance to a Missouri PCB facility.

2. High efficiency boiler means one of the following: a boiler which meets the requirements of 40 CFR 761.71(a) or a boiler that has been approved by Environmental Protection Agency (EPA) under 40 CFR 761.71(b). PCB facility owners/operators shall not destroy PCBs in concentrations exceeding five hundred parts per million (500 ppm) in a high efficiency boiler.

3. A facility is in operation if all components of the facility necessary for it to function as a PCB facility have been completely constructed, the facility is functioning as a PCB facility and the facility owner/operator has received remuneration for such function at the facility.

4. Large PCB unit means a PCB unit weighing in excess of one hundred pounds (100 lbs.), not including the weight of any PCB material contained within the PCB unit.

5. PCB-contaminated metals reclamation incinerator means a thermal treatment unit which is utilized to remove organic material and residual PCBs from PCB units which formerly contained PCBs at concentrations of less than five hundred parts per million (500 ppm).

6. PCB(s) means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain this substance.

7. A PCB facility is one which accepts PCB material, PCB units, or both for brokerage, treatment, storage or disposal on a commercial basis for remuneration.

8. PCB incinerator means an engineered device using controlled flame combustion to thermally degrade PCB material, PCB units, or both that is not classified as a high efficiency boiler or a PCB-contaminated metals reclamation incinerator.

9. PCB material is defined as any waste chemical substance that is known or assumed to contain equal to or greater than fifty parts per million (50 ppm) PCBs, or any mixture of a waste chemical substance that is known or assumed to contain equal to or greater than fifty parts per million (50 ppm) PCBs with a chemical substance containing less than fifty parts per million (50 ppm) PCBs. Unless tested in accordance with 40 CFR 761.60(g), oil in or from electrical equipment (except circuit breakers, reclosers and cable) for which the PCB concentration is unknown must be assumed to contain equal to or greater than fifty parts per million (50 ppm) PCBs.

10. PCB units are defined as any waste manufactured item which contains or did contain PCB material, excluding the following PCB articles and PCB containers:

A. Small capacitors that remain as components of waste manufactured items;

B. PCB articles containing PCBs at concentrations of less than five hundred parts per million (500 ppm), provided that the article is first drained of all free-flowing liquids, filled with a solvent that readily solubilizes PCBs (for example, kerosene, toluene), allowed to stand for at least eighteen (18) hours and then drained thoroughly;

C. PCB articles containing PCBs at concentrations of less than five hundred parts per million (500 ppm), provided that the article is first drained of all free-flowing liquids and then thermally treated for the purpose of degrading the residual PCBs and combustible material. (Note: Minimum technical standards for thermal treatment of PCB articles are set forth in subsection (11)(A) of this rule.);

D. PCB containers that are decontaminated in accordance with 40 CFR 761.79;

E. PCB articles and PCB containers which have internal and external surfaces that have been decontaminated to less than ten micrograms (10 µg) PCBs per one hundred centimeters squared (100 cm²) surface area;

F. Electrical equipment that has been reclassified to non-PCB status pursuant to 40 CFR 761.30(a)(2)(v); and

G. PCB articles and PCB containers that are decontaminated by an alternate method, if approved by the department.

11. Treatment means any method, technique, or process, including degreasing, designed to change the physical, chemical, or biological character or composition of any PCB material or PCB units so as to recover energy or material resources from the waste or render the waste nontoxic or less toxic, to render the waste safer for transportation, storage, or disposal or to make the waste more suitable for recovery, storage, or volume reduction.

(B) The definitions for the following terms are codified in 40 CFR 761.3 and are incorporated by reference:

1. Capacitor;

2. Chemical substance;

3. Fluorescent light ballast;

4. PCB article;

5. PCB container;

6. PCB-contaminated electrical equipment; and

7. PCB transformer.

(C) The following terms shall be substituted in the portions of 40 CFR Part 264, 40 CFR Part 265, 40 CFR Part 270, and 10 CSR 25 that apply in this rule:

1. "PCB material," "PCB units," or both shall be substituted for "hazardous waste";
2. "PCB facility" shall be substituted for "hazardous waste facility"; "hazardous waste treatment, storage or disposal facility"; "treatment, storage or disposal facility"; and "HWM facility"; and
3. "PCB facility permit" shall be substituted for "Part B permit" and "RCRA permit."

(4) Manifesting, Record Keeping, and Reporting.

(A) Assignment of PCB Identification Numbers. PCB material and PCB units are assigned the following PCB identification numbers:

M001 Mineral oil dielectric fluid containing equal to or greater than fifty parts per million (50 ppm) PCBs but less than five hundred parts per million (500 ppm) PCBs.

M002 PCB-contaminated electrical equipment with dielectric fluid.

M003 PCB-contaminated electrical equipment that has been drained of all free-flowing liquids.

M004 Dielectric fluid containing greater than five hundred parts per million (500 ppm) PCBs.

M005 PCB transformers with dielectric fluid.

M006 PCB transformers that have been drained of all free-flowing liquids.

M007 PCB transformers that have been flushed with solvent as prescribed in 40 CFR 761.60(b)(1)(i)(B).

M008 Capacitors contaminated with PCBs.

M009 Soil, solids, sludges, dredge materials, clothing, rags, or other debris contaminated with PCBs.

M010 PCB-contaminated solvent. (Note: Any PCB-contaminated solvent that meets the definition of hazardous waste shall further be identified by the appropriate EPA identification number.)

M011 Other PCB material.

M012 Other PCB units.

(B) Manifests. All shipments destined to or originating from a Missouri PCB facility shall use EPA's Uniform Hazardous Waste Manifest. The owner/operator of a Missouri PCB facility who ships PCB material, PCB units, or both off-site for treatment, storage, or disposal shall comply with the following requirements:

1. The owner/operator of a Missouri PCB facility shall contract with the designated facility to return the completed manifest to the Missouri PCB facility within thirty-five (35) days after the date the waste was accepted by the initial transporter;

2. An owner/operator of a Missouri PCB facility who does not receive a copy of the PCB manifest with a handwritten signature of the owner/operator of the designated facility within thirty-five (35) days of the date the waste was accepted by the initial transporter shall contact the transporter, the owner/operator of the designated facility, or both, to determine the status of the consignment;

3. An owner/operator of a Missouri PCB facility who has not received the completed manifest with the handwritten signature of the owner/operator of the designated facility within thirty-five (35) days from the date the waste was accepted by the initial transporter shall submit a completed exception report to the department within forty-five (45) days from the date the waste was accepted by the initial transporter; and

4. The exception report shall include the following: the name, address, and telephone number of the Missouri PCB facility; the name, address, and telephone number and Missouri transporter license number for each transporter; the name, address, and telephone number of the designated facility; the manifest document numbers followed by the date of shipment; the waste description and the PCB identification number(s); the total quantity of PCB material, PCB units, or both, and the appropriate abbreviation for units of measure as follows: G—gallons (liquids only); P—pounds; T—tons (2,000 lbs.); Y—cubic yards; L—liters (liquid only); K—kilograms; M—metric tons (1,000 kg); N—cubic meters; the following certification statement, signed and dated by an authorized representative of the Missouri PCB facility: "I have personally examined and am familiar with the information submitted on this form. I hereby certify that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information which include fine and imprisonment"; a legible copy of the manifest document originated by the Missouri PCB facility and signed by the initial transporter which was retained by the Missouri PCB facility and for which the Missouri PCB facility does not have confirmation of delivery; and a cover letter signed by the facility owner/operator or his/her authorized representative explaining the efforts taken to locate the PCB material, PCB units, or both, and the results of those efforts.

(C) The facility shall return a copy of the PCB manifest to the transporter immediately upon receipt of the consignment and shall return a copy to the consignor within thirty-five (35) days of receipt. The facility's manifest copy shall be maintained on-site for a period of three (3) years following receipt of a consignment. The period of record retention shall extend upon the written request of the department or automatically during the course of any unresolved enforcement action regarding the regulated activity.

(D) Reporting Requirements. The owner/operator of a PCB facility shall submit the following reports to the department:

1. The owner/operator shall submit an annual report by July 15 of each year that covers the previous calendar year. The annual report shall be prepared in accordance with 40 CFR 761.180(b).

2. The owner/operator shall complete and submit, within forty-five (45) days after the end of each calendar quarter, a quarterly report that includes the following information:

A. The name, address, and phone number of the facility;

B. The quarter for which the report is prepared;

C. A summary of the total quantity of PCB material and PCB units (designated by PCB identification number) received during the quarter. For the purpose of this report, any dielectric fluid drained from electrical equipment shall be designated as M001 or M004, as applicable;

D. A summary of the total quantity of PCB material and PCB units (designated by PCB identification number) generated on-site;

E. A summary of the total quantity of PCB material and PCB units (designated by PCB identification number) treated on-site and the method of treatment;

F. A summary of the total quantity of PCB material and PCB units (designated by PCB identification number) transferred to other treatment, storage, or disposal facilities. A summary shall be prepared for each individual facility utilized and shall include a list of shipping dates and the method of final disposition;

G. A summary of the total quantity of PCB material and PCB units (designated by PCB identification number) retained at the facility at the end of the reporting quarter;

H. In chronological order, a copy of each PCB manifest received during the reporting quarter;

I. In chronological order, all completed manifests utilized for off-site shipments during that calendar quarter; and

J. A certification which reads: "CERTIFICATION: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete for the quarterly accounting of PCB material so handled, and the operations of the facility referenced herein. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment." The original signature of the owner/operator shall follow this certification.

(E) Operating Record. The owner/operator of a PCB facility shall maintain a written operating record. This subsection sets forth record keeping requirements for storage and transfer operations. A PCB facility shall also comply with the applicable record keeping requirements set forth in sections (7) and (8) of this rule. The information required in this subsection shall be recorded, as it becomes available, and maintained in the operating record of the facility until closure of the facility.

1. When PCB material is transferred from a PCB article or PCB container to a PCB container (for example, bulk tank or drum), the owner/operator shall record the following information:

A. The date of transfer;

B. The quantity of PCB material transferred;

C. The appropriate PCB identification number or some other reference to the type of material and PCB concentration;

D. Identification of the container into which the PCBs were transferred; and

E. The manifest document number from the manifest that accompanied the consignment or some other type of cross reference to the manifest document number.

2. When PCB material is transferred from a bulk tank to a tank truck, the owner/operator shall record information that indicates—

A. The date transported;

B. The tank identification and tank level or the quantity of PCB material removed from the tank; and

C. The manifest document number(s) associated with the off-site shipment(s).

(5) Transporter Requirements.

(A) Consignments of PCB material, PCB units, or both which are destined for or originate from a Missouri PCB facility shall be conveyed by a hazardous waste transporter licensed by the state in accordance with 10 CSR 25-6. The transporter's current license application or renewal shall specify that the applicant intends to transport PCB material, PCB units, or both.

(B) A transporter shall not accept a consignment of PCB material, PCB units, or both destined for or originating from a Missouri PCB facility unless the consignment is accompanied by a PCB manifest.

(C) PCB units not in PCB containers shall be inspected by the transporter prior to acceptance to ensure that the unit is intact and not leaking. The transporter shall not accept a leaking PCB unit unless the unit is in a nonleaking PCB container.

(D) In addition to existing state and federal requirements, the department may require that specific safety equipment, spill control equipment, and spill cleanup procedures be utilized by PCB transporters.

(6) Provisionally Regulated PCB Facilities.

(A) A PCB facility that meets the following criteria is defined as a provisionally regulated PCB facility:

1. The facility accepts only PCB waste numbers M002 and M003 for treatment and storage;
2. The quantity of PCB material accumulated on-site never exceeds ten thousand pounds (10,000 lbs);
3. The quantity of large PCB units accumulated on-site never exceeds fifty (50) units; and
4. The treatment processes conducted at the facility are limited to decontamination of PCB units that contained less than five hundred parts per million (500 ppm) PCBs.

(B) The owners/operators of provisionally regulated PCB facilities shall comply with the following:

1. Notification. The facility owner/operator shall submit a notification letter to the department prior to commencing operation as a PCB facility. The notification letter shall include the following information:

- A. The facility name, address, and telephone number; and
- B. A description of the existing and proposed treatment and storage methods and capacities;

2. Manifesting. PCB articles that are transported to a facility for the purpose of servicing need not be accompanied by a manifest; and

3. Owners/operators of PCB-contaminated metals reclamation incinerators shall meet the minimum technical standards in subsection (12)(A) of this rule.

(C) A provisionally regulated PCB facility which does not provide adequate environmental protection as determined by the department may be required to meet any or all of the requirements of this rule.

(D) The owner/operator of a provisionally regulated PCB facility who fails to operate within the criteria of subsection (6)(A) of this rule or who fails to comply with the requirements of subsection (6)(B) of this rule may be required to meet any or all of the requirements of this rule.

(7) Mobile Treatment Units.

(A) For the purpose of the rule, mobile treatment units (MTUs) are defined as follows:

1. Mobile treatment processes that utilize a physical or chemical treatment unit for the purpose of reclassifying a transformer pursuant to 40 CFR 761.30(a)(2)(v) as incorporated in this rule; or
2. Any other mobile treatment process that requires EPA approval pursuant to 40 CFR 761.60(e).

(B) MTUs are exempt from sections (4), (8), (9), and (10) of this rule provided that—

1. The owner/operator of an EPA approved MTU submits a copy of the MTU's EPA approval to the department at least thirty (30) days prior to initial operation in Missouri;

2. The owner/operator of a MTU that does not require an EPA approval submits a detailed description of his/her process at least thirty (30) days prior to initial operation in Missouri;

3. The owner/operator of a MTU that is not providing a transformer reclassification service cannot operate for more than twenty (20) consecutive working days at any given job site without prior written approval of the department;

4. The owner/operator of a MTU that is providing a transformer reclassification service cannot operate at any given job site for more than one hundred eighty (180) days without prior written approval from the department; and

5. The owner/operator submits a site-specific notification to the department prior to treatment of PCBs at any given job site. The site-specific notification shall include the following information:

- A. The client's name, address, and phone number;
- B. The approximate quantity of PCBs to be processed by the MTU;
- C. The approximate PCB concentration of the PCB material prior to treatment; and
- D. The location of the job site.

(8) Standards for Owners/Operators of PCB Facilities. The owner/operator of a permitted Missouri PCB facility shall comply with this section. This section sets forth standards for a Missouri PCB facility permit which modify and add to the requirements of 40 CFR Part 264 incorporated by reference in 10 CSR 25-7.264(1) and modified in 10 CSR 25-7.264(2), which apply in this rule. For those subsections marked *Reserved* in which no modification or addition is indicated, the requirements of 10 CSR 25-7.264 and those 40 CFR parts incorporated by reference in 10 CSR 25-7.264 apply.

(A) Applicability. This subsection sets forth standards which modify or add to the requirements in 40 CFR Part 264 Subpart A, incorporated in 10 CSR 25-7.264(1) and modified in 10 CSR 25-7.264(2)(A). This section does not apply to an owner/operator of a provisionally regulated PCB facility or mobile treatment unit provided that the owner/operator maintains compliance with section (6) or (7) of this rule, respectively.

(B) General Facility Standards. This subsection sets forth standards which modify or add to 40 CFR Part 264 Subpart B, incorporated in 10 CSR 25-7.264(1) and modified in 10 CSR 25-7.264(2)(B). In addition to the requirements in 40 CFR 264.13(a)(1), as incorporated in 10 CSR 25-7.264, the waste analysis, at a minimum, shall contain all the information which must be known to treat, store, dispose of, or broker the waste in accordance with the requirements of this rule, the PCB facility permit conditions and 40 CFR Part 761.

(C) Preparedness and Prevention. (*Reserved*)

(D) Contingency Plan and Emergency Procedures. (*Reserved*)

(E) Manifest System, Record Keeping, and Reporting. The owner/operator shall comply with the requirements in section (3) of this rule.

(F) Groundwater Protection. (*Reserved*)

(G) Closure and Post-Closure. This subsection sets forth standards which modify or add to those requirements in 40 CFR Part 264 Subpart G incorporated in 10 CSR 25-7.264(1) and modified in 10 CSR 25-7.264(2)(G). The most recent closure and post-closure estimates prepared in accordance with this subsection shall be submitted annually to the department by March 1.

(H) Financial Assurance Requirements. (*Reserved*)

(I) Use and Management of Containers. This subsection sets forth standards which modify or add to those requirements in 40 CFR Part 264 Subpart I incorporated in 10 CSR 25-7.264(1) and modified in 10 CSR 25-7.264(2)(I).

1. The term container as used in this subsection shall mean PCB article, PCB container, or both.

2. The storage area shall meet the requirements in 40 CFR 761.65(b).

3. The temporary storage exemptions in 40 CFR 761.65(c)(1) are not allowed for permitted PCB facilities.

(J) Tank Systems. (*Reserved*)

(K) Surface Impoundments. The management of PCB material, PCB units, or both in a surface impoundment is prohibited.

(L) Waste Piles. The management of PCB material, PCB units, or both in a waste pile is prohibited.

(M) Land Treatment. The management of PCB material, PCB units, or both in a land treatment unit or facility is prohibited.

(N) Landfills. This subsection sets forth standards which modify or add to the requirements in 40 CFR Part 264 Subpart N incorporated by reference in 10 CSR 25-7.264(1) and modified in 10 CSR 25-7.264(2)(N). Landfilling of PCB material containing free liquids is prohibited.

(O) PCB Incinerators. This subsection sets forth standards applicable to PCB incinerators which modify or add to those requirements in 40 CFR Part 264 Subpart O, incorporated by reference in 10 CSR 25-7.264(1) and modified in 10 CSR 25-7.264(2)(O).

1. The provisions of 40 CFR 264.340(b), as incorporated in 10 CSR 25-7.264, shall not apply in this rule.

2. The requirements of 40 CFR 264.343(a)(1), as incorporated in 10 CSR 25-7.264, are modified to require an incinerator burning PCBs to achieve a destruction and removal efficiency (DRE) of ninety-nine and nine thousand nine hundred ninety-nine ten-thousandths percent (99.9999%).

3. The provisions of 40 CFR 264.343(a)(2) as incorporated in 10 CSR 25-7.264 shall not apply in this rule.

4. Combustion criteria for PCB liquids and combustion gases entering a secondary chamber shall be either of the following:

A. Maintenance of the introduced liquids for a two (2)-second dwell time at twelve hundred degrees Celsius, plus or minus one hundred degrees Celsius ($1,200^{\circ}\text{C} \pm 100^{\circ}\text{C}$) and three percent (3%) excess oxygen in the stack gas; or

B. Maintenance of the introduced liquids for a one and one-half (1 1/2) second dwell time at sixteen hundred degrees Celsius, plus or minus one hundred degrees Celsius, ($1,600^{\circ}\text{C} \pm 100^{\circ}\text{C}$) and two percent (2%) excess oxygen in the stack gas.

5. Combustion efficiency shall be at least ninety-nine and nine-tenths percent (99.9%), computed as follows: Combustion efficiency equals the concentration of carbon dioxide divided by the sum of the concentration of carbon dioxide and the concentration of carbon monoxide multiplied by one hundred

$$\frac{C_{CO_2}}{C_{CO_2} + C_{CO}} \times 100$$

where

C_{CO_2} = the concentration of carbon dioxide; and

where

C_{CO} = the concentration of carbon monoxide.

6. The provisions of 40 CFR 264.344(a)(2), as incorporated in 10 CSR 25-7.264 shall not apply in this rule.

(P) Health Profiles. (*Reserved*)

(Q) (*Reserved*)

(R) (*Reserved*)

(S) (*Reserved*)

(T) (*Reserved*)

(U) (*Reserved*)

(V) (*Reserved*)

(W) (*Reserved*)

(X) Miscellaneous Units. This subsection sets forth requirements which modify or add to the requirements in 10 CSR 25-7.264(2)(X).

1. Permit conditions will be based upon successful process demonstrations. The process demonstrations shall define the maximum PCB concentration and type of PCB material and PCB units that can be treated.

2. The final concentrations of treated PCB material must be less than two parts per million (2 ppm) PCB.

(9) Interim Status Standards for Owners/Operators of PCB Facilities. The requirements set forth in 40 CFR Part 265, incorporated by reference in 10 CSR 25-7.265(1) and modified in 10 CSR 25-7.265(2) apply in this rule. This section sets forth standards for interim status PCB facilities which modify and add to the requirements of 40 CFR Part 265 incorporated by reference in 10 CSR 25-7.265(1) and modified in 10 CSR 25-7.265(2). This section does not apply to an owner/operator of a provisionally regulated PCB facility or mobile treatment unit provided that the owner/operator maintains compliance with section (6) or (7) of this rule, respectively. For those subsections marked *Reserved* in which no modification or addition is indicated, the requirements of 10 CSR 25-7.265 and those 40 CFR parts incorporated by reference in 10 CSR 25-7.265 apply in this rule.

(A) General. Within one hundred eighty (180) days after the effective date of this rule, the owner/operator shall complete, sign and submit a PCB facility permit application or a closure plan prepared in accordance with 10 CSR 25-13.010(9)(G) to the director.

(B) General Facility Standards. (*Reserved*)

(C) Preparedness and Prevention. (*Re-served*)

(D) Contingency Plan and Emergency Procedures. (*Reserved*)

(E) Manifest System, Record Keeping, and Reporting. The owner/operator shall comply with the requirements in section (3) of this rule.

(F) Groundwater Monitoring. (*Reserved*)

(G) Closure and Post-Closure. (*Reserved*)

(H) Financial Requirements. (*Reserved*)

(I) Use and Management of Containers. (*Reserved*)

(J) Tank Systems. (*Reserved*)

(K) Surface Impoundments. The management of PCB material, PCB units, or both in surface impoundments is prohibited.

(L) Waste Piles. The management of PCB material, PCB units, or both in waste piles is prohibited.

(M) Land Treatment. The management of PCB material, PCB units, or both in a land treatment unit or facility is prohibited.

- (N) Landfills. *(Reserved)*
- (O) Incinerators. *(Reserved)*
- (P) Thermal Treatment. *(Reserved)*
- (Q) Chemical, Physical, and Biological Treatment. *(Reserved)*

(10) PCB Facility Permitting. The requirements in 40 CFR Part 270, incorporated by reference in 10 CSR 25-7.270(1) and modified in 10 CSR 25-7.270(2) apply in this rule. This section sets forth standards for a Missouri PCB facility permit which modify and add to the requirements of 40 CFR Part 270 incorporated by reference in 10 CSR 25-7.270(1) and modified in 10 CSR 25-7.270(2). This section does not apply to an owner/operator of a provisionally regulated PCB facility or a mobile treatment unit provided that the owner/operator maintains compliance with section (6) or (7) of this rule, respectively. For those subsections marked *Reserved* in which no modification or addition is indicated, the requirements of 10 CSR 25-7.270 and those 40 CFR parts incorporated by reference in 10 CSR 25-7.270 apply in this rule.

(A) General Information. This subsection sets forth standards which modify or add to the requirements in 40 CFR Part 270 Subpart A, incorporated by reference in 10 CSR 25-7.270(1) and modified in 10 CSR 25-7.270(2)(A). The owner/operator shall submit a Missouri PCB facility application on a form provided by the department.

(B) Permit Application. This subsection sets forth standards which modify or add to the requirements in 40 CFR Part 270 Subpart B, incorporated by reference in 10 CSR 25-7.270(1) and modified in 10 CSR 25-7.270(2)(B).

1. The requirements for qualifying for interim status are set forth in paragraph (10)(G)2. of this rule.

2. The waste analysis plan required by 40 CFR 270.14(b)(3), as incorporated in 10 CSR 25-7.270, shall be prepared in accordance with subsection (8)(B).

3. These requirements are in addition to the specific information requirements for incinerators in 40 CFR 270.19 as incorporated in 10 CSR 25-7.270.

A. 40 CFR 270.19(a), as incorporated in 10 CSR 25-7.270, shall not apply in this rule.

B. In addition to the requirements of 40 CFR 270.19(c)(5) as incorporated in 10 CSR 25-7.270, methods and results of monitoring for the following parameters shall be submitted from any previously-conducted trial burns: oxygen (O₂); carbon dioxide (CO₂); oxides of nitrogen (NO_x); hydrochloric acid (HCl); total chlorinated organic content (RCI); PCBs; and total particulate matter.

(C) Permit Conditions. *(Reserved)*

(D) Changes to Permit. *(Reserved)*

(E) Expiration and Continuance of Permits. *(Reserved)*

(F) Special Forms of Permits. This subsection sets forth standards which modify or add to the requirements in 40 CFR Part 270 Subpart F incorporated by reference in 10 CSR 25-7.270(1) and modified in 10 CSR 25-7.270(2)(F).

1. In addition to the requirements of 40 CFR 270.62(b)(2), as incorporated in 10 CSR 25-7.270, the applicant shall conduct monitoring for the following parameters: a) oxygen (O₂); b) carbon monoxide (CO); c) carbon dioxide (CO₂); d) oxides of nitrogen (NO_x); e) hydrochloric acid (HCl); f) total chlorinated organic content (RCI); g) PCBs; and h) total particulate matter.

(G) Interim Status. This subsection sets forth standards which modify or add to those requirements in 40 CFR Part 270 Subpart G, incorporated by reference in 10 CSR 25-7.270(1) and modified in 10 CSR 25-7.270(2)(G).

1. A PCB facility that meets the requirements of this subsection may continue to operate without a PCB permit if the facility remains in compliance with the interim status requirements in this subsection.

2. A PCB facility shall qualify for interim status if the facility—

A. Was in operation on August 13, 1986;

B. Filed a letter of intent with the department before December 12, 1986 to construct, alter, or operate the facility; and

C. Is in compliance with section (9) of this rule.

(11) Public Participation. The public participation requirements and variance and appeal procedures in 10 CSR 25-8.124 apply in this rule.

(12) Minimum Operating Requirements for Specific Units.

(A) Scrap Metal Recovery Ovens and Smelters.

1. Scrap metal recovery ovens and smelters that are used to reclaim PCB-contaminated metals shall be operated in accordance with 40 CFR 761.72.

(B) *(Reserved)*

AUTHORITY: section 260.370, RSMo Supp. 2010, and sections 260.395 and 260.396, RSMo 2000

**Title 10--DEPARTMENT OF NATURAL RESOURCES
Division 25--Hazardous Waste Management Commission
Chapter 14--Administrative Penalties**

10 CSR 25-14.010 Administrative Penalty Assessment

PURPOSE: This rule establishes the procedures for assessment of administrative penalties.

(1) General Provisions.

(A) Pursuant to section 260.412, RSMo, and in addition to any other remedy provided by law, upon determination by the department that a provision of sections 260.350 to 260.481, RSMo or a standard, limitation, order or rule promulgated, or a term or condition of any permit has been violated, the director may issue an order assessing an administrative penalty upon the violator. The amount of the administrative penalty will be determined according to section (3) of this rule. In no event may the total penalty assessed per day of violation exceed the statutory maximum specified in section 260.425, RSMo.

(B) An administrative penalty shall not be imposed until the department has sought to resolve the violations through conference, conciliation and persuasion and shall not be imposed for minor violations. If the violation is resolved through conference, conciliation and persuasion, no administrative penalty shall be assessed unless the violation has caused, or had the potential to cause, a risk to human health or to the environment, or has caused or has potential to cause pollution, or was knowingly committed, or is defined by the United States Environmental Protection Agency as other than minor.

(C) An order assessing an administrative penalty, shall be served upon the operator, owner or appropriate representative through United States Postal Service certified mail, return receipt requested, a private courier or messenger service which provides verification of delivery or by hand delivery to the operator's or owner's residence or place of business. An order assessing an administrative penalty shall be considered served if verified receipt is made by the operator's or owner's appropriate representative. A refusal to accept, or a rejection of certified mail, private courier or messenger service delivery or by hand delivery of an order assessing an administrative penalty constitutes service of the order.

(D) The program may, at any time, withdraw, without prejudice, any administrative order.

(E) An order assessing an administrative penalty shall describe the nature of the violation(s), the amount of the administrative penalty being assessed and the basis of the penalty calculation.

(2) Definitions.

(A) Definitions for key words used in this rule may be found at 260.360, RSMo, and 10 CSR 25-3.260(2).

(B) Additional definitions specific to this rule are as follows:

1. Conference, conciliation and persuasion--A process of verbal or written communications, consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at minimum, consist of one (1) offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;

2. Economic benefit--Any monetary gain which accrues to a violator as a result of noncompliance;

3. Gravity-based assessment--The degree of seriousness of a violation taking into consideration the risk to human health and the environment posed by the violation and considering the extent of deviation from sections 260.350-260.481, RSMo;

4. Minor violation--A violation which possesses a small potential to harm the environment or human health or cause pollution, was not knowingly committed, and is not defined by the United States Environmental Protection Agency (U.S. EPA) as other than minor;

5. Multiple violation penalty--The sum of individual administrative penalties assessed when two (2) or more violations are included in the same complaint or enforcement action; and

6. Multi-day violation--A violation which has occurred on or continued for two (2) or more consecutive or nonconsecutive days.

(3) Determination of Penalties. The amount of an administrative penalty will involve the application of a gravity-based assessment under subsection (3)(A) and may involve additional factors for multiple violations, (3)(B), multi-day violations, (3)(C), and economic benefit resulting from noncompliance, (3)(D). The resulting administrative penalty may be further adjusted as specified under (3)(E).

(A) Gravity-Based Assessment. The gravity-based assessment is determined by evaluating the potential for harm posed by the violation and the extent to which the violation deviates from the requirements of the law.

1. Potential for harm. The potential for harm posed by a violation is based on the risk to human health or the environment or to the purposes of implementing the law and associated rules or permits.

A. The risk of exposure is dependent on both the likelihood that humans or the environment may be exposed to contaminants and the degree of potential exposure. Penalties will reflect the probability the violation either did result in or could have resulted in a release of contaminants in the environment, and the harm which either did occur or would have occurred if the release had in fact occurred.

B. Violations which may or may not pose a potential threat to human health or the environment, but which have an adverse effect upon the purposes of or procedures for implementing the law and associated rules or permits may be assessed a penalty.

C. The potential for harm shall be evaluated according to the following degrees of severity:

(I) Major. The violation poses or may pose a substantial risk to human health or to the environment, or has or may have a substantial adverse effect on the purposes of or procedures for implementing the law and associated rules and/or permits;

(II) Moderate. The violation poses or may pose a significant risk to human health or to the environment, or has or may have a significant adverse effect on the purposes of or procedures for implementing the law and associated rules and/or permits; and

(III) Minor. The violation does not pose significant or substantial risk to human health or to the environment, was not knowingly committed, and is not defined by the United States Environmental Protection Agency as other than minor.

2. Extent of deviation. The extent of deviation may range from slight to total disregard of the requirements of the law, and associated rules and/or permits. The assessment will reflect this range and will be evaluated according to the following degrees of severity:

A. Major. The violator has deviated substantially from the requirements of the law, associated rules, or permits resulting in substantial noncompliance;

B. Moderate. The violator has deviated significantly from the requirements of the law, associated rules, or permits resulting in significant noncompliance; and

C. Minor. The violator has deviated slightly from the requirements of the law, associated rules, or permits that does not result in substantial or significant noncompliance; most provisions were implemented as intended; the violation was not knowingly committed; and is not defined by the United States Environmental Protection Agency as other than minor.

3. Gravity-based penalty assessment matrix. The matrix that follows will be used to determine the gravity-based assessment portion of the administrative penalty. Potential for harm and extent of deviation form the axes of the matrix. The penalty range selected may be adapted to the circumstances of a particular violation.

Gravity Based Penalty Assessment Matrix

Potential
for Harm

Extent of Deviation

Major

Moderate

Minor

Major

\$8,000-\$6,000

\$6,000-\$4,400

\$4,400-\$3,200

Moderate

\$3,200-\$2,000

\$2,000-\$1,200

\$1,200-\$600

Minor

\$600-\$200

\$200-\$40

\$0

(B) Multiple Violation Penalty. Penalties for multiple violations may be determined when a violation is independent of or substantially different from any other violation. The director may order a separate administrative penalty for that violation as set forth in this rule.

(C) Multi-Day Penalty. Penalties for multi-day violations may be determined when the director has concluded that a violation(s) has continued or occurred for more than one (1) day. Multi-day penalty assessments will be determined by using the Multi-Day Penalty Assessment Matrix that follows. The director may seek penalties for each day of noncompliance not to exceed the amount of the civil penalty specified in section 260.425, RSMo.

Multi-Day Penalty Assessment Matrix

Potential
for Harm

Extent of Deviation

Major

Moderate

Minor

Major

\$400-\$200

\$300-\$150

\$220-\$110

Moderate

\$160-\$80

\$100-\$50

\$60-\$30

Minor

\$40-\$20

\$20-\$10

\$0

(D) Economic Benefit. Any economic benefits, including delayed and avoided costs that have accrued to the violator as a result of noncompliance will be added to the penalty amount. Determination will be made by the department using an economic benefit formula that provides a reasonable estimate of the economic benefit of noncompliance. Economic benefit may be excluded from the administrative penalty if--

1. The economic benefit is an insignificant amount;
2. There are compelling public concerns that would not be served by taking a case to trial; or
3. It is unlikely that the department would be able to recover the economic benefit in litigation based on the particular case.

(E) Adjustments. The department may add to or subtract from the total amount of the penalty after consideration of the following adjustments:

1. Recalculation of penalty amount. After the issuance of an order by the director, if new information about a violation becomes available which indicates that the original penalty calculation may have been incorrect, the department may recalculate the penalty in light of the new information. No adjustments will be made once a settlement agreement has been signed by all parties;
2. Good faith efforts to comply. The department may adjust a penalty amount downward if good faith efforts have been adequately documented by the violator. Good faith efforts include, but are not limited to, documentation that the violator has reported noncompliance or instituted measures to remedy the violation prior to detection by the department. However, good faith efforts to achieve compliance after agency detection are assumed and are not grounds for decreasing the penalty amount;
3. Culpability. In cases of heightened culpability which do not meet the standard of criminal activity, the penalty may be increased at the department's discretion, within the limits of the matrix. Likewise, in cases where there is a demonstrable absence of culpability, the department may decrease the penalty. Lack of knowledge of the law and any associated rule and/or permit shall not be a basis of decreased culpability. The following criteria will be used to determine culpability:
 - A. How much control the violator had over the events constituting the violation;
 - B. The foreseeability of the events constituting the violation;
 - C. Whether the violator took reasonable precautions against the events constituting the violation;
 - D. Whether the violator knew or should have known of the hazards associated with the conduct; and
 - E. Whether the violator knew or should have known of the legal requirement which was violated. This criteria shall be used only to increase a penalty, not to decrease it;
4. History of noncompliance. Where there has been a history of noncompliance with the law or any associated rule or permit, to a degree deemed significant due to frequency, similarity or seriousness of past violations, and considering the violator's response to previous enforcement actions, the department may increase the administrative penalty. No downward adjustment is allowed because of this factor;
5. Ability to pay. When a violator has adequately documented that payment of all or a portion of the administrative penalty will preclude the violator from achieving compliance or from carrying out important remedial measures, the department may--
 - A. Waive any of the administrative penalty; or
 - B. Negotiate a delayed payment schedule, installment plan or penalty reductions with stipulated penalties; and
6. Other adjustment factors. This rule allows for other penalty adjustments based on fairness and equity not mentioned in this rule which may arise on a case-by-case basis.

(4) Proceeds From Administrative Penalties. The proceeds from any administrative penalty assessed in accordance with this rule shall be paid to the county treasurer of the county in which the violation(s) occurred for the use and benefit of the county schools.

(5) Natural Resource Damages. Nothing in this rule shall be construed as satisfying any claim by the state for natural resource damages.

*AUTHORITY: sections 260.370 and 260.437, RSMo Supp. 1998 and 260.412, RSMo 1994.**

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 15—Hazardous Substance Environmental Remediation (Voluntary Cleanup Program)

10 CSR 25-15.010 Hazardous Substance Environmental Remediation (Voluntary Cleanup Program)

PURPOSE: This rule defines those persons who may apply to the Missouri Department of Natural Resources for oversight of an environmental remediation cleanup in accordance with sections 260.565—260.575, RSMo, and establishes procedures for participation.

(1) Applicability. Any person, including, but not limited to, a person acquiring, disposing of or possessing a lien holder interest in real property that is known to be or suspected to be contaminated by hazardous substances, may apply to remediate the real property with oversight by the Missouri Department of Natural Resources.

(2) Definitions and Substitution of Terms. This section supplements and modifies the definitions in 10 CSR 25-3. Where these definitions differ from those in 10 CSR 25-3, the modified definition is applicable only in this rule.

(A) Additional Definitions.

1. Days means calendar days unless otherwise specified.

2. Environmental remedial cleanup means a remedial action at an affected site undertaken and financed by a person, which remedial action is subject to oversight and approval by the department, and with respect to which remedial action the person agrees to pay the department's site-specific costs incurred in administration and oversight.

3. Hazardous substance means any hazardous substance specified in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. sections 9601(14)(A)–(F) and any hazardous waste as defined in section 260.360, RSMo or any rules promulgated under sections 260.350–260.480, RSMo.

4. Nonresidential property means any real property currently or previously used for industrial or commercial purposes, or both.

5. Participation fees means the two hundred dollar (\$200) application fee, the initial oversight costs deposit not to exceed five thousand dollars (\$5000) and all additional oversight cost reimbursements.

6. Person means any individual, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political subdivision or any agency, board, department or bureau of the state or federal government or any other legal entity which is recognized by law as the subject of rights and duties.

7. Phase I environmental site assessment means a noninvasive physical assessment of the real property conducted in accordance with American Society for Testing and Materials (ASTM) Standard E.1527 by a technical consultant who is familiar with the nature of the operations and activities that have occurred on the real property.

8. Phase II environmental site assessment means an invasive investigation by a technical consultant of those areas of concern identified during the Phase I environmental site assessment.

(B) Modified definition applicable only to this rule. Remediation or remedial action means all appropriate actions taken to clean up contaminated real property, including but not limited to removal, remedial action and response as these terms are defined by the federal Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601).

(3) Intent to Participate.

(A) Persons desiring to remediate real property with oversight by the department shall request an application form from the department.

(B) The application form shall include the information set forth in section 260.567.1, RSMo and any other existing and relevant information required by the department. The application form shall be filled out completely and returned to the department with the two hundred dollar (\$200) application fee. Application forms may be submitted at any time from the completion of a Phase I environmental site assessment up through the development, but not including the implementation, of a remedial action plan. Sites where remediation had been initiated or completed since August 28, 1994, will not be accepted into the voluntary cleanup program except in cases where limited action was taken to abate an emergency resulting from a release of hazardous substance.

(C) The department will review the form for completeness. The department will return any form deemed incomplete to the person for completion. Upon receipt of all requested information, the department will notify the person that the application form is complete and proceed according to section (4) of this rule.

(D) The department will deny applications for sites which warrant clean-up under force of law or regulation under Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq., as amended, or the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. section 9601 et seq., as amended, or the Missouri Hazardous Waste Management law that fall within any of the following categories:

1. Conditions at a site constitute an imminent and substantial threat to public health or the environment;
2. Site inspection is completed and the site is being evaluated for listing on the NPL;
3. Permitted or interim status Resource Conservation Recovery Act facilities; or
4. Sites which warrant enforcement action for clean-up under the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act, or the Missouri Hazardous Waste Management Law.

(4) Environmental Remediation Oversight Agreement.

(A) Upon approval of the application, the department shall enter into a site-specific environmental remediation oversight agreement with the person. This agreement shall set forth the responsibilities of the person and the department.

(B) The person shall post an initial five thousand dollar (\$5000) deposit with the department or a lesser amount as determined by the department to cover the department's initial oversight costs. The deposit shall be a check or an irrevocable letter of credit issued by a Missouri bank.

(C) The person shall submit a copy of all reports concerning the results of any site assessments, investigations, sample collections and sample analyses, and any other existing and relevant information requested by the department. At a minimum, such reports and information shall consist of a Phase I environmental site assessment.

1. All reports, including other information requested by the department pursuant to subsection (4)(C) of this rule, shall be submitted within ninety (90) days following receipt of notice from the department that these reports are required. An extension may be granted at the department's discretion.

2. The department will review and comment on the reports within one hundred eighty (180) days. The one hundred eighty (180) days shall start upon receipt of all the reports or the deposit required in subsection (4)(B) of this rule, whichever is later.

(D) The person shall notify the department's voluntary cleanup project manager by telephone, facsimile or letter no later than five (5) working days before the intended starting date of field work relating to site characterization or remediation.

(5) Remedial Action Plan.

(A) The person shall submit a remedial action plan for any contamination identified in the environmental site assessments within ninety (90) days following notice from the department that this information is required. An extension may be granted at the department's discretion. The remedial action plan shall satisfy the requirements of section 260.567.6., RSMo.

1. The department shall review the remedial action plan and determine if the plan is protective of human health and the environment. If revisions or modifications of the plan are necessary, the department will notify the person of the required revisions.

2. The final remedial action plan, including all the revisions or modifications, shall be approved by the department within ninety (90) days of receipt if the plan satisfies the requirements of section 260.567.6., RSMo.

(B) Implementation of the Approved Remedial Action Plan.

1. The approved remedial action plan shall be implemented by the person in accordance with the schedule contained in the work plan.

2. Quarterly progress reports shall be submitted to the department on forms provided by the department.

3. A final completion report signed by the person or an authorized agent, documenting that all required work has been satisfactorily completed shall be submitted to the department.

4. Departmental review and oversight of the environmental remediation shall be conducted in accordance with the provisions of the approved remedial action plan.

(6) Notification of Completion. The department will issue a letter to the person stating that no remedial action or no further remedial action need be taken at the site related to any contamination identified in the environmental assessments, provided that—

- (A) The person has complied with all provisions of this rule and sections 260.565—260.575, RSMo;
- (B) Remedial actions, if any, have been taken in accordance with the approved remedial action plan; and
- (C) All applicable participation fees have been remitted to the department.

(7) Termination of Environmental Remediation.

(A) Pursuant to section 260.567.11., RSMo, a person may terminate participation at any time by providing the department with written notification by certified mail. This termination does not affect the person's environmental liability.

(B) Pursuant to section 260.569.3., RSMo, the department may terminate a person's participation in the environmental remediation oversight agreement for cause.

(C) Reimbursement of unspent oversight monies shall be handled in accordance with section 260.569.4., RSMo.

(8) Oversight Reimbursements. The person shall reimburse the department for site-specific administration and oversight costs in accordance with section 260.569.1, RSMo and this rule.

(A) A complete accounting of the costs incurred by the department will be billed to the person by certified mail at the following rates:

1. Personnel. The project manager's and geology and laboratory field personnel's hourly rates multiplied by a fixed factor of three and one-half (3 1/2) will be the basis for time accounting billing. This fixed factor is comprised of direct labor costs; fringe benefits, calculated at a rate developed by the department, indirect costs calculated at a rate approved by the United States Department of the Interior; and direct overhead, including, but not limited to, the cost of clerical support and supervisory engineering review and Hazardous Waste Program administrative and management support;

2. Expenses. The direct expenses incurred during administration and oversight and any analytical costs associated with sampling; plus indirect costs calculated at the approved United States Department of the Interior rates; and

3. Monitoring fee. For sites which require engineering and/or institutional controls (e.g., capping, deed restrictions), the person shall submit a fee to cover the department's long-term monitoring costs. The department's voluntary cleanup project manager shall establish a site-specific monitoring fee, ranging from five thousand dollars to fifteen thousand dollars (\$5,000–\$15,000). The amount of the monitoring fee shall be dependent upon the complexity of the site and the type of engineering and/or institutional controls.

(B) The person shall reimburse the department as follows:

1. Initial department expenses shall be reimbursed from the two hundred dollar (\$200) fee accompanying the application form.

2. After the two hundred dollar (\$200) application fee has been expended, reimbursement shall be made from the deposit required in subsection (4)(B) of this rule.

3. The department shall bill the person for any further expenses. The person shall reimburse the department within sixty (60) days following notice from the department that reimbursement is due. Failure to submit timely reimbursement may be grounds for termination of the environmental remediation oversight agreement.

(C) The person may appeal to the commission any charge within thirty (30) days of receipt of the bill in accordance with procedures outlined in section (9) of this rule. Upon appeal to the commission, the disputed amount shall be placed in escrow pending resolution of the appeal.

(9) Appeals.

(A) The person may appeal to the commission any departmental action under sections 260.565—260.575, RSMo or this rule.

1. Appeals shall be filed with the staff director to the commission by certified mail within thirty (30) days of the disputed department action.

2. Appeals shall be in writing and shall specify the grounds for the appeal.

(B) Appeal hearings will be conducted by the commission in accordance with section 260.400, RSMo.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 16—Universal Waste

10 CSR 25-16.273 Standards for Universal Waste Management

PURPOSE: This rule provides standards for managing certain widely generated hazardous wastes, which due to their ease of safe transport, wide diversity of generators, and the ready availability of recycling technology, are considered universal wastes when recycled or disposed in compliance with the rule.

(1) The regulations set forth in 40 CFR part 273, July 1, 2010, and the changes made at 72 FR 35666, June 29, 2007, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) Small and large quantity handlers of universal waste, universal waste transporters, universal waste collection programs, and owners/operators of a universal waste destination facility shall comply with the requirements noted in this section in addition to requirements set forth in 40 CFR part 273 incorporated in this rule. (Comment: This section has been organized such that Missouri additions or changes to a particular federal subpart are noted in the corresponding subsection of this section. For example, the requirements to be added to 40 CFR part 273 subpart A are found in subsection (2)(A) of this rule.)

(A) General. In addition to the requirements in 40 CFR part 273 subpart A, the following regulations also apply:

1. *(Reserved)*

2. Applicability—batteries.

A. The additional state specific requirements described in this rule do not apply to batteries as described in 40 CFR 273.2;

3. Applicability—pesticides.

A. 40 CFR 273.3(a)(2) is modified as follows: Stocks of other unused pesticide products that are collected and managed as part of a universal waste pesticide collection program, as defined in paragraph (2)(A)9. of this rule.

B. The words “or reclamation” in 40 CFR 273.3(d)(1)(ii) are not incorporated in this rule;

4. *(Reserved)*

5. *(Reserved)*

6. *(Reserved)*

7. *(Reserved)*

8. Applicability—household and conditionally exempt small quantity generator waste.

A. In addition to the requirements of 40 CFR 273.8(a)(1) incorporated in this rule, household hazardous wastes which are of the same type as universal wastes defined at 40 CFR 273.9 as amended by paragraph (2)(A)9. of this rule, and which are segregated from the solid waste stream must either be managed in compliance with this rule or 10 CSR 25-4.261(2)(A)10.;

9. Definitions.

A. *(Reserved)*

B. Universal Waste Pesticide Collection Program—a Missouri universal waste pesticide collection program is any site where stocks of unused pesticide products are collected and managed. The collection program may accept unused pesticide products from both small and large quantity handlers of universal waste pesticides, universal waste transporters, and other universal waste pesticide collection programs. The collection program must operate in compliance with the Department of Natural Resources’ Standard Procedures for Pesticide Collection Programs in Missouri and submit a Letter of Intent to the director of the Hazardous Waste Program at least fourteen (14) days prior to accepting unused pesticide products. The Letter of Intent shall contain all of the following:

(I) The name of the organization/agency sponsoring the collection program;

(II) Name, telephone number, and address of a contact person responsible for operating the collection program;

(III) Location of the collection program; and

(IV) Date and time of the collection.

(B) Standards for Small Quantity Handlers of Universal Wastes. In addition to the requirements in 40 CFR part 273 subpart B, the following regulations also apply except that additional state specific requirements do not apply to batteries as described in 40 CFR 273.2, as incorporated in this rule:

1. In addition to the requirements of 40 CFR 273.11, a small quantity handler of universal waste is prohibited from accepting universal waste pesticides from other universal waste pesticide handlers unless the receiving small quantity handler operates a universal waste pesticide collection program as defined in paragraph (2)(A)9. of this rule;

2. The phrase “or received from another handler” in 40 CFR 273.15(a) in regards to universal waste pesticides is not incorporated in this rule because in Missouri small quantity handlers of universal waste pesticides are prohibited from accepting universal waste pesticides from another handler. If a small quantity handler of universal waste pesticides operates a universal waste pesticide collection program as defined in section (2) of this rule, the handler shall comply with the accumulation time limits specified in the Department of Natural Resources’ Standard Procedures for Pesticide Collection Programs in Missouri;

3. In 40 CFR 273.18(a), with respect to universal waste pesticides, remove the phrase “another universal waste handler” and replace it with “a Missouri-certified resource recovery facility, a universal waste pesticide collection program”;

4. Subsections 40 CFR 273.18(d) through (g) are not incorporated in this rule in regards to universal waste pesticides. In lieu of these subsections, the following requirements apply. If a shipment of universal waste pesticides is rejected by the Missouri-certified resource recovery facility or destination facility, the originating handler must either—

A. Receive the waste back when notified that the shipment has been rejected; or

B. Send the pesticides to another Missouri-certified resource recovery facility or to a destination facility which agrees to take the waste;

5. *(Reserved)*

6. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 273.20, as incorporated in this rule. The state may not assume authority from the Environmental Protection Agency (EPA) to receive notifications of intent to export or to transmit this information to other countries through the Department of State or to transmit Acknowledgments of Consent to the exporter. This modification does not relieve the regulated person of the responsibility to comply with the Resource Conservation and Recovery Act (RCRA) or other pertinent export control laws and regulations issued by other agencies.

(C) Standards for Large Quantity Handlers of Universal Wastes. In addition to the requirements in 40 CFR part 273 subpart C, the following regulations also apply:

1. In addition to the requirements of 40 CFR 273.31, a large quantity handler of universal waste is prohibited from accepting universal waste pesticides from other universal waste pesticide handlers unless the receiving large quantity handler operates a universal waste pesticide collection program as defined in paragraph (2)(A)9. of this rule;

2. A large quantity handler of universal waste who manages recalled universal waste pesticides as described in 40 CFR 273.3(a)(1) as modified by 10 CSR 25-16.273(2)(A)3. and who has sent notification to EPA as required by 40 CFR part 165 is not required to notify EPA for those recalled universal waste pesticides under this section;

3. In addition to the requirements in 40 CFR 273.33, a large quantity handler of universal waste must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or components of universal waste to the environment, as follows:

A. Ensure that a mercury clean-up system is readily available to immediately transfer any mercury-contaminated residue resulting from breakage, spills, or leaks into a container that meets the requirements of 40 CFR 262.34; and

B. Ensure that the area in which containers are stored is ventilated;

4. In addition to the requirements in 40 CFR 273.33, a large quantity handler of universal waste must manage universal waste lamps in a way that prevents releases of any universal waste or components of universal waste to the environment, as follows:

A. Ensure that a mercury clean-up system is readily available to immediately transfer any mercury-contaminated residue resulting from breakage, spills, or leaks into a container that meets the requirements of 40 CFR 262.34;

B. Ensure that the area in which containers are stored is ventilated; and

C. Ensure that employees handling universal waste lamps are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of spillage or released material into appropriate containers;

5. In 40 CFR 273.35(a) and (b), the phrase “or received from another handler” is not incorporated in this rule in regards to universal waste pesticides because in Missouri large quantity handlers of universal waste pesticides are prohibited from accepting universal waste pesticides from another handler. If a large quantity handler of universal waste pesticides operates a universal waste pesticide collection program as defined in section (2) of this rule, the handler shall comply with the accumulation time limits specified in the Department of Natural Resources’ Standard Procedures for Pesticide Collection Programs in Missouri;

6. In 40 CFR 273.35(c)(1) through (c)(6), the phrases “or is received” and “or was received” are not incorporated in this rule in regards to universal waste pesticides because in Missouri large quantity handlers of universal waste pesticides are prohibited from accepting universal waste pesticides from another handler. If a large quantity handler of universal waste pesticides operates a universal waste pesticide collection program as defined in section (2) of this rule, the handler shall comply with the requirements for marking, labeling, and accumulation time limits that are specified in the Department of Natural Resources’ Standard Procedures for Pesticide Collection Programs in Missouri;

7. In 40 CFR 273.38(a), with respect to pesticide, remove the phrase “another universal waste handler” and replace it with “a Missouri-certified resource recovery facility, a universal waste pesticide collection program”;

8. 40 CFR 273.38(d) through (f) are not incorporated in this rule with regards to universal waste pesticides. In lieu of these subsections, the following requirements apply. If a shipment of universal waste pesticides from a large quantity generator is rejected by the Missouri-certified resource recovery facility or destination facility, the original handler must either—

A. Receive waste back when notified that the shipment has been rejected; or

B. Send the waste to another Missouri-certified resource recovery facility or to a destination facility which agrees to take the waste;

9. *(Reserved)*

10. 40 CFR 273.39(c)(1) is not incorporated in this rule in regards to universal waste pesticides because in Missouri large quantity handlers of universal waste pesticides are prohibited from receiving shipments of universal waste pesticides from another handler. If a large quantity handler of universal waste pesticides operates a universal waste pesticide collection program as defined in section (2) of this rule, the handler shall comply with the record retention requirements that are specified in the Department of Natural Resources’ Standard Procedures for Pesticide Collection Programs in Missouri;

11. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 273.40, as incorporated in this rule. The state may not assume authority from the EPA to receive notifications of intent to export or to transmit this information to other countries through the Department of State or to transmit Acknowledgments of Consent to the exporter. This modification does not relieve the regulated person of the responsibility to comply with the Resource Conservation and Recovery Act (RCRA) or other pertinent export control laws and regulations issued by other agencies.

(D) Standards for Universal Waste Transporters.

1. In addition to the requirements set forth in 40 CFR part 273, subpart D, universal waste transporters shall—

A. Comply with all provisions of 10 CSR 25-6.263 if hazardous waste, as defined at 10 CSR 25-4.261 and not managed under the provisions of this rule, is transported in the state of Missouri;

B. Comply with the provisions of 10 CSR 25-6.263(2)(C) following a discharge of universal waste.

2. In addition to the prohibitions in 40 CFR 273.51(a) and (b), a transporter of universal waste pesticides is prohibited from delivering this waste to another universal waste handler except by delivery back to the original handler upon rejection of shipment by the Missouri-certified resource recovery facility or destination facility.

3. In 40 CFR 273.51(a) add the phrase “into the environment” after the phrase “prohibited from disposing of universal waste.”

(E) Standards for Destination Facilities. In addition to the requirements in 40 CFR part 273 subpart E, the following regulations also apply:

1. A universal waste destination facility that is also a permitted or interim status hazardous waste storage, treatment, or disposal facility must manage all universal wastes in an area which is separate from the permitted area or the waste loses its identity as universal waste and must be managed in compliance with the facility’s permit or interim status;

2. A universal waste destination facility may be a Missouri-certified resource recovery facility if operating in compliance with the requirements for the universal waste in question and the standards of an R2 resource recovery facility as described in 10 CSR 25-9.020(3)(A)3.

(F) *(Reserved)*

(G) In addition to the requirements in 40 CFR 273 subpart G, any person seeking to add a hazardous waste or a category of hazardous waste to this rule shall—

1. Comply with those provisions of section 536.041, RSMo, that describe a petition process to adopt, amend, or repeal any rule.

AUTHORITY: section 260.370, RSMo Supp. 2010

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 17—Dry-Cleaning Environmental Response Trust Fund

10 CSR 25-17.010 Applicability

PURPOSE: This rule defines the active and abandoned dry cleaning facilities that are subject to the requirements of this chapter. This rule is designed specifically to protect the quality of groundwater in the state as well as to protect human health and the overall quality of the environment. This rule is promulgated on the authority of sections 260.900 to 260.960, RSMo.

(1) These rules, 10 CSR 25-17.010 through 10 CSR 25-17.170, apply to the owner or operator of any active facility or owner or operator of any abandoned facility, on which a dry cleaning facility is or was located, as the term is defined in 10 CSR 25-17.020. This includes coin-operated facilities. The term dry cleaning facility includes all contiguous land, structures and other appurtenances and improvements on the land used in connection with the dry cleaning facility.

(2) Dry cleaning facilities located in prisons, governmental entities, hotels, motels, and industrial laundry facilities are excluded from this rule. Facilities that use non-chlorinated solvents are exempt from these rules.

AUTHORITY: sections 260.900 and 260.905, RSMo Supp. 2005

10 CSR 25-17.020 Definitions

PURPOSE: This rule defines specific terms used in this chapter.

(1) Definitions.

(A) Definitions beginning with the letter A.

1. “Abandoned dry cleaning facility” means any real property premises or individual leasehold space in which a dry cleaning facility formerly operated.

2. “Active dry cleaning facility” means any real property premises or individual leasehold space in which a dry cleaning facility currently operates.

(B) Definitions beginning with the letter B. *Reserved*

(C) Definitions beginning with the letter C.

1. “Chlorinated dry cleaning solvent” means any dry cleaning solvent which contains a compound which has a molecular structure containing the element chlorine.

2. “Claim” means a written demand for money or services from the Dry-Cleaning Environmental Response Trust (DERT) Fund for cleanup at a dry cleaning facility.

3. “Commission” means the Hazardous Waste Management Commission created in section 260.365, RSMo.

4. “Corrective action” means those activities described in section 260.925.1, RSMo;

5. “Corrective action plan” means a plan approved by the director to perform corrective action at a dry cleaning facility.

(D) Definitions beginning with the letter D.

1. “Department” unless otherwise stated, means the Missouri Department of Natural Resources.

2. “DERT Fund” means the Dry-Cleaning Environmental Response Trust (DERT) Fund.

3. “Director” means the director of the Missouri Department of Natural Resources.

4. “DNAPL” means dense non-aqueous phased liquid. DNAPLs are chemicals that exist in a denser-than-water, immiscible phase when released to the environment. They include, but are not limited to, halogenated organic solvents such as tetrachloroethylene (PCE), trichloroethylene (TCE) and 1,1,1-trichloroethane (TCA), substituted aromatics, phthalates, polychlorinated biphenyls (PCB) mixtures, coal and process tars, and some pesticides.

5. "Dry cleaning facility" means a commercial establishment that operates, or has operated in the past in whole or in part for the purpose of cleaning garments or other fabrics on-site utilizing a process that involves any use of dry cleaning solvents. Dry cleaning facility includes all contiguous land, structures and other appurtenances and improvements on the land used in connection with a dry cleaning facility but does not include prisons, governmental entities, hotels, motels or industrial laundries. Dry cleaning facility does include coin-operated dry cleaning facilities.

6. "Dry cleaning solvent" means any and all non-aqueous solvents used or to be used in the cleaning of garments and other fabrics at a dry cleaning facility and includes but is not limited to perchloroethylene, also known as tetrachloroethylene, chlorinated solvents, and the products into which such solvents degrade.

7. "Dry cleaning unit" means a machine or device which utilizes dry cleaning solvents to clean garments and other fabrics and includes any associated piping and ancillary equipment and any containment system.

8. "Dry cleaning waste" means waste which is generated at a dry cleaning facility during the cleaning of garments and contains dry cleaning solvents. Some or all of this waste may also be hazardous waste.

(E) Definitions beginning with the letter E.

1. "Environmental response surcharge" means either the annual dry cleaning facility registration surcharge or the dry cleaning solvent surcharge.

2. "Existing contamination" means the discovery of contamination in the soil, groundwater, surface and drinking waters in excess of the applicable state cleanup levels. It also includes the presence of DNAPL/free product or vapors in soils, basements, sewer and utility lines and nearby surface and drinking waters.

(F) Definitions beginning with the letter F.

1. "Facility closure" means an active dry cleaning facility that has ceased operations for sixty (60) continuous days.

2. "Free product" means a dry cleaning solvent that is present as a non-aqueous phase liquid (for example, pools of regulated substances at the surface or perched in the subsurface on top of an impermeable rock stratum or on top of groundwater).

3. "Fund" means the Dry-Cleaning Environmental Response Trust Fund created in section 260.920, RSMo.

(G) Definitions beginning with the letter G. *Reserved*

(H) Definitions beginning with the letter H. *Reserved*

(I) Definitions beginning with the letter I.

1. "Industrial laundry facility" means dry cleaners solely engaged in supplying laundered or dry-cleaned work uniforms, wiping towels, dust control items, etc. to industrial and commercial users.

(J) Definitions beginning with the letter J. *Reserved*

(K) Definitions beginning with the letter K. *Reserved*

(L) Definitions beginning with the letter L. *Reserved*

(M) Definitions beginning with the letter M.

1. "Multi-source site" means a site that contains contaminants from more than one source or operation (e.g., a dry cleaner in combination with a service station or auto part facility).

(N) Definitions beginning with the letter N. *Reserved*

(O) Definitions beginning with the letter O.

1. "Operator" means any person who is or has been responsible for the operation of dry cleaning operations at a dry cleaning facility.

2. "Owner" means any person who owns the real property where a dry cleaning facility is or has operated.

(P) Definitions beginning with the letter P.

1. "Participant" means the owner or operator of an active or abandoned dry cleaning facility.

2. "Person" means an individual, trust, firm, joint venture, consortium, joint-stock company, corporation, partnership, association or limited liability company. Person does not include any governmental organization.

3. "Prioritization" means to arrange in order of importance for expenditures from the DERT Fund.

(Q) Definitions beginning with the letter Q. *Reserved*

(R) Definitions beginning with the letter R.

1. "Release" means any spill, leak, emission, discharge, escape, leak or disposal of dry cleaning solvent from a dry cleaning facility into the soils or waters of the state;

(S) Definitions beginning with the letter S. *Reserved*

(T) Definitions beginning with the letter T. *Reserved*

(U) Definitions beginning with the letter U. *Reserved*

(V) Definitions beginning with the letter V. *Reserved*

(W) Definitions beginning with the letter W. *Reserved*

(X) Definitions beginning with the letter X. *Reserved*

(Y) Definitions beginning with the letter Y. *Reserved*

(Z) Definitions beginning with the letter Z. *Reserved*

AUTHORITY: sections 260.900 and 260.905, RSMo Supp. 2005

10 CSR 25-17.030 Registration and Surcharges

PURPOSE: This rule explains the requirements of registration of active dry cleaning facilities and the requirements of the solvent providers.

(1) Every active dry cleaning facility shall pay, in addition to any other environmental response surcharges, an annual dry cleaning facility registration surcharge in accordance with section 260.935, RSMo.

(A) The annual dry cleaner facility registration surcharge follows:

1. Five hundred dollars (\$500) for facilities which use no more than one hundred forty (140) gallons of chlorinated solvents per year;

2. One thousand dollars (\$1,000) for facilities which use more than one hundred forty (140) gallons of chlorinated solvents and less than three hundred sixty (360) gallons of chlorinated per year; and

3. Fifteen hundred dollars (\$1,500) for facilities which use at least three hundred sixty (360) gallons of chlorinated solvents per year.

(B) The annual dry cleaning facility registration surcharge is due on April 1 of each calendar year on a form provided by the department, on a reproduction of a form provided by the department, or a substitute version of a form approved by the department. The annual dry cleaning facility registration fee is determined based upon solvent use for the previous calendar year. Failure to keep registration current may cause an active dry cleaning facility to be ineligible for the Dry-Cleaning Environmental Response Trust (DERT) Fund.

(C) If any person does not pay the annual dry cleaning facility registration surcharge in full within thirty (30) days from the date prescribed for such payment, the department shall impose and such person shall pay, in addition to the annual dry cleaning facility registration surcharge owed by such person, a penalty of fifteen percent (15%) and interest upon the unpaid amount at the rate of ten percent (10%) per annum from the date prescribed for payment of the annual dry cleaning registration surcharge and penalties until such payment is actually made. Such penalty and interest shall be deposited in the DERT Fund.

(2) Every seller or provider of dry cleaning solvent for use in this state shall pay, in addition to any other environmental response surcharges, a dry cleaning solvent surcharge on the sale or provision of dry cleaning solvent in accordance with section 260.940, RSMo. The dry cleaning solvent surcharge required in this section shall be paid by the seller or provider on a quarterly basis and shall be paid to the department for the previous quarter. Quarterly reporting periods shall end on March 31, June 30, September 30, and December 31 of each calendar year. Quarterly reports and the accompanying surcharge payment shall be received by the department no later than thirty (30) days after the end of each reporting quarter.

(A) The amount of the dry cleaning solvent surcharge imposed by this section on each gallon of dry cleaning solvent shall be an amount equal to the product of the solvent factor for the dry cleaning solvent and the rate of eight dollars (\$8) per gallon.

1. The solvent factor for each dry cleaning solvent is as follows:

A. For perchloroethylene, the solvent factor is 1.00;

B. For 1,1,1-trichloroethane, the solvent factor is 1.00;

C. For other chlorinated dry cleaning solvents, the solvent factor is 1.00.

(B) In the case of a fraction of a gallon, the dry cleaning solvent surcharge imposed by this section shall be the same fraction of the fee imposed on a whole gallon.

(C) Dry cleaning solvent surcharge reporting will be done on a form provided by the department, on a reproduction of a form provided by the department, or a substitute version of a form approved by the department. This form shall include a list of facilities that the solvent provider has provided solvents to and the type of solvent and amount delivered to each.

(D) The dry cleaning solvent surcharge required in this section shall be paid to the department by the seller or provider of the dry cleaning solvent, regardless of the location of such seller or provider.

(E) If any person does not pay the dry cleaning solvent surcharge in full on the date prescribed for such payment, the department shall impose and such person shall pay, in addition to the dry cleaning solvent surcharge owed by such person, a penalty of fifteen percent (15%) and interest upon the unpaid amount at the rate of ten percent (10%) per annum from the date prescribed for payment of the dry cleaning solvent surcharge and penalties until such payment is actually made. Such penalty and interest shall be deposited in the DERT Fund.

(F) An operator of a dry cleaning facility shall not purchase or obtain solvent from a seller or provider who does not pay the dry cleaning solvent charge, as provided in this rule. Any operator of a dry cleaning facility who fails to obey the provisions of this rule shall be required to pay the dry cleaning solvent surcharge for any dry cleaning solvent purchased or obtained from a seller or provider who fails to pay the proper dry cleaning solvent surcharge as determined by the department. Any operator of a dry cleaning facility who fails to follow the provisions of this subsection shall also be charged a penalty of fifteen percent (15%) of the dry cleaning solvent surcharge owed. Any operator of a dry cleaning facility who fails to obey the provisions of this subsection shall also be subject to the interest provisions of subsection (2)(E) of this section. If a seller or provider of dry cleaning solvent charges the operator of a dry cleaning facility the dry cleaning solvent surcharge provided for in this section when the solvent is purchased or obtained by the operator and the operator can prove that the operator made full payment of the surcharge to the seller or provider but the seller or provider fails to pay the surcharge to the department as required by this section, then the operator shall not be liable pursuant to this subsection for interest, penalties or the seller's or provider's unpaid surcharge.

(G) A solvent supplier shall not provide dry cleaning solvents to an active dry cleaning facility that has not paid its annual dry cleaning facility registration surcharge.

(3) The department will provide a receipt to each person that pays the annual dry cleaning facility registration surcharge and the dry cleaning solvent surcharge.

(4) An owner or operator of a facility will inform the department of the opening of a new dry cleaning facility on a form provided by the department within thirty (30) days of the start of operations.

(5) An owner or operator of an active dry cleaning facility will notify the department of a change in ownership of the facility on a form provided by the department within thirty (30) days after the change of ownership occurs.

AUTHORITY: sections 260.905, 260.935 and 260.940, RSMo Supp. 2005

10 CSR 25-17.040 Reporting and Record Keeping

PURPOSE: This rule explains how the owner and operator of an active dry cleaning facility shall keep records demonstrating compliance with the requirements of this chapter. These records shall be furnished to the department on request. The rule establishes the reporting requirements to the General Assembly and the governor's office.

(1) Owners and operators of an active dry cleaning facility shall cooperate fully with inspections, monitoring and testing conducted by the department, as well as requests for document submission, testing and monitoring by the department, in regards to a claim for the Dry-Cleaning Environmental Response Trust (DERT) Fund.

(2) Participants will provide copies of records or reports, within five (5) calendar working days upon receipt of a written request for such records, in regards to a claim for the DERT Fund. A written request shall be made by certified mail to the mailing address.

(3) The department will provide the General Assembly and the governor an annual report on the items listed in section 260.955, RSMo on July 1 of each calendar year.

AUTHORITY: sections 260.905, RSMo Supp. 2005 and 260.955, RSMo 2000

10 CSR 25-17.050 Reporting of Releases and Existing Contamination

PURPOSE: This rule describes the steps for reporting and initial abatement of the spilling, leaking, emitting, discharging, escaping, leaching, or disposing of dry cleaning solvents onto the ground surface or into groundwater, surface water, or subsurface soil and the reporting of existing contamination at dry cleaner sites.

(1) Owners or operators of an active dry cleaning facility shall report to the department as soon as practical after discovery of a release of chlorinated dry cleaning solvents from spills or leaks that result in a release to the environment that equals or exceeds its reportable quantity under Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) (40 CFR 302.4) at the site or in the surrounding area. The reportable quantity for dry cleaning solvents not listed in Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) (40 CFR 302.4) is one hundred (100) pounds. The National Response Center phone number is (800) 424-8802 and the department's Environmental Emergency Response phone number for reporting releases is (573) 634-2436.

(2) Owners or operators of an active or abandoned dry cleaning facility shall report to the department as soon as practical after discovery of existing contamination of chlorinated dry cleaning solvents that is discovered in soils, groundwater, vapors, surface water, etc., that exceeds the department's cleanup guidelines.

(3) The department may require owners and operators to submit a report to the department summarizing the steps taken to clean up the release, within thirty (30) days after a reportable quantity release confirmation.

(4) If directed to do so by the department, owners or operators of an active or abandoned dry cleaning facility shall be required to follow the application procedures to the Dry-Cleaning Environmental Response Trust (DERT) Fund in accordance with 10 CSR 25-17.090 and conduct site characterization and corrective action in accordance with 10 CSR 25-17.080.

(5) The department may respond and conduct emergency response procedures to mitigate any emergency release to protect human health and the environment that if in the opinion of the department, the owner or operator has not satisfactorily responded to at an active or abandoned facility. The department may initiate procedures to recover the costs of these actions from the owner or operator.

(6) Failure to comply with 10 CSR 25-17.050 and failure to pay cost recovery as outlined in 10 CSR 25-17.050(5), may cause a dry cleaning facility to be ineligible for the DERT Fund.

AUTHORITY: sections 260.905, RSMo Supp. 2005 and 260.910, RSMo 2000

10 CSR 25-17.060 Site Prioritization and Completion

PURPOSE: This rule describes the requirements for the prioritization of sites and for determining the completion of cleanup of sites.

(1) The department shall prioritize the order in which to use funds from the Dry-Cleaning Environmental Response Trust (DERT) Fund

using standardized site assessment prioritization criteria. The criteria shall include but may not be limited to:

- (A) Risk to human health or the environment;
- (B) The present and future use of the affected property, groundwater, or surface water;
- (C) The effect that interim remedial measures have on the site;
- (D) The benefit of corrective action compared to the cost of corrective action; and
- (E) Other factors that the director deems relevant, which include but are not limited to:
 - 1. Whether a public water supply well or one (1) or more domestic drinking water wells are contaminated or threatened with levels above state or federal drinking water limits, and no alternative source is readily available;
 - 2. Whether a surface water intake is contaminated or threatened with levels above state or federal drinking water limits, and no alternative source is readily available; and
 - 3. Whether a high probability exists for direct human exposure to contaminated media.

(2) The department shall determine whether the proposed level of corrective action is sufficient by using the following criteria, which include but are not limited to:

- (A) The characteristics of the contaminated dry cleaning facility;
- (B) Cleanup standards and procedures developed by the department in guidance documents or other state and federal regulations; and

(C) Any other factors which the department considers relevant may be used in determining the level at which corrective action is deemed completed.

AUTHORITY: section 260.905, RSMo Supp. 2005

10 CSR 25-17.070 Closure of Facilities

PURPOSE: This rule describes the requirements for the permanent closure of active dry cleaning facilities.

(1) An owner or operator of an active dry cleaner facility will notify the department sixty (60) days after facility closure on a form provided by the department.

(2) Each owner or operator of an active dry cleaner facility which has ceased operation for sixty (60) continuous days shall remove all dry cleaning solvents and dry cleaning wastes from the facility no later than ninety (90) days after the last day of operation.

(A) Each owner or operator shall properly dispose of all hazardous dry cleaning wastes. Dry cleaning wastes are subject to hazardous waste determination pursuant to 10 CSR 25-5.262(1). Hazardous dry cleaning wastes must be handled in compliance with the requirements of 10 CSR 25-4.261 and 10 CSR 25-5.262, et seq. This can include, but is not limited to, proper storage, management, and disposal of the waste.

(B) An owner or operator may request a written extension of the sixty (60)-day time limit. This written extension will include a brief description of the reason for the extension, list of the type and quantity of solvents stored on-site, and a plan for inspections of the facility.

(3) To ensure eligibility in the Dry-Cleaning Environmental Response Trust (DERT) Fund, the owner or operator of the closed facility should immediately measure for contamination in areas where a release of dry cleaner solvents is most likely to occur.

AUTHORITY: section 260.905, RSMo Supp. 2005

10 CSR 25-17.080 Site Characterization and Corrective Action

PURPOSE: This rule describes the steps for the assessment, investigation, and corrective action of contamination of dry cleaning solvents.

(1) Owners or operators shall conduct assessments, investigations, and corrective actions of contamination and shall do so in accordance with risk-based guidance developed by the department.

(2) When required by the department, owners or operators of active or abandoned dry cleaning facilities shall conduct investigations to determine if the active or abandoned dry cleaning facility is the source of off-site impacts. These impacts include, but are not limited to, the discovery of dry cleaning solvents, the presence of dense non-aqueous phased liquid (DNAPL)/free product or vapors in soils, basements, sewer and utility lines and nearby surface and drinking waters that have been observed by the department or brought to its attention by another party.

(3) The department will approve the work plan only after ensuring that implementation of the plan will adequately protect human health, safety and the environment.

(4) Upon approval of the corrective action plan, the owner or operator shall implement the plan including modifications to the plan made by the department. Owners and operators shall monitor, evaluate and report the results of implementing the plan in accordance with a schedule and in a format established by the department.

AUTHORITY: section 260.905, RSMo Supp. 2005

10 CSR 25-17.090 Application Procedures

PURPOSE: This rule describes the application procedures for the Dry-Cleaning Environmental Response Trust (DERT) Fund.

(1) Any owner or operator of an active or abandoned dry cleaning facility who wishes to participate in the Dry-Cleaning Environmental Response Trust (DERT) Fund shall apply to the DERT Fund on a form provided by the department.

(A) An application form shall be submitted for each site for which an owner or operator of an active or abandoned dry cleaning facility desires participation in the DERT Fund.

(B) Applications shall include information on all known environmental conditions that exist at the site. To be eligible, one (1) groundwater or one (1) soil sample shall provide proof that the level of contamination at the site exceeds the department's cleanup levels or other evidence confirming contamination must be provided.

(2) The department shall review applications within thirty (30) days of receipt of the application and respond to such application in writing with one (1) of the following options:

(A) A notice of acceptance of eligibility;

(B) If the response is a request for clarification or information, it shall specify a date by which the applicant shall respond; and

(C) If the response is a rejection, it shall list the reasons for the rejection.

AUTHORITY: section 260.905, RSMo Supp. 2005

10 CSR 25-17.100 Participation and Eligibility for Funding

PURPOSE: This rule describes eligibility requirements for participation and funding of the Dry-Cleaning Environmental Response Trust (DERT) Fund.

(1) Any owner or operator of an active or the owner or operator of an abandoned dry cleaning facility may apply to participate in the Dry-Cleaning Environmental Response Trust (DERT) Fund.

(A) Dry cleaning facilities located in prisons, governmental entities, hotels, motels and industrial laundries are not eligible for participation in the DERT Fund. Facilities that use a non-chlorinated dry cleaning solvent are not eligible for participation in the DERT Fund.

(B) Governmental entities that own or are in possession and control of an abandoned facility otherwise eligible for coverage may apply to the DERT Fund as long as the governmental entity follows the procedures of 10 CSR 25-17.050 through 10 CSR 25-17.170.

(2) An active or abandoned dry cleaning facility may be considered ineligible if the owner or operator owes the annual dry cleaning facility registration surcharge or dry cleaning solvent surcharge, including any penalties or interest, at the time the application for the DERT Fund is submitted or contamination from dry cleaner solvents was discovered.

AUTHORITY: sections 260.905 and 260.925, RSMo Supp. 2005

.10 CSR 25-17.110 Eligible Costs

PURPOSE: This rule describes eligible costs associated with the assessment, investigation, or remediation of dry cleaning sites.

(1) Moneys from the Dry-Cleaning Environmental Response Trust (DERT) Fund shall be utilized to address contamination resulting from releases of chlorinated dry cleaning solvents in accordance with section 260.925, RSMo.

(A) Eligible payments from the DERT Fund shall include:

1. Costs for investigation and assessment of releases from a dry cleaning facility, including costs of off-site investigations and assessments of contamination, which may have moved off of the dry cleaning facility;

2. Costs for necessary or appropriate emergency action, including but not limited to treatment, restoration or replacement of drinking water supplies, to assure that the human health or safety is not threatened by a release or potential release;

3. Costs for remediation of releases from dry cleaning facilities, including contamination which may have moved off of the dry cleaning facility, which remediation shall consist of the preparation of a corrective action plan, which may include activity and use limitations for the site, and the cleanup of affected soil, groundwater and surface waters, using an alternative that is cost-effective, technologically feasible and reliable, and provides adequate protection of human health and environment and to the extent practicable minimizes environmental damage. Costs for remediation beyond that necessary to achieve contaminant levels that are protective of human health and the environment are not eligible;

4. Costs for operation and maintenance of corrective action;

5. Costs for monitoring of releases from dry cleaning facilities including contamination which may have moved off of the dry cleaning facility;

6. Payment of reasonable costs incurred by the director in providing field and laboratory services;

7. Reasonable costs of restoring property as nearly as practicable to the condition that existed prior to activities associated with the investigation of a release or cleanup or remediation activities;

8. Costs of removal and proper disposal of wastes generated by a release of a dry cleaning solvent; and

9. Payment of costs of corrective action conducted by the department or by entities other than the department but approved by the department, whether or not such corrective action is set out in a corrective action plan; except that, there shall be no reimbursement for corrective action costs incurred before August 28, 2000. Costs, under this paragraph, are not eligible unless the department has declared a hazardous substance emergency and has provided an opportunity and/or requirement to the responsible party, if available, to conduct the corrective action activities.

(B) At any multi-source site, the department shall utilize the moneys in the fund to pay for the proportionate share of the liability for the assessment, investigation, and corrective action costs which is attributable to a release from one or more eligible dry cleaning facilities and for that proportionate share of the liability only. At any multi-source site, the director is authorized to make a determination of the relative liability of the fund for costs of corrective action, expressed as a percentage of the total cost of assessment, investigation, and corrective action at a site, whether known or unknown. The director shall issue an order establishing such percentage of liability. Such order shall be binding and shall control the obligation of the fund until or unless amended by the director. In the event of an appeal from such order, such percentage of liability shall be controlling for costs incurred during the pendency of the appeal.

(2) Nothing in section (1) of this rule shall be construed to authorize the department to obligate moneys in the fund for payment of costs that are not integral to corrective action for a release of dry cleaning solvents from a dry cleaning facility. Moneys from the fund shall not be used:

(A) For corrective action at sites that are contaminated by solvents normally used in dry cleaning operations where the contamination did not result from the operation of a dry cleaning facility;

(B) For corrective action at sites, other than dry cleaning facilities, that are contaminated by dry cleaning solvents which were released while being transported to or from a dry cleaning facility;

(C) To pay any fine or penalty brought against a dry cleaning facility operator under state or federal law;

(D) To pay any costs related to corrective action at a dry cleaning facility that has been included by the United States Environmental Protection Agency on the national priorities list;

(E) For corrective action at sites with active dry cleaning facilities where the owner or operator is not in compliance with sections 260.900 to 260.960, RSMo, rules and regulations adopted pursuant to sections 260.900 to 260.960, RSMo, orders of the director pursuant to sections 260.900 to 260.960, RSMo, or any other applicable federal or state environmental statutes, rules or regulations;

(F) For corrective action at sites with abandoned dry cleaning facilities that have been taken out of operation prior to July 1, 2009, and not documented by or reported to the department by July 1, 2009. Any person reporting such a site to the department shall include any available evidence that the site once contained a dry cleaning facility;

(G) Assessment, investigation, and remediation costs incurred prior to August 28, 2000;

(H) Compensating third parties for bodily injury or property damage caused by a release from a dry cleaning facility, other than property damage included in the corrective action plan under 10 CSR 25-17.110(1)(A)7.;

(I) Costs necessary to remove an underground or aboveground storage tank system;

(J) Costs of demolition and removal of building, equipment, etc., except as required as a result of necessary cleanup activities and pre-approved by the department;

(K) Costs of disposal of soil, groundwater, etc., that is not contaminated with contaminants associated with dry cleaning solvents at levels such that the Department of Natural Resources requires corrective action;

(L) Markup of costs charged by a treatment facility which is used for the disposal of contaminated soil, groundwater, etc.;

(M) Markup of costs charged by laboratory for analysis of soil, groundwater, surface water, etc., samples;

(N) Markup of costs by the environmental consultant or contractor of major subcontracted work done as part of the assessment, investigation, or remedial work, such as drilling, well installation, or push-probe investigations;

(O) Installation of new or repair and maintenance of existing dry cleaning equipment;

(P) Preparation of claim submittals;

(Q) Paving or resurfacing, except as required as a result of necessary cleanup activities. Costs for resurfacing shall be paid on the basis of the actual cash value of the surface which existed immediately prior to cleanup activities; and

(R) Other costs not relevant to the assessment, investigation, or remediation of contamination caused by dry cleaning solvents from eligible facilities, as determined by the department.

AUTHORITY: sections 260.905 and 260.925, RSMo Supp. 2005

.10 CSR 25-17.120 Payment of Deductible and Limits on Payments

PURPOSE: This rule explains the deductible amounts and limits on expenditures from the Dry-Cleaning Environmental Response Trust (DERT) Fund.

(1) The Dry-Cleaning Environmental Response Trust (DERT) Fund shall not be liable for the payment of costs in excess of one (1) million dollars at any one (1) contaminated dry cleaning site.

(2) The DERT Fund shall not be liable for the payment of costs for any one (1) site in excess of twenty-five percent (25%) of the total moneys in the fund during any fiscal year.

(3) The owner or operator of an active and the owner or operator of an abandoned dry cleaning facility shall be liable for the first twenty-five thousand dollars (\$25,000) of corrective action costs incurred because of a release from an active or abandoned dry cleaning facility.

AUTHORITY: sections 260.905 and 260.925, RSMo Supp. 2005

.10 CSR 25-17.130 Suspension of Collection of Surcharges; Reinstatement

PURPOSE: This rule describes the procedures for suspension of collection of surcharges and the reinstatement of those surcharges.

(1) If the unobligated principal of the Dry-Cleaning Environmental Response Trust (DERT) Fund equals or exceeds five (5) million dollars on April 1 of any year, the annual dry cleaning facility registration surcharge and the dry cleaning solvent surcharge imposed by sections 260.935 and 260.940, RSMo, shall not be collected on or after the next July 1 until such time as on April 1 of any year thereafter the unobligated principal balance of the fund equals two (2) million dollars or less, then the annual dry cleaning facility registration surcharge imposed by section 260.935, RSMo and the dry cleaning solvent surcharge imposed by section 260.940, RSMo shall again be collected on and after the next July 1.

AUTHORITY: sections 260.905 and 260.945, RSMo Supp. 2005

10 CSR 25-17.140 General Reimbursement Procedures

PURPOSE: This rule describes general reimbursement procedures for the Dry-Cleaning Environmental Response Trust (DERT) Fund.

(1) Dry-Cleaning Environmental Response Trust (DERT) Fund participants are required to seek pre-approval from the DERT Fund of site assessment, investigation, or remedial activities by following the procedures outlined below:

(A) Obtain proposals from qualified contractors or consultants to demonstrate that a fair and reasonable price will be paid; and

(B) Submit the bid(s) or proposal(s) to the director. The bids should contain the following:

1. Cost estimate for field activities;
2. Cost estimate for removal, treatment, and/or disposal of contaminated media, which includes but is not limited to soil, water, and air;
3. Cost estimate for project management, supervision, data analysis, reporting, and other activities necessary to comply with sections 260.900–260.960, RSMo and implementing regulations, as appropriate;
4. Cost estimate for collection and analysis of samples for contaminated media, which includes but is not limited to soil, water, and air;
5. Contingency costs, expressed as unit costs, for any additional costs which may be incurred if conditions warrant;
6. Cost estimate for any equipment purchased or rented to conduct remedial activities; and

7. Cost estimate for any anticipated work not described above that is necessary to comply with sections 260.900–260.960, RSMo and implementing regulations.

(2) The department will respond in writing within sixty (60) days after the work plan and cost estimate is received by the department. One (1) of the following responses will be made:

(A) The response will include a statement of whether the cost estimate(s) is eligible, reasonable, and necessary.

1. This response will be based on the information and reports submitted for the particular project and compared to a review of cost estimates for similar claims;

(B) If the cost estimate is incomplete or contains costs which are higher than the department deems reasonable, the director may:

1. Ask the participant to solicit additional cost estimates;
2. Ask the participant to justify the cost estimate in writing; and
3. Agree to pay a lesser cost deemed reasonable by the director; and

(C) The department reserves the right to reject a proposed cost estimate, that the department deems ineligible, unreasonable, and unnecessary. Any rejection shall be made in writing and shall contain the specific reasons for the rejection of the cost estimate.

(3) Reimbursement of the DERT Fund moneys will be accomplished based on the site prioritization method described in 10 CSR 25-17.060.

(A) DERT Funds will be allocated to prioritized sites in the following proportions: high priority sites—sixty percent (60%); medium priority sites—thirty percent (30%); low priority sites—ten percent (10%). In any fiscal year, if the funding allocation in any priority category are not used, those funds may be reallocated to other priority categories, starting with any high priority sites and followed by medium and low priority sites.

(B) Owners, operators, or persons that are not allocated with moneys for a fiscal year, but wish to proceed with cleanup and remain eligible for future available funding, shall have assessment, investigation, and corrective action work plans and cost estimates pre-approved by the department. Failure to obtain approval for these costs may subject the DERT Fund participant to reduction or denial of reimbursement of costs.

(4) Participants requesting payment from the DERT Fund shall send invoices for the work done along with any reports generated for the work to the DERT Fund address.

(A) Invoices shall be submitted within six (6) months of the date that the proposed work is completed. Failure to submit invoices within the time frame may result in a denial of payments.

(B) Original invoices are requested. Photocopies may be submitted with a signed statement that the copies are accurate and true.

(5) Eligible costs will be reduced by the applicable deductible, as outlined in 10 CSR 25-17.120, for the dry cleaning facility until such deductible amount is met.

(6) The department will respond in writing to every request for reimbursement within thirty (30) days of receipt of the request. If the response indicates that some or all of the costs are being denied, then the response will state the reasons for the denial of costs.

AUTHORITY: section 260.905, RSMo Supp. 2005

10 CSR 25-17.150 Claims

PURPOSE: This rule describes who can make claims against the Dry-Cleaning Environmental Response Trust (DERT) Fund, when and how such claims shall be made, how to request payment from the DERT Fund and describes claims appeals.

(1) To ensure eligibility in the Dry-Cleaning Environmental Response Trust (DERT) Fund the owner or operator should submit a notice to the department as soon as reasonably possible after a dry cleaning facility becomes aware of contamination.

(2) After being accepted in the DERT Fund, prior to the initiation of any assessment, investigation, or cleanup activities, whether within the deductible or in excess of the deductible, the costs shall be first approved by the department. Failure to obtain approval for these costs may subject the DERT Fund participant to reduction or denial of reimbursement of costs.

(A) Fund participants are not required to obtain prior approval of the department for the reasonable costs of emergency response or of necessary first aid. The DERT Fund participant shall notify the department of such activities as soon as practical.

(3) Before the initiation of any assessment, investigation, or cleanup activities, the DERT Fund participant will provide a consent of access form that states the property's owners consent for the department or its agents or contractors to access the facility or property.

(4) The department and the commission retain the final authority to make a determination concerning all eligibility issues, including but not limited to whether costs for products and services were reasonable, and whether the costs incurred were necessary to achieve the cleanup activities required by the Department of Natural Resources.

(5) Claim Dispute Resolution.

(A) If a DERT Fund participant disagrees with a payment decision, he or she shall send or deliver the objection(s) or reason(s) for the disagreement in writing to the department within ninety (90) days of the date the check or claim denial is issued.

(B) The department will then review the claim considering the objections or reasons, and respond in writing to the DERT Fund participant within thirty (30) days of receipt. The director must—

1. Affirm the decision previously made;
2. Modify the decision previously made;
3. Refer the claim to the commission; or

4. Request additional information or clarification from the owner or operator making the appeal. Within thirty (30) days of receipt of the additional information or clarifications, the department shall take one (1) of the three (3) steps listed above. If no response is received, the department may terminate the dispute resolution process, which leaves in place the original decision.

(C) If the DERT Fund participant still disagrees with department's decision, he or she may request further review by sending a written request within sixty (60) days of receipt of the director's decision to the commission, in accordance with 10 CSR 25-1.010.

(D) The commission will then consider the disputed claim at one (1) of its two (2) next regularly scheduled meetings.

AUTHORITY: section 260.905, RSMo Supp. 2005

10 CSR 25-17.160 Notification of Abandoned Sites

PURPOSE: This rule describes the requirements for the notification of abandoned dry cleaning sites.

(1) Owners or former operators of abandoned dry cleaners shall inform the department of the existence of an abandoned dry cleaning facility on a form provided by the department. Any available evidence that the property once contained a dry cleaning facility shall accompany the form.

(2) This form shall be postmarked by July 1, 2009.

AUTHORITY: sections 260.905 and 260.925, RSMo Supp. 2005

10 CSR 25-17.170 Violations of Dry Cleaning Remediation Laws

PURPOSE: This rule describes the violations and penalties for violation of the dry cleaning regulations.

(1) The department may bring civil damages not to exceed five hundred dollars (\$500) for each violation, against a participant of a dry cleaning facility for the following:

(A) For operation of an active dry cleaning facility in violation of 10 CSR 25-17.010 through 10 CSR 25-17.170, or operate an active dry cleaning facility in violation of any other applicable federal or state environmental statutes, rules or regulations;

(B) Prevent or hinder a properly identified officer or employee of the department or other authorized agent of the director from entering, inspecting, sampling or responding to a release at reasonable times and with reasonable advance notice to the operator as authorized by section 260.910, RSMo;

(C) Knowingly make any false material statement or representation in any record, report or other document filed, maintained or used for the purpose of compliance with 10 CSR 25-17.040;

(D) Knowingly destroy, alter or conceal any record required to be maintained by 10 CSR 25-17.040; and

(E) Willfully allow a release in excess of a reportable quantity or knowingly fail to make an immediate response to a release in accordance with 10 CSR 25-17.050.

AUTHORITY: sections 260.905 and 260.910, RSMo Supp. 2005

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 18—Risk-Based Corrective Action**

10 CSR 25-18.010 Risk-Based Corrective Action Process

PURPOSE: The Department of Natural Resources (department) oversees response, characterization, risk assessment, and risk management under a variety of authorities at over two thousand (2,000) contaminated sites in Missouri. Many more sites are in an early stage of investigation or as yet unknown to the department. The impetus and philosophy behind Missouri Risk-Based Corrective Action (MRBCA) is to provide a framework for cleanup decisions that facilitates the constructive use of contaminated sites by protecting human health and the environment in the context of current and reasonably anticipated future site use. This framework can streamline the process of site cleanup and closure.

(1) Definitions.

(A) As used in this rule the following terms mean:

1. 7Q10 low-flow of a stream—the average minimum flow for seven (7) consecutive days that has a probable recurrence interval of once-in-ten (10) years;

2. Activity and use limitations (AULs)—mechanisms or controls that ensure that exposure pathways to chemicals of concern (COCs) associated with current or reasonably anticipated future uses are not completed for as long as the COCs would pose an unacceptable risk to human health, public welfare, or the environment if the pathways were complete;

3. Applicable target levels—one (1) of the following for each chemical of concern:

A. The default target level as defined below;

B. The tier 1 risk-based target level as defined below for tier 1 purposes; or

C. A tier 2 or tier 3 site-specific target level as defined below for tier 2 or tier 3 purposes;

4. Chemical of concern (COC)—chemical that may contribute to risk at a site;

5. Commission—the Missouri Hazardous Waste Management Commission;

6. Conceptual site model—information that qualitatively and/or quantitatively describes the relevant site-specific factors that determine the risk COCs pose to human health and the environment and provides a basis for management of a site;

7. Cumulative site-wide risk—sum of risk for all chemicals;

8. Default target level (DTL)—the concentration of a chemical of concern that is the lowest of the tier 1 risk-based target levels for all exposure pathways and below which human receptors are protected from all complete exposure pathways for residential or other unrestricted land use. For each contaminant of concern, the default target level shall be either—

A. The target level shown in Table B-1 of Appendix B of the *Departmental Missouri Risk-Based Corrective Action (MRBCA) Technical Guidance* document published by the Department of Natural Resources, PO Box 176, Jefferson City, MO 65102-0176, dated April 2006 and updated in June 2006 and June 2008, which is hereby incorporated by reference without any later amendments or additions; or

B. A different value if the department determines in writing that a deviation is appropriate based on changes in the scientific data used to calculate such default target level;

9. Department—the Department of Natural Resources (DNR), which includes the director thereof, or the person or division or program within the department delegated the authority to render a decision, order, determination, finding, or other action that is subject to review by the commission;

10. Domestic use of groundwater—groundwater used for indoor water use activities such as drinking, cooking, showering, and other uses by which a receptor could be exposed to COCs via ingestion, dermal contact, or inhalation of vapors;

11. Ecological risk assessment—the process that evaluates the likelihood that adverse ecological effects may occur or are occurring as a result of exposure of ecological receptors to one (1) or more contaminants of concern;

12. Exposure—contact of a chemical of concern with an organism;

13. Exposure domain—the area that can result in a particular receptor being exposed to COCs by a specified exposure pathway;

14. Exposure factors—human behaviors and characteristics that affect the degree or amount of exposure to a chemical of concern, such as duration, frequency, body weight, inhalation rate, or intake rate;

15. Exposure pathway—the course a chemical takes from a source to the receptor. An exposure pathway describes a unique mechanism by which an individual or population is exposed to chemicals originating from a site. Each exposure pathway includes a source or release from a source, an exposure point, and an exposure route. If the exposure point differs from the source, a transport/exposure medium (e.g., air) or media (in cases of intermedia transfer) also is included. The exposure pathway is considered complete if there are no discontinuities in or impediments to movement from the source of the contaminant to the receptor;

16. Fate and transport parameters—factors that characterize physical site properties that affect how a chemical of concern may travel or disperse in any particular medium;

17. Habitat—a place where an ecological receptor, such as an animal or plant, normally lives;

18. Hazard index—the sum of more than one (1) hazard quotient for multiple substances and/or multiple exposure pathways;

19. Hazard quotient—the ratio of an exposure level to a substance to a non-carcinogenic toxicity value selected for the risk assessment for that substance;

20. Hydraulic conductivity—the volume of water at the existing kinematic viscosity that will move in unit time under a unit hydraulic gradient through a unit area measured at right angles to the direction of flow;

21. Long-term stewardship (LTS)—the system of controls, institutions, and information required to ensure protection of human health, public welfare, and the environment at sites where residual contamination has been left in place above unrestricted use levels for the period of time over which the contaminants exceed those levels. Activity and Use Limitations (AULs) may be an integral part of long term stewardship. AULs shall be designed to ensure that pathways of exposure to COCs associated with current or reasonably anticipated future uses are not completed for as long as the COCs would pose an unacceptable risk to human health, public welfare, or the environment if the pathways were complete;

22. Point of demonstration (POD) wells—wells located between the source and the POE to monitor the COC concentrations in groundwater to prevent exceedances at the POE;

23. Point of exposure (POE)—the nearest down gradient, three-dimensional location that could reasonably be considered for installation of a groundwater supply well;

24. Receptor—an organism that receives, may receive, or has received exposure to a COC as a result of a release. Under the MRBCA program, human receptor refers to a resident child, resident adult, age-adjusted resident (one who resides on the site from birth to age thirty (30)), non-resident adult, or construction worker;

25. Remediating party—the party who is legally responsible for, or who is otherwise taking on the responsibility for, the investigation, risk assessment, and remediation of property known or believed to be contaminated;

26. Representative chemical concentration—the average concentration to which a receptor is exposed over the specified exposure duration, within a specified exposure domain, and for a specific exposure pathway;

27. Risk-based target level (RBTL)—the pathway and chemical-specific concentration of a chemical of concern in an environmental medium that meets an acceptable human health risk level. Risk-based target levels are calculated by the department using standard models and default exposure factors, toxicity factors, physical and chemical properties, and contaminant fate and transport parameters and are applicable at tier 1 of the risk-based corrective action process. For each contaminant of concern, the risk-based target level shall be either—

A. The risk-based target level shown in Tables B-1 through B-11 of Appendix B of the *Departmental Missouri Risk-Based Corrective Action (MRBCA) Technical Guidance* document published by the Department of Natural Resources, PO Box 176, Jefferson City, MO 65102-0176, dated April 2006 and updated in June 2006 and June 2008, which are hereby incorporated by reference without any later amendments or additions; or

B. A different value if the department determines in writing that a deviation is appropriate based on changes in the scientific data used to calculate such risk-based target level;

28. Risk management plan—a written account of all site-specific activities necessary to manage a site’s risk to human health, public welfare, and the environment so that acceptable risk levels are not exceeded under current or reasonably anticipated future land use conditions;

29. Route of exposure—the manner or mechanism by which a COC enters a receptor’s body, for example, ingestion, inhalation, or dermal contact;

30. Site—areal extent of contamination inclusive of contamination both on the property at which the contamination originated and on all adjacent and nearby properties onto which such contamination has or is likely to migrate;

31. Site-specific target levels (SSTLs)—pathway and chemical specific calculated risk-based target levels that are based on site-specific data and an acceptable risk level considered protective of human health and the environment.

A. Site-specific target levels calculated at tier 2 of the risk-based corrective action process using site-specific fate and transport data and the toxicity factors, parameters for dermal contact pathway, physical and chemical properties, and exposure factors found in tables E-1, E-2, E-3, and E-4, respectively, and default models and equations found in Appendix E of the *Departmental Missouri Risk-Based Corrective Action (MRBCA) Technical Guidance* document published by the Department of Natural Resources, PO Box 176, Jefferson City, MO 65102-0176, dated April 2006 and updated in June 2006 and June 2008, which are hereby incorporated by reference, without any later amendments or additions, and are applicable unless the department determines in writing that a deviation is appropriate based on changes in the scientific data used to calculate the site-specific target levels.

B. Site-specific target levels calculated at tier 3 of the risk-based corrective action process using default, literature-derived, and/or site-specific exposure factors, physical and chemical properties, toxicity factors, and fate and transport data and default, alternative or a combination of default and alternative models are applicable unless the department determines or has determined that a deviation is appropriate based on site-specific conditions or changes in the scientific data used to calculate the site-specific target levels;

32. Source property—the property or properties on which contamination originated;

33. Subsurface soil—soil from three feet (3') below ground surface to the water table;

34. Surficial soil—soil from zero to three feet (0'–3') below ground surface; and

35. Unrestricted use levels—chemical concentrations at which soil and groundwater at a site are safe for residential land use and domestic use of groundwater.

(2) Applicability.

(A) This rule applies to contaminated or potentially contaminated sites. The risk-based corrective action process does not in any way supersede or change applicable federal statutes and regulations. This rule does not supersede the requirement that state programs authorized by the United States Environmental Protection Agency that are operating in lieu of the federal program, including but not limited to the federal Resource Conservation and Recovery Act, be at least as protective as the federal program. This rule does not change the federally mandated, program-specific administrative, technical, and notification requirements on either a remediating party or regulators. Neither the remediating party nor the department can pick or choose portions of the media or sites to which this process will apply. This rule will be applicable only to newly discovered sites, new releases discovered at previously closed sites, ongoing cleanups, and site reviews where a different use is being contemplated than planned for at the time of closure. Nothing in this rule addresses any natural resources damages claims that may be applicable at a site.

(B) In the absence of a hazardous substance emergency or any other situation requiring immediate corrective action, and in lieu of complete remediation, any party seeking to remediate a contaminated site within the purview of the Missouri Department of Natural Resources may choose to follow the risk-based process described in this rule, which may be applied at any of the following types of sites:

1. Sites on the registry of abandoned or uncontrolled sites pursuant to section 260.435, RSMo, *et seq*;

2. Sites enrolled in the Voluntary Cleanup Program pursuant to section 260.265, RSMo, *et seq*;

3. Sites with dry-cleaning facilities governed by section 260.900, RSMo, *et seq*; or

4. Any other site where the department and the remediating party agree to apply this rule.

(C) This rule does not apply to petroleum storage tank sites where risk-based corrective action is implemented in accordance with section 319.109, RSMo, and any implementing rules.

(D) Where necessary to promote the public benefit of remediating a “brownfield” or other voluntary cleanup site, a remediating party who is substantially in compliance with the EPA All Appropriate Inquiries rule (40 CFR Part 312) and who, along with the property owner or operator if different from the remediating party, did not cause nor contribute to the release or potential release of a hazardous material at the site, may apply the requirements of sections (8), (11), (14), (15), and (16) and subsections (4)(B), (9)(J), (18)(A), and (19)(A) of this rule, to the property subject to voluntary remediation rather than the entire site.

(3) Rationale and Characteristics of Tiered Approach. Each tier will result in cleanup target levels that provide an acceptable level of protection to human health, public welfare, and the environment. This rule is based on *Missouri Risk-Based Corrective Action (MRBCA) Technical Guidance* published by the department. Table 1, included herein, shows a comparison of risk-based assessment options.

(4) Risk-Based Corrective Action Process. This section identifies the steps in the process. Requirements for steps (B) through (G) are contained in succeeding sections. The department shall establish a Memorandum of Understanding with the Missouri Department of Health and Senior Services (DHSS) to effectively involve DHSS in the risk assessment activities in the risk-based corrective action process.

(A) Determination and Abatement of Imminent Threat(s). When imminent threats are discovered, the remediating party shall inform the department immediately. Upon completion of imminent threat abatement actions, the remediating party shall submit a report to the department that documents the activities and confirms that all imminent threats have been abated.

(B) Initial Site Characterization and Comparison with Default Target Levels. The remediating party shall perform an initial site characterization. The initial site characterization shall be conducted to identify with certainty the maximum concentrations of the contaminants or chemicals of concern in each impacted environmental media and compare the sample concentrations with default target levels (DTLs) and, to the extent needed, water quality criteria (10 CSR 20-7.031). Impacts are to be delineated to the higher of DTLs or other residential levels necessary to protect the receptors from complete exposure pathways. This initial comparison is not required if the remediating party has chosen to conduct a tier 1 or tier 2 analysis. The extent of contamination and complete exposure pathways, not the property boundaries, determine the extent of site-specific data collection and analysis.

(C) Development and Validation of Conceptual Site Model. If the maximum concentrations of COCs exceed the DTLs, or the DTLs are not selected as the cleanup levels, the remediating party shall develop and validate a conceptual site model. A conceptual site model shall qualitatively and/or quantitatively describe the relevant site-specific factors that determine the risk COCs pose to human health and the environment. If the contaminants are below the default target levels, the remediating party may request a letter of completion.

(D) Acceptable Risk. For the MRBCA process, the acceptable risk levels are—

1. Carcinogenic risk. The total risk for each chemical, which is the sum of risk for all complete exposure pathways for each chemical, shall not exceed 1×10^{-5} . The cumulative site-wide risk (sum of risk for all chemicals and all complete exposure pathways) shall not exceed 1×10^{-4} ; and

2. Non-carcinogenic risk. The hazard index for each chemical, which is the sum of hazard quotients for all complete exposure pathways for each chemical (the total risk), shall not exceed 1.0. The sitewide hazard index, which is the sum of hazard quotients for all chemicals and all complete exposure pathways, shall not exceed 1.0.

3. If the hazard index exceeds 1.0, a qualified toxicologist may calculate the hazard index corresponding to a specific toxicological end point.

(E) Tier 1 Risk Assessment. Based on the comparison of representative concentrations and tier 1 risk-based target levels or calculated site risk with target risk, the remediating party may—

1. Request a determination from the department that the residual concentrations are protective of human health, public welfare, and the environment. If the concentrations are below the tier 1 risk-based target levels, the remediating party may request a letter of completion;

2. Adopt tier 1 risk-based target levels and submit a Risk Management Plan to manage the risk associated with these levels; or

3. Perform a tier 2 risk assessment. Unless performing a tier 2 risk assessment, upon completion of the tier 1 risk assessment, the remediating party shall submit a tier 1 risk assessment report to the department.

(F) Tier 2 Risk Assessment. Tier 2 risk assessments allow for the use of site-specific fate and transport parameters to calculate site-specific target levels. Tier 2 site-specific target levels are calculated values based on site-specific data, including but not limited to the nature and extent of contamination and physical characteristics of the site. After the tier 2 site-specific target levels have been calculated, the results shall be compared with representative COC concentrations at the site. Based on the comparison results, the remediating party may—

1. Request a determination from the department that the residual concentrations are protective of human health, public welfare, and the environment;

2. Adopt calculated tier 2 site-specific target levels as cleanup levels and develop a risk management plan to manage the risk associated with these levels; or

3. Develop a work plan for a tier 3 risk assessment. Upon completion of the tier 2 risk assessment, the remediating party shall provide a tier 2 risk assessment report to the department.

(G) Tier 3 Risk Assessment. The remediating party shall submit a work plan to the department and receive approval prior to the performance of a tier 3 risk assessment. Upon completion of the tier 3 risk assessment, the remediating party shall provide a tier 3 risk assessment report to the department.

(H) Development, Approval, and Implementation of Risk Management Plan (RMP). The risk management plan shall protect human health, public welfare, and the environment under current and reasonably anticipated future use conditions. An RMP shall be developed after the department approves media-specific cleanup levels under any of the tiers. Where residual contamination will be left in place above unrestricted use levels, the RMP shall include an AUL as an integral part of the plan. The RMP shall be implemented as written and approved. Data shall be collected and analyzed to evaluate the performance of the plan and, if needed, to implement modifications. If additional information becomes available while or after the RMP has been implemented that shows the site poses an unacceptable risk to human health, public welfare, or the environment, or that the land use has changed and is no longer compatible with the risk management plan, the department may rescind its decision and require further action at the site.

(5) Applicable Target Levels within the MRBCA Process. If an analysis proceeds from DTLs through the tiers and the applicable target levels become lower, the remediating party does not have the option of using higher levels from the previous tier since the higher tiered analysis provides a more precise estimate of the actual risk. Large sites may be divided into smaller areas, and these areas may be managed using different applicable target levels and different AULs.

(5) Applicable Target Levels within the MRBCA Process. If an analysis proceeds from DTLs through the tiers and the applicable target levels become lower, the remediating party does not have the option of using higher levels from the previous tier since the higher tiered analysis provides a more precise estimate of the actual risk. Large sites may be divided into smaller areas, and these areas may be managed using different applicable target levels and different AULs.

(5) Applicable Target Levels within the MRBCA Process. If an analysis proceeds from DTLs through the tiers and the applicable target levels become lower, the remediating party does not have the option of using higher levels from the previous tier since the higher tiered analysis provides a more precise estimate of the actual risk. Large sites may be divided into smaller areas, and these areas may be managed using different applicable target levels and different AULs.

(5) Applicable Target Levels within the MRBCA Process. If an analysis proceeds from DTLs through the tiers and the applicable target levels become lower, the remediating party does not have the option of using higher levels from the previous tier since the higher tiered analysis provides a more precise estimate of the actual risk. Large sites may be divided into smaller areas, and these areas may be managed using different applicable target levels and different AULs.

(5) Applicable Target Levels within the MRBCA Process. If an analysis proceeds from DTLs through the tiers and the applicable target levels become lower, the remediating party does not have the option of using higher levels from the previous tier since the higher tiered analysis provides a more precise estimate of the actual risk. Large sites may be divided into smaller areas, and these areas may be managed using different applicable target levels and different AULs.

(6) Documentation of the MRBCA Process. To record the data, analysis, and decision making of the MRBCA process, the remediating party shall develop applicable documents including the initial site characterization, the conceptual site model, the risk assessment, and the risk management plan. Each applicable document shall be provided to the department.

(7) Initial Site Characterization.

(A) The remediating party shall develop an initial site characterization, consisting of a site description, data collection work plan, and comparison of the maximum concentrations of chemicals of concern with default target levels and relevant water quality criteria.

(B) Site Description. The remediating party shall conduct a thorough site reconnaissance and a historic review of site use and site operations to identify existing and potential sources of contamination. The remediating party shall prepare a list of potential chemicals of concern (COCs) and the probable on-site location(s) of COCs. The remediating party shall prepare a site description based on available information, including but not limited to—

1. Knowledge of known or documented releases;
2. Current and past location of certain structures that represent potential sources (for example, pipelines, process areas, pumps, or transformers);
3. Historic documentation of site layout such as aerial photographs, fire insurance maps, etc.;
4. Interviews with current and past owners and operators to understand site activities;
5. Permits issued for various activities; and
6. One (1) or more site visits.

(C) Collection of Data. Prior to the collection of environmental data for the initial site characterization, the remediating party shall submit the initial characterization and data collection work plan to the department for review and approval. The work plan shall meet the minimum data quality assurance/quality control requirements of the department's Quality Management Plan. After approval, the remediating party shall implement the work plan.

(D) Comparison with Default Target Levels and Relevant Water Quality Criteria.

1. The remediating party shall compare the maximum groundwater concentrations with the lower of the DTLs or the applicable water quality criteria. To determine if an ecological risk exists at the site, for any COCs listed in the guidance document for aquatic life protection, determine whether levels found exceed water quality criteria. Other potentially toxic substances for which sufficient toxicity data are not available may not be released to waters of the state until safe levels are demonstrated through adequate bioassay studies.

2. For any COCs found to exceed water quality criteria, determine whether and where there are any complete pathways for eco-receptors by completing a level 1 ecological risk assessment.

3. For both ecological and human health risk assessments, the maximum soil and groundwater concentrations shall be compared with the default target levels (DTLs) presented in Appendix B of the guidance. If the maximum soil and groundwater concentrations do not exceed the DTLs and no ecological risk is identified, the remediating party may petition the department for a letter of completion. If either the soil or groundwater maximum concentrations exceed their comparative values, the remediating party shall either—

A. Conduct a tier 1, tier 2, or tier 3 evaluation; or

B. Select the DTLs (or lower of DTLs and water quality criteria if ecological issues are of concern) as the cleanup levels.

(E) Initial Characterization Report. The remediating party shall document the results of the initial characterization and comparison with target levels in a report to the department.

(8) Conceptual Site Model.

(A) Components of Conceptual Site Model. The remediating party shall develop a conceptual site model, including the following key elements:

1. The chemical release scenario, known and suspected source(s), and chemicals of concern (COCs);
2. Spatial and temporal distribution of COCs in the various affected media;
3. Description of any known durable and enforceable land or water use restrictions;
4. Current and reasonably anticipated future land and groundwater use;
5. Description of site stratigraphy, hydrogeology, meteorology, determination of the predominant vadose zone soil type, and identification of surface water bodies that may potentially be affected by site COCs;
6. Remedial activities conducted to date; and
7. An exposure model that identifies the receptors, exposure pathways, and routes of exposure under current and reasonably anticipated future land use conditions.

(B) Determinations of Reasonably Anticipated Future Land Use. The department will make final decisions with respect to the reasonably anticipated future land use of each property that is or is a part of a site evaluated under the risk-based corrective action process. The department will make such decisions in accordance with the following:

1. Decisions will be made in consideration of information available to the department relevant to the future use of a property, including conclusions and recommendations in a risk assessment report, provided to the department by the remediating party, the owner of an adjacent or nearby property affected by a release from the source property being evaluated by the remediating party, or either party's environmental consultant or other authorized designee;

2. The department may also consider information obtained from other information sources, including but not limited to, local, county, state, and federal governmental entities and actual and prospective future purchasers, developers, tenants, and users of the property to which the decision pertains; and

3. The department may request future land use information from the owner, or the owner's authorized designee, of an adjacent or nearby property affected by a release from a source property being evaluated under the risk-based corrective action process. Such owner or designee is not obligated to respond to the department's request.

(C) Exposure Model.

1. In developing an exposure model, the following receptors shall be considered at all sites:

- A. Resident;
- B. Non-resident worker; and
- C. Construction worker.

2. The exposure model shall consider any additional receptors that may be exposed to contamination, both currently and in the future.

3. The exposure model shall include a determination as to whether or not each of the following pathways is complete under current or future conditions:

A. Pathways for surficial soils, defined as zero to three feet (0'-3') below ground surface (bgs):

- (I) Leaching to groundwater and potential use of groundwater;
- (II) Leaching to groundwater and subsequent migration to a surface water body; and
- (III) Ingestion of soil, dermal contact with soil, and outdoor inhalation of vapors and particulates emitted by surficial soils.

B. Pathways for subsurface soils, defined as greater than three feet (3') bgs to the water table:

(I) Volatilization and upward migration of vapors from subsurface soil and potential indoor inhalation of these vapor emissions;

(II) Leaching to groundwater and potential use of groundwater; and

(III) Leaching to groundwater and subsequent migration to a surface water body.

C. Soil pathways applicable to construction worker for soil up to depth of construction.

(I) Ingestion, dermal contact with, and inhalation of vapor emissions and particulates from soil.

D. Groundwater pathway applicable to construction worker.

(I) Outdoor inhalation of vapor emissions.

(II) Dermal contact.

E. Pathways for groundwater—

(I) Volatilization and upward migration of vapors from groundwater and potential indoor inhalation of these vapor emissions;

(II) Volatilization and upward migration of vapors from groundwater and potential outdoor inhalation of these vapor emissions;

(III) Ingestion of water, dermal contact with water, and inhalation of vapors if the domestic use of groundwater pathway is complete;

(IV) Dermal contact with groundwater; and

(V) Migration to a surface water body and potential impacts to surface waters.

F. Other pathways that may need to be considered on a site-specific basis include, but are not necessarily limited to, the following:

(I) Ingestion of surface water;

(II) Contact with surface water during recreational activities (ingestion, inhalation of vapors, and dermal contact);

(III) Contact with (accidental ingestion and dermal contact with) sediments;

(IV) Ingestion of produce grown in impacted soils;

(V) Use of groundwater for irrigation purposes;

(VI) Use of groundwater for industrial purposes; or

(VII) Ingestion of fish or other aquatic organisms that have bioaccumulated COCs through the food chain as a result of surface water or sediment contamination.

(D) Evaluation of the Groundwater Use Pathway.

1. The analysis of current and future groundwater use shall include all groundwater zones beneath or in the vicinity of the site that could potentially be—

- A. Impacted by site-specific COCs; or
- B. Targeted in the future for the installation of water use wells.

2. The current groundwater domestic use pathway is considered complete if water use wells are located on or near the site, and there is a reasonable probability of impact to the wells or the groundwater zones they intersect by site-specific chemical releases.

A. All public water supply wells within a one (1)-mile radius of the site and all private water wells within a quarter (¼)-mile radius of the site shall be identified. Other distances may be used if prescribed by law, or necessary and appropriate based on COC mobility and hydrogeology.

B. Whether a well might be impacted depends on the hydrogeological conditions, well construction, and use of the well, including the following factors:

- (I) Characteristics of soil and rock formations;
- (II) Groundwater flow direction;
- (III) Hydraulic conductivity;
- (IV) Distance to the well;
- (V) The zone where the well is screened;
- (VI) Casing of the well;
- (VII) Well seals and other well construction attributes;
- (VIII) Zone(s) of influence and capture generated by well pumpage; and
- (IX) Biodegradability and other physical and chemical properties of the COCs.

3. For each zone, the future groundwater use pathway will be judged complete if—

A. There is no ordinance that prohibits well drilling in that zone supported by a memorandum of agreement between the department and a governing body; and

B. The zone is suitable for use and there is a reasonable probability of future use, or the zone is the only viable source of future water supply; and

C. There is a reasonable probability of site impacts to the zone.

4. Evaluation of activity and use limitations (AULs). If an AUL is in place that eliminates the potential that a specified groundwater zone will serve as a future source of domestic water, the presence of the AUL will be considered along with other relevant site-specific domestic use factors. For early relief from consideration of this pathway, an ordinance that prohibits well drilling along with a memorandum of agreement between the department and a governing body can be used to justify an incomplete pathway.

5. Suitability for use determination: For groundwater to be considered a viable domestic water supply source, it shall meet appropriate total dissolved solids (TDS) and yield criteria—

A. Total dissolved solids criteria—Groundwater containing less than ten thousand milligrams per liter (10,000 mg/L) total dissolved solids is considered a potential source of domestic use;

B. Yield criteria—Groundwater zones capable of producing a minimum of one-quarter (¼) gallon per minute or three hundred sixty (360) gallons per day on a sustained basis have sufficient yield to serve as a potential source of domestic use.

6. Determination of sole source/availability of alternative water supplies. If the groundwater zone being considered is the only viable source of water at or in the vicinity of the site, then the remediating party shall assume that future domestic use is reasonable. This conclusion is irrespective of TDS or yield considerations, and this zone shall be evaluated to determine if it is likely to be impacted by COCs from the site. Determining the availability of alternative water supplies should include consideration of other groundwater zones, municipal water supply systems, and surface water sources;

7. Reasonable probability of future use determination. The probability that a groundwater zone could be used as a future source of water for domestic use shall be a weight of evidence determination based on consideration of the following factors:

- A. Current groundwater use patterns in the vicinity of the site under evaluation;
- B. Suitability of use (TDS and yield criteria);
- C. Availability of alternative water supplies;
- D. AULs;

E. Urban development considerations for sites in areas of intensive historic industrial or commercial activity, having groundwater zones in hydraulic communication with industrial or commercial surface activity, and located within metropolitan areas with a population of at least seventy thousand (70,000) as established by the 1970 census; and

F. Aquifer capacity limitations (ability to support a given density of production wells).

8. Probability of impact determination. If a groundwater zone has a reasonable probability of future use as a domestic water supply, the zone shall be evaluated for the probability that the zone could be impacted by site COCs. The evaluation shall consider the nature and extent of contamination at the site, site hydrogeology including the potential presence of karst features, contaminant fate and transport factors and mechanisms, and other pertinent variables. To evaluate potential site impacts to groundwater zones that could serve as future water supply sources, the potential impact shall be evaluated at the nearest down-gradient location that could reasonably be considered for installation of a groundwater supply well. In the absence of durable AULs, the nearest location might be on the site itself.

(9) Site Characterization for an MRBCA Risk Assessment.

(A) To adequately characterize a site to determine risks, the following categories of data are required. If any categories of data are not included, the site characterization report shall document the reason(s) for the omission.

1. Description and magnitude of the spill or release;
2. Land use, activity and use limitations, and receptor information;
3. Analysis of current and reasonably anticipated future groundwater use;
4. Vadose zone soil characteristics, including determination of soil type;
5. Characteristics of saturated zones;
6. Surface water body characteristics;
7. Ecological receptor information;
8. Meteorology (such as rainfall, infiltration rate, evapotranspiration, wind speed, and direction);
9. Distribution of chemicals of concern in soil;
10. Distribution of chemicals of concern in groundwater;
11. Distribution of chemicals of concern in soil vapor; and
12. Distribution of chemicals of concern in sediments and surface waters.

(B) The remediating party shall develop a work plan, for approval by the department, to address any data inadequacies, as appropriate, including a sampling and analysis plan and a quality assurance project plan (QAPP). Environmental data shall be collected consistent with the department's quality management plan.

(C) Lateral and vertical impacts in soil and groundwater shall be delineated to the extent required to determine—

1. Potential exposure pathways to human and ecological receptors under current and reasonably anticipated future conditions;
2. The extent of impacts above the tiered risk-based levels for the identified exposure pathways; and
3. Exposure domains for each combination of receptor-pathway-route of exposure.

(D) To delineate impacts in other media (for example, surface water, sediments, and air), the number of samples, sample locations, delineation levels, and sampling methodologies will be based on site-specific considerations; hence the remediating party shall receive the department's approval for the work plan prior to conducting fieldwork. For surface water and sediment sampling, the work plan shall contain a strategy to determine background levels; delineation criteria; location of, and concentrations of COCs in, site-related discharges to the surface water; and the current and future extent of related impacts.

(E) For zones of impacted groundwater, plume status (increasing, stable, or decreasing) shall be determined. To assess plume stability, groundwater monitoring shall be conducted for a period of time sufficient to show a reliably consistent trend in contaminant concentrations.

(F) For delineating groundwater impacts where the domestic use of groundwater pathway is complete, delineation criteria will be the lower of the following four (4) criteria:

1. MCLs (in the absence of MCLs, risk-based concentrations that assume ingestion of, dermal contact with, and inhalation of vapors from indoor groundwater use);
2. Land use-dependent concentrations protective of indoor inhalation;
3. Concentrations for the protection of ecological receptors (when such receptors are present); or
4. Non-domestic uses of groundwater (when such uses are present).

(G) Where the domestic use of groundwater pathway is incomplete, the groundwater delineation criteria will be based on other actually or potentially complete groundwater pathways, or concentrations protective of ecological receptors (when present).

(H) When a discharge of contaminated groundwater to a surface water body (perennial or intermittent stream, river, or lake) is suspected or known, water and sediment samples shall be collected both upstream and downstream of each point of discharge. The remediating party shall compare the sediment sample data with sediment criteria that are protective of human health and ecological receptors that can be obtained from literature or develop site-specific levels and delineate any sediment contamination based on the criteria determined to be applicable as per subsection (9)(D) above.

(I) The following information shall be collected for any surface water impacted by site-related COCs:

1. Distance to the surface water body. If the body is impacted, the distance is zero; if the body might be impacted, the distance should be measured from the leading edge of the groundwater plume or the down-gradient edge of the area of release to the water body;

2. Likely location where COCs from the site would discharge into a surface water body;

3. Flow direction and depth of any groundwater contamination plume(s) in relation to the water body;

4. Lake or stream classification as found in 10 CSR 20-7.031, Table G and Table H respectively;

5. Lake or pond acreage or stream 7Q10 flow rate;

6. Determination of the beneficial uses of the lake or stream as found in 10 CSR 20-7.031, Table G and Table H respectively; and

7. Water quality criteria based upon the beneficial uses of the lake or stream as found in 10 CSR 20-7.031, Table

A. If a water quality criterion for a COC is not available, contact the department project manager. If necessary, the project manager can then coordinate with the Water Protection Program (WPP) for further guidance.

(J) Access to Adjacent and Nearby Property Beyond the Source Property. When contamination at concentrations exceeding target levels applicable to residential land use has or is likely to migrate beyond one (1) or more boundaries of the property on which the contamination originated (i.e., the source property) and onto one (1) or more adjacent or nearby properties, the remediating party must gain access to all such properties in order to fully characterize the contamination and assess associated risks, unless the department determines that such access is not required.

1. If the remediating party is unable to gain access to an adjacent or nearby property from the owner of the property or the owner's authorized representative, the remediating party shall—

A. Document all unsuccessful attempts to gain access to the department and obtain concurrence from the department that the attempts to gain access were legitimate and reasonable and that further attempts by the remediating party need not be made;

B. Provide written notice of the contamination to the owner, or the owner's authorized representative, of the adjacent or nearby property to which access has been denied and document such notice to the department; and

C. Document to the department that all applicable target or risk levels have been met at the boundary of the source property and that actions have been taken to ensure that further migration off the source property of COCs at concentrations exceeding the criteria specified in subsections (9)(C) through (G) will not occur in the future.

2. Any letter of completion subsequently issued by the department shall include a statement regarding the denial of access and the property to which access was denied.

(10) Ecological Risk Assessment.

(A) The ecological risk assessment has three (3) levels—

1. Level 1 is a qualitative screening evaluation comprised of checklists A and B of the MRBCA guidance document;

2. Level 2 requires comparison of site-specific COC levels with applicable standards or criteria protective of ecological receptors available in literature; and

3. Level 3 allows for a site-specific evaluation.

(B) Level 1 ecological assessment shall be performed at every tier 1, 2, and 3 site to identify whether any ecological receptors or habitat exist at, adjacent to, or near the site. The following decision criteria shall be used:

1. If the answers to all of the checklist A questions are negative, no further ecological evaluation is necessary;

2. A positive answer to any one (1) of the questions in checklist A implies that a receptor or a habitat exists on or near the site and further evaluation is required, and this evaluation is ecological risk assessment checklist B;

3. If the answer to all of the checklist B questions are negative, the conclusion is that, even though a receptor exists on or near the site, a complete pathway to the receptor(s) does not exist and, therefore, there are no ecological concerns at the site; and

4. If the answer to one (1) or more of the seven (7) questions is positive, a level 2 or level 3 ecological risk assessment is necessary to determine whether contamination at the site poses an unacceptable risk to ecological receptors.

(C) A level 2 and/or level 3 evaluation is necessary only if ecological concerns continue to persist beyond the level 1 evaluation.

1. In a level 2 ecological risk assessment, site-specific COC concentrations that may reach an ecological receptor are compared to Missouri's Water Quality Standards or literature values when standards are not available. If the comparison of representative, site-specific soil, groundwater, surface water, or sediment values indicates that applicable values are exceeded, the remediating party may perform a level 3 ecological risk assessment or use the applicable water quality criteria or literature values as cleanup goals. If water quality criteria or literature values are used, then at least one (1) element of the risk management plan shall address remediation goals to protect ecological receptors.

2. A level 3 ecological risk assessment will include a detailed site-specific evaluation as per current EPA guidance on performing risk assessment. A level 3 ecological risk assessment will require the development of a site-specific, detailed work plan and approval by the department prior to its implementation. If a site-specific analysis determines that the risk to ecological receptors remains unacceptable, then at least one (1) element of the Risk Management Plan shall specify remediation goals to protect ecological receptors.

(11) Representative Concentrations.

(A) Estimating Representative Soil and Groundwater Concentrations. For each receptor—

1. Identify all media of concern;
2. Identify all complete exposure pathways under current and reasonably anticipated future conditions;
3. Identify the exposure domain for each media identified in step 1, and each complete exposure pathway identified in step 2;
4. Identify the chemical concentration data available within the exposure domain for each media; and
5. Calculate the representative concentration.

(B) To ensure the calculated average value is representative, take the following actions:

1. Do not use data beyond the exposure domain. If there is not enough data within the domain, additional data should be collected;
2. Replace the non-detect values with half the detection limit. Concentrations with a "J" laboratory qualifier should use the laboratory-estimated value;
3. If the maximum concentration of a chemical exceeds ten times the representative concentration for any exposure pathway, document the situation and explain its cause in the risk assessment report;
4. If the representative concentration is based in whole or in part on extrapolation using a model, the model must be supported by site-specific data;
5. For groundwater, estimate the average concentration in each well based on recent data, if data from multiple events is available, and then use the average of each well to estimate the representative concentration;
6. If multiple years of data are available for a well, use data from the two (2) most recent years to estimate the representative concentration. Justify the use of any data more than two (2) years old in the report;
7. If free product is present, use the effective solubility or effective vapor pressure to estimate COC concentrations associated with the free product at that point; depending on the extent, multiple data points might be needed to represent the full extent of free product;
8. If the area of impact is smaller than the exposure domain, the exposure factors may be modified in a tier 3 evaluation and representative concentrations calculated over the area of impact; and
9. Do not use soil data collected below the water table for the subsurface-soil-to-indoor-inhalation pathway. Groundwater data from the first encountered saturated zone is used for the groundwater-to-indoor-inhalation pathway.
10. In certain cases, the department may require that area-weighted averaging be used in the development of representative concentrations, in particular when data has been collected using a biased sampling protocol.

(C) Additional Information About Representative Concentrations.

1. For surficial soil concentration for leaching to groundwater, the exposure domain is the area of release. The representative surficial soil concentration is calculated using surficial soil data collected within this exposure domain.

2. For the surficial soil direct contact pathway, the representative concentration is based on the receptor's exposure domain, which is the area of the site over which the receptor might be exposed to the surficial soil. In the absence of specific information about the receptor's activities, the unpaved portion of a site is the receptor's exposure domain. For potential future exposures in the absence of any engineered controls, assume the pavement will be removed and the receptor will be exposed to surficial soil. For a non-resident worker, the average concentration over the domain may be used. For a child receptor (actual or potential and for residential land use), the maximum concentration is used and the representative concentration need not be calculated.

3. For subsurface soil, consider two (2) exposure pathways: leaching of residual chemical concentrations from subsurface soil to groundwater, and indoor inhalation of vapor emissions. Calculate a representative concentration for each complete pathway. Calculate additional representative concentrations if the receptor's domain differs under current and reasonably anticipated future conditions.

4. For the construction worker receptor, consider incidental ingestion, dermal contact and outdoor inhalation of vapors and particulates from soil, outdoor inhalation of vapors from groundwater, and dermal contact with groundwater. For representative soil concentration for the construction worker, no distinction is made between surficial and subsurface soil. Estimate the representative concentration based on the depth of construction and the areal extent of construction. If the areal extent of the construction area is not known, assume construction will be within the area of release unless there are site limitations that would prevent construction in that area. For representative groundwater concentrations for construction worker, estimate the areal extent of the construction zone. The representative concentration is calculated using data from within this zone.

5. Groundwater.

A. For groundwater, consider three (3) exposure pathways: ingestion, dermal contact, and indoor inhalation of vapor emissions from groundwater. The analysis considers specific aquifers that are or might be used for domestic use or in any other manner in which dermal contact could occur. Representative concentrations shall be calculated for each aquifer that is or is reasonably likely to be used for domestic purposes. The shallowest aquifer is considered for the indoor inhalation of vapor emissions from groundwater pathway.

B. For the groundwater domestic use pathway, maximum contaminant levels (MCLs) or, where MCLs are not established, calculated risk-based concentrations shall be met at the point of exposure. The point of exposure well may be hypothetical. One (1) or more point-of-demonstration wells shall be established, if possible. Target concentrations shall be calculated for both point of exposure and point-of-demonstration wells. The representative concentration at the point of exposure or demonstration are calculated as follows. If chemical concentrations in groundwater are stable, the representative concentration is the arithmetic average of the most recent data collected over a period of at least two (2) years on at least a quarterly basis. If chemical concentrations are decreasing, the representative concentration is the arithmetic average of the most recent data collected over a period of at least one and one-half (1½) years on at least a quarterly basis.

C. For representative groundwater concentration for the protection of indoor inhalation, use a model approved by the department.

D. For the indoor inhalation of vapors from groundwater pathway, the calculation of multiple representative concentrations may be required if the plume has migrated below several current or potential future buildings.

E. For representative groundwater concentration for dermal contact, use the average concentration of chemicals in the groundwater that a receptor might contact. More than one (1) representative concentration may be needed if a receptor might contact groundwater from more than one (1) aquifer or saturated zone.

(12) Selection of COCs for MRBCA Evaluation.

(A) The remediating party may focus the risk assessment on the data for chemicals of concern (COCs) that contribute to the total risk at a site and eliminate—

1. Data analyzed using an outdated analytical method or a wrong and unproven method;
2. Data that is not adequately supported by corresponding quality assurance/quality control (QA/QC) data/measures;
3. Data that is not considered representative of current conditions; or
4. Data collected prior to earlier remediation at the site, if that remediation affected or likely affected that data.

(B) If data is eliminated, it should be replaced with better data unless the eliminated data is not necessary for site characterization or risk assessment purposes. Eliminating COCs from further consideration due to laboratory artifacts or common laboratory contaminants shall be supported by site-specific QA/QC information.

(C) If more than thirty (30) chemicals are selected as COCs, additional chemicals may be eliminated by the use of the toxicity screen (EPA, 1989). The screening procedure shall identify and possibly eliminate chemicals that are likely to contribute relatively little (less than one percent (1%)) to the total risk. Use the following steps to complete this procedure:

1. Identify the maximum concentration of the chemical in each media;
2. Select the toxicity value(s). For chemicals that have different toxicity values for various routes of exposure, use the most health-protective toxicity value;
3. Estimate the carcinogenic and non-carcinogenic toxicity score by multiplying the concentration with the slope factor, and by dividing the concentration with the reference dose, respectively;

4. Estimate the site score by adding the toxicity score for each chemical and each media. A separate site score is calculated for carcinogenic and non-carcinogenic effects; and

5. Estimate the percent contribution of each chemical to the site score and eliminate chemicals that have a very low score relative to the other chemicals.

(D) Document the rationale for the elimination of any chemicals. During the tier 1, tier 2, or tier 3 evaluation, chemicals that were eliminated shall be reviewed and a determination made of whether their inclusion would have resulted in an unacceptable risk.

(13) Applicable Target Levels. Use the published values as default target levels (DTLs) and tier 1 risk-based target levels. These may also be used in tier 2 evaluation. Use the following parameters to calculate the tiers 2 and 3 site-specific target levels: 1) acceptable risk level; 2) chemical-specific toxicological factors; 3) chemical-specific physical and chemical properties; 4) receptor-specific exposure factors; 5) fate and transport parameters; and 6) mathematical models.

(A) Tier 1 Target Levels. Tier 1 risk-based target levels are calculated for each COC, each receptor (child, adult resident, age-adjusted resident, non-residential worker, and construction worker), and each of the following exposure pathways using conservative assumptions applicable to most Missouri sites. Tier 1 risk-based target levels are not adjusted for the presence of other exposure pathways and COCs, and any additional exposure pathways shall be considered in using these levels. The pathways included in paragraph (8)(B)3. are considered in tier 1.

(B) Tier 2 Target Levels. The remediating party shall calculate the site-specific target levels for all COCs and all complete exposure pathways using technically justifiable, site-specific fate and transport data and taking into consideration target risk and the additive effect of multiple COCs and multiple complete exposure pathways. The default fate and transport models used for developing the tier 1 risk-based target levels shall be used.

(C) Tier 3 Target Levels. Tier 3 target levels are calculated for the pathways listed in paragraph (8)(B)3. In addition, target levels must be calculated for all other complete exposure pathways that may include exposure through, for instance, ingestion of produce grown in impacted soils; use of groundwater for irrigation purposes; use of groundwater for industrial purposes; or ingestion of fish or other aquatic organisms that have bioaccumulated COCs through the food chain as a result of surface water or sediment contamination. Alternative fate and transport models, different exposure factors and scenarios, the most current toxicity factors and chemical and physical properties, and site-specific data may be used to develop tier 3 site specific target levels if approved by the department.

(D) Risk Levels. For carcinogenic effects, risk is quantified using individual excess lifetime cancer risk (IELCR), and, for non-carcinogenic effects, the risk is quantified using a hazard quotient (HQ) or hazard index (HI). A hazard index is the sum of hazard quotients when multiple chemicals and multiple exposure pathways are evaluated. For evaluating the groundwater domestic use pathway, maximum contaminant levels (MCLs) are used as the target concentrations at the point of exposure. For COCs that do not have MCLs, the target concentration at the point of exposure (POE) is estimated assuming ingestion of, dermal contact with, and indoor inhalation of vapors from groundwater use under residential conditions. Potential impacts to surface waters from a release shall be evaluated against water quality standards (10 CSR 20-7.031). Other potentially toxic substances for which sufficient toxicity data are not available may not be released to waters of the state until safe levels are demonstrated through adequate bioassay studies. Tier 1 risk-based target levels are based on risk levels of 1×10^{-5} for the carcinogenic chemicals and a hazard quotient of 1.0 for non-carcinogenic chemicals and do not account for cumulative site-wide risk. These target levels shall be adjusted to address cumulative site-wide risk at each risk assessment level. The acceptable risk levels are presented in subsection (4)(D).

(14) Conducting a Tier 1 Risk Assessment. If the maximum soil or groundwater concentrations exceed the default target levels (DTLs) and the remediating party wishes to continue the risk-based remediation, the remediating party shall either conduct the cleanup using DTLs as cleanup levels or complete a tier 1 risk assessment as follows. A tier 1 risk assessment consists of the following steps:

(A) Compile relevant site characterization data including that necessary to determine the predominant vadose zone soil type;

(B) Develop an exposure model, including—

1. All complete exposure pathways for current and reasonably anticipated future land use;
2. The exposure domain for each complete exposure pathway identified above; and
3. The point of exposure for each exposure pathway;

(C) Collect data to fill any site characterization or risk assessment data gaps;

(D) Calculate media and pathway-specific representative concentrations for chemicals of concern (COCs). If the risk calculated with the use of the maximum concentrations meets the tier 1 risk-based target levels, calculation of representative concentrations is not necessary;

(E) Compare representative site concentrations with selected tier 1 risk-based target levels from lookup tables of the guidance document referenced in section (22). For residential land use, tier 1 values are the lower of the values for the three (3) receptors: child, adult, and age-adjusted individual;

(F) Calculate cumulative site-wide risk and compare with acceptable risk at each risk assessment level. The cumulative site-wide risks calculated in this step are compared with acceptable cumulative site-wide risk levels. The cumulative site-wide risk is calculated for each receptor using the following two (2)-step process:

1. The risk of each chemical for each complete (current or future) exposure pathway; and
2. The total risk for each chemical (sum of risk for all exposure pathways) and the site-wide risk (sum of risk of all chemicals for all pathways) for each receptor;

(G) Evaluate the next course of action. The remediating party may request that the department issue a letter of completion for the site if—

1. The analysis indicates that both the cumulative site-wide risk (all chemicals and all complete pathways) and the risk for each chemical (all complete pathways) for all receptors is acceptable; or

2. The representative concentration for all COCs and all complete exposure pathways are below the tier 1 risk-based target levels;

(H) Document the tier 1 risk assessment and recommendations. If a tier 2 assessment is also conducted, both tier 1 and tier 2 assessments may be submitted as one (1) report. The tier 1 risk assessment report shall include, but not necessarily be limited to, the following:

1. Site background and chronology of events;
2. Data used to perform the evaluation;
3. Documentation of the exposure model and its underlying assumptions;
4. If cumulative risk calculation is required, the estimated risk for each chemical, each exposure pathway, each receptor, each media, and the cumulative site-wide risk for each receptor;
5. Recommendations based on the tier 1 risk assessment (either tier 2 assessment or preparation of a risk management plan); and
6. If a letter of completion is requested, documentation that both the cumulative site-wide risk (all carcinogenic and non-carcinogenic COCs and all complete pathways) and the risk for each COC (carcinogenic and non-carcinogenic and all complete pathways) for all receptors have been met or that representative concentrations for all COCs and all exposure pathways are below the tier 1 risk-based target levels;

(I) To conclude a remediation at tier 1, the following four (4) conditions must be met:

1. If relevant, a groundwater plume is stable or decreasing. If this condition is not satisfied, the remediating party shall continue groundwater monitoring until the plume is demonstrably stable or successfully run an approved predictive model to demonstrate the extent to which COC concentrations will increase or the areal extent of the plume will expand and how such increases or expansion will effect the conclusions of the tier 1 risk assessment;

2. The maximum concentration of any COC in any sample used in developing a representative concentration is less than ten (10) times the representative concentration of that COC for any exposure pathway. This condition can be met if an exceedance can be explained by any of the following, appropriate action is taken to address the condition, and the department approves the risk assessment with this explanation:

A. The maximum concentration is an outlier; or

B. Other explanation satisfactory to the department;

3. Pursuant to section (18), long-term stewardship is established if any contaminant of concern exceeds unrestricted levels after cleanup; and

4. There are no ecological concerns at the site, as determined by confirmation that the maximum representative concentrations are below levels protective of ecological receptors or completion of the ecological risk assessment. This condition can be met if an unacceptable ecological risk can be managed through actions recommended in the risk management plan and approved by the department; and

(J) If the remediating party chooses to remediate the site to meet the tier 1 risk-based target levels, the cleanup criteria are the lowest of the concentrations protective of human health, both carcinogenic and non-carcinogenic, and ecological receptors.

(15) Conducting a Tier 2 Risk Assessment. If any of the representative concentrations at the site are above the tier 1 risk-based target levels or if the cumulative site-wide risk exceeds acceptable target risk levels, and the remediating party wishes to continue the risk-based remediation, the remediating party shall either conduct the cleanup using tier 1 risk-based target levels or complete a tier 2 risk assessment as follows. A tier 2 risk assessment may also be required by the department if the site-specific fate and transport parameters or other site conditions are different from the default assumptions used to develop tier 1 risk-based target levels. Concluding a tier 2 risk assessment is subject to the conditions in subsection (14)(I). A tier 2 risk assessment shall include the following steps:

(A) Compile site-specific fate and transport parameters. Fate and transport parameters are considered site-specific if they are—

1. Measured on site at the appropriate location using approved methods;
2. Literature values justified as being representative of site conditions;
3. Default values justified as representative of current conditions at the site or shown to be conservative based on site conditions; or

4. Documented values from a nearby site in a similar hydrogeologic setting. In cases that show considerable variability in fate and transport parameter values, the department may require a sensitivity analysis. The guidance document provides considerations related to each parameter that may be considered in a tier 2 analysis; deviations from the guidance document in the development of any parameter must be explained in the risk assessment document;

(B) Calculate Tier 2 Risk Levels. At tier 2, risk values shall be individually calculated for each COC and each complete exposure pathway. Then the total risk for each COC and the cumulative site-wide risk shall be calculated. In calculating the tier 2 risk, the models, physical-chemical properties, toxicological properties, and exposure factors will be the same as used in the tier 1 risk calculations;

(C) Tier 2 risks for each COC and the total site-wide risk will be compared with the acceptable risk levels. The total acceptable individual excess lifetime cancer risk for each COC is 1×10^{-5} . The acceptable risk level for site-wide cumulative individual excess lifetime cancer risk is 1×10^{-4} . The acceptable hazard quotient (HQ) for each COC and each exposure pathway as well as the hazard index is 1.0. Based on this comparison, one (1) of the following four (4) outcomes is possible:

1. The calculated individual excess lifetime cancer risk for each COC and the cumulative site-wide individual excess lifetime cancer risk are below the acceptable risk levels. In such case, it is not necessary to develop tier 2 site-specific target levels for carcinogenic effects;

2. Either the individual COC or the cumulative site-wide individual excess lifetime cancer risk exceeds the acceptable risk level. In such case, tier 2 site-specific target levels shall be developed;

3. The calculated cumulative site-wide hazard index (sum of the hazard quotients for all chemicals for all exposure pathways) is acceptable (less than 1.0). In such case, it is not necessary to develop tier 2 site-specific target levels for non-carcinogenic adverse health effects; and

4. The hazard quotient for each COC is acceptable (less than 1.0), but the site-wide hazard index is unacceptable (greater than 1.0). In such case, the remediating party may segregate the COCs by target organ, system, or mode of action and derive hazard indices for each. If each of these cumulative hazard indices is acceptable (less than 1.0), it is not necessary to develop tier 2 site-specific target levels for these COCs for non-carcinogenic health effects. If not acceptable (greater than 1.0), site-specific target levels for the COCs in the group that exceed the hazard index of 1.0 shall be developed. A toxicologist shall perform this analysis. In calculating the hazard index, COCs with multiple effects shall be included in each category of organ affected by that COC;

(D) Calculate Tier 2 Site-Specific Target Levels. If risk levels (carcinogenic and non-carcinogenic, individual and site-wide) are exceeded and remediation is not proposed to lower risk to acceptable levels, tier 2 site-specific target levels shall be developed as per subsection (13)(B);

(E) Evaluate the Next Course of Action.

1. The remediating party may request that the department issue a letter of completion for the site if—

- A. The representative concentration for all COCs and all the exposure pathways are below the tier 2 site-specific target levels; or

- B. The analysis at subsections (15)(B) and (C) indicates that both the cumulative site-wide risk (all chemicals and all complete pathways, cancer and hazard indices) and the risk for each chemical (all pathways, cancer and hazard indices) for all receptors is acceptable; and

- C. All other conditions in subsection (14)(I) are satisfied.

2. The remediating party shall decide either to use the calculated tier 2 site specific target levels as the cleanup levels and conduct corrective action to meet these levels or perform a tier 3 risk assessment if the analysis determines—

- A. The risk any chemical poses (all pathways, cancer and hazard indices) to any human or ecological receptor exceeds acceptable levels; or

B. The cumulative site-wide risk (all chemicals and all complete pathways, cancer and hazard indices) exceeds acceptable levels; or

C. The representative concentrations exceed the calculated tier 2 site specific target levels.

3. Based on the decision above, the remediating party shall recommend one (1) of the following:

A. Remediation to tier 2 site-specific target levels. If the remediating party decides to remediate the site to tier 2 site-specific target levels, the cleanup levels will be the lower of concentrations protective of human health, both carcinogenic and non-carcinogenic, and ecological receptors; or

B. Performance of a tier 3 risk assessment; and

(F) The risk assessment shall be documented. If a tier 1 risk assessment is also conducted, both tier 1 and tier 2 risk assessments may be submitted as one (1) report. The tier 2 risk assessment report shall include but is not necessarily limited to the following:

1. Site background and chronology of events;

2. Data used to perform the evaluation including, as applicable, calculated tier 2 site-specific target levels;

3. Documentation of the exposure model and its assumptions;

4. Documentation and justification of all fate and transport parameters used in the development of tier 2 site-specific target levels;

5. Estimated risk for each COC, each exposure pathway, and each receptor, and the cumulative site-wide risk for each receptor and media;

6. Recommendations based on the tier 2 risk assessment; and

7. If a letter of completion is requested, documentation that all four (4) of the risk conditions (carcinogenic and non-carcinogenic chemicals, individual and site-wide risk) and the conditions listed in subsection (14)(I) have been met.

(16) Conducting a Tier 3 Risk Assessment. If any of the representative concentrations at the site are above the tier 2 site-specific target levels or if the individual or cumulative site-wide risks exceed acceptable target risk levels, and the remediating party wishes to continue the risk-based remediation, the remediating party shall either conduct the cleanup using tier 2 site-specific target levels or complete a tier 3 risk assessment as follows. A tier 3 risk assessment may use the most recent toxicity factors, physical and chemical properties, site-specific exposure factors, and alternative models. Concluding a tier 3 risk assessment is subject to the conditions in subsection (14)(I). A tier 3 risk assessment consists of the following steps:

(A) Develop a tier 3 work plan. The tier 3 risk assessment must consider the receptors for which risks exceed acceptable levels as determined in tier 2 and any additional receptors identified in tier 3. Receptors for which risks do not exceed acceptable risk levels as determined at tier 2 need not be evaluated. All chemicals of concern (COCs) considered in the tier 2 risk assessment must be considered in the tier 3 analysis unless new data collected after the tier 2 assessment indicates they no longer pose unacceptable risk and the condition can be documented to the department, in which case the COCs may be eliminated from consideration. The department must approve a tier 3 work plan. The technical portion of the work plan shall include but not necessarily be limited to the following:

1. Identification of the receptors that will be evaluated in tier 3;

2. Identification of the COCs and the exposure pathways for which tier 3 risk will be calculated;

3. An explanation of the fate and transport models to be used for the calculation of risk for the identified exposure pathways;

4. A tabulation of the input parameters required to calculate the tier 3 risk and a justification for the use of each selected value;

5. A discussion of the data and the methodology that will be used to calculate the representative concentrations;

6. An explanation of data gaps, if any, that require additional fieldwork and a scope of work for the collection of this data;

7. A discussion of the variability and uncertainty in the input parameters and the manner in which the impact of this variability on the final risk will be evaluated; and

8. An evaluation of ecological risk, if any, in addition to ecological risk assessments previously completed;

(B) Collect additional data, if necessary. Upon approval of the Tier 3 work plan, the remediating party shall perform the necessary fieldwork to collect the data. Any changes in the data collection due to field conditions or logistics of fieldwork shall be discussed with the department prior to completion of the field effort;

(C) Calculate tier 3 risk. Estimate the carcinogenic and non-carcinogenic risk for all COCs, receptors, and exposure pathways, using the models and data in accordance with the approved work plan. At tier 3, the risk values shall be calculated for each COC and each exposure pathway. The total risk for each COC (sum of risk for all the complete exposure pathways for a COC) and the cumulative site-wide risk (sum of risk for all COCs and all complete exposure pathways) shall then be calculated. Ecological risk must also be considered according to the work plan;

(D) Compare tier 3 risks with acceptable risk levels. Total risks for each COC as well as cumulative site-wide risk for each receptor are compared with respective acceptable risk levels. If the calculated risks for each COC and the cumulative site-wide risk do not exceed the target risk levels, tier 3 site-specific target levels need not be developed, and, if the other conditions set forth in subsection (14)(I) are satisfied, the remediating party may request a letter of completion from the department;

(E) The remediating party shall develop site-specific target levels and propose remedial actions to achieve these levels if the analysis finds that either—

1. The total risk any COC poses (considering all pathways and both carcinogenic and non-carcinogenic risk) to any of the human or ecological receptors is unacceptable; or

2. The cumulative site-wide risk (considering all COCs, all complete pathways, and both carcinogenic and non-carcinogenic risk) posed to any of the human or ecological receptors is unacceptable. The site-specific target levels and the methodologies used to achieve these levels shall be included in the risk management plan; and

(F) The remediating party shall submit a tier 3 risk assessment report that clearly describes the data and methodology used, key assumptions, results, and recommendations. Any deviation from the approved scope of work, the rationale for the deviation, and approval by the department shall be clearly documented in the report. The report shall include but not necessarily be limited to—

1. Site background and chronology of events;

2. Data used to perform the evaluation, including any calculated tier 3 site-specific target levels;

3. Documentation of the exposure model and its assumptions;

4. Documentation and justification of all input parameters used;

5. Estimated risk for each COC, each exposure pathway, each receptor, and the site-wide risk for each receptor and media;

6. Recommendations based on the tier 3 risk assessment; and

7. If a letter of completion is requested, documentation that all the risk conditions (carcinogenic and non-carcinogenic chemicals, individual and site-wide risk) and the conditions at subsection (14)(I) have been met.

(17) Data Quality. Following are the areas that shall be addressed to meet quality assurance/quality control requirements for environmental measurement data collected as part of the MRBCA process. These minimum requirements include the necessary components for work plans submitted for department approval to conduct environmental data collection and the necessary QA/QC documentation to be submitted after data collection.

(A) Work plans for site characterization must include the following, each of which is subject to QA/QC requirements:

1. Sampling and analysis plan;

2. Field sampling plan; and

3. Quality assurance project plan.

(B) Characterization reports, including tier 1, tier 2, and tier 3 risk assessment reports, are subject to QA/QC requirements, in particular—

1. Field QA/QC documentation requirements; and

2. Laboratory QA/QC documentation requirements.

(C) For field QA/QC planning and documentation, the following practices shall be observed, if applicable:

1. Calibration and maintenance records for field instrumentation;

2. Documentation of sample collection procedures;

3. Reporting of any variances made in the field to sampling plans, standard operating procedures (SOPs), or other applicable guidance documents;

4. Reporting of all field analysis results;

5. Documentation of sample custody (provide copies of chain-of-custody documents);

6. Documentation of sample preservation, handling, and transportation procedures;

7. Documentation of field decontamination procedures (and, if applicable, collection and analysis of equipment rinsate blanks);

8. Collection and analysis of all required duplicate, replicate, background, and trip blank samples; and

9. Documentation of disposal of investigation-derived wastes.

(D) All analytical data shall be accompanied by QA/QC sample results. The following shall be considered in laboratory QA/QC planning and documentation, if applicable:

1. If the published analytical method used specifies QA/QC requirements within the method, those requirements shall be met and the QA/QC data reported with the sample results;

2. At a minimum, QA/QC samples shall consist of the following items (where applicable):

A. Method/instrument blank;

B. Extraction/digestion blank;

C. Initial calibration information;

D. Initial calibration verification;

E. Continuing calibration verification;

F. Laboratory fortified blanks/laboratory control samples;

G. Duplicates;

H. Matrix spikes/matrix spike duplicates;

I. Rinsate when equipment will be reused; and

J. Documentation of appropriate instrument performance data such as internal standard and surrogate recovery.

(E) Risk Management Plan. If the risk management plan involves environmental data collection, such as further site characterization, confirmatory samples shall follow the requirements of subsection (17)(A). If the risk management plan does not involve sampling but only LTS (including but not limited to AULs), then data QA/QC would not be a component.

(F) Completion of Risk Management Plan. If implementation of the risk management plan involves sampling, then the following components, as explained in subsections (17)(C) and (D) above, pertain—

1. Field QA/QC documentation requirements; and

2. Laboratory QA/QC documentation requirements.

(18) Long-Term Stewardship (LTS) for Risk-Based Corrective Action Sites.

(A) Activity and use limitations (AULs) shall be used at any site where a chemical of concern concentration exceeds unrestricted use levels after cleanup. Where required, AULs shall be fully developed and proposed as part of the risk management plan. To be approved, a risk management plan with proposed controls must be consistent with this rule and any other controls or limitations that are required by the specific legal authority governing the cleanup. AULs shall be established as environmental covenants pursuant to sections 260.1000 to 260.1039, RSMo, or, alternatively, AULs for groundwater contamination at a site may be addressed through an ordinance and memorandum of agreement described in subsection (18)(G) below or well location and construction restrictions described in subsection (18)(J) below. Department of Defense sites may be addressed through subsection (18)(H) below. Environmental covenants may be supplemented with other AULs as provided in subsections (18)(I) and (18)(J) below.

(B) AULs shall guarantee that pathways of exposure to chemicals of concern (COCs) remain incomplete for as long as there are chemicals remaining that could pose an unacceptable risk to human health, public welfare, or the environment.

(C) AULs shall be readily accessible, durable, reliable, enforceable, and consistent with the risk posed by the COCs. Environmental covenants, letters of completion, and any additional requirements of the authority under which remediation is being performed apply to the property.

(D) Environmental covenants shall be enforceable by the department and shall contain the following elements:

1. State that the instrument is an environmental covenant executed under sections 260.1000 to 260.1039, RSMo;

2. Contain a legally sufficient description of the real property subject to the covenant;

3. Describe the activity and use limitations on the real property;

4. Identify every holder. In addition, identify any lienholder or person who otherwise owns a prior interest in the property as described in section 260.1006.1, RSMo, and whether such interests are subordinated to the environmental covenant, or alternatively, provide a title insurance commitment or other documentation demonstrating the property is free and clear of liens;

5. Be signed by the department, every holder, and, unless waived by the department, every owner of the fee simple of the real property subject to the covenant; and

6. Identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(E) The following elements may be included in an environmental covenant for clarity or based on site-specific conditions:

1. Requirements for notice following transfer of a specified interest in, concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on the property subject to the covenant;
2. Requirements for periodic reporting describing compliance with the covenant;
3. Rights of access to the property granted in connection with implementation or enforcement of the covenant;
4. A brief description of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;
5. Limitation on amendment or termination of the covenant in addition to those contained in sections 260.1024 and 260.1027, RSMo; and
6. Rights of the holder in addition to its right to enforce the covenant under section 260.1030, RSMo.
7. The department may require those persons specified by the department who have interests in the real property to sign the covenant.

(F) A copy of the recorded covenant that references the book and page of recording shall be submitted to the department as part of the completion of the risk management plan report before the department will issue a letter of completion. The covenant does not become effective until it is officially recorded in the chain of title for the property. A covenant remains in effect unless amended or terminated in accordance with section 260.1024 or 260.1027, RSMo. The use of a site shall be consistent with the terms of the environmental covenant established on the property.

(G) Ordinances and Supporting Memoranda of Agreement. An ordinance and supporting memorandum of agreement may be used as an AUL if it prohibits the installation of water supply wells and requires the closure of any existing private wells, but does not expressly prohibit the installation of public potable water supply wells and require the closure of such wells owned and operated by units of local government that are part of the agreement. Monitoring wells shall not be used for providing a potable water supply, and shall be managed in accordance with 10 CSR 23-4. In a request for approval of a local ordinance and supporting memorandum of agreement as an AUL, the remediating party shall submit the following to the department:

1. A copy of the ordinance restricting groundwater use, including prohibitions on new wells, certified by an official of the unit of local government representative of the area in which the site is located that it is a true and accurate copy of the ordinance, and supporting information including—

- A. A scaled map(s) delineating the area and extent of groundwater contamination above the applicable remediation objectives including a summary of any measured data showing concentrations of chemicals of concern for which the applicable remediation objectives are exceeded;

- B. Scaled map delineating the boundaries of all properties under which groundwater is located that exceeds the applicable groundwater remediation objectives and information identifying the current owner(s) of each property identified in the boundary map;

- C. Documentation that the current owners identified in subparagraph (18)(G)1.B. above have been notified that groundwater that extends beneath their property is the subject of a risk-based cleanup and that each has been sent a copy of this request as submitted to the department; and

- D. Documentation that the current property owners identified in subparagraph (18)(G)1.B. above have been notified of the intent to use the local ordinance as an AUL; and

2. A supporting memorandum of agreement (MOA) between the department and the local government which includes the following provisions:

- A. Identification of the authority of the unit of local government to enter into the MOA;

- B. Identification of the legal boundaries, or equivalent, to which the ordinance is applicable;

- C. A certified copy of the ordinance expressly prohibiting the installation of public and private potable water supply wells, the use of such wells, and the closure of existing wells;

- D. A commitment by the unit of local government to notify the department of any variance requests or proposed ordinance changes at least thirty (30) days prior to the date the local government is scheduled to take action on the request or proposed change;

- E. A commitment by the unit of local government to maintain a list of all sites within the geographical unit of local government that have received letters of completion under the MRBCA process;

- F. A provision that allows departmental access to information necessary to monitor adherence to requirements in subparagraphs (18)(G)2.D. and (18)(G)2.E. above;

- G. If applicable, the terms of any commitment by the local government to reimburse the department for periodic review of the local ordinance and actions relating to it, and for any actions taken by the department to address increased risks that arise from actions taken by the local government on the ordinance or related to it; and

- H. The commitment of the local government to enforce the ordinance.

(H) For any Department of Defense (DOD) properties that contain contaminants of concern exceeding unrestricted use levels after cleanup, an environmental covenant will be required at the time that such property is transferred to a non-federal entity or person. For property owned by the DOD, other land use or institutional control mechanisms may be used as part of the risk management plan if approved by the department.

(I) Engineered controls or barriers may be used as AULs as part of the risk management plan to prevent direct human or environmental exposure to contaminants, and environmental covenants shall accompany their use. Any letter of completion determination that is based, in whole or in part, upon the use of engineered controls requires effective inspection and maintenance of the engineered control. The inspection, maintenance, and integrity certification requirements will be included in the risk management plan and environmental covenant.

(J) Well location and construction restrictions pursuant to 10 CSR 23-3 may be used as AULs to the extent that they restrict access to certain groundwaters and thus limit the pathway for contaminants.

(19) Risk Management Plan.

(A) A risk management plan shall encompass all activities necessary to manage a site's risk to human health, public welfare, and the environment so that acceptable risk levels are not exceeded under current or reasonably anticipated future land use conditions. The risk management plan shall ensure that assumptions made in the estimation of risk and development of applicable target levels are not violated in the future, and the groundwater extent of contamination is stable or decreasing. A site-specific risk management plan, approved by the department, is required at a site under any one (1) of the following conditions:

1. The total (sum of all pathways) carcinogenic risk for any COC exceeds 1×10^{-5} ;
2. The hazard index (sum of all pathways) for any COC exceeds 1.0 (or, if appropriate, the hazard index for individual organ, system, or mode of action);
3. The cumulative site-wide carcinogenic risk (sum of COCs and all exposure pathways) exceeds 1×10^{-4} ;
4. The site-wide hazard index (sum of COCs and all exposure pathways) for individual adverse health effects exceeds 1.0 (or, if appropriate, the hazard index for individual organ, system, or mode of action);
5. Although neither the carcinogenic or non-carcinogenic risk for any COC nor the site-wide risk exceeds acceptable levels, the risk assessment was based on site-specific assumptions that require a risk management plan;
6. Although neither the carcinogenic nor non-carcinogenic risk for any COC nor the site-wide risk exceeds acceptable levels, the groundwater plume is expanding and such expansion, either as an increase in COC concentrations or a physical expansion of the plume, would result in unacceptable risks;
7. There are hot spots where sample results exceed ten (10) times average concentrations, and these pose unacceptable risks; or
8. Ecological risk does not meet the acceptable criteria.

(B) Successful implementation of the risk management plan will result in a letter of completion from the department. The department will approve the risk management plan as submitted or provide comments. Upon receipt of approval, the remediating party shall implement the plan. The plan shall include—

1. Rationale explaining why the risk management plan was prepared and the specific objectives of the plan;
2. Reference to the approved risk assessment report;
3. An explanation of technologies to be used to reduce mass, concentration, or mobility of COCs to meet the applicable target levels determined for the site or specific engineering activities to be used to mitigate excessive risks;
4. Data to be collected and quality control/quality assurance procedures for collection, documentation, analysis, and reporting during the implementation of the risk management plan;
5. Application of long-term stewardship provisions to eliminate certain pathways of exposure or to ensure pathways remain incomplete under current and reasonably anticipated future uses and that site information remains publicly available;
6. If needed, monitoring demonstrating plume stability or the effectiveness of monitored natural attenuation;
7. A schedule for implementation of the plan, including all major milestones and all deliverables to the department, and a requirement to conduct a review five (5) years following completion where appropriate. Such a requirement would be included in an AUL;
8. Criteria to determine whether the risk management plan has been successfully implemented; and
9. As needed, contingency plans if the risk management plan fails to provide adequate protection in a timely manner.

(20) Completion of Risk Management Activities. Upon successful implementation of the approved risk management plan, the remediating party shall submit a completion of the risk management plan report to the department for approval that includes but is not necessarily limited to—

(A) Documentation of completion of all risk management activities; and

(B) If applicable, a request to plug and abandon all nonessential monitoring wells related to the environmental activities at the site.

(21) Public Participation and Notice.

(A) When contamination in any media at concentrations exceeding target levels applicable to residential land use has or is likely to migrate beyond one (1) or more boundaries of the property on which the contamination originated (i.e., the source property) and onto one (1) or more adjacent or nearby properties, the department will provide notice to those members of the public directly affected by the contamination and the planned risk management activities. Where it determines appropriate, the department will also provide notice to the local (city or county) government.

(B) If the department determines that implementation of an approved risk management plan has failed to achieve applicable target or risk levels or otherwise successfully mitigate excessive risks associated with contamination, and the department is considering terminating the RMP, the department will provide public notice regarding the failure of the RMP to those members of the public directly affected by the contamination and the RMP and, as appropriate, the local government.

1. Notice may be made via one (1) or more of the following means or other means determined appropriate by the department:

A. Notice in newspapers having circulation in the area in which the site is located;

B. Block advertisements;

C. Public service announcements;

D. Publication in a state register;

E. Letters to individual households;

F. Letters to property owners;

G. Letters to government agencies; or

H. Personal contacts by department field staff.

2. The notice will provide for a minimum of thirty (30) days in which to submit comments to the department regarding the subject of the notice. The notice must specify a date by which comments must be submitted to the department, a contact for the department and a telephone number at which that person may be contacted, and the department's mailing address and electronic mail address to which comments shall be directed.

(C) In each instance in which the department determines that public notice as per subsection (21)(A) or (21)(B) above is required, before providing the public notice, the department will give the remediating party an opportunity to provide the required public notice in lieu of the department. If the remediating party declines, fails to meet notification deadlines as prescribed by the department, or provides notice the department believes to be inadequate, the department will provide the public notice.

(D) When contamination associated with a site is, without cleanup or other actions, contained to the property on which the contamination originated such that chemicals of concern at concentrations above residential target levels do not extend off the property of origin, and, after cleanup, one (1) or more chemicals of concern exist on the property at concentrations exceeding unrestricted use levels such that an AUL per subsection (18)(A) is required, the department, or the remediating party in lieu of the department, will notify the local government in writing.

1. The notification shall include a description and address of the property, the name and address of the remediating party, the name and address of the department contact, and an explanation of the type and extent of contamination, that the cleanup levels applied pertained to non-residential land use, and that an AUL has been recorded in the property chain of title to restrict certain uses of and activities on the property. A copy of the AUL, as recorded with the Office of the Recorder, must be included with the notification.

2. If local government notification is made by the remediating party in lieu of the department, the remediating party must submit a copy of the written notification provided to the local government to the department with documentation appropriate to demonstrate that the local government received the notification.

(E) The department will review each comment received as a result of the public notice provided for above and determine an appropriate response to each and collectively.

(22) Procedure for Letter of Completion.

(A) After the risk management plan has been successfully implemented, the remediating party may request a letter of completion from the department. The department will issue a letter if it determines that all requirements of the approved risk management plan have been satisfied. The letter would state that, based on the information submitted, the concentrations of COCs on the site do not pose an unacceptable level of risk to human health, public welfare, and the environment for the current and reasonably anticipated future land use and provided that all applicable long-term stewardship requirements remain in place.

(B) The department will include all of the following in a letter of completion:

1. An acknowledgement that the requirements of the risk management plan were satisfied, including reference to the administrative record supporting completion of the site work and acknowledging continuing requirements of the risk management plan, if any;

2. The use level of remediation objectives specifying any long-term stewardship requirements imposed as part of the remediation efforts;

3. A statement that the department's issuance of the letter of completion signifies achievement of risk reduction under applicable laws and regulations in implementing the approved risk management plan, other than any continuing requirements of the risk management plan, and that the site does not present unacceptable risks to human health, public welfare, and the environment based upon currently known information. If the site is part of a larger parcel of property or if the remediating party limited the cleanup to specific environmental conditions and related contaminants of concern, or both, the letter of completion may include this information;

4. The prohibition against the use of the site in a manner inconsistent with any use limitation imposed as a result of the remediation efforts without additional appropriate remedial activities;

5. A description of any preventive, engineered, or institutional controls or monitoring, including long-term monitoring of wells, required in the approved risk management plan or a reference identifying where risk management plan information can be found;

6. The obligation to record the letter of completion in the chain of title for the site;

7. Notification that further information regarding the site can be obtained from the department through a request under the Missouri Sunshine Law (Chapter 610, RSMo);

8. A standard agency reservation of rights clause for previously unknown or changing site conditions. This wording may vary depending upon the authority overseeing the remediation;

9. Notification that the letter of completion may be voided for reasons listed in subsection (21)(E); and

10. A description of the site by legal description, by reference to a plat showing the boundaries, or by other means sufficient to identify site location, any of which may be an attachment to the letter.

(C) If only a portion of the site or only selected contaminants at a site were remediated, the letter of completion may contain any other provisions agreed to by the department and the remediating party, such as the limitation of the letter to the specific area or contaminants. The remediating party receiving a letter of completion from the department shall submit the letter, and, where the remediating party is not the sole owner of the remediation site, an owner certification described below, to the Office of the Recorder of the county or city not within a county in which the site is located within forty-five (45) days after receipt of the letter. The Office of the Recorder will record the letter and, where applicable, the owner certification so that it forms a permanent part of the chain of title for the property. The remediating party is responsible for any cost of recording. Where the remediating party is not the sole owner of the site, the remediating party shall obtain a certification by original signature of each owner, or the authorized agent of the owner(s), of the site or any portion of the site. The certification shall be recorded along with the letter of completion. The certification shall read as follows: "I hereby certify that I have reviewed the attached letter of completion, and that I accept the terms and conditions and will abide by any AULs set forth in the letter." The issuance of the letter is contingent on obtaining this certification from all owners. A letter of completion is effective upon the date of the official recording of the letter and any associated owner certification(s). Until it is in the chain of title, the letter of completion is effective only between the department and the remediating party. The remediating party shall obtain and submit to the department an acknowledgement from the Office of the Recorder that a copy of the letter and any owner certifications have been recorded. This acknowledgement shall be provided to the department within thirty (30) days after recording to demonstrate that the recording requirements have been satisfied.

(D) No site with activity or use limitations or other long-term stewardship requirements may be used in an inconsistent manner unless further evaluation or remediation documents the attainment of objectives appropriate for the new land use or activity. If the department approves modified long-term stewardship requirements, an updated letter of completion reflecting the new site conditions and requirements may be obtained and recorded as described above.

(E) The department may void a letter of completion, with prior notice to the current title holder or holders of the site and to the remediating party at the last known address, if site use and activities are not managed in full compliance with the approved risk management plan. Specific acts or omissions that may result in voiding of the letter of completion include and are not limited to—

1. Failure to adhere to the terms of an environmental covenant;
2. Failure to adhere to any other applicable institutional controls, land use restrictions, or other environmental limitation;
3. Failure of the owner, operator, remediating party, or any subsequent transferee to operate and maintain preventive or engineered controls, to comply with any monitoring plan, or to disturb the site contrary to the established limitations;
4. Disturbance or removal of contamination that has been left in place if such disturbance or removal is not in accordance with the risk management plan;
5. Failure to comply with the recording requirements or to complete them in a timely manner;
6. Obtaining the letter of completion by fraud or misrepresentation; and
7. Subsequent discovery of contaminants, releases, or other site-specific conditions not identified as part of the investigative or remedial activities and which pose a threat to human health, public welfare, or the environment.

(23) MRBCA Technical Guidance.

(A) DNR shall develop and maintain a technical guidance document for implementation of the MRBCA process that shall include, at a minimum, the following:

1. Equations and default factors to be used in the derivation of RBTLs and SSTLs;
2. Tables of DTLs and tier 1 RBTLs; and
3. Additional elaboration or description that may be useful for implementing the MRBCA process not covered in this rule.

(B) Significant changes to the DNR MRBCA technical guidance will occur only after a stakeholder process that includes, at a minimum, the following:

1. Stakeholder notification of proposed changes a minimum of sixty (60) days prior to issuance of new guidance;
2. Opportunity for stakeholder input, including submission of written comments, prior to the issuance of the new guidance; and
3. DNR shall prepare and distribute responses to stakeholder comments prior to issuance of the new guidance.

AUTHORITY: sections 260.370, 260.470, and 260.905, RSMo Supp. 2008 and sections 260.437, 260.465, 260.500, 260.510, 260.520, 260.567, 260.573, 644.026, and 644.143, RSMo 2000

Appendix D - Identification of Hazardous Waste Rules inconsistent with requirements of Section 260.373.3 of the Revised Statutes of Missouri

This document presents the Hazardous Waste Program's evaluation of the applicability of the HB1251 to Chapters 3, 4, 5, and 7 of Title 10 Division 25 of the Code of State regulations. Rules in these chapters determined to contain provisions that are inconsistent with the requirements of Section 260.373.1 of the Revised Statutes of Missouri are as follows:

10 CSR 25-3.260 Definitions, Modifications to Incorporations and Confidential Business Information;

10 CSR 25-4.261 Methods for Identifying Hazardous Waste;

10 CSR 25-5.262 Standards Applicable to Generators of Hazardous Waste;

10 CSR 25-7.264 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities;

10 CSR 25-7.265 Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities;

10 CSR 25-7.266 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities;

10 CSR 25-7.268 Land Disposal Restrictions; and

10 CSR 25-7.270 Missouri Administered Permit Programs: The Hazardous Waste Permit Program

In an effort to further identify specific provisions within these identified rules that are inconsistent with Section 260.373.1, the Hazardous Waste Program has evaluated the rules and used strikethrough text to denote those provisions that have been determined to be inconsistent.

Shaded text has also been used in the document to identify those provisions that still require further evaluation by the Hazardous Waste Program to determine if and to what extent they may be inconsistent with Section 260.373.1 RSMo.

All portions of these rules identified by either strikethrough or shading will need to be evaluated to determine to what extent if any that they will need to be amended to be consistent with the requirements of Section 260.373.1 RSMo. Any amendments necessary will have to be in place by December 31, 2015, or those portions of the rules that are inconsistent will become null and void.

10 CSR 25-3.260 Definitions, Modifications to Incorporations and Confidential Business Information

PURPOSE: This rule sets forth definitions and delisting procedures. This rule incorporates the federal regulations in 40 CFR part 260 by reference. This rule also outlines a number of specific substitutions between the state and federal regulations that are necessary for incorporation by reference.

(1) The regulations set forth in 40 CFR part 260, July 1, 2010, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference, except for the changes made at 70 FR 53453, September 8, 2005, and 73 FR 64667 to 73 FR 64788, October 30, 2008, subject to the following additions, modifications, substitutions, or deletions. This rule does not incorporate any subsequent amendments or additions.

(A) Except where otherwise noted in sections (2) and (3) of this rule or elsewhere in 10 CSR 25, any federal agency, administrator, regulation, or statute that is referenced in 40 CFR parts 260–270, 273, and 279, and incorporated by reference in 10 CSR 25, shall be deleted and in its place add the comparable state department, director, rule, or statute. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

1. “Director” shall be substituted for “Administrator” or “Regional Administrator” except where those terms are defined in 40 CFR 260.10 incorporated in this rule and where otherwise indicated in 10 CSR 25. ~~All applications, approvals, petitions, appeals, or other paperwork associated with the United States Environmental Protection Agency’s “National Environmental Performance Track” shall not be submitted to the director in lieu of the administrator or regional administrator.~~

2. “Missouri Department of Natural Resources” shall be substituted for “EPA,” “U.S. EPA,” or “U.S. Environmental Protection Agency” except where those terms appear in definitions in 40 CFR 260.10 incorporated in this rule and where otherwise indicated in 10 CSR 25.

3. “Section 260.395.15, RSMo,” shall be substituted for “Section 3005(e) of RCRA.”

4. “Sections 260.375(9), 260.380.1(9), 260.385(7), and 260.390(7), RSMo,” shall be substituted for “Section 3007 of RCRA.”

5. “Sections 260.410 and 260.425, RSMo,” shall be substituted for “Section 3008 of RCRA.”

6. “10 CSR 25-3.260” shall be substituted for any reference to 40 CFR part 260.

7. “10 CSR 25-4.261” shall be substituted for any reference to 40 CFR part 261.

8. “10 CSR 25-5.262” shall be substituted for any reference to 40 CFR part 262.

9. “10 CSR 25-6.263” shall be substituted for any reference to 40 CFR part 263.

10. “10 CSR 25-7.264” shall be substituted for any reference to 40 CFR part 264.

11. “10 CSR 25-7.265” shall be substituted for any reference to 40 CFR part 265.

12. “10 CSR 25-7.266” shall be substituted for any reference to 40 CFR part 266.

13. “10 CSR 25-7.268” shall be substituted for any reference to 40 CFR part 268.

14. “10 CSR 25-7.270” shall be substituted for any reference to 40 CFR part 270.

15. “10 CSR 25-8.124” shall be substituted for any reference to 40 CFR part 124.

16. “10 CSR 25-11.279” shall be substituted for any reference to 40 CFR part 279.

17. “10 CSR 25-16.273” shall be substituted for any reference to 40 CFR part 273.

18. “Sections 260.350–260.434, RSMo,” shall be substituted for “Subtitle C of RCRA Act,” or “RCRA,” except where those terms are defined in 40 CFR 260.10, incorporated in this rule.

19. “Section 260.380.1(1), RSMo” shall be substituted for “Section 3010 of RCRA.”

20. “Section 260.420, RSMo” shall be substituted for “Section 7003 of RCRA.”

21. “Waste within the meaning of section 260.360(21), RSMo,” shall be substituted for “solid waste within the meaning of section 1004(27) of RCRA.” Residual materials specified as wastes under section 260.360(21), RSMo, shall mean any spent materials, sludges, by-products, commercial chemical products, or scrap metal that are solid wastes under 40 CFR 261.2, as incorporated in 10 CSR 25-4.261.

22. “Section 260.360(9), RSMo,” shall be substituted for “Section 1004(5) of RCRA.”

23. “Chapter 610, RSMo, sections 260.430 and 260.550, RSMo, 10 CSR 25-3.260(1)(B), and 10 CSR 25-7.270(2)(B)” shall be substituted for any reference to the Federal Freedom of Information Act (5 U.S.C. 552(a) and (b)), 40 CFR part 2, or Section 3007(b) of RCRA.

~~24. “Owner/operator” shall be substituted for each reference to “owner and operator” and “owner or operator” in the 40 CFR parts incorporated in 10 CSR 25.~~

25. All quantities of solid waste which are defined as hazardous waste pursuant to 10 CSR 25-4 are hazardous waste and are regulated under sections 260.350–260.434, RSMo, and 10 CSR 25. A person shall manage all hazardous waste which is not subject to requirements in 10 CSR 25 in accordance with subsection 260.380.2, RSMo. When a person accumulates one hundred kilograms (100 kg) of nonacute hazardous waste or one kilogram (1 kg) of acutely hazardous waste or one gram (1 g) of 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD), or the aggregate of one hundred kilograms (100 kg) of acute and nonacute hazardous waste, whichever first occurs, that person is subject to the provisions in 10 CSR 25. This provision is in addition to the calendar-month generation provisions in 40 CFR 261.5 which are incorporated by reference and modified in 10 CSR 25-4.261(2)(A).

26. The term variance in 10 CSR 25 means an action of the commission pursuant to section 260.405, RSMo. In any case where a federal rule that is incorporated by reference in 10 CSR 25 uses the term variance but the case-by-case decision or action of the department or commission does not meet the description of a variance pursuant to section 260.405, RSMo, the decision or action shall be considered an exception or exemption based on the conditions set forth in the federal regulation incorporated by reference or the omission from regulation.

27. The rules of grammatical construction in 40 CFR 260.3 incorporated by reference in this rule shall also apply to the incorporated text of 40 CFR parts 266 and 270 and to 10 CSR 25.

(2) This section sets forth specific modifications to the regulations incorporated in section (1) of this rule. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, changes to 40 CFR part 260 subpart A will be located in subsection (2)(A) of this rule.)

(A) The following are changes to 40 CFR part 260 subpart A incorporated in this rule:

1. Confidential business information and availability of information. 40 CFR 260.2 is not incorporated in this rule. In lieu of those provisions, the following shall apply to confidential business information and the availability of information:

A. Any information provided to the department under 10 CSR 25 will be made available to the extent and in the manner authorized by Chapter 610, RSMo, sections 260.430 and 260.550, RSMo, subsection (1)(B) and 10 CSR 25-7.270(2)(B)2. as applicable;

B. Any person who submits information to the department in accordance with 10 CSR 25 may assert a claim of business confidentiality covering a part or all of that information by including a letter with the information which requests protection of specific information from disclosure. Information covered by this claim will be disclosed by the department to the extent and by means of the procedures set forth in Chapter 610, RSMo. However, if no claim accompanies the information when it is received by the department, the information may be made available to the public without further notice to the person submitting it. The department will respond to requests for protection of business information within twenty (20) business days; and

C. The department will respond to requests for information within three (3) business days except as provided in Chapter 610, RSMo, and except as allowed for reasonable cause in accordance with Chapter 610, RSMo. When the period for document production must exceed three (3) business days for reasonable cause, the department will provide the document within no more than twenty (20) business days.

(B) Definitions. (*Reserved*)

(C) 40 CFR part 260 subpart C, Rulemaking Petitions, is not incorporated in this rule. Not more than sixty (60) days after promulgation of the final federal determination, the department shall approve or disapprove all delistings granted under 40 CFR 260.20 or 40 CFR 260.22. If the department fails to take action within that sixty (60)-day time frame, the delistings shall be deemed approved.

(D) 40 CFR part 260 Appendix I is not incorporated in this rule.

(3) Missouri Specific Definitions. Definitions of terms used in 10 CSR 25. This section sets forth definitions which modify or add to those definitions in 40 CFR parts 60, 260–270, 273, and 279 and 49 CFR parts 40, 171–180, 383, 387, and 390–397.

(A) Definitions beginning with the letter A.

~~1. ASTM means the American Society for Testing and Materials.~~

2. Abandoned or uncontrolled means any property where hazardous waste has been disposed of illegally or where hazardous waste was disposed of prior to regulation under sections 260.350–260.434, RSMo.

3. Active fault means a fault which, according to substantial geologic evidence, is capable of movement along a fault trace. A fault which, according to historical records, has moved along a fault trace is considered an active fault.

4. Attenuation means any physical, chemical, or biological reaction, or a combination of both, transformation occurring in the zone of aeration or zone of saturation that brings about a temporary or permanent decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled.

(B) Definitions beginning with the letter B. (*Reserved*)

(C) Definitions beginning with the letter C.

1. CFR means the *Code of Federal Regulations*.

2. CSR means the *Missouri Code of State Regulations*.

3. Commission means the Hazardous Waste Management Commission of Missouri created by section 260.365, RSMo.

4. Compliance procedure means any proceeding instituted under sections 260.350–260.434, RSMo, which seeks to require compliance with, or which is in the nature of an enforcement action or an action to cure a violation of, sections 260.350–

260.434, RSMo, or rules adopted under those sections, or permits, licenses, or certifications issued under those sections. A compliance procedure includes, without limitation, an order issued pursuant to section 260.410, RSMo, or any denial or revocation of or notice of intent to revoke a license, permit, or certification pursuant to, or any civil or criminal action filed in the courts of Missouri pursuant to, sections 260.350–260.434, RSMo. A compliance procedure is considered to be pending from the time an order, denial, revocation, or notice of intent to revoke is issued by the director or judicial proceedings begin, until the director notifies the person subject to the compliance procedure in writing that the violation has been corrected or that the procedure has been withdrawn or dismissed.

(D) Definitions beginning with the letter D.

1. Department means the Missouri Department of Natural Resources.

2. Director means the director of the Missouri Department of Natural Resources.

~~3. Displacement means the relative movement of any two (2) sides of a fault measured in any direction.~~

4. DOT means the United States Department of Transportation.

(E) Definitions beginning with the letter E.

~~1. Extended reporting period means a declaration or endorsement in a liability insurance policy required by 10 CSR 25-7 which provides an extension of the coverage of the policy to claims otherwise covered by the policy and first made during a specified period immediately following the effective date of cancellation or nonrenewal of the policy. The specified period shall be of at least twelve (12) months duration.~~

(F) Definitions beginning with the letter F.

1. Farmer means a person primarily engaged in the production of crops or livestock for agricultural purposes, or both.

~~2. Fault means a fracture along which rocks on one (1) side have been displaced with respect to those on the other side.~~

(G) Definitions beginning with the letter G.

1. Generation means the act or process of producing hazardous waste.

(H) Definitions beginning with the letter H.

~~1. HSWA means the Hazardous and Solid Waste Amendments of 1984. These amendments were made to the Resource Conservation and Recovery Act by P.L. 98-616, November 8, 1984.~~

2. Hazardous constituent means any chemical compound listed in 40 CFR part 261 Appendix VIII as incorporated in 10 CSR 25-4.261. (This is different than the term hazardous waste constituent as defined in 40 CFR 260.10.)

3. Hazardous waste means any waste or combination of wastes as defined by or listed in 10 CSR 25-4, which, because of its quantity, concentration, or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a threat to the health of humans or other living organisms.

4. Hazardous waste transporter means any person or company conducting activities in Missouri which require a hazardous waste transporter license pursuant to 10 CSR 25-6.263. These activities may include, but are not limited to, transportation of hazardous wastes, used oil, and infectious wastes by highway, railway, or waterway.

~~5. Holocene means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene period to the present, approximately the previous twelve thousand (12,000) years.~~

6. Household hazardous waste means any household waste excluded from regulation as hazardous waste by 40 CFR 261.4(b)(1) but otherwise meets the definition of hazardous waste in paragraph (2)(H)3. of this rule.

(I) Definitions beginning with the letter I.

1. Identification number means the unique code assigned to each hazardous waste, each hazardous waste generator, transporter, facility, or resource recovery facility pursuant to these rules.

2. International Registration Plan, referred to as IRP, is a system of reporting and apportioning fees to states and other jurisdictions based on the percentage of mileage accumulated while conducting business in those states or jurisdictions.

(J) Definitions beginning with the letter J. (*Reserved*)

(K) Definitions beginning with the letter K. (*Reserved*)

(L) Definitions beginning with the letter L.

~~1. Land-based management facility means any hazardous waste landfill, land treatment unit, surface impoundment, or waste pile.~~

(M) Definitions beginning with the letter M.

1. Missouri hazardous waste mileage means the total fleet miles that materials requiring a hazardous waste transporter license are transported in Missouri over a period specified by rule. Additionally, all miles traveled transporting containers with residues of these materials, as defined at 49 CFR 171.8, will be included in the Missouri hazardous waste mileage.

2. Motor vehicle means a vehicle, machine, tractor, trailer, or semitrailer, or any combination of them, propelled or drawn by mechanical power and used upon the highways in transportation. It does not include a vehicle, locomotive, or car operated exclusively on a rail(s).

(N) Definitions beginning with the letter N. (*Reserved*)

(O) Definitions beginning with the letter O.

~~1. One hundred (100)-year flood means a flood that has a one percent (1%) chance of recurring in any year or a flood of magnitude equaled or exceeded once in one hundred (100) years on the average over a significantly long period. In any given one hundred (100)-year interval, a flood of that magnitude may or may not occur, or more than one (1) flood of that magnitude may occur.~~

2. One hundred (100)-year floodplain means any land area which is subject to a one percent (1%) or greater chance of flooding in any given year from any source.

~~3. Operating disposal facility means a hazardous waste management facility permitted or seeking a permit for the construction, operation, or both, including receipt of hazardous waste, of surface impoundment, waste pile, land treatment unit, or landfill.~~

4. Owner/operator means owner and operator. For the purposes of performing the activities required by these rules, where not specifically required of the owner, the owner may designate in writing that the operator has the authority to perform the duties of the owner/operator. This designation does not relieve the owner of his/her joint liability that these activities are performed.

(P) Definitions beginning with the letter P.

1. Post-closure disposal facility means a hazardous waste management facility which has disposed of hazardous waste, and which is required by applicable state and federal laws and regulations to have a permit to conduct post-closure activities, or to perform necessary post-closure activities under an enforceable document, as defined in 40 CFR 270.1(c)(7) and incorporated by reference in 10 CSR 25-7.270(1).

2. Professional engineer or registered engineer means a professional engineer licensed to practice by the Missouri Board of Architects, Professional Engineers and Land Surveyors.

3. Power unit for the purpose of this regulation is a truck with at least two (2) axles, regardless of licensed vehicle weight or configuration.

4. Preceding year is defined as the period of twelve (12) consecutive months immediately prior to July 1 immediately preceding the commencement of the license year for which license is sought.

(Q) Definitions beginning with the letter Q. (*Reserved*)

(R) Definitions beginning with the letter R.

1. RCRA means the Resource Conservation and Recovery Act, 42 U.S.C. sections 6901–6991.

~~2. Regional aquifer means a geologic formation, group of formations or part of a formation that contains sufficient saturated permeable material to yield or be capable of yielding water at a sufficient rate to serve as a practical source of water supply.~~

3. Registry means the Missouri Registry of Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites.

4. Remedial action means any action at a hazardous waste site to protect the public health and environment. These actions may include, but are not limited to: storage; confinement; perimeter protection using dikes, trenches, or ditches; clay cover; neutralization; cleanup of hazardous waste, hazardous substances, or contaminated materials; recycling or reuse; diversion; destruction; segregation of reactive materials; repair or replacement of leaking containers; collection of leachate and runoff; on-site treatment or incineration; provision of alternative water supplies; any monitoring reasonably required to assure that these actions protect the public health and environment; or any combination of these actions.

5. Remedial action plan means the specific procedures to be followed in implementation of any remedial action and all necessary, related procedures including, but not limited to, safety, analysis, sampling, handling, packaging, storing, removing, transporting, labeling, registering, and site security. A remedial action plan has a defined endpoint, agreed to in advance, which will complete the plan. Additional remedial actions may be necessary after completion of a remedial action plan dependent upon results of sample analysis or development of new information.

6. Residual materials means any spent materials, sludges, by-products, commercial chemical products, or scrap metals that are solid wastes under 40 CFR 261.2, as incorporated in 10 CSR 25-4.261.

7. Resource recovery means the reclamation of energy or materials from waste, its reuse, or its transformation into new products which are not wastes.

8. Responsible party means any person(s) liable for costs of removal actions or remedial action or other response costs or damages pursuant to Section 107 of the federal Comprehensive Environmental Re-sponse, Compensation and Liability Act of 1980, 42 U.S.C. 9607–9657 as amended by P.L. 99-499 Superfund Amendments, and Reauthorization Act of 1986, or any current owners or other person willing to assume responsibility.

(S) Definitions beginning with the letter S.

1. Site, for purposes of 10 CSR 25-10, means the smallest geographic boundary which contains known chemical contamination. A buffer zone may be included within the area.

~~2. Standby trust fund means a trust fund which must be established by the owner or operator who obtains a surety bond or provides other security as specified in these rules.~~

3. Substantial change means any change in use of a site which may result in a spread of contamination over additional portions of a site or off-site, an increase in human exposure to hazardous materials, an increase in adverse environmental impacts, or a situation making potential remedial actions to correct problems at the site more difficult to undertake or complete.

(T) Definitions beginning with the letter T.

1. Training means formal instruction which supplements an employee's existing job knowledge and is designed to protect human health and the environment through increased awareness and improved job proficiency.

2. Transporter; see hazardous waste transporter.

~~3. True vapor pressure means the pressure exerted when a solid or liquid is in equilibrium with its own vapor. The vapor pressure is a function of the substance and of the temperature.~~

4. Twenty-four (24)-hour, twenty-five (25)-year storm means a storm of twenty-four (24)-hour duration for which the frequency of occurrence is once in twenty-five (25) years.

(U) Definitions beginning with the letter U.

1. Universal waste means any of the hazardous wastes that are defined under the universal waste requirements of 10 CSR 25-16.273(2)(A).

2. Used oil.

A. The definition of used oil at 40 CFR 260.10 is amended to include, but not be limited to, petroleum-derived and synthetic oils which have been spilled into the environment or used for any of the following:

(I) Lubrication/cutting oil;

(II) Heat transfer;

(III) Hydraulic power; or

(IV) Insulation in dielectric transformers.

B. The definition of used oil at 40 CFR 260.10 is amended to exclude used petroleum-derived or synthetic oils which have been used as solvents. (Note: Used ethylene glycol is not regulated as used oil under 10 CSR 25.)

C. Except for used oil that meets the used oil specifications found in 40 CFR 279.11, any amount of used oil that exhibits a hazardous characteristic and is released into the environment is a hazardous waste and shall be managed in compliance with the requirements of 10 CSR 25, Chapters 3–9 and 13. Any exclusions from the definition of solid waste or hazardous waste will apply.

3. USGS means United States Geological Survey.

4. U.S. importer means a United States-based person who is in corporate good standing with the U.S. state in which they are registered to conduct business and who will be assuming all generator responsibilities and liabilities specified in sections 260.350–260.430, RSMo, for wastes which the U.S. importer has arranged to be imported from a foreign country.

(V) Definitions beginning with the letter V.

1. Vapor recovery system means a system capable of collecting vapors and discharged gases and a vapor processing system capable of processing those vapors and gases so as to control emission of contaminants to the atmosphere. Emission not retained by vapor recovery systems, except for emissions regulated in 10 CSR 25, are regulated by rules adopted by the Missouri Air Conservation Commission, 10 CSR 10.

2. Vehicle, for the purpose of this regulation, refers to a power unit.

(W) Definitions beginning with the letter W.

1. Washout means the fluvial transport of hazardous waste from a hazardous waste management unit as a result of flooding.

2. Waste means any material for which no use or sale is intended and which will be discarded or any material which has been or is being discarded. Waste shall also mean certain residual materials which may be sold for purposes of energy or materials reclamation, reuse, or transformation into new products which are not wastes. Waste shall also mean hazardous waste fuels.

(X) Definitions beginning with the letter X. (*Reserved*)

(Y) Definitions beginning with the letter Y.
(*Reserved*)

(Z) Definitions beginning with the letter Z.

(*Reserved*)

AUTHORITY: section 260.370, RSMo Supp. 2010, and section 260.395, RSMo 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. Amended: Filed Feb. 3, 1987, effective Aug. 1, 1987. Amended: Filed Dec. 1, 1987, effective Aug. 12, 1988. Amended: Filed Feb. 16, 1990, effective Dec. 31, 1990. Amended: Filed Jan. 15, 1991, effective Aug. 1, 1991. Amended: Filed Sept. 4, 1991, effective Feb. 6, 1992. Amended: Filed Feb. 14, 1992, effective Dec. 3, 1992. Amended: Filed Jan. 5, 1993, effective Aug. 9, 1993. Amended: Filed June 3, 1993, effective Jan. 31, 1994. Amended: Filed Jan. 5, 1994, effective Aug. 28, 1994. Amended: Filed Aug. 16, 1995, effective April 30, 1996. Amended: Filed June 1, 1998, effective Jan. 30, 1999. Amended: Filed Feb. 1, 2001, effective Oct. 30, 2001. Amended: Filed Dec. 17, 2001, effective Aug. 30, 2002. Amended: Filed March 31, 2006, effective Dec. 30, 2006. Amended: Filed Oct. 15, 2008, effective June 30, 2009. Amended: Filed April 15, 2011, effective Dec. 30, 2011.*

**Original authority: 260.370, RSMo 1977, amended 1980, 1988, 1993, 1995, 2004, 2010 and 260.395, RSMo 1977, amended 1980, 1983, 1985, 1988, 2000.*

10 CSR 25-4.261 Methods for Identifying Hazardous Waste

PURPOSE: This rule sets forth characteristics and lists by which a generator can determine whether his/her waste is hazardous. This rule defines hazardous waste under sections 260.475–260.479, RSMo. The federal regulations in 40 CFR part 261 are incorporated by reference, subject to the modifications set forth in this rule.

(1) The regulations set forth in 40 CFR part 261, July 1, 2010, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference, except for the changes made at 55 FR 50450, December 6, 1990, 56 FR 27332, June 13, 1991, 60 FR 7366, February 7, 1995, 63 FR 33823, June 19, 1998, ~~70 FR 53453, September 8, 2005~~, 73 FR 64667 to 73 FR 64788, October 30, 2008, and 73 FR 77954, December 19, 2008. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) This section sets forth specific modifications of the regulations incorporated in section (1) of this rule. A person required to identify a hazardous waste shall comply with this section as it modifies 40 CFR part 261 as incorporated in this rule. (Comment: This section has been organized in order that all Missouri additions, changes, or deletions to any subpart of the federal regulation are noted within the corresponding subsection of this section. For example, changes to 40 CFR part 261 subpart A will be located in subsection (2)(A) of this rule.)

(A) General. The following are **changes** to 40 CFR part 261 subpart A incorporated in this rule:

~~1. Material that is stored or accumulated in surface impoundments or waste piles is inherently waste like as provided in 40 CFR 261.2(d) incorporated in this rule, and is a solid waste, regardless of whether the material is recycled;~~

~~2. A solid waste, as defined in 40 CFR 261.2, as incorporated in this rule, is a hazardous waste if it is a mixture of solid waste and one (1) or more hazardous wastes listed in 40 CFR part 261 subpart D, as incorporated in this rule, and has not been excluded from 40 CFR 261.3(a)(2), as incorporated in this rule, under 40 CFR 260.20 and 260.22, as incorporated in 10 CSR 25-3.260. However, mixtures of solid wastes and hazardous wastes listed in 40 CFR part 261 subpart D, as incorporated in this rule, are not hazardous wastes (except by application of 40 CFR part 261.3(a)(2)(i) or (ii), as incorporated in this rule) if the generator can demonstrate that the mixture consists of wastewater, the discharge of which is regulated under Chapter 644, RSMo, the Missouri Clean Water Law;~~

3. In Table 1 of 40 CFR 261.2, add an asterisk in column 3, row 6, Reclamation of Commercial Chemical Products listed in 40 CFR 261.33 and add the following additional footnote: “Note 2. Commercial chemical products listed in 40 CFR 261.33 are not solid wastes when the original manufacturer uses, reuses, or legitimately recycles the material in his/her manufacturing process”;

4. *(Reserved)*

~~5. In addition to the requirements in 40 CFR 261.3 incorporated in this rule, hazardous waste may not be diluted solely for the purpose of rendering the waste nonhazardous unless dilution is warranted in an emergency response situation or where the dilution is part of a hazardous waste treatment process regulated or exempted under 10 CSR 25-7 or 10 CSR 25-9;~~

~~6. Fly ash that is not regulated under sections 260.200-260.245, RSMo, or sections 644.006-644.564, RSMo, or is not beneficially reused as allowed under 10 CSR 80-2.020(9)(B), and fails Toxicity Characteristic Leaching Procedure (TCLP) is not subject to the exclusion at 40 CFR 261.4(b)(4) and shall be disposed of in a permitted hazardous waste facility;~~

~~7. In 40 CFR 261.4(a)(8)(i) incorporated in this rule, substitute “is a totally enclosed treatment facility” for “through completion of reclamation is closed”;~~

~~8. 40 CFR 261.4(a)(11) is not incorporated in this rule;~~

9. 40 CFR 261.4(a)(16) is not incorporated in this rule (Note: The paragraph at 40 CFR 261.4(a)(16) added by 63 FR 33823, June 19, 1998, is the paragraph not incorporated by 10 CSR 25-4.261(2)(A)9.);

10. Household hazardous waste which is segregated from the solid waste stream becomes a regulated hazardous waste upon acceptance by delivery at a commercial hazardous waste treatment, storage, or disposal facility. Any waste for which the commercial facility becomes the generator in this way shall not be subject to waste minimization requirements under 40 CFR 264.73(b)(9), as incorporated by 10 CSR 25-7.264(1), nor shall that facility be required to pay hazardous waste fees and taxes on that waste pursuant to 10 CSR 25-12.010;

11. A generator shall submit the information required in 40 CFR 261.4(e)(2)(v)(C) as incorporated in this rule to the department along with the Generator’s Hazardous Waste Summary Report required in 10 CSR 25-5.262(2)(D)1.;

12. The changes to 40 CFR 261.5, special requirements for hazardous waste generated by small quantity generators, incorporated in this rule are as follows:

A. The modification set forth in 10 CSR 25-3.260(1)(A)25. applies in this rule in addition to other modifications set forth;

B. 40 CFR 261.5(g)(2) is not incorporated in this rule;

~~C. A process, procedure, method, or technology is considered to be on-site treatment for the purposes of 40 CFR 261.5(f)(3) and 40 CFR 261.5(g)(3), as incorporated in this rule, only if it meets the following criteria:~~

~~(1) The process, procedure, method, or technology reduces the hazardous characteristic(s) and/or the quantity of a hazardous waste; and~~

~~(H) The process, procedure, method, or technology does not result in off-site emissions of any hazardous waste or constituent; and~~

D. If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to 40 CFR 279.10(b)(3) as incorporated in 10 CSR 25-11.279;

13. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 261.6(a)(3)(i), as incorporated in this rule. The state may not assume authority from the Environmental Protection Agency (EPA) to receive notifications of intent to export or to transmit this information to other countries through the Department of State or to transmit Acknowledgments of Consent to the exporter. This modification does not relieve the regulated person of the responsibility to comply with the Resource Conservation and Recovery Act (RCRA) or other pertinent export control laws and regulations issued by other agencies;

14. 40 CFR 261.6(a)(4) is amended by adding the following sentence: "Used oil that exhibits a hazardous characteristic and that is released into the environment is subject to the requirements of 10 CSR 25-3, 4, 5, 6, 7, 8, 9, and 13.";

15. *(Reserved)*

16. Recyclable materials that meet the definition of used oil in 40 CFR 260.10 as incorporated in 10 CSR 25-3.260(1) shall be managed in accordance with 10 CSR 25-11.279 and applicable portions of 10 CSR 25-3.260–10 CSR 25-9.020;

17. The resource recovery of hazardous waste is regulated by 10 CSR 25-9.020. An owner/operator of a facility that uses, reuses, or recycles hazardous waste shall be certified under 10 CSR 25-9 or permitted under 10 CSR 25-7, unless otherwise excluded. Therefore, the parenthetical text in 40 CFR 261.6(c)(1) is not incorporated in this rule; and

18. In accordance with section 260.432.5(2), RSMo, used cathode ray tubes (CRTs) may not be placed in a sanitary landfill, except as permitted by section 260.380.3, RSMo.

(B) Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Wastes. *(Reserved)*

(C) Characteristics of Hazardous Waste. *(Reserved)*

(D) Lists of Hazardous Wastes. The following are additions or changes to the lists in 40 CFR part 261 subpart D, incorporated in this rule:

1. Hazardous waste identified by the Environmental Protection Agency (EPA) hazardous waste number F020, F023, or F027 is hazardous waste even if highly purified 2,4,5-trichlorophenol is used. Therefore, the following language is deleted from 40 CFR 261.31 incorporated in this rule:

A. In F020, delete the words "(This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)";

B. In F023, delete the words “(This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)”; and

C. In F027, delete the words “(This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.)”;

2. Any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill of waste listed in F020, F021, F022, F023, F026, or F027 (including the changes made in 10 CSR 25-4.261(2)(D)1.), regardless of the quantity or time of the spill or release, is an acutely hazardous waste and is designated the Missouri hazardous waste number MH01. Note: This does not include hexachlorophene soap rinses resulting from medicinal uses.);

3. 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) is an acutely hazardous waste and is designated the Missouri hazardous waste number MH02. Without regard to any quantity specified in 40 CFR 261.5, as incorporated and modified in paragraph (2)(A)10. of this rule, if a generator generates less than one gram (1 g) of 2,3,7,8-TCDD in a calendar month and does not accumulate one gram (1 g) of 2,3,7,8-TCDD at any one time, that generator shall manage that hazardous waste in accordance with subsection 260.380.2, RSMo. When a generator generates one gram (1 g) of 2,3,7,8-TCDD in a calendar month or accumulates at least one gram (1 g) of 2,3,7,8-TCDD at any one time, that generator shall manage that hazardous waste in accordance with the provisions in 10 CSR 25;

4. 40 CFR 261.38 is not incorporated in this rule.

(E) Exclusions/Exemptions.

1. The substitution of the director of the Department of Natural Resources for the regional administrator discussed in 10 CSR 25-3.260(1)A.1. does not apply to the requirement for notification of the export of used CRTs established in 40 CFR 261.41.

10 CSR 25-5.262 Standards Applicable to Generators of Hazardous Waste

PURPOSE: This rule sets forth standards for generators of hazardous waste, incorporates 40 CFR part 262 by reference, and sets forth additional state standards.

(1) The regulations set forth in 49 CFR part 172, October 1, 1999, 40 CFR 302.4 and .5, July 1, 2006, and 40 CFR part 262, July 1, 2010, except Subpart H, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) A generator located in Missouri, except as conditionally exempted in accordance with 10 CSR 25-4.261, shall comply with the requirements of this section in addition to the requirements incorporated in section (1). Where contradictory or conflicting requirements exist in 10 CSR 25, the more stringent shall control. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. ~~For example, the additional storage standards which are added to 40 CFR part 262 subpart C are found in subsection (2)(C) of this rule.~~)

(A) General. The following registration requirements are additional requirements to, or modifications of, the requirements specified in 40 CFR part 262 subpart A:

1. In lieu of 40 CFR 262.12(a) and (c), a generator located in Missouri shall comply with the following requirements:

A. A person generating in one (1) month or accumulating at any one (1) time the quantities of hazardous waste specified in 10 CSR 25-4.261 and a transporter who is required to register as a generator under 10 CSR 25-6.263 shall register and is subject to applicable rules under 10 CSR 25-3.260–10 CSR 25-9.020 and 10 CSR 25-12.010; and

B. Conditionally exempt generators may choose to register and obtain Environmental Protection Agency (EPA) and Missouri identification numbers, but in doing so will be subject to any initial registration fee and annual renewal fee outlined in this chapter;

2. An owner/operator of a treatment, storage, disposal, or resource recovery facility who ships hazardous waste from the facility shall comply with this rule;

3. The following constitutes the procedure for registering:

A. A person who is required to register shall file a completed registration form furnished by the department. The department shall require an original ink signature on all registration forms before processing. In the event the department develops the ability to accept electronic submission of the registration form, the signature requirement will be consistent with the legally-accepted standards in Missouri for an electronic signature on documents. All generators located in Missouri shall use only the Missouri version of the registration form;

B. A person required to register shall also complete and file an updated generator registration form if the information filed with the department changes;

C. The department may request additional information, including information concerning the nature and hazards associated with a particular waste or any information or reports concerning the quantities and disposition of any hazardous wastes as necessary to authorize storage, treatment, or disposal and to ensure proper hazardous waste management;

D. A person who is required to register, and those conditionally-exempt generators who choose to register, shall pay a one-hundred-dollar (\$100) initial or reactivation registration fee at the time their registration form is filed with the department. If a generator site has an inactive registration, and a generator required to register reactivates that registration, the generator shall file a registration form and pay the one-hundred-dollar (\$100) registration reactivation fee. The department shall not process any form for an initial registration or reactivation of a registration if the one-hundred-dollar (\$100) fee is not included. Generators required to register shall thereafter pay an annual renewal fee of one hundred dollars (\$100) in order to maintain their registration in good standing; and

E. Any person who pays the registration fee with what is found to be an insufficient check shall have their registration immediately revoked;

4. The following constitutes the procedure for registration renewal:

A. The calendar year shall constitute the annual registration period;

B. Annual registration renewal billings will be sent by December 1 of each year to all generators holding an active registration;

C. Any generator initially registering between October 1 and December 31 of any given year shall pay the initial registration fee, but shall not pay the annual renewal fee for the calendar year immediately following their initial registration. From that year forward, they shall pay the annual renewal fee;

D. Any generator required to register who fails to pay the annual renewal fee by the due date specified on the billing shall be administratively inactivated and subject to enforcement action for failure to properly maintain their registration;

E. Generators administratively inactivated for failure to pay the renewal fee in a timely manner, who later in the same registration year pay the annual renewal fee, shall pay the fifteen-percent (15%) late fee required by section 260.380.4, RSMo, in addition to the one-hundred-dollar (\$100) annual renewal fee for each applicable registration year and shall file an updated generator registration form with the department before their registration is reactivated by the department;

F. Generators who request that their registration be made inactive rather than pay the renewal fee, who later in that same renewal year pay the annual renewal fee to reactivate their registration, shall pay the fifteen-percent (15%) late fee required by section 260.380.4, RSMo, in addition to the one-hundred-dollar (\$100) annual renewal fee and file an updated generator registration form with the department before their registration is reactivated by the department; and

G. Any person who pays the annual renewal fee with what is found to be an insufficient check shall have their registration immediately revoked; and

5. The department may administratively inactivate the registration of generators that fail to pay any applicable hazardous waste fees and taxes in a timely manner after appropriate notice to do so.

(B) The Manifest. Additional manifest and reporting requirements are set forth in subsections (2)(D) and (E). This subsection is applicable to all Missouri generators and to all other generators who deposit hazardous waste in Missouri. (Note: This section is not applicable to an out-of-state or international generator who is shipping hazardous waste through, in less than ten (10) days, but not depositing hazardous waste in Missouri. This subsection does not prevent a transporter from voluntarily carrying information in addition to the manifest. Any reference to the United States Environmental Protection Agency (EPA) form 8700-22 means the form as revised by EPA and approved by the federal Office of Management and Budget (OMB)).

1. Generators must list the Missouri waste code MH02 if the hazardous waste is 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) as listed in 10 CSR 25-4.261(2)(D)3.

2. If the waste contains MH02 or MH01, these must be one (1) of the six (6) waste codes listed on the manifest.

3. Generators must list the Missouri waste code D098 if the hazardous waste is a used oil as described in 10 CSR 25-11.279(2)(I)1.B.

4. Generators must record either the total weight in kilograms or pounds or the specific gravity for wastes listed or measured in gallons, liters, or cubic yards.

5. Manifest reporting. This paragraph sets forth additional requirements for manifest reporting. The generator shall contract with the designated facility to return the completed manifest to the generator within thirty-five (35) days after the hazardous waste was accepted by the initial transporter. A generator, in addition to this requirement, and where applicable under paragraph (2)(D)2. of this rule, shall file exception reports.

(C) Pretransport, Containerization, and Labeling Requirements.

1. During the entire time hazardous waste is accumulated in storage on-site, generators shall ~~package, mark, and~~ label hazardous waste containers in compliance with the requirements of 40 CFR 262.32 and 40 CFR part 262 subpart C, as incorporated and modified within these regulations. The generator is not required to mark the manifest document number for the shipment on the container until it is prepared for off-site shipment.

~~2. This paragraph sets forth requirements for storage of hazardous waste based on the quantity of waste generated or accumulated.~~

~~A. Notwithstanding any other provisions of this rule to the contrary, a person who generates one hundred kilograms (100 kg) or more, but fewer than one thousand kilograms (1000 kg) of nonacute hazardous waste in a calendar month may store these hazardous wastes in quantities, according to time frames and under the conditions specified in 40 CFR 262.34(d) as incorporated in this rule. However, upon accumulating one thousand kilograms (1000 kg) of nonacute hazardous waste, the generator must also comply with 40 CFR 262.34(a)(1) incorporated in this rule rather than 40 CFR 262.34(d)(3) incorporated in this rule, 40 CFR part 265 subpart D as incorporated in 10 CSR 25 7.265(1) and modified in 10 CSR 25 7.265(2)(D) rather than 40 CFR 262.34(d)(5) incorporated in this rule, and 40 CFR 265.16 as incorporated in 10 CSR 25 7.265(1) and modified in 10 CSR 25 7.265(2)(D) in addition to the requirements of 40 CFR 262.34(d) incorporated in this rule.~~

~~B. A person who generates one kilogram (1 kg) of acutely hazardous waste defined by or listed in 10 CSR 25 4.261 or one gram (1 g) of 2,3,7,8 TCDD or one thousand kilograms (1000 kg) of nonacute hazardous waste, or an aggregate of one thousand kilograms (1000 kg) of hazardous waste, as listed in 10 CSR 25 4.261 shall comply with 40 CFR 262.34(a) and (b) as incorporated in this rule.~~

C. General inspection requirements. In addition to the requirements in 40 CFR Part 262, a generator shall also comply with the following requirements.

~~(I) The owner/operator shall inspect his/her facility for malfunction, deterioration, or both, operator error, and any evidence of discharges which may be causing or could cause the release of hazardous waste constituents to the environment or could pose a threat to human health. The owner/operator shall conduct these inspections often enough to identify and correct any problems of that nature before they cause harm to human health or the environment.~~

~~(II) The frequency of inspection may vary for the items that require inspection. However, it should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, shall be inspected daily when in use. At a minimum, the inspection schedule shall include the terms and frequencies set forth in the applicable regulations in 40 CFR 265.174 and 40 CFR 265.195, incorporated in 10 CSR 25-7.265; and~~

~~(III) The owner/operator shall remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.~~

D. Containment for storage in containers. This subparagraph sets forth additional requirements for storage of hazardous waste in containers.

~~(I) Container storage areas shall have a containment system that is designed and operated in accordance with part (2)(C)2. D.(III) of this rule, except as provided in part (2)(C)2.D.(II) of this rule.~~

~~(II) Storage areas that store containers holding only wastes that do not contain free liquids or storage areas that store less than one thousand kilograms (1000 kg) of nonacute hazardous waste containing free liquids need not have a containment system as described in part (2)(C)2.D.(I) of this rule, provided that the storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation, or the containers are elevated or are otherwise protected from contact with accumulated liquid.~~

~~(III) A containment system shall be designed, maintained, and operated as follows:~~

~~(a) The containment system shall include a base which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed. The base shall be under the container;~~

~~(b) The base shall be sloped or the containment system shall be designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;~~

~~(c) The containment system shall have a capacity equal to ten percent (10%) of the containerized waste volume or the volume of the largest container, whichever is greater. (Containers that do not contain free liquids need not be considered in this calculation);~~

~~(d) Run-on into the containment system shall be prevented unless the collection system has sufficient excess capacity in addition to that required in subpart (2)(C)2.B.(III)(c) of this rule to contain any run-on which might enter the system; and~~

~~(e) Spilled or leaked waste and accumulated precipitation shall be removed from the sump or collection area as necessary to prevent overflow of the collection system.~~

~~(IV) The containment system must also be inspected as part of the weekly inspections required by 40 CFR 265.174 as incorporated in 10 CSR 25-7.265.~~

~~E. Tanks. This subparagraph sets forth additional requirements for storage of hazardous waste in tanks. Additional requirements set forth in paragraph (2)(C)2. apply to storage of hazardous waste in tank systems.~~

~~F. General requirements for ignitable, reactive, incompatible, or volatile wastes.~~

~~(I) Volatile waste having a true vapor pressure of greater than seventy eight millimeters (78 mm) of mercury at twenty five degrees Celsius (25°C) shall not be placed in an open tank.~~

~~(II) The owner/operator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. These hazardous wastes shall be separated and protected from sources of ignition or reaction including, but not limited to, open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (that is, from heat producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner/operator shall confine smoking and open flame to specially designated locations. No Smoking signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.~~

~~G. Preparedness and prevention. In addition to the required equipment specified in 40 CFR 265.32, incorporated in 10 CSR 25 7.265, a generator shall also provide safety equipment such as fire blankets, gas masks, and self contained breathing apparatus.~~

~~3. Satellite accumulation. In addition to the requirements in 40 CFR 262.34(c), the generator shall comply with the following requirements: Within one (1) year from the date satellite storage begins, irrespective of the quantity of hazardous waste in the satellite storage area, the hazardous waste shall be transferred to the area where hazardous waste is stored during the ninety (90), one hundred eighty (180), or two hundred seventy (270) day storage period. And in 40 CFR 262.34(c)(1)(ii), add the words "Mark his containers either with the words 'Hazardous Waste' or with other words that identify the contents of the containers and the beginning date of satellite storage."~~

~~4. 40 CFR 262.34(a)(1)(iii) is not incorporated in this rule.~~

~~5. In addition to requirements in 40 CFR 262.34(d), a generator, upon generating one thousand kilograms (1000 kg) of nonacute hazardous waste, in a calendar month or accumulating one thousand kilograms (1000 kg) of nonacute hazardous waste, shall comply with paragraph (2)(C)2. of this rule.~~

~~6. All generators shall meet the special requirements for ignitable or reactive waste set forth in 40 CFR 265.176 incorporated in 10 CSR 25 7.265 and, therefore, the following language in 40 CFR 262.34(d)(2) is not incorporated in this rule: "except the generator need not comply with subsection 265.176."~~

~~7. Closure. At closure of the storage area, the generator shall remove and properly dispose of all hazardous waste and hazardous residues. For the purpose of this paragraph, closure shall occur when the storage of hazardous wastes has not occurred or is not expected to occur for one (1) year.~~

~~(D) Record Keeping and Reporting. In addition to requirements in 40 CFR 262.40, generators shall retain registration information required in subsection (2)(A) of this rule and the Generator's Hazardous Waste Summary Report required in paragraph (2)(D)1. of this rule for no fewer than three (3) years. The period of record retention referred to in 40 CFR 262.40(d) begins the day the initial transporter signs the manifest. The period of record retention referred to extends upon the written requests of the department or automatically during the course of any unresolved enforcement action regarding the regulated activity.~~

1. This paragraph establishes requirements for quarterly Generator's Hazardous Waste Summary Reports.

A. All generators who are required to register in accordance with subsection (2)(A) of this rule shall complete a Generator's Hazardous Waste Summary Report. This report shall be completed on a form provided by the department or on a reproduction of the form provided by the department or in the same format as the form provided by the department after review and approval by the department.

B. Persons who do not ship any hazardous wastes or who make only one (1) shipment of hazardous waste during the entire reporting year, July 1 through June 30, or are defined as a small quantity generator for the entire reporting year, may file an annual report by August 14 following the reporting year period. However, persons who are defined as a large quantity generator and have more than one (1) shipment of hazardous waste during the reporting years shall file quarterly.

C. A generator who is registered with the department shall report the quantity, type, and status of all hazardous waste(s) shipped off-site during the reporting period on the Generator's Hazardous Waste Summary Report regardless of the destination of the shipment(s).

D. The Generator's Hazardous Waste Summary Report shall be signed and certified by an authorized representative as defined in 40 CFR 260.10 incorporated by reference in 10 CSR 25-3. The certification statement shall read as follows: "CERTIFICATION: I certify under penalty of law that I personally examined and am familiar with the information submitted on this form and all attached documents and, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment." The handwritten signature of the authorized representatives shall follow this certification.

E. The generator shall submit the completed Generator's Hazardous Waste Summary Report within forty-five (45) days after the end of each reporting period. The reporting periods and submittal dates are as follows: January 1 through March 31, with a submittal date of May 14 of the same year; April 1 through June 30, with a submittal date of August 14 of the same year; July 1 through September 30, with a submittal date of November 14 of the same year; and October 1 through December 31, with a submittal date of February 14 of the following year.

F. A generator shall submit the information required in 40 CFR 261.4(e)(2)(v)(C) incorporated by reference in 10 CSR 25-4.261(1) to the department along with the completed Generator's Hazardous Waste Summary Report.

G. Generators failing to file the reports required by this rule shall have their registration administratively inactivated. Their registration shall be reactivated after all required reporting is filed, applicable fees are paid, and an updated generator registration form is submitted to the department.

2. Exception reporting. 40 CFR 262.42 is not incorporated in this rule. In lieu of those requirements, a generator shall comply with the following requirements:

A. A generator shall contract with the designated facility to return the completed manifest to the generator within thirty-five (35) days after the date the waste was accepted by the initial transporter. A generator, in addition to the requirements of this subsection, shall comply with manifest reporting requirements in paragraph (2)(B)6. of this rule;

B. A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within thirty-five (35) days of the date the waste was accepted by the initial transporter shall contact the transporter, the owner, or both, or operator of the designated facility, to determine the status of the hazardous waste;

C. A generator who has not received the completed manifest with the handwritten signature of the designated facility operator within thirty-five (35) days from the date the waste was accepted by the initial transporter shall submit a completed exception report to the department within forty-five (45) days from the date the waste was accepted by the initial transporter; and

D. The exception report may be completed on the exception report form provided by the department or in a format which shall include the following: the generator's EPA identification number (if applicable), the Missouri generator identification number and the generator's name, address, and telephone number; the name, address, phone number, EPA identification number (if applicable), and Missouri transporter license number for each transporter; the EPA identification number of the facility (if applicable), the Missouri facility identification number, the facility telephone number, and the designated facility's name and address; the Missouri and EPA hazardous waste manifest document numbers followed by the date of shipment; the waste description and EPA waste code identification number as listed in 10 CSR 25-4 for each hazardous waste appearing on the manifest; the total quantity of each hazardous waste and the appropriate abbreviation for units of measure as follows: G—gallons (liquids only); P—pounds; T—tons (2,000 lbs.); Y—cubic yards; L—liters (liquids only); K—kilograms; M—metric tons (1,000 kg); N—cubic meters; the following certification statement, signed and dated by an authorized representative of the generator: "I have personally examined and am familiar with the information submitted on this form. I hereby certify that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information which include fine and imprisonment"; a legible copy of the manifest document originated by the generator and signed by the initial transporter which was retained by the generator and for which the generator does not have confirmation of delivery; and a cover letter signed by the generator or his/her authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts. The director may require a generator to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 10 CSR 25-4.261 as the director deems necessary under section 260.375(7), RSMo.

3. Reporting requirements for small quantity generators. 40 CFR 262.44 is not incorporated in this rule.

(E) Exports of Hazardous Waste. This subsection modifies the incorporation of 40 CFR part 262 subpart E. The state cannot assume authority from the EPA to receive notifications of intent to export or to transmit this information to other countries through the Department of State or to transmit acknowledgements of consent to the exporter. In addition, the annual reports and exception reports required in 40 CFR 262.55 and 262.56, incorporated in this rule, shall be filed with the EPA administrator and copies shall be provided to the department. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 262.51, 262.52, 262.53, 262.54, 262.55, 262.56, and 262.57, as incorporated in this rule. This modification does not relieve the regulated person of his/her responsibility to comply with the Resource Conservation and Recovery Act (RCRA) or other pertinent export control laws and regulations issued by other agencies (for example, the federal Department of Transportation and the Bureau of the Census of the Department of Commerce).

(F) Imports of Hazardous Waste. The United States importer shall also comply with the following requirements:

1. In addition to registration requirements specified in this section, the United States importer shall register as generator in accordance with this section and shall be responsible for compliance with all applicable requirements specified in this section. The United States importer shall register with the department as a generator, and four (4) weeks in advance of the date the waste is expected to enter the United States, shall specifically identify hazardous waste(s) intended to be imported by their EPA waste number(s) found in 40 CFR 261 and this section; and

2. The United States importer shall keep and maintain the following information on each shipment which is imported and make available upon departmental request:

A. If the waste is a mixed bulk shipment of multi-generator wastes, the individual original foreign generator's names and addresses and the wastes' technical chemical names from each source;

B. Quantity of waste from each imported source; and

C. List of EPA waste numbers found in 40 CFR 261 and this section which are applicable to the waste(s) from each source.

(G) Farmers. (*Reserved*)

(H) 40 CFR 262, subpart H, Transfrontier shipments of hazardous waste for recovery within the OECD, is not incorporated in this rule.

(I) Emergency Procedures. In the event of a spill of hazardous waste at the generator's site, where there is clear and imminent danger to humans or the environment, the generator shall take reasonable action to eliminate the danger. In the event of a spill of a reportable quantity of material under 40 CFR 302.4 and 302.5 (Note: this includes table 302.4), a generator shall notify ~~the department~~ in accordance with the ~~notification~~ procedure set forth in 10 CSR 24-3.010.

(J) Generator Fee and Taxes. A generator who is required to register under this rule, unless otherwise exempted, shall pay fees and taxes in accordance with 10 CSR 25-12.010. Generators failing to pay the fees, taxes, or applicable late fees outlined in 10 CSR 25-12.010 by the due date shall have their registration administratively inactivated. Their registration shall be reactivated after all applicable fees, taxes, and late fees are paid and an updated generator registration form is submitted to the department.

10 CSR 25-7.264 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

PURPOSE: This rule incorporates and modifies the federal regulations in 40 CFR part 264 by reference and sets forth additional state requirements.

(1) The regulations set forth in 40 CFR part 264, July 1, 2010, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modification set forth in section (2) of this rule. ~~Where conflicting rules exist in 10 CSR 25, the more stringent shall control. "Owner/operator," as defined in 10 CSR 25-3.260(2)(O)3., shall be substituted for any reference to "owner and operator" or "owner or operator" in 40 CFR part 264 incorporated in this rule.~~

(2) ~~The owner/operator~~ of a permitted hazardous waste treatment, storage, or disposal facility shall comply with this section in addition to the regulations of 40 CFR part 264. In the case of contradictory or conflicting requirements, the more stringent shall control. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the requirements to be added to 40 CFR part 264 subpart E are found in subsection (2)(E) of this rule.)

(A) General. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 264 subpart A.

1. A treatment permit is not required under this rule for a resource recovery process that has been certified by the department in accordance with 10 CSR 25-9.020. Storage of hazardous waste prior to resource recovery must be in compliance with this rule.

2. A permit is not required under this rule for an elementary neutralization unit or a wastewater treatment unit receiving only hazardous waste that is generated on-site or generated by its operator or only one (1) generator if the ~~owner/operator~~, upon request, can demonstrate to the satisfaction of the department compliance with the requirements in 10 CSR 25-7.270(2)(A)3.

~~3. Hazardous waste which must be managed in a permitted unit (for example, waste generated on-site and stored beyond the time frames allowed without a permit pursuant to 10 CSR 25-5.262, waste received from off site, certain hazardous waste fuels, etc.) shall not be stored or managed outside an area or unit which does not have a permit or interim status for that waste for a period which exceeds twenty-four (24) hours. This provision shall not apply to railcars held for the period allowed by, and managed in accordance with, 10 CSR 25-7.264(3) of this regulation. (Comment: The purpose of this paragraph is to allow necessary movement of hazardous waste into, out of, and through facilities, and not to evade permit requirements.)~~

~~(B) General Facility Standards This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 264 subpart B.~~

~~1. The substitution of terms at 10 CSR 25 3.260(1)(A)1. does not apply to 40 CFR 264.12(a), incorporated by reference in this rule. In addition to the requirements in 40 CFR 264.12(a) incorporated in this rule, an owner/operator shall submit to the department a separate analysis for each hazardous waste that s/he intends to import. Each analysis shall contain the following information: the foreign generator's name, site address, and telephone number; a list of applicable United States Environmental Protection Agency (EPA) waste codes and a percentage of each for each hazardous waste; the flash point determined in accordance with 40 CFR 261.21 incorporated by reference in 10 CSR 25 4; a list of reactive waste(s) as defined in 40 CFR 261.23 incorporated by reference in 10 CSR 25 4; and results of toxicity tests conducted in accordance with 40 CFR 261.24 incorporated by reference in 10 CSR 25 4.261, if applicable.~~

~~2. Information describing the frequency and type of analysis performed on run off and leachate generated at the hazardous waste management units shall be included as part of the waste analysis plan required in 40 CFR 264.13(b) incorporated in this rule.~~

~~3. 40 CFR 264.15(b)(5) is not incorporated in this rule.~~

~~4. The comment following 40 CFR 264.18(a) is not incorporated in this rule.~~

(C) Preparedness and Prevention. (*Reserved*)

(D) Contingency Plan and Emergency Procedures. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 264 subpart D.

1. The government official described in 40 CFR 264.56(d)(2) incorporated in this rule as the on-scene coordinator shall be contacted and further identified in the report as one (1) of the following:

A. The department's Emergency Response Coordinator (573) 634-2436 or (573) 634-CHEM;

B. The EPA Region VII Emergency Planning and Response Branch (913) 236-3778; or

C. The National Response Center identified in 40 CFR 264.56(d)(2), incorporated in this rule.

(E) Manifest System, Record Keeping, and Reporting. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 264 subpart E.

1. Missouri requires an original copy of the manifest to be submitted to the department by all in-state and out-of-state Treatment, Storage, or Disposal Facilities (TSDFs) in accordance with 40 CFR 264.71(e).

~~2. As it becomes available, the following additional information shall be maintained in the operating record described in 40 CFR 264.73 incorporated in this rule until final closure, at which time the operating record shall be submitted to the department:~~

~~A. The information from each manifest shall be maintained in the operating record;~~

~~B. In addition to the requirements in 40 CFR 264.73(b)(2) incorporated in this rule, an owner/operator of a hazardous waste disposal facility shall record the location and quantity of each hazardous waste shipment on a map or diagram of each cell or disposal area with respect to a surveyed permanent benchmark and baseline;~~

~~C. In addition to the requirements in 40 CFR 264.73(b)(2) incorporated in this rule, an owner/operator of a facility which has had a release or which has hazardous waste or hazardous waste constituent migration beyond the hazardous waste management unit shall record the locations and concentrations of contamination on a map or diagram with respect to a surveyed permanent benchmark and baseline;~~

~~D. If applicable, information regarding volumes, dates of removal, and disposition of leachate removed from collection points shall be maintained in the operating record; and~~

~~E. A complete copy of the final, approved permit application, including all approved engineering plans, shall be maintained in the operating record.~~

3. The owner/operator of a hazardous waste management facility shall submit a report to the department as set forth in this paragraph.

A. All owners/operators shall comply with the reporting requirements in 10 CSR 25-5.262(2)(D) regardless of whether the owner/operator is required to register as a generator pursuant to 10 CSR 25-5.262(2)(A)1.

B. In addition to the requirements in 10 CSR 25-5.262(2)(D) for hazardous waste generated on-site and shipped off-site for treatment, storage, resource recovery, or disposal, the owner/operator shall meet the same requirements for the following:

(I) All hazardous waste generated on-site during the reporting period that is managed on-site; and

(II) All hazardous waste received from off-site during the reporting period, including hazardous waste generated by another generator and hazardous waste generated at other sites under the control of the owner/operator.

C. In addition to the information required in 10 CSR 25-5.262(2)(D), an owner/operator shall include the following information in the summary report:

(I) A description and the quantity of each hazardous waste that was both generated and managed on-site during the reporting period;

(II) For each hazardous waste that was received from off-site, a description and the quantity of each hazardous waste, the corresponding state, and EPA identification numbers of each generator;

(III) For imports, the name and address of the foreign generator;

(IV) The corresponding method of treatment, storage, resource recovery, disposal, or other approved management method used for each hazardous waste;

(V) The quantity and description of hazardous waste residue generated by the facility; and

(VI) A summary of both quantitative and qualitative groundwater monitoring data that was received during the reporting period, as required in 40 CFR part 264 subpart F incorporated in this rule and subsection (2)(F) of this rule. (Comment: This does not change the frequency of monitoring required by rules or in specific permit conditions. It only changes the frequency of reporting.)

4. As outlined in section 260.380.2, RSMo, all owners/operators shall pay a fee to the department of two dollars (\$2) per ton or portion thereof for any and all hazardous waste received from outside of Missouri. This fee shall be referred to as the Out-of-State Waste Fee and shall not be paid on hazardous waste received directly from other permitted treatment, storage, and disposal facilities located in Missouri.

A. For each owner/operator, this fee shall be paid on or before January 1 of each year and shall be based on the total tons of hazardous waste received in the aggregate by that owner/operator for the twelve (12)-month period ending the previous June 30. As outlined in section 260.380.4, RSMo, failure to pay this fee in full by the due date shall result in imposition of a late fee equal to fifteen percent (15%) of the total original fee. Each twelve (12)-month period ending on June 30 shall be referred to as a reporting year.

B. Owners/operators may elect, but are not required, to pay this fee on a quarterly basis at the time they file the reporting required in subparagraphs (2)(E)3.B. and C. of this rule. If they do not choose to pay the fee quarterly, owners/operators may elect, but are not required, to pay the fee at the time they file their final quarterly report of each reporting year. However, the total fee for each reporting year must be paid on or before January 1 immediately following the end of each reporting year.

EXAMPLES OF OUT-OF-STATE WASTE FEE CALCULATION

Example 1. ABC Company reports receiving 250 tons of hazardous waste from outside of Missouri:

$$\$2 \times 250 \text{ tons} = \$500 \text{ fee}$$

Example 2. ABC Company reports receiving 410.6 tons of hazardous waste from outside of Missouri.

The number of tons would be rounded to 411:

$$\$2 \times 411 \text{ tons} = \$822 \text{ fee}$$

Example 3. ABC Company reports receiving 52,149.3 tons of hazardous waste from outside of Missouri.

The number of tons would be rounded to 52,150:

$$\$2 \times 52,150 \text{ tons} = \$104,300 \text{ fee}$$

~~(F) Releases From Solid Waste Management Units. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 264 subpart F.~~

~~1. If the department determines that there is a significant risk to human health or the environment resulting from ground or surface water contamination from operation of any hazardous waste management facility or solid waste management unit, the department may condition the permit for a facility or unit; or upon issuance or reissuance or by modification of a permit, the department may require that an owner/operator of the facility comply with the requirements of this section. An owner/operator shall furnish to the department, within a reasonable time period, any information which the department requests to comply with this subsection.~~

~~2. In addition to requirements in 40 CFR 264.91(a)(3) and 40 CFR 264.100(e)(2) incorporated in this rule, the owner/operator shall document in the operating record all efforts taken to monitor groundwater or take corrective action beyond the facility boundary.~~

~~3. The facility permit will include, as described in 40 CFR 264.100(b) incorporated in this rule, a course of action to implement remedial procedures. The corrective action program may include, if necessary, closure of the appropriate units to prevent further leachate generation and transport.~~

~~4. This paragraph sets forth requirements for surface water monitoring.~~

~~A. The owner/operator is exempt from regulations under this paragraph if—~~

~~(I) S/he is exempted under this subsection and 40 CFR part 264 subpart F, incorporated in this rule; or~~

~~(II) The department finds based upon a demonstration by the owner/operator, that there is low potential for migration of liquid from the facility or unit to surface water bodies throughout the post-closure care period. This demonstration shall be certified by a registered geologist or professional engineer registered in Missouri; or~~

~~(III) The surface water runoff from the regulated unit(s) is being monitored in accordance with the facility's National Pollutant Discharges Elimination System (NPDES) or state operating stormwater discharge permit and the NPDES or state operating permit is substantially equivalent to that which would otherwise be required under this section.~~

~~B. An owner/operator shall establish a surface water monitoring program, except as provided otherwise in subparagraph (2)(F)4.A. of this rule. This program shall be designed to protect human health and the environment. The owner/operator, at a minimum, shall fulfill the following requirements:~~

~~(I) The surface water monitoring system shall consist of a sufficient number of points at appropriate locations to yield surface water samples that—~~

~~(a) Represent the quality of background surface water that has not been affected by any contamination from the facility (for example, upgradient); and~~

~~(b) Represent the quality of surface water hydrologically downgradient of the facility or regulated units;~~

~~(II) The surface water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results which provide a reliable indication of surface water quality at the facility and changes in the water quality due to the impact of the facility or regulated units;~~

~~(III) The owner/operator shall report to the department the surface water analysis by including it in the routine reports required by part (2)(E)3.C.(VI) of this rule; and~~

~~(IV) If the department determines, based upon the findings in the reports submitted under part III of this subparagraph, that there is a substantial threat to human health or the environment, it will direct the owner/operator, through modification of the facility permit, to take corrective and preventative measures.~~

~~5. The department may require additional monitoring to protect human health and the environment.~~

~~(G) Closure and Post-Closure. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 264 subpart G.~~

~~1. The incorporation by reference of 40 CFR 264.113(d) and (e) does not relieve the owner/operator of his/her responsibility to comply with 10 CSR 80.~~

~~2. The owner/operator of a hazardous waste unit which is certifying closure with residues left in place, regardless of the level of treatment to render the residue nonhazardous, shall meet the requirements in 40 CFR 264.116 incorporated in this rule.~~

~~3. In addition to requirements in 40 CFR 264.116, when an owner/operator certifies a closure which did not result in the removal of wastes to background levels, the owner/operator shall record, in accordance with state law, a notation on an instrument which is normally examined during title search that in perpetuity will notify any potential purchaser of the property that the land has been used to manage hazardous waste.~~

~~4. In addition to requirements in 40 CFR 264.116 and 264.119 as incorporated in this rule, an owner/operator shall submit a notarized statement to the department certifying that the owner/operator has caused the notation(s) to be recorded. The notation shall be recorded with the recorder(s) of deeds in all counties in which the facility is located.~~

(H) Financial Assurance Requirements. This subsection sets forth the requirements which modify or add to those requirements in 40 CFR part 264 subpart H.

1. For purposes of this subsection, commercial treatment, storage, or disposal (TSD) facility means any facility that would be considered a commercial hazardous waste TSD facility for the purposes of 10 CSR 25-12.020, or any facility that is certified as an R2 resource recovery facility according to 10 CSR 25-9.020, or any facility that receives for remuneration polychlorinated biphenyls (PCB) material or PCB units as defined by 10 CSR 25-13.010.

2. In 40 CFR 264.143(a)(3), incorporated by reference in this rule, delete “the term of the initial RCRA permit” and insert in its place “a period of five (5) years, beginning with the date the permit is issued.”

3. In 40 CFR 264.145(a)(3), incorporated by reference in this rule, delete “the term of the initial RCRA permit” and insert in its place “a period of five (5) years, beginning with the date the permit is issued.”

4. This paragraph modifies the requirements for surety bonds guaranteeing payment into a closure trust fund or post-closure trust fund per 40 CFR 264.143(b) or 40 CFR 264.145(b), incorporated in this rule.

A. Any surety company issuing a surety bond guaranteeing payment into a closure trust fund or post-closure trust fund shall be authorized to do business in Missouri.

B. Any surety company issuing a surety bond guaranteeing payment into a closure trust fund or post-closure trust fund shall not cancel, terminate, or fail to renew a surety bond guaranteeing payment into a closure or post-closure trust fund, and the surety bond shall remain in full force and effect in the event that on or before the date of cancellation:

(I) The director deems the facility abandoned; or

(II) The permit is terminated or revoked, or a new permit is denied; or

(III) Closure is ordered by the department or a court of competent jurisdiction; or

(IV) The owner/operator is named as a debtor in a voluntary or involuntary proceeding under 11 U.S.C. section 1, et seq.; or

(V) The premium due is paid; or

(VI) An appeal of an order to close the facility as specified in part (4)(H)4.B.(III) of this subparagraph is pending.

C. Facilities that have a surety bond or bond(s) guaranteeing payment into a closure trust fund or a post-closure trust fund as of the effective date of this subparagraph shall modify their surety instruments to comply with this paragraph within twelve (12) months of the effective date of this subparagraph.

5. This paragraph modifies the requirements for surety bonds guaranteeing performance of closure or performance of post-closure care per 40 CFR 264.143(c) or 40 CFR 264.145(c), incorporated in this rule.

A. A surety company issuing a surety bond for closure or post-closure performance shall be authorized to do business in Missouri.

B. Any surety company issuing a surety bond for closure or post-closure performance shall not cancel, terminate, or fail to renew a surety bond guaranteeing performance of closure or post-closure care and the surety bond shall remain in full force and effect in the event that on or before the date of cancellation:

(I) The director deems the facility abandoned; or

(II) The permit is terminated or revoked, or a new permit is denied; or

(III) Closure is ordered by the department or a court of competent jurisdiction; or

~~(IV) The owner/operator is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), *United States Code*; or~~

~~(V) The premium due is paid; or~~

~~(VI) An appeal of an order to close the facility as specified in part (4)(H)5.B.(III) of this subparagraph is pending.~~

~~C. Facilities that have a surety bond or bonds guaranteeing performance of closure or performance of post closure care as of the effective date of this subparagraph shall modify their surety instruments to comply with this paragraph within twelve (12) months of the effective date of this subparagraph.~~

~~6. This paragraph modifies the requirements for letters of credit per 40 CFR 264.143(d), 40 CFR 264.145(d), and 40 CFR 264.147(h), incorporated in this rule. Letters of credit shall be issued by a state or federally chartered and regulated bank or trust association.~~

~~7. An owner/operator of a facility that is a commercial TSD facility may not satisfy financial assurance requirements for closure, post closure, or liability coverage, or any combination of these, by the use of a financial test as specified in 40 CFR 264.143(f), 40 CFR 264.145(f), or 264.147(f), incorporated in this rule.~~

~~8. This paragraph modifies the requirements for closure insurance per 40 CFR 264.143(e), incorporated in this rule, post closure insurance per 40 CFR 264.145(e), incorporated in this rule, liability coverage for sudden accidental occurrences per 40 CFR 264.147(a)(1), incorporated in this rule, and liability coverage for non-sudden accidental occurrences per 40 CFR 264.147(b)(1), incorporated in this rule. Each insurance policy shall be issued by an insurer who, at a minimum, is licensed to transact the business of insurance or is eligible to provide insurance as an excess or surplus lines insurer in Missouri.~~

~~9. In 40 CFR 264.143(f), incorporated in this rule, delete “or a firm with a ‘substantial business relationship’ with the owner or operator.”~~

~~10. In 40 CFR 264.145(f), incorporated in this rule, delete “or a firm with ‘a substantial business relationship’ with the owner or operator.”~~

~~11. In 40 CFR 264.147(g), incorporated in this rule, delete “or a firm with a ‘substantial business relationship’ with the owner or operator.”~~

(I) Containers. This subsection sets forth requirements in addition to 40 CFR part 264 subpart I incorporated in this rule.

1. An owner/operator of a facility which treats hazardous waste in containers shall meet the requirements of 40 CFR 264.601–264.603 incorporated in this rule and subsection (2)(X) of this rule.

2. Containers storing hazardous waste must be marked and labeled in accordance with 10 CSR 25-5.262(2)(C) during the entire storage period.

3. ~~Container storage areas which close without removing all hazardous waste and/or hazardous waste constituents to below background levels may pursue either a risk-based closure if there is no evidence of groundwater or surface water contamination or, in the absence of such evidence, close in accordance with 10 CSR 25 7.264(2)(N) and 40 CFR part 264 subpart N as incorporated in subsection (2)(N). The owner/operator shall also comply with the requirements of 10 CSR 25 7.264(2)(G).~~

4. Containers holding ignitable or reactive waste that are stored outdoors or in buildings not equipped with sprinkler systems shall be located at least fifty feet (50') from the facility's property line.

5. Containers holding ignitable or reactive waste that are stored indoors shall be located at least fifty feet (50') from the facility's property line unless the following requirements are satisfied:

A. Exposing walls that are located more than ten feet (10') but less than fifty feet (50') from a boundary line of adjoining property that can be built upon shall have a fire-resistance rating of at least two (2) hours, with each opening protected by an automatically-closing listed one and one-half (1.5) hour (B) fire door;

B. Exposing walls that are located less than ten feet (10') from a boundary line of adjoining property, that can be built upon, shall have a fire-resistance rating of at least four (4) hours, with each opening protected by an automatically-closing listed three (3)-hour (A) fire door (Comment: All fire doors, closure devices, and windows shall be installed in accordance with the National Fire Protection Agency (NFPA) Code 80, *Standards for Fire Doors and Windows*, 1995 edition);

C. The construction design of exterior walls shall provide ready accessibility for fire-fighting operations through the provision of access openings, windows, or lightweight noncombustible wall panels;

D. Container storage areas shall be provided with automatic fire suppression systems designed and installed in accordance with the NFPA 14 (1996 edition), NFPA 15 (1996 edition), NFPA 16 (1995 edition), NFPA 16A (1994 edition), NFPA 17 (1998 edition), NFPA 17A (1998 edition), NFPA 18 (1995 edition), NFPA 20 (1996 edition), NFPA 22 (1996 edition), and NFPA 24 (1995 edition) standards. Final design of these systems shall be approved by a qualified, registered professional engineer in Missouri;

E. Each container storage area shall have preconnected hose lines capable of reaching the entire area. The fire hose shall be either a one and one-half (1.5)-inch line or a one-inch (1") hard rubber line. Where a one and one-half (1.5)-inch fire hose is used, it shall be installed in accordance with NFPA 14 (1996 edition). Hand-held fire extinguishers rated for the appropriate class of fire shall be available at each storage area;

F. Only containers meeting the requirements of, and containing products authorized by, Chapter I, Title 49 of the *Code of Federal Regulations* (DOT Regulations) or NFPA 386, *Standard for Portable Shipping Tanks* shall be used;

G. All storage of ignitable or reactive materials shall be organized in a manner which will not physically obstruct a means of egress. Materials shall not be placed in a manner that a fire would preclude egress from the area. Evacuation plans shall recognize the locations of any automatically-closing fire doors;

H. All containers shall be arranged so there is a minimum aisle space of four feet (4') between rows, allowing accessibility to each individual container. Double rows can be utilized. Containers shall not be stacked or placed closer than three feet (3') from ceilings or any roof members, or both; and

I. Explosive gas levels in the facility shall be monitored continuously. If the facility is not manned twenty-four (24) hours per day, a telemetry system shall be provided to alarm designated response personnel.

(J) Tanks. ~~This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 264 subpart J.~~

~~1. Hazardous waste that has a true vapor pressure of greater than seventy-eight millimeters of mercury (78 mm Hg) at twenty-five degrees Celsius (25 °C) is considered to be volatile and shall not be placed in an open tank.~~

2. 40 CFR 264.190(c) is not incorporated by reference.

3. In 40 CFR 264.193(g) incorporated in this rule, delete “or that in the event of a release that does migrate to ground water or surface water, no substantial present or potential hazard will be posed to human health or the environment.” 40 CFR 264.193(g)(2) and its subdivisions are not incorporated in this rule.

4. For purposes of 40 CFR 264.193(h) incorporated in this rule, “variance” means exception.

5. In 40 CFR 264.196(e) and 40 CFR 264.196(e)(1) incorporated in this rule, delete “visible” and “visual.” Tank storage areas which close without removing all hazardous waste and/or hazardous waste constituents to below background levels may pursue either a risk-based closure if there is no evidence of groundwater or surface water contamination or in the absence of such evidence, close in accordance with 10 CSR 25 7.264(2)(N) and 40 CFR part 264 subpart N as incorporated in subsection (2)(N). The owner/operator shall also comply with the requirements of 10 CSR 25 7.264(2)(G).

6. An owner/operator of a facility which treats hazardous waste in a tank system shall meet the requirements of 40 CFR 264.601 40 CFR 264.603 incorporated in this rule and subsection (2)(X) of this rule.

(K) Surface Impoundments. This subsection sets forth standards and requirements which modify or add to those requirements in 40 CFR part 264 subpart K.

1. Design and operating requirements are as follows:

A. Any existing surface impoundment or existing portion of a surface impoundment shall be replaced with a new surface impoundment in compliance with 40 CFR part 264 subpart K, incorporated in this rule, and this subsection prior to permit issuance;

B. Each new surface impoundment shall be constructed with a double liner as required in 40 CFR 264.221(e), incorporated in this rule, and subparagraphs (2)(K)1.C. and D. of this rule;

C. The lower component of the composite liner required by 40 CFR 264.221(e) shall, at a minimum, consist of at least three feet (3') of clay, recompacted to ninety five percent (95%) of Standard Proctor Density with the moisture content between two percent (2%) below and four percent (4%) above the optimum moisture content. The soils used for this purpose shall meet the following minimum specifications:

(I) Be classified under the United Soil Classification Systems as CL, CH, or SC (American Society for Testing and Materials (ASTM) Standard D2487-93, current edition approved September 15, 1993, published November 1993);

(II) Allow more than thirty percent (30%) passable through a No. 200 sieve (ASTM Test D1140-54 (reapproved 1971), current edition approved September 15, 1954);

(III) Have a liquid limit equal to or greater than thirty (30) (ASTM Test D4318-95a, current edition approved December 10, 1995, published April 1996);

(IV) Have a plasticity index equal to or greater than fifteen (15) (ASTM Test D4318-95a, as previously referenced in this rule); and

(V) Have a coefficient of permeability equal to or less than 1×10^{-8} cm/sec when compacted to ninety five percent (95%) of Standard Proctor Density with the moisture content between two percent (2%) below and four percent (4%) above the optimum moisture content, and when tested by using the indirect calculation from the one (1) dimensional consolidation test for clay rich soils (ASTM D2435-96, current edition approved June 10, 1996, published August 1996) or other procedures approved by the department;

D. The leak detection system required by 40 CFR 264.221(e)(2) shall cover the entire sides and bottom of the surface impoundment;

~~E. When liquids are detected in the leak detection system installed to comply with subparagraph (2)(K)1.D. of this rule and 40 CFR 264.221(c)(2), the owner/operator shall —~~

~~(I) Notify the department in writing within thirty (30) days of the event;~~

~~(II) Continue to operate and maintain the leak detection system so that the liquids are removed as they accumulate or with sufficient frequency to prevent backwater within the system; and~~

~~(III) Implement leachate monitoring in accordance with paragraph (2)(K)1.F. of this rule and the facility permit;~~

~~F. This paragraph sets forth requirements for leachate monitoring at surface impoundments. An owner/operator that is required under subparagraph (2)(K)1.E. of this rule to initiate leachate monitoring shall comply with parts (2)(K)1.F.(I)–(IV) of this rule.~~

~~(I) The owner/operator shall remove any accumulated leachate in the leak detection system collection sumps at least weekly during the active life and closure period. After the final cover is installed, accumulated leachate shall be removed at least as often as the owner/operator is required by 40 CFR 264.226(d)(2) to record the amount of liquids removed from the system.~~

~~(II) The owner/operator shall analyze the leachate at least annually. At a minimum, the annual leachate analyses shall be conducted for indicator parameters (that is pH, specific conductance, dissolved organic carbon, and total organic halogen) and selected hazardous waste constituents. The hazardous waste constituents selected must provide a reliable indication of the presence of hazardous constituents that are reasonably expected to be in or derived from wastes contained in each unit.~~

~~(III) The owner/operator shall calculate the average daily flow rate for each sump as required by 40 CFR 264.222(b). If the department determines that the leachate generation rate is greater than reasonably expected for any unit, the department may require the owner/operator to provide additional information to evaluate the existing conditions.~~

~~(IV) In accordance with subsection (2)(E) of this rule and 40 CFR part 264 subpart E incorporated in this rule, the owner/operator shall submit to the department all information required to comply with parts (2)(K)1.F.(I)–(III) of this rule.~~

~~(V) The department may require more frequent leachate collection and analysis than that outlined in parts (2)(K)1.F.(I)–(III) of this rule if determined necessary. The frequency of leachate collection and analysis will be specified in the facility permit.~~

~~(VI) Indicator parameters and constituents to be monitored as required by part (2)(K)1.F.(II) of this rule will be specified by the department in the facility permit. If the department determines that results of the chemical analyses are outside of the range that is reasonably expected for any unit, the department may require the owner/operator to provide additional information to evaluate the existing conditions;~~

~~G. The owner/operator shall measure daily precipitation at the facility until final closure is certified. During the post-closure care period of the facility, the owner/operator shall also record and report regional precipitation from the nearest weather recording station in accordance with the schedule established for the maintenance of the facility. The information required under this paragraph shall be submitted to the department in accordance with subsection (2)(E) of this rule and 40 CFR part 264 subpart E incorporated in this rule; and~~

~~H. If the leachate monitoring (implemented in accordance with subparagraph (2)(K)1.F. of this rule) detects hazardous waste(s) constituents in the leak detection system, a leak in the surface impoundment liner is indicated and the owner/operator shall —~~

~~(I) Within seven (7) days after detecting the leak, notify the department in writing of the leak;~~

~~(II) Remove, within the period of time specified in the permit, accumulated liquid, repair or replace the leaking liner to prevent the migration of hazardous waste liquids through the liner and obtain a certification from a registered professional engineer that, to the best of his/her knowledge and opinion, the leak has been stopped; and~~

~~(III) Obtain, after performing the necessary repairs, written approval from the department prior to placing the surface impoundment in service again.~~

~~2. Those surface impoundments which are intended to be closed without removing the hazardous waste shall meet the requirements of subparagraph (2)(N)1.A. and 40 CFR part 264 subpart N, incorporated in this rule. If the site cannot meet these requirements and contamination exists beyond the liner of the surface impoundment, the owner/operator shall clean up contaminated residues and hazardous constituents to the greatest extent practical during closure. If the department determines, based on the potential impact on human health and the environment, that it is not necessary or feasible to remove contaminated material down to background concentrations during closure, the owner/operator shall —~~

~~A. Comply with subsection 40 CFR 264.228(b) incorporated in this rule; or~~

~~B. Submit and obtain approval for a delisting petition pursuant to 40 CFR 260.20 and 40 CFR 260.22 for the contaminated material not removed during closure.~~

~~3. An owner/operator of a facility which treats hazardous waste in a surface impoundment shall meet the requirements of 40 CFR 264.601 40 CFR 264.603 incorporated in this rule and subsection (2)(X) of this rule.~~

~~(L) Waste Piles. This subsection sets forth standards which modify or add to those requirements in 40 CFR part 264 subpart L.~~

~~1. In addition to the requirements in 40 CFR part 264.250(c) incorporated in this rule, the waste pile must be at least ten feet (10') above the historical high groundwater table to be exempt from the regulatory requirements in 40 CFR 264.251 incorporated in this rule, 40 CFR part 264 subpart F incorporated in this rule, and subsection (2)(F) of this rule.~~

~~2. Design and operating requirements are as follows:~~

~~A. Any existing waste pile or existing portion of a waste pile shall be replaced with a new waste pile in compliance with 40 CFR 264 subpart L, incorporated in this rule, and this subsection prior to permit issuance;~~

~~B. Each new waste pile shall be constructed with a double liner as required in 40 CFR 264.251(c), incorporated in this rule, and subparagraphs (2)(L)2.C. and D. of this rule;~~

~~C. The lower component of the composite liner required by 40 CFR 264.251(c), at a minimum, shall consist of at least three feet (3') of clay, recompact to ninety five percent (95%) of Standard Proctor Density with the moisture content between two percent (2%) below and four percent (4%) above the optimum moisture content. The soils used for this purpose shall meet the following minimum specifications:~~

~~(I) Be classified under the United Soil Classification Systems as CL, CH, or SC (ASTM Standard D2487-93, as previously referenced in this rule);~~

~~(II) Allow more than thirty percent (30%) passable through a No. 200 sieve (ASTM Test D1140, as previously referenced in this rule);~~

~~(III) Have a liquid limit equal to or greater than thirty (30) (ASTM Test D4318-95a, as previously referenced in this rule);~~

~~(IV) Have a plasticity index equal to or greater than fifteen (15) (ASTM Test D4318-95a, as previously referenced in this rule); and~~

~~(V) Have a coefficient of permeability equal to or less than 1×10^{-8} cm/sec when compacted to ninety five percent (95%) of Standard Proctor Density with the moisture content between two percent (2%) below and four percent (4%) above the optimum moisture content, and when tested by using the indirect calculation from the one (1) dimensional consolidation test for clay rich soils (ASTM D2435-96, as previously referenced in this rule) or other procedures approved by the department;~~

~~D. The leak detection system required by 40 CFR 264.251(c)(3) shall be capable of detecting leaks from the entire area of the waste pile;~~

~~E. When liquids are detected in the leachate collection/removal system installed to comply with 40 CFR 264.251(c)(2), the owner/operator shall —~~

~~(I) Notify the department in writing within thirty (30) days of the event;~~

~~(II) Continue to operate and maintain the leachate collection/removal and leak detection systems so that the liquids are removed as they accumulate or with sufficient frequency to prevent backwater within the system; and~~

~~(III) Implement leachate monitoring in accordance with subparagraph (2)(L)2.F. of this rule and the facility permit;~~

~~F. This paragraph sets forth requirements for leachate monitoring at waste piles. An owner/operator that is required under subparagraph (2)(L)2.E. to initiate leachate monitoring shall comply with parts (2)(L)2.F.(I)–(IV) of this rule.~~

~~(I) The owner/operator shall remove any accumulated leachate in the leachate collection/removal and leak detection system collection sumps at least weekly during the active life and closure period. After the final cover is installed, accumulated leachate shall be removed at least as often as the owner/operator is required by subparagraph (2)(L)3.A. of this rule to record the amount of liquids removed from the system.~~

~~(II) The owner/operator shall analyze leachate from the leak detection system at least annually. If leachate has not yet been discovered in the leak detection system, the annual analysis shall be completed on leachate collected from the leachate collection/removal system. At a minimum, the annual leachate analyses shall be conducted for indicator parameters (that is pH, specific conductance, dissolved organic carbon, and total organic halogen) and selected hazardous waste constituents. The hazardous waste constituents selected must provide a reliable indication of the presence of hazardous constituents that are reasonably expected to be in or derived from wastes contained in each unit.~~

~~(III) The owner/operator shall calculate the average daily flow rate for each sump in the leak detection system as required by 40 CFR 264.252(b), in addition the average daily flow rate for each sump calculated in a similar manner. If the unit is closed in accordance with 40 CFR 264.258(b), the average daily flow rates shall be calculated at the same frequency as the recording of leachate removal as required by subparagraph (2)(L)3.B. of this rule. If the department determines that the leachate generation rate is greater than reasonably expected for any unit, the department may require the owner/operator to provide additional information to evaluate the existing conditions.~~

~~(IV) The owner/operator shall submit all information required to comply with parts (2)(L)2.F.(I)–(III) of this rule to the department in accordance with subsection (2)(E) of this rule and 40 CFR part 264 subpart E incorporated in this rule.~~

~~(V) The department may require more frequent leachate collection and analysis than that outlined in parts (2)(L)2.F.(I) (III) of this rule if determined necessary. The frequency of leachate collection and analysis will be specified in the facility permit.~~

~~(VI) Indicator parameters and constituents to be monitored, as required by part (2)(L)2.F.(II) of this rule, will be specified by the department in the facility permit. If the department determines that results of the chemical analyses are outside of the range that is reasonably expected for any unit, the department may require the owner/operator to provide additional information to evaluate the existing conditions;~~

~~G. The owner/operator shall measure daily precipitation at the facility until final closure is certified. During the post-closure care period of the facility, the owner/operator shall also record and report regional precipitation from the nearest weather recording station in accordance with the schedule established for the maintenance of the facility. The information required under this paragraph shall be submitted to the department in accordance with subsection (2)(E) of this rule and 40 CFR part 264 subpart E incorporated in this rule; and~~

~~H. If the leachate monitoring (implemented in accordance with subparagraph (2)(L)2.F. of this rule) detects hazardous waste constituents in the leak detection system, a leak in the waste pile liner is indicated, and the owner/operator shall—~~

~~(I) Notify the department in writing of the leak within seven (7) days after detecting the leak;~~

~~(II) Remove, within the period of time specified in the permits, accumulated liquid, repair or replace the leaking liner to prevent the migration of hazardous waste liquids through the liner and obtain a certification from a registered professional engineer that, to the best of his/her knowledge and opinion, the leak has been stopped; and~~

~~(III) Obtain, after performing the necessary repairs, written approval from the department prior to placing the waste pile in service again.~~

~~3. This paragraph sets forth standards which modify or add to those requirements in 40 CFR 264.254(c) for monitoring and inspection.~~

~~A. In addition to recording the amount of liquids removed from each leak detection system sump at least once per week during the active live and closure period, the owner/operator shall record the amount of liquids removed from each leachate collection/removal system sump at the same frequency.~~

~~B. If the waste pile is closed in accordance with 40 CFR 264.258(b), following closure the amount of liquids removed from each leachate collection/removal and leak detection system sump shall be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two (2) consecutive months, the amount of liquids in the sump must be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two (2) consecutive quarters, the amount of liquids in the sump shall be recorded at least semiannually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semiannual recording schedules, the owner/operator must return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two (2) consecutive months.~~

~~(M) Land Treatment. (Reserved)~~

~~(N) Landfills. This subsection sets forth standards which modify or add to those requirements in 40 CFR part 264 subpart N.~~

~~1. This paragraph sets forth standards for a site suitability demonstration.~~

~~A. Location standards.~~

~~(I) A landfill shall be located so as to minimize discharges and the potential for harm to human health and the environment.~~

~~(II) A landfill shall be located so that a total of no less than thirty feet (30') of soil or other material, which has a coefficient of permeability of less than 1×10^{-7} cm/sec, when tested according to subpart (2)(N)1.B.(II)(d) of this rule, lies between the bottom of the lowest artificial liner or lowest engineered soil liner and the uppermost regional aquifer.~~

~~(III) The requirements of part (2)(N)1.A.(II) of this rule do not apply to a landfill which meets the following criteria:~~

~~(a) Demonstrates to the satisfaction of the department by a combination of laboratory tests, field test and development of models that naturally occurring materials between the lowest artificial liner or lowest engineered soil liner and the uppermost regional aquifer would retard the migration of hazardous constituents contained in the waste to at least the same degree that thirty feet (30') of material having a coefficient of permeability of 1×10^{-7} cm/sec when tested according to subpart (2)(N)1.B.(II)(d) would retard the migration of water, but in no case shall the thickness of the naturally occurring material be less than twenty feet (20');~~

~~(b) Receives only wastes generated by its operator(s); and~~

~~(c) Meeting the criteria in subparts (2)(N)1.A.(III)(a) and (b) shall not waive compliance with any regulations except those set forth in part (2)(N)1.A.(II) of this rule.~~

~~(IV) No landfill shall be located in the following areas:~~

~~(a) In a wetland;~~

~~(b) Within two hundred feet (200') of a fault which has had surface displacement in Holocene time;~~

~~(c) In a one hundred (100) year flood plain;~~

~~(d) In an area of unstable soil deposits or area(s) containing landslides; or~~

~~(e) In an area subject to catastrophic collapse as evaluated by the Division of Geology and Land Survey.~~

~~B. The permit application shall include the following engineering reports:~~

~~(I) A geologic description of the region in which the site is located, which description shall be prepared by a qualified geologist familiar with the region;~~

~~(II) A description of the natural soils and bedrock underlying the site including a representative number of borings that indicate the type, depth and thickness of soils, bedrock, and other materials underlying the site and test results that indicate the following parameters for soils or other materials underlying the site. The following test methods shall be utilized unless other procedures have been evaluated and approved by the department:~~

~~(a) Atterberg limits (ASTM D4318-95a, as previously referenced in this rule);~~

~~(b) pH (*Methods of Soil Analysis Part II, Chemical and Microbiological Properties*, A.L. Page, Ed. American Society of Agronomy, 2nd Ed., 1982, pp. 200-209);~~

~~(c) Maximum dry density at optimum moisture content (ASTM D1557-91, current edition approved November 18, 1991, published January 1992);~~

~~(d) Coefficient of permeability, which is the indirect calculation from the one (1)-dimensional consolidation test for clay rich soils (ASTM D2435-96, as previously referenced in this rule) or other laboratory procedures found in the professional literature and approved by the department;~~

~~(e) Grain size distribution, Unified Soil Classification System designation (ASTM Standards D2487-93, as previously referenced in this rule and D422-63 (reapproved 1990) current edition approved November 21, 1963); and~~

~~(f) Cation exchange capacity (*Methods of Soil Analysis Part II, Chemical and Microbiological Properties*, A.L. Page, Ed., American Society of Agronomy, 2nd Ed., 1982, pp. 149-157);~~

~~(III) A hydrogeologic study conducted at the site to determine the potential for transport of groundwater and contaminants. This study shall include:~~

~~(a) Piezometric contours of groundwater;~~

~~(b) Potential direction(s) of groundwater movement and estimated rate(s);~~

~~(c) Identification and description of the aquifer(s);~~

~~(d) Background water quality data; and~~

~~(e) Field permeability tests as found in the professional literature and approved by the department;~~

~~(IV) A present water balance which shall be determined as outlined in *Use of the Water Balance Method for Predicting Leachate Generation from Solid Waste Disposal Sites*, EPA/530/SW-168 or an equivalent method approved by the department;~~

~~(V) Engineering and geologic drawings that delineate—~~

~~(a) Typical disposal cells for each hazardous waste type;~~

~~(b) Structures for surface water control;~~

~~(c) Locations of borings and monitoring systems;~~

~~(d) Leachate collection systems, bottom elevations, and cover elevations for each disposal area; and~~

~~(e) Stratigraphic cross sections of the geologic setting showing, at a minimum, boring locations and depths, trench design and depths, and piezometric surfaces and water tables where present; and~~

~~(VI) Any other applicable details.~~

2. This paragraph sets forth additional design and operating requirements.

A. Any existing landfill or existing portion of a landfill shall be replaced with a new landfill in compliance with 40 CFR part 264 subpart N, incorporated in this rule, and this subsection prior to permit issuance;

B. Each new landfill shall be constructed with a double liner as required in 40 CFR 264.301(c), incorporated in this rule, and subparagraphs (2)(N)2.C. of this rule;

C. The lower component of the composite liner required by 40 CFR 264.301(c), at a minimum, shall consist of at least three feet (3') of clay, recompacted to ninety five percent (95%) of Standard Proctor Density with the moisture content between two percent (2%) below and four percent (4%) above the optimum moisture content. The soils used for this purpose shall meet the following minimum specifications:

(I) Be classified under the United Soil Classification Systems as CL, CH, or SC (ASTM Standard D2487-93, as previously referenced in this rule);

(II) Allow more than thirty percent (30%) passable through a No. 200 sieve (ASTM Test D1140, as previously referenced in this rule);

(III) Have a liquid limit equal to or greater than thirty (30) (ASTM Test D4318-95a, as previously referenced in this rule);

(IV) Have a plasticity index equal to or greater than fifteen (15) (ASTM Test D4318-95a, as previously referenced by this rule); and

~~(V) Have a coefficient of permeability equal to or less than 1×10^{-8} cm/sec when compacted to ninety five percent (95%) of Standard Proctor Density with the moisture content between two percent (2%) below and four percent (4%) above the optimum moisture content, and when tested by using the indirect calculation from the one (1) dimensional consolidation test for clay rich soils (ASTM D2435-96, as previously referenced by this rule) or other procedures approved by the department;~~

~~D. Each detection or collection and removal system shall meet the requirements of 40 CFR 264.301(c)(3)(I) - (V), incorporated in this rule.~~

~~E. The leak detection system required by 40 CFR 264.301(c)(3) shall be capable of detecting leaks from the entire sides and bottom of each cell.~~

~~F. When liquids are detected in the leachate collection/removal system installed to comply with 40 CFR 264.301(c)(2), the owner/operator shall —~~

~~(I) Notify the department in writing within thirty (30) days of the event;~~

~~(II) Continue to operate and maintain the leachate collection/removal and leak detection systems so that the liquids are removed as they accumulate or with sufficient frequency to prevent backwater within the system; and~~

~~(III) Implement leachate monitoring in accordance with subparagraph (2)(N)2.G. of this rule and the facility permit;~~

~~G. This paragraph sets forth requirements for leachate monitoring at landfills. An owner/operator that is required under subparagraph (2)(N)2.F. to initiate leachate monitoring shall comply with parts (2)(N)2.G.(I) - (V) of this rule.~~

~~(I) The owner/operator shall remove any accumulated leachate in the leachate collection/removal and leak detection system collection sumps at least weekly during the active life and closure period. After the final cover is installed, accumulated leachate shall be removed at least as often as the owner/operator is required by 40 CFR 264.303(c)(2) to record the amount of liquids removed from the systems.~~

~~(II) The owner/operator shall analyze leachate from the leak detection system at least annually. If leachate has not yet been discovered in the leak detection system, the annual analysis shall be completed on leachate collected from the leachate collection/removal system. At a minimum, the annual leachate analyses shall be conducted for indicator parameters (that is pH, specific conductance, dissolved organic carbon, and total organic halogen) and selected hazardous waste constituents. The hazardous waste constituents selected must provide a reliable indication of the presence of hazardous constituents that are reasonably expected to be in or derived from wastes contained in each unit.~~

~~(III) At the first occurrence of leachate in the leak detection system, the owner/operator shall analyze leachate from that system for the complete list of parameters identified in 40 CFR part 264 Appendix IX.~~

~~(IV) The owner/operator shall calculate the average daily flow rate for each sump in the leak detection system as required by 40 CFR 264.302(b). In addition, the average daily flow rate for each sump in each of the leachate collection/removal systems shall also be calculated in a similar manner. Following closure, the average daily flow rates shall be calculated at the same frequency as the recording of leachate removal as required by 40 CFR 264.303(c)(2). If the department determines that the leachate generation rate is greater than reasonably expected for any unit, the department may require the owner/operator to provide additional information to evaluate the existing conditions.~~

~~(V) The owner/operator shall submit all information required to comply with parts (2)(N)2.G.(I) (IV) of this rule to the department in accordance with subsection (2)(E) of this rule and 40 CFR part 264 subpart E incorporated in this rule.~~

~~(VI) The department may require more frequent leachate collection and analysis than that outlined in parts (2)(N)2.G.(I) (IV) of this rule if determined necessary. The frequency of leachate collection and analysis will be specified in the facility permit.~~

~~(VII) Indicator parameters and constituents to be monitored as required by part (2)(N)2.G.(II) of this rule will be specified by the department in the facility permit. If the department determines that results of the chemical analyses are outside of the range that is reasonably expected for any unit, the department may require the owner/operator to provide additional information to evaluate the existing conditions.~~

~~H. The owner/operator shall measure daily precipitation at the facility until final closure is certified. During the post closure care period of the facility, the owner/operator shall also record and report regional precipitation from the nearest weather recording station in accordance with the schedule established for the maintenance of the facility. The information required under this paragraph shall be submitted to the department in accordance with subsection (2)(E) of this rule and 40 CFR part 264 subpart E incorporated in this rule.~~

~~I. If the volume or rate of flow of leachate contained in the leak detection system (implemented in accordance with subparagraph (2)(N)2.G. of this rule) exceeds ten percent (10%) of the action leakage rate as defined in 40 CFR 264.302, incorporated in this rule, then the owner/operator shall analyze the leachate for the indicator parameters and constituents outlined in the facility permit. If the analyzed leachate exceeds the detection limits outlined in the facility permit, the owner/operator shall—~~

~~(I) Notify the department in writing of the leak within seven (7) days after detecting the leak;~~

~~(II) Remove, within the period of time specified in the permit, accumulated liquid, conduct an assessment of the leakage to determine the cause and extent of the leak, and, if necessary, initiate repairs or replace the leaking liner to prevent the migration of hazardous waste liquids through the liner; and~~

~~(III) Submit to the department the assessment and a certification from a registered professional engineer describing any repairs or replacement of the liner system within thirty (30) days of completion.~~

~~J. A landfill shall be designed, constructed, and operated to minimize erosion, landslides and sloughing.~~

~~K. Where necessary, features shall be provided around closed units or, when leachate is detected in the lower leachate collection system, features shall control horizontal migration of leachate from the disposal unit. These features may include, but are not limited to, recompacted trench walls, slurry trenches, and interceptor trenches.~~

~~L. There shall be a minimum of three hundred feet (300') of buffer between the property line of the disposal facility and the permitted area.~~

~~M. If the owner/operator accepts any odoriferous waste, the owner/operator shall apply cover or otherwise manage the landfill to control odor dispersal.~~

~~N. If gases are generated within the landfill, a gas collection and control system shall be installed to control the vertical and horizontal escape of gases from the landfill.~~

~~3. All hazardous wastes accepted for disposal shall be listed in the permit application in accordance with 40 CFR 270.13(j) as incorporated by reference in 10 CSR 25 7.270. In addition, departmental approval of individual waste streams may be required prior to allowing the disposal of the waste streams in the landfill.~~

~~4. Wastes having a true vapor pressure greater than seventy-eight millimeters of mercury (78 mm Hg) at twenty five degrees Celsius (25 °C) are volatile wastes and shall not be landfilled.~~

~~(O) Incinerators. This subsection sets forth standards which modify or add to those requirements in 40 CFR part 264 subpart O.~~

~~1. Sampling methods to determine compliance with 40 CFR 264.343 incorporated in this rule will be specified by the department in the permit and shall consist of any of the following methods:~~

~~A. The methods described in the *Engineering Handbook for Hazardous Waste Incineration*, SW 889, by the United States EPA or equivalent; or~~

~~B. The methods specified in 40 CFR part 60 Appendix A (July 1, 1989). For facilities subject to paragraph (2)(O)2. of this rule, the methods referenced in this paragraph shall be used exclusively to determine compliance with the emission limitations required in this subsection.~~

~~2. The provisions of 40 CFR part 60 subpart E, July 1, 1989, shall apply and are incorporated by reference as part of this rule. An owner/operator of a hazardous waste incinerator which is regulated under the New Source Performance Standards in that subpart shall comply with the provisions in addition to complying with all other applicable provisions in this rule.~~

~~3. Where emission limitations found in both paragraph (2)(O)2. of this rule and in another provision of this rule are applicable to a hazardous waste incinerator, the more stringent shall control.~~

~~(P) Health Profiles.~~

~~1. An owner/operator shall submit a health profile, as required by section 260.395.7(5), RSMo, with the initial application for a hazardous waste treatment or land disposal facility. A health profile is not necessary for facilities that must obtain a permit for only post closure care and/or corrective action activities. A health profile shall identify any potential serious illnesses, the rate of which exceeds the state average for the illnesses, which might be attributable to environmental contamination from any hazardous waste treatment or land disposal unit at the hazardous waste facility applying for the permit. The purpose of the information in the health profile is to document the potential for exposure from the applicable hazardous waste treatment or land disposal units and to determine whether additional permit controls are necessary for these units to ensure protection of human health beyond the facility property boundaries. One of the following for each applicable unit or combination of units as approved by the department may constitute a health profile for the purposes of this subsection:~~

~~A. For combustion units—~~

~~(I) The evaluation described in 40 CFR 270.10(1)(1) for hazardous waste combustion units;~~

~~(II) An evaluation of the potential risk to human health resulting from both direct and indirect exposure pathways. In selecting this option, the applicant shall submit a workplan to conduct the evaluation with the initial application; however, the permit shall not be issued until the evaluation is final; or~~

~~(III) A Health Evaluation by the Missouri Department of Health and Senior Services requested by the facility according to paragraph (2)(P)4;~~

~~B. For other treatment units—~~

~~(I) An evaluation of the potential risk to human health resulting from both direct and indirect exposure pathways. In selecting this option, the applicant shall submit a workplan to conduct the evaluation with the initial application; however, the permit shall not be issued until the evaluation is final; or~~

~~(II) A Health Evaluation by the Missouri Department of Health and Senior Services requested by the facility according to paragraph (2)(P)4.; and~~

~~C. For land disposal units—~~

~~(I) The information required by 40 CFR 270.10(j);~~

~~(II) An evaluation of the potential risk to human health resulting from both direct and indirect exposure pathways. In selecting this option, the applicant shall submit a workplan to conduct the evaluation with the initial application; however, the permit shall not be issued until the evaluation is final; or~~

~~(III) A Health Evaluation by the Missouri Department of Health and Senior Services requested by the facility according to paragraph (2)(P)4.~~

~~2. This paragraph sets forth requirements which shall be met subsequent to the initial permit application for hazardous waste treatment and/or land disposal activities.~~

~~A. If changes occur after permit issuance that may increase the potential for human exposure to hazardous waste or hazardous constituents from the treatment or land disposal unit, an updated health profile shall be part of a facility application for permit renewal or permit modifications that include addition or modification of a hazardous waste treatment or land disposal unit.~~

~~B. Appropriate documentation to be submitted as the updated health profile shall include one (1) of the options set out in subparagraphs (2)(P)1.A. through C., or an update of a previous submittal under those requirements.~~

~~3. Additional epidemiological investigations by the Missouri Department of Health and Senior Services may be required if the information provided pursuant to subparagraph (2)(P)2.B. indicates the presence of potentially unacceptable human health risks.~~

~~4. A Health Evaluation by the Missouri Department of Health and Senior Services will assess the potential for exposure and adverse health effects to the public from materials released by the applicable hazardous waste units. If the owner or operator chooses to request a Health Evaluation by the Missouri Department of Health and Senior Services to meet the requirements of this subsection, the request shall be submitted with the initial application; however, a permit shall not be issued until the evaluation is final.~~

~~(Q) (Reserved)~~

~~(R) (Reserved)~~

~~(S) Corrective Action for Solid Waste Management Units. (Reserved)~~

~~(T) (Reserved)~~

~~(U) (Reserved)~~

~~(V) (Reserved)~~

~~(W) Drip Pads. 40 CFR part 264 subpart W is not incorporated by reference.~~

~~(X) Miscellaneous Units. This subsection sets forth requirements in addition to 40 CFR part 264 subpart X incorporated in this rule.~~

~~1. A facility which continuously feeds hazardous waste into the treatment process shall be equipped with an automatic waste feed cutoff or a bypass system that is activated when a malfunction in the treatment process occurs. A bypass system shall return hazardous wastefeed to storage and shall not allow a discharge or release of hazardous waste.~~

~~2. Residuals of by-products from a treatment process (for example, sludges, spent resins) shall be analyzed during a trial period to determine the effectiveness of the treatment process.~~

(Y) *(Reserved)*

(Z) *(Reserved)*

(AA) Air Emission Standards for Process Vents. *(Reserved)*

(BB) Air Emission Standards for Equipment Leaks. *(Reserved)*

(CC) Air Emission Standards for Tanks, Surface Impoundments, and Containers. *(Reserved)*

(DD) Containment Buildings. *(Reserved)*

(EE) Hazardous Waste Munitions and Explosive Storage. *(Reserved)*

(3) The following requirements apply to hazardous waste TSD facilities that accept and/or ship hazardous waste via railroad tank car (railcar).

(A) The owner/operator shall submit a railcar management plan with the application for a hazardous waste treatment, storage, or disposal facility permit. Permitted facilities that currently accept and/or ship hazardous waste via railcars shall request a Class I permit modification that requires prior director approval for the railcar management plan according to the procedures defined in 10 CSR 25-7.270 within one hundred eighty (180) days of the effective date of this paragraph. Permitted facilities that fail to apply for a permit modification in compliance with this subsection shall cease all operations involved in the acceptance and/or shipment of hazardous waste via railcar. The permitted facility that has fully complied with this subsection has authorization to conduct the operations involved in the acceptance and/or shipment of hazardous waste via railcar, pending action by the director.

1. The railcar management plan shall describe steps to be taken by the facility in order to comply with the requirements of subsections (3)(B)–(3)(F).

2. The railcar management plan shall be maintained at the facility.

(B) Railcars shall not be used as container or tank storage units at a facility unless the owner/operator complies with the standards for container storage set forth in 40 CFR part 264 subpart I as incorporated in this rule and 40 CFR 270.15 as incorporated in 10 CSR 25-7.270. During the time allowed for loading and unloading as set forth in this section, the railcar shall not be considered to be in storage.

1. The owner/operator shall ship hazardous wastes loaded onto a railcar within seventy-two (72) hours after loading is initiated. For the purposes of this section, shipment occurs when—

A. The transporter signs and dates the manifest acknowledging acceptance of the hazardous waste;

B. The transporter returns a signed copy of the manifest to the facility; and

C. The railcar crosses the property boundary line of the TSD facility.

2. The owner/operator shall have a maximum of ten (10) days following receipt of a shipment to unload hazardous waste from incoming railcars. The amount of time allowed for unloading shall be specified in the approved railcar management plan for each facility as part of the permit. The department will review and approve each railcar management plan on a case-by-case basis and will base its decision regarding the time allowed for unloading on factors including, but not limited to, the size of the rail siding, surveillance and security standards, enclosure of the facility, type and amount of emergency response equipment, and the facility's capacity to handle incidents. Unless more time is allowed by an approved railcar management plan, the owner/operator shall unload hazardous waste from an incoming railcar within seventy-two (72) hours of receipt of the shipment. For the purposes of this section, receipt of the shipment occurs when—

- A. The owner/operator signs the shipping paper; or
- B. The owner/operator signs the manifest; or
- C. The railcar crosses the property boundary line of the TSD facility.

3. The time limits in this subsection may be extended for up to an additional twenty-four (24) hours for Saturdays, Sundays, or public holidays as defined in section 9.010, RSMo 2000, that fall within the time period approved in the railcar management plan.

4. If the owner/operator finds that a railcar shipment must be rejected, the railcar shall be shipped within twenty-four (24) hours of that determination, or within the time period approved in the railcar management plan, whichever is later. The rejection and the reasons for the rejection shall be documented in the facility's operating record.

5. The owner/operator shall attempt to arrange for the rail carrier to provide the owner/operator a notification detailing when a railcar was picked up from the facility or when a railcar was delivered to the facility. If the rail carrier declines to enter into such arrangements, the owner/operator must document the refusal in the operating record. The time limitations set forth in this subsection must be documented by recording dates and times in the facility's operating record.

6. If the loading and unloading time frames specified in this section are exceeded, then the owner/operators utilizing railcars shall comply with the standards for container storage in 40 CFR part 264 subpart I, as incorporated in this rule, and with 40 CFR 270.15, as incorporated in 10 CSR 25-7.270.

(C) The owner/operator shall comply with 40 CFR 264.17, incorporated in this rule, during railcar loading and unloading. Additional specific precautions to be taken shall include facility design, construction, operation and maintenance standards as specified in "Loading and Unloading Operations: Tank Vehicles and Tank Cars" in section 5-4.4.1 of the 1993 Edition of the *National Fire Protection Association Flammable and Combustible Liquids Code* (NFPA 30).

(D) The owner/operator shall provide security for railcars at the facility by utilizing one of the alternatives specified in 40 CFR 264.14(b), as incorporated in this rule. If the owner/operator demonstrates that it is not practical to provide security for railcars at the facility as specified in 40 CFR 264.14(b), incorporated in this rule, railcars shall be secured by locking all fill and drain posts upon receipt of a loaded railcar or upon completion of the owner/operator's loading procedures. The locks must remain in place until the owner/operator begins unloading procedures or until the rail carrier picks up the loaded or rejected railcar for transport off-site.

(E) In accordance with 40 CFR 264.15, incorporated in this rule, the owner/operator shall inspect railcars and surrounding areas, at least daily, looking for leaks and for deterioration caused by corrosion or other factors.

(F) In accordance with 40 CFR part 264 subpart C and 40 CFR part 264 subpart D, as incorporated in this rule, the owner/operator shall develop preparedness and prevention procedures and a contingency plan for railcars. If the owner/operator has not prepared a Spill Prevention Control and Countermeasures (SPCC) Plan for hazardous waste, then one must be developed that parallels requirements and guidelines as specified in 40 CFR part 112 for oil. At a minimum, the SPCC Plan must include adequate spill response equipment and preventative measures, such as dikes, curbing, and containment systems.

10 CSR 25-7.265 Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

PURPOSE: This rule incorporates 40 CFR part 265 by reference and sets forth additional state standards.

(1) The regulations set forth in 40 CFR part 265, July 1, 2010, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) The ~~owner/operator~~ of a treatment, storage, or disposal (TSD) facility shall comply with the requirements noted in this section in addition to requirements set forth in 40 CFR part 265 incorporated in this rule. In the case of contradictory or conflicting requirements in 10 CSR 25, the more stringent shall control. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the additional requirements to be added to 40 CFR part 265 subpart A are found in subsection (2)(A) of this rule.)

(A) General. In addition to the requirements in 40 CFR part 265 subpart A, the following regulations also apply:

1. This rule does not apply to an ~~owner/operator~~ of an elementary neutralization unit or a wastewater treatment unit receiving only hazardous waste generated on-site or generated by its operator or only one (1) operator if the unit meets the standards set forth in 10 CSR 25-7.270(2)(A)3.;

2. This rule does not apply to an owner/operator for that portion of or process at the facility which is in compliance with 10 CSR 25-9.020 Hazardous Waste Resource Recovery Processes. (Note: Underground injection wells are prohibited in Missouri by section 577.155, RSMo.);

3. State interim status is authorization to operate a hazardous waste treatment, storage, or disposal facility pursuant to section 260.395.15, RSMo, 10 CSR 25-7.265, and 10 CSR 25-7.270 until the final administrative disposition of the permit application is made or until interim status is terminated pursuant to 10 CSR 25-7.270. The ~~owner/operator~~ of a facility or unit operating under state interim status shall comply with the requirements of this rule and 10 CSR 25-7.270. In addition to providing notification to the Environmental Protection Agency (EPA), the ~~owner/operator~~ is required to provide state notification in accordance with 10 CSR 25-7.270; and

4. ~~Hazardous waste which must be managed in a permitted unit (e.g., waste generated on-site and stored beyond the time frames allowed without a permit pursuant to 10 CSR 25-5.262, waste received from off-site, certain hazardous waste fuels, etc.) shall not be stored or managed outside an area or unit which does not have a permit or interim status for that waste for a period which exceeds twenty four (24) hours. This provision shall not apply to railcars held in areas for handling during the time period allowed by, and managed in accordance with, 10 CSR 25-7.264(3) of this regulation. (Comment: The purpose of this paragraph is to allow the necessary movement of hazardous waste into, out of, and through facilities, and not to evade permit requirements.)~~

(B) General Facility Standards. ~~This subsection sets forth requirements that modify or add to the requirements in 40 CFR part 265 subpart B.~~

~~1. In addition to the requirements in 40 CFR 265.12(a) incorporated in this rule, an owner/operator shall submit to the department a separate analysis for each hazardous waste that s/he intends to import. Each analysis shall contain the following information: the foreign generator's name, site address, and telephone number; a list of applicable EPA waste codes and a percentage of each for each hazardous waste; the flash point determined in accordance with 40 CFR 261.21, incorporated by reference in 10 CSR 25-4; a list of reactive waste(s) as defined in 40 CFR 261.23, incorporated by reference in 10 CSR 25-4; and results of toxicity tests conducted in accordance with 40 CFR 261.24, incorporated by reference in 10 CSR 25-4.261, if applicable.~~

~~2. 40 CFR 265.15(b)(5) is not incorporated in this rule.~~

(C) Preparedness and Prevention. (*Reserved*)

(D) Contingency Plan and Emergency Procedures. (*Reserved*)

(E) Manifest System, Record Keeping, and Reporting. This subsection sets forth standards which modify or add to those requirements in 40 CFR part 265 subpart E.

1. All owners/operators shall comply with the reporting requirements in 10 CSR 25-5.262(2)(D) regardless of whether the owner/operator is required to register as a generator pursuant to 10 CSR 25-5.262(2)(A)1.

2. In addition to the requirements in 10 CSR 25-5.262(2)(D) for hazardous waste generated on-site and shipped off-site for treatment, storage, resource recovery, or disposal, the owner/operator shall meet the same requirements for the following:

A. All hazardous waste generated on-site during the reporting period that is managed on-site; and

B. All hazardous waste received from off-site during the reporting period, including hazardous waste generated by another generator and hazardous waste generated at other sites under the control of the owner/operator.

3. In addition to the information required in 10 CSR 25-5.262(2)(D), an owner/operator shall include the following information in the summary report:

A. A description and the quantity of each hazardous waste that was both generated and managed on-site during the reporting period;

B. For each hazardous waste that is received from off-site, a description and the quantity of each hazardous waste and the corresponding state and EPA identification numbers of each generator;

C. For imports, the name and address of the foreign generator;

D. The corresponding method of treatment, storage, resource recovery, disposal, or other approved management method used for each hazardous waste.

4. As outlined in section 260.380.2, RSMo, all owners/operators shall pay a fee to the department of two dollars (\$2) per ton or portion thereof for any and all hazardous waste received from outside of Missouri. This fee shall be referred to as the Out-of-State Waste Fee and shall not be paid on hazardous waste received directly from other permitted treatment, storage, and disposal facilities located in Missouri.

A. For each owner/operator, this fee shall be paid on or before January 1 of each year and shall be based on the total tons of hazardous waste received in the aggregate by that owner/operator for the twelve (12)-month period ending the previous June 30. As outlined in section 260.380.4, RSMo, failure to pay this fee in full by the due date shall result in imposition of a late fee equal to fifteen percent (15%) of the total original fee. Each twelve (12)-month period ending on June 30 shall be referred to as a reporting year.

B. Owners/operators may elect, but are not required, to pay this fee on a quarterly basis at the time they file the reporting required in subparagraphs (2)(E)3.B. and C. of this rule. If they do not choose to pay the fee quarterly, owners/operators may elect, but are not required, to pay the fee at the time they file their final quarterly report of each reporting year. However, the total fee for each reporting year must be paid on or before January 1 immediately following the end of each reporting year.

EXAMPLES OF OUT-OF-STATE WASTE FEE CALCULATION

Example 1. ABC Company reports receiving 250 tons of hazardous waste from outside of Missouri:

$$\text{\$2} \times 250 \text{ tons} = \text{\$500 fee}$$

Example 2. ABC Company reports receiving 410.6 tons of hazardous waste from outside of Missouri.

The number of tons would be rounded to 411.

$$\text{\$2} \times 411 \text{ tons} = \text{\$822 fee}$$

Example 3. ABC Company reports receiving 52,149.3 tons of hazardous waste from outside of Missouri.

The number of tons would be rounded to 52,150.

$$\text{\$2} \times 52,150 \text{ tons} = \text{\$104,300 fee}$$

(F) Groundwater Monitoring. *(Reserved)*

(G) Closure and Post-Closure. ~~This subsection sets forth additional requirements to 40 CFR part 265 subpart G, incorporated in this rule.~~

~~1. The incorporation by reference of 40 CFR 265.113(d) and (e) does not relieve the owner/operator of his/her responsibility to comply with 10 CSR 80 if a solid waste permit is required under those rules.~~

~~2. The owner/operator of a hazardous waste unit which is certifying closure with residues left in place, regardless of the level of treatment to render the residue nonhazardous, shall meet the requirements in 40 CFR 265.116 incorporated in this rule.~~

~~3. In addition to requirements in 40 CFR 265.116, when an owner/operator certifies a closure which did not result in removal of hazardous wastes to background levels, the owner/operator shall record, in accordance with state law, a notation on an instrument which is normally examined during title search that will notify, in perpetuity, a potential purchaser of the property that the land has been used to manage hazardous waste.~~

~~4. In addition to the requirements in 40 CFR 265.116 and 265.119 as incorporated in this rule, an owner/operator shall submit a notarized statement to the department certifying that the owner/operator has caused the notation(s) to be recorded. The notation(s) shall be recorded with the recorder(s) of deeds in all counties in which the facility or part of the facility is located.~~

~~(H) Financial Assurance Requirements. This subsection sets forth the requirements which modify or add to those requirements in 40 CFR part 265 subpart H.~~

~~1. For purposes of this subsection, commercial treatment, storage, or disposal (TSD) facility means any facility that would be considered a commercial hazardous waste treatment, storage, and disposal facility for purposes of 10 CSR 25-12.020, or any facility that is certified as an R2 resource recovery facility according to 10 CSR 25-9.020, or any facility that receives for remuneration polychlorinated biphenyls (PCB) material or PCB units as defined by 10 CSR 25-13.010.~~

~~2. In 40 CFR 265.143(a)(3), incorporated by reference in this rule, delete “the 20 years” and insert in its place “a period of five (5) years.”~~

~~3. In 40 CFR 265.145(a)(3), incorporated by reference in this rule, delete “the 20 years” and insert in its place “a period of five (5) years.”~~

~~4. This paragraph modifies the requirements for surety bonds guaranteeing payment into a closure trust fund or post-closure trust fund per 40 CFR 265.143(b) or 40 CFR 265.145(b), incorporated in this rule.~~

~~A. Any surety company issuing a surety bond guaranteeing payment into a closure trust fund or post-closure trust fund shall be authorized to do business in Missouri.~~

~~B. Any surety company issuing a surety bond guaranteeing payment into a closure trust fund or post-closure trust fund shall not cancel, terminate, or fail to renew a surety bond guaranteeing payment into a closure or post-closure trust fund and the surety bond shall remain in full force and effect in the event that on or before the date of cancellation—~~

~~(I) The director deems the facility abandoned; or~~

~~(II) Interim status is terminated or revoked; or~~

~~(III) Closure is ordered by the department or a court of competent jurisdiction; or~~

~~(IV) The owner/operator is named as a debtor in a voluntary or involuntary proceeding under 11 U.S.C. section 1, et seq.; or~~

~~(V) The premium due is paid; or~~

~~(VI) An appeal of an order to close the facility as specified in part (2)(H)4.B.(III) of this subparagraph is pending.~~

~~C. Facilities that have a surety bond or bonds guaranteeing payment into a closure trust fund or a post closure trust fund as of the effective date of this subparagraph shall modify their surety instruments to comply with this paragraph within twelve (12) months of the effective date of this subparagraph.~~

~~5. This paragraph modifies the requirements for letters of credit per 40 CFR 265.143(e), incorporated in this rule, 40 CFR 265.145(e), incorporated in this rule, and 40 CFR 265.147(h), incorporated in this rule. Letters of credit shall be issued by a state or federally chartered and regulated bank or trust association.~~

~~6. An owner/operator of a facility that is a commercial TSD facility may not satisfy financial assurance requirements for closure, post closure, or liability coverage, or any combination of these, by the use of a financial test as specified in 40 CFR 265.143(e), incorporated in this rule, 40 CFR 265.145(e), incorporated in this rule, or 40 CFR 265.147(f), incorporated in this rule.~~

~~7. This paragraph modifies the requirements for closure insurance per 40 CFR 265.143(d), incorporated in this rule, post closure insurance per 40 CFR 265.145(d), incorporated in this rule, liability coverage for sudden accidental occurrences per 40 CFR 265.147(a)(1), incorporated in this rule, and liability coverage for non-sudden accidental occurrences per 40 CFR 265.147(b)(1), incorporated in this rule. Each insurance policy shall be issued by an insurer which, at a minimum, is licensed to transact the business of insurance or is eligible to provide insurance as an excess or surplus lines insurer in Missouri.~~

~~8. In 40 CFR 265.143(e), incorporated in this rule, delete “or a firm with a ‘substantial business relationship’ with the owner or operator.”~~

~~9. In 40 CFR 265.145(e), incorporated in this rule, delete “or a firm with a ‘substantial business relationship’ with the owner or operator.”~~

~~10. In 40 CFR 265.147(g), incorporated in this rule, delete “or a firm with a ‘substantial business relationship’ with the owner or operator.”~~

(I) Use and Management of Containers. This subsection sets forth additional standards for container storage areas.

~~1. Container storage areas shall have a containment system that is designed and operated in accordance with paragraph (2)(I)2. of this rule except as provided by paragraph (2)(I)4. of this rule.~~

~~2. A containment system shall be designed, maintained, and operated as follows:~~

~~A. A containment system shall have a base which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;~~

~~B. The base shall be sloped or the containment system shall be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or otherwise protected from contact with accumulated liquids;~~

~~C. The containment system shall have a capacity equal to ten percent (10%) of the containerized waste volume or the volume of the largest container, whichever is greater. Containers that do not contain free liquids need not be considered in this calculation;~~

~~D. Run-on into the containment system shall be prevented unless the collection system has sufficient excess capacity in addition to that required in subparagraph (2)(I)2.C. of this rule to contain any run-on which might enter the system; and~~

~~E. Spilled or leaked waste and accumulated precipitation shall be removed from the sump or collection area in as timely a manner as is necessary to prevent overflow of the collection system.~~

~~3. The containment system shall also be inspected as part of the weekly inspections required by 40 CFR 265.174, incorporated in this rule.~~

~~4. Storage areas that store containers holding only wastes that do not contain free liquids or storage facilities that store less than one thousand kilograms (1,000 kg) of nonacute hazardous waste containing free liquids need not have a containment system described in paragraph (2)(I)2. of this rule provided that—~~

~~A. The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation; or~~

~~B. The containers are elevated or are otherwise protected from contact with accumulated liquid.~~

~~5. Containers storing hazardous waste must be marked and labeled in accordance with 10 CSR 25 5.262(2)(C) during the entire storage period.~~

~~6. Container storage areas which close without removing all hazardous waste and/or hazardous waste constituents to below background levels may pursue either a risk-based closure if there is no evidence of groundwater or surface water contamination or, in the absence of such evidence, close in accordance with 10 CSR 25 7.264(2)(N) and 40 CFR part 264 subpart N, as incorporated in subsection (2)(N). The owner/operator shall also comply with the requirements of 10 CSR 25 7.265(2)(G).~~

~~7. Containers holding ignitable or reactive waste which are stored outdoors or in buildings not equipped with sprinkler systems shall be located at least fifty feet (50') from the facility's property line.~~

~~8. Containers holding ignitable or reactive waste which are stored indoors shall be located at least fifty feet (50') from the facility's property line, unless the following requirements are satisfied:~~

A. Exposing walls that are located more than ten feet (10') but less than fifty feet (50') from a boundary line of adjoining property that can be built upon shall have a fire-resistance rating of at least two (2) hours, with each opening protected by an automatically-closing listed one and one-half (1.5)-hour (B) fire door;

B. Exposing walls that are located less than ten feet (10') from a boundary line of adjoining property that can be built upon shall have a fire-resistance rating of at least four (4) hours, with each opening protected by an automatically-closing listed three (3)-hour (A) fire door (Comment: All fire doors, closure devices, and windows shall be installed in accordance with the National Fire Protection Association (NFPA) Code 80, *Standards for Fire Doors and Windows*, 1995 edition);

C. The construction design of exterior walls shall provide ready accessibility for fire-fighting operations through the provision of access openings, windows, or lightweight noncombustible wall panels;

D. Container storage areas shall be provided with automatic fire suppression systems designed and installed in accordance with NFPA 14 (1996 edition), NFPA 15 (1996 edition), NFPA 16 (1995 edition), NFPA 16A (1994 edition), NFPA 17 (1998 edition), NFPA 17A (1998 edition), NFPA 18 (1995 edition), NFPA 20 (1996 edition), NFPA 22 (1996 edition), and NFPA 24 (1995 edition) Standards. Final design of these systems shall be approved by a qualified, registered professional engineer in Missouri;

E. Each container storage area shall have preconnected hose lines capable of reaching the entire area. The fire hose shall be a one and one-half (1.5)-inch line or one-inch (1") hard rubber line. Where a one and one-half (1.5)-inch fire hose is used, it shall be installed in accordance with NFPA 14 (1996 edition). Hand-held fire extinguishers rated for the appropriate class of fire shall be available at each storage area;

F. Only containers meeting the requirements of, and containing products authorized by, Chapter I, Title 49 of the *Code of Federal Regulations* (DOT Regulations) or NFPA 386, *Standard for Portable Shipping Tanks* (1990 edition) shall be used;

G. All storage of ignitable or reactive materials shall be organized in a manner which will not physically obstruct a means of egress. Materials shall not be placed in a manner that a fire would preclude egress from the area. Evacuation plans shall recognize the locations of any automatically-closing fire doors;

H. All containers shall be arranged so that there is a minimum aisle space of four feet (4') between rows, allowing accessibility to each individual container. Double rows can be utilized. Containers shall not be stacked, placed, or both, closer than three feet (3') from ceilings or any roof members; and

I. Explosive gas levels in the facility shall be monitored continuously. If the facility is not manned twenty-four (24) hours per day, a telemetry system shall be provided to alarm designated response personnel.

~~(J) Tanks. This subsection modifies and adds to the incorporation of 40 CFR part 265 subpart J.~~

~~1. 40 CFR 264.190(c) is not incorporated by reference.~~

~~2. In 40 CFR 265.193(g)(1) incorporated in this rule, delete “or that in the event of a release that does migrate to ground water or surface water, no substantial present or potential hazard will be posed to human health or the environment.” 40 CFR 265.193(g)(2) is not incorporated by reference in this rule. In 40 CFR 265.193(g)(4)(ii) incorporated in this rule, substitute “264.197(b)” for “265.197(b).” For purposes of 40 CFR 265.193(h) incorporated in this rule, “variance” means exception.~~

~~3. In 40 CFR 265.196(c) and (c)(2) incorporated in this rule, delete “visible” and “visual.” Tank storage areas which close without removing all hazardous waste and/or hazardous waste constituents to below background levels may pursue either a risk based closure if there is no evidence of groundwater or surface water contamination or in the absence of such evidence, close in accordance with 10 CSR 25-7.264(2)(N) and 40 CFR part 264 subpart N as incorporated in subsection (2)(N). The owner/operator shall also comply with the requirements of 10 CSR 25-7.265(2)(G).~~

~~(K) Surface Impoundments. In addition to the requirements in 40 CFR part 265 subpart K, those surface impoundments which are intended to be closed without removing the hazardous waste shall meet the requirements of 10 CSR 25-7.264(2)(N)1.A. and 40 CFR part 264 subpart N as incorporated in 10 CSR 25-7.264. If the site location for any such impoundment cannot meet these site specific location requirements and contamination exists beyond the liner of the surface impoundment, the owner/operator shall clean up contaminated residues and hazardous constituents to the greatest extent practical during closure. If the department determines, based on the potential impact on human health and the environment, that it is not necessary or not feasible to remove contaminated material down to background concentrations during closure, the owner/operator shall comply with 40 CFR 264.228(b) incorporated in 10 CSR 25-7.264 or shall submit a delisting petition and obtain approval from EPA for that delisting petition pursuant to 40 CFR 260.20 and 40 CFR 260.22 for the contaminated material not removed during closure.~~

~~(L) Waste Piles. (Reserved)~~

~~(M) Land Treatment. (Reserved)~~

~~(N) Landfills. (Reserved)~~

~~(O) Incinerators. (Reserved)~~

~~(P) Thermal Treatment. (Reserved)~~

~~(Q) Chemical, Physical, and Biological Treatment. (Reserved)~~

~~(R) Underground Injection. 40 CFR part 265 subpart R is not incorporated by reference.~~

~~(S) (Reserved)~~

~~(T) (Reserved)~~

~~(U) (Reserved)~~

~~(V) (Reserved)~~

~~(W) Drip Pads. 40 CFR part 265 subpart W is not incorporated by reference.~~

~~(X) (Reserved)~~

~~(Y) (Reserved)~~

~~(Z) (Reserved)~~

~~(AA) Air Emission Standards for Process Vents. (Reserved)~~

~~(BB) Air Emission Standards for Equipment Leaks. (Reserved)~~

~~(CC) Air Emission Standards for Tanks, Surface Impoundments, and Containers. (Reserved)~~

(DD) Containment Buildings. *(Reserved)*

(EE) Hazardous Waste Munitions and Explosives Storage. *(Reserved)*

(3) This section applies to TSD facilities that accept and/or ship hazardous waste via railroad tank cars (railcars). The owner/operator of a TSD facility shall comply with requirements set forth in 10 CSR 25-7.264(3) and shall submit a rail car management plan for inclusion in their part B permit application within one hundred eighty (180) days of the effective date of this section.

10 CSR 25-7.266 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

PURPOSE: This rule incorporates federal regulations in 40 CFR part 266 by reference and provides Missouri specific additions, deletions, or changes to the federal regulations. This rule provides limited standards for certain hazardous waste management practices, particularly in regard to recyclable materials and sets forth standards for recyclable materials used in a manner constituting disposal, hazardous waste burned in boilers and industrial furnaces recyclable materials utilized for precious metals recovery and spent lead-acid batteries being reclaimed.

(1) The regulations set forth in 40 CFR part 266, July 1, 2010, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) Persons subject to the regulations in 40 CFR part 266 shall comply with the requirements, changes, additions, or deletions noted in this section in addition to 40 CFR part 266 incorporated in this rule. (Comment: This section has been organized so that all Missouri additions or changes to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the changes to the management requirements for hazardous waste fuels, 40 CFR part 266 subpart D, are found in subsection (2)(D) of this rule.)

(A) *(Reserved)*

(B) *(Reserved)*

(C) Recyclable Materials Used in a Manner Constituting Disposal. In addition to the requirements in 40 CFR part 266 subpart C incorporated in this rule, a person who is marketing hazardous waste recyclable materials which would be used in a manner constituting disposal must obtain a hazardous waste resource recovery certification pursuant to 10 CSR 25-9.020.

(D) *(Reserved)*

(E) *(Reserved)*

(F) Recyclable Materials Used for Precious Metals Recovery. *(Reserved)*

(G) Spent Lead-Acid Batteries Being Reclaimed. In addition to the requirements in 40 CFR part 266 subpart G a person who reclaims materials from spent lead-acid batteries shall obtain a hazardous waste resource recovery certification pursuant to 10 CSR 25-9.020.

1. Owners or operators of facilities that store spent batteries before reclaiming them are subject to the following requirements:

A. Notification requirements under section 3010 of RCRA;

B. All applicable provisions in subparts A, B (but not 40 CFR 264.13 (waste analysis)), C, D, E (but not 264.71 or 264.72 (dealing with the use of the manifest and manifest discrepancies)), and F through L of 40 CFR part 264, as incorporated by reference in 10 CSR 25-7.264(1) and modified in 10 CSR 25-7.264(2)(A) through 10 CSR 25-7.264(2)(L);

C. All applicable provisions in subparts A, B (but not 40 CFR 265.13 (waste analysis)), C, D, E (but not 265.71 or 265.72 (dealing with the use of the manifest and manifest discrepancies)), and F through L of 40 CFR part 265, as incorporated by reference in 10 CSR 25-7.265(1) and modified in 10 CSR 25-7.265(2)(A) through 10 CSR 25-7.265(2)(L);

D. All applicable provisions in parts 270 and 124 of the CFR, as incorporated by reference in 10 CSR 25-7.270 and 10 CSR 25-8.124. (Note: The language printed at 10 CSR 25-7.266(2)(G)1.A.–D. above was originally incorporated by reference from 40 CFR 266.80(b), 1994 edition. The language is reprinted here because it was mistakenly omitted from subsequent editions of the *Code of Federal Regulations*.)

(H) Hazardous Waste Burned in Boilers and Industrial Furnaces. Additions, modifications, and deletions to 40 CFR part 266 subpart H “Hazardous Waste Burned in Boilers and Industrial Furnaces” are as follows:

1. 40 CFR 266.100(c)(1) is not incorporated by reference in this rule;

2. Add the following provision to 40 CFR 266.100(d) incorporated in this rule: “The owner/operator of facilities that process hazardous waste solely for metal recovery in accordance with 40 CFR 266.100(d) shall be certified for resource recovery pursuant to 10 CSR 25-9.020”;

~~3. In 40 CFR 266.101(e)(2) incorporated in this rule, replace “paragraph (e)(1)” with “paragraphs (e)(1) and (d)(1)”;~~ and

~~4. 40 CFR 266.101 is amended by adding a new subsection (d) to 266.101 incorporated in this rule as follows: (d)(1) Treatment facilities. Owners/operators of permitted facilities that thermally, chemically, physically (that is, shredding, grinding, etc.), or biologically treat hazardous waste prior to burning must comply with 10 CSR 25 7.264(2)(X), and owners/operators of interim status facilities that thermally, chemically, physically (that is, shredding, grinding, etc.), or biologically treat hazardous waste prior to burning shall comply with 10 CSR 25 7.265(2)(P) and (Q). Owners/operators of permitted facilities which blend hazardous waste in tanks or containers prior to burning must comply with 10 CSR 25-7.264(2)(J)6., and owners/operators of interim status facilities that blend hazardous waste in tanks or containers prior to burning shall comply with 10 CSR 25 7.265(2)(J).~~

(I) *Reserved.*

(J) *Reserved.*

(K) *Reserved.*

(L) *Reserved.*

(M) Military Munitions. Additions, modifications, and deletions to 40 CFR part 266 subpart M “Military Munitions” are:

1. Oral and written notifications required by 40 CFR 266.203(a)(1) shall be submitted to the department’s emergency response coordinator at (573) 634-2436 or (573) 634-CHEM, in lieu of the director; and

2. Oral and written notifications required by 40 CFR 266.205(a)(1) shall be submitted to the department’s emergency response coordinator at (573) 634-2436 or (573) 634-CHEM, in lieu of the director.

Editor’s Note: Subsection (2)(H) becomes effective December 31, 1993.

AUTHORITY: section 260.370, RSMo Supp. 2010 and sections 260.390 and 260.395, RSMo 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. Amended: Filed Feb. 3, 1987, effective Aug. 1, 1987. Amended: Filed Dec. 1, 1987, effective Aug. 12, 1988. Amended: Filed Feb. 16, 1990, effective Dec. 31, 1990. Amended: Filed Jan. 15, 1991, effective Aug. 1, 1991. Amended: Filed Feb. 14, 1992, effective Dec. 3, 1992. Amended: Filed Jan. 5, 1994, effective Aug. 28, 1994. Amended: Filed Aug. 16, 1995, effective April 30, 1996. Amended: Filed June 1, 1998, effective Jan. 30, 1999. Amended: Filed Feb. 1, 2001, effective Oct. 30, 2001. Amended: Filed March 31, 2006, effective Dec. 30, 2006. Amended: Filed Oct. 15, 2008, effective June 30, 2009. Amended: Filed April 15, 2011, effective Dec. 30, 2011.*

**Original authority: 260.370, RSMo 1977, amended 1980, 1988, 1993, 1995, 2004, 2010; 260.390, RSMo 1977, amended 1980, 1983, 1985, 1993; and 260.395, RSMo 1977, amended 1980, 1983, 1985, 1988, 2000.*

10 CSR 25-7.268 Land Disposal Restrictions

PURPOSE: This rule establishes standards and requirements that identify hazardous wastes that are restricted from land disposal.

PUBLISHER’S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) The regulations set forth in 40 CFR part 268, July 1, 2010, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) Persons who generate or transport hazardous waste and ~~owners/operators~~ of hazardous waste treatment, storage, and disposal facilities shall comply with this section in addition to the regulations in 40 CFR part 268. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the changes to 40 CFR part 268 subpart A are found in subsection (2)(A) of this rule.)

(A) General. This subsection sets forth modifications to 40 CFR part 268 subpart A incorporated by reference in section (1) of this rule.

1. (*Reserved*)

2. The state cannot be delegated the authority from the United States Environmental Protection Agency (EPA) to approve extensions to effective dates of any applicable restrictions, as provided in 40 CFR 268.5 incorporated in this rule. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 268.5 as incorporated in this rule. This modification does not relieve the regulated person of his/her responsibility to comply with 40 CFR 268.5 of the federal hazardous waste management regulations.

3. The state cannot be delegated the authority from the EPA to approve exemptions from prohibitions for the disposal of a restricted hazardous waste in a particular unit(s) based upon a petition demonstrating, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit(s) for as long as the wastes remain hazardous as provided in 40 CFR 268.6 incorporated in this rule. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 268.6 as incorporated in this rule. This modification does not relieve the regulated person of his/her responsibility to comply with 40 CFR 268.6 of the federal hazardous waste management regulations.

(B) 40 CFR part 268 subpart B, Schedule for Land Disposal Prohibition and Establishment of Treatment Standards (*Reserved*), ~~is not incorporated in this rule.~~

(C) Prohibitions on Land Disposal. This subsection sets forth modifications to 40 CFR part 268 subpart C incorporated by reference in section (1) of this rule.

1. The waste specific prohibitions in 40 CFR 268.31 apply to the hazardous wastes identified by EPA hazardous waste numbers F020, F023, and F027 as amended in 10 CSR 25-4.261(2)(D)1.A.-C.

2. The waste specific prohibitions in 40 CFR 268.31 apply to the EPA hazardous waste numbers F020, F021, F022, F023, F026, and F027 as amended in 10 CSR 25-4.261(2)(D)2.

3. The hazardous waste identified by the Missouri hazardous waste number MH02 in 10 CSR 25-4.261(2)(D)3. may be disposed in a landfill or surface impoundment only if that unit is in compliance with the requirements specified in 40 CFR 268.5(h)(2) as incorporated in section (1) of this rule and all other applicable requirements of 10 CSR 25-7.264(1) incorporating by reference 40 CFR part 264 and 10 CSR 25-7.265(1) incorporating by reference 40 CFR part 265.

(D) Treatment Standards. This subsection sets forth modifications to 40 CFR part 268 subpart D incorporated by reference in section (1) of this rule.

1. The treatment standards in 40 CFR part 268 subpart D for the hazardous wastes identified by EPA hazardous waste numbers F020, F023, and F027 apply to F020, F023, and F027 hazardous wastes as amended in 10 CSR 25-4.261(2)(D)1.A.-C.

2. The treatment standard in 40 CFR part 268 subpart D for the hazardous wastes identified by EPA hazardous waste numbers F020, F021, F022, F023, F026, and F027 apply to these listed wastes as amended in 10 CSR 25-4.261(2)(D)2.

3. The state cannot be delegated the authority from the U.S. EPA to allow the use of alternative treatment methods as provided in 40 CFR 268.42(b) incorporated in this rule. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 268.42(b) as incorporated in this rule. This modification does not relieve the regulated person of his/her responsibility to comply with 40 CFR 268.42(b) of the federal hazardous waste management regulations.

4. The state cannot be delegated the authority from the U.S. EPA to approve variances from treatment standards as provided in 40 CFR 268.44 incorporated in this rule. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 268.44, as incorporated in this rule. This modification does not relieve the regulated person of his/her responsibility to comply with 40 CFR 268.44 of the federal hazardous waste management regulations.

(E) Prohibitions on Storage. (*Reserved*)

10 CSR 25-7.270 Missouri Administered Permit Programs: The Hazardous Waste Permit Program

PURPOSE: This rule incorporates the federal regulations in 40 CFR part 270 by reference and sets forth additional state requirements.

(1) The regulations set forth in 40 CFR part 270, July 1, 2010, except for the changes made at 70 FR 53453 September 8, 2005, and 73 FR 64667 to 73 FR 64788, October 30, 2008, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(A) Any federal agency, administrator, regulation, or statute that is referenced in 40 CFR part 270 shall be deleted and the comparable state department, director, rule, or statute as provided in 10 CSR 25-3.260(1)(A) shall be added in its place except as specified in paragraph (2)(A)6. of this rule. The additional substitutions or changes noted in this subsection shall also apply.

1. ~~“Owner/operator” as defined by 10 CSR 25-3.260(2)(O)3. shall be substituted for any reference to “owner and operator” or “owner or operator” in 40 CFR part 270.~~

(2) The ~~owner/operator~~ of a permitted hazardous waste treatment, storage, or disposal (TSD) facility shall comply with the requirements noted in this rule along with 40 CFR part 270, incorporated in this rule. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the changes to 40 CFR part 270 subpart A are found in subsection (2)(A) of this rule.)

(A) General Information. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 270 subpart A.

1. When a facility is owned by one (1) person but is operated by another person, both the owner and operator shall sign the permit application, and the permit shall be issued to both.

2. The owner/operator of a new hazardous waste management facility shall contact the department and obtain a United States Environmental Protection Agency (EPA) identification number before commencing treatment, storage, or disposal of hazardous waste.

3. A permit is not required under this rule for an elementary neutralization unit or a wastewater treatment unit receiving only hazardous waste that is generated on-site or generated by its operator or only one (1) generator if the owner/operator, upon request, can demonstrate to the satisfaction of the department the following:

A. There is sufficient evidence that the unit is not leaking;

B. The unit is structurally sound and there is no evidence that the unit will fail or collapse;

C. There are no incompatible wastes being placed in the unit;

D. The owner/operator has been and is in compliance with all present and prior permits and authorizations issued to the owner/operator; and

E. There is no evidence of any past releases from the unit.

4. In addition to the requirements in 40 CFR 270.1(b) incorporated in this rule, the owner/operator shall provide state notification to the department within sixty (60) days after the effective date of a state rule that first requires him/her to comply with 10 CSR 25 where that notification is required.

5. *(Reserved)*

~~6. In 40 CFR 270.2, substitute “Facility mailing list means the mailing list required of the permittee or applicant in accordance with 10 CSR 25-7.270(2)(B)10.” for the definition of “Facility mailing list” given in the incorporated regulation.~~

7. In 40 CFR 270.3 “Considerations Under Federal Law,” do not substitute any comparable Missouri statute or administrative rule for the federal acts and regulations. This does not relieve the owner/operator of his/her responsibility to comply with any applicable and comparable state law or rule in addition to complying with the federal acts and regulations.

(B) Permit Application. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 270 subpart B.

1. Existing hazardous waste management facilities must submit a state Part A permit application to the department no later than sixty (60) days after the effective date of state rules which first require them to comply with the requirements set forth in 10 CSR 25-7.265 or 10 CSR 25-7.266. A facility which did not meet federal notification and Part A submittal requirements under the Hazardous and Solid Waste Amendments (HSWA) shall not qualify for state interim status. State interim status is granted to those facilities which either meet federal interim status requirements, are required to meet state interim status requirements because no federal interim status requirements affect the filing, or become subject to regulations under state rules which are not promulgated to meet the requirements of 40 CFR part 271.

2. Confidentiality may be requested for the information required in 40 CFR 270.13(a)–(m) incorporated in this rule. 10 CSR 25-3.260(1)(B) sets forth requirements for protection of confidential business information and the availability of information provided under 10 CSR 25. Therefore, 40 CFR 270.12 is not incorporated by reference in this rule.

~~3. The topographic map required in 40 CFR 270.13(1) incorporated in this rule shall also depict surrounding land uses such as residential, commercial, agricultural, and recreational.~~

~~4. Seismic evaluation requirements for hazardous waste management facility permit applicants. 40 CFR 270.14(b)(11)(i) and (ii) are not incorporated in this rule. An applicant for a hazardous waste management facility permit (excluding post closure) shall design and construct the facility to withstand stresses due to earthquake loading or certify that the existing facility is able to withstand stresses due to earthquake loading. In the event that the regulated unit cannot withstand stresses, the facility shall certify that a release or situation which will endanger human health and/or the environment is not likely to occur. The applicant shall submit as part of the permit application a certification of the adequacy of the design or the ability of the existing facility to withstand stresses due to earthquake loading. The certification shall consider the location of the facility (e.g., the proximity of the facility to an active seismic zone) and must be completed by a qualified professional engineer registered in Missouri.~~

~~5. In addition to the topographic map required in 40 CFR 270.14(b)(19) incorporated in this rule, an applicant for a land-based hazardous waste management facility permit shall submit drawings which depict at a minimum—~~

- ~~A. Original contours;~~
- ~~B. Proposed final contours;~~
- ~~C. Original surface water drainage patterns;~~
- ~~D. Proposed final surface water drainage patterns;~~
- ~~E. Layout of the leachate collection system;~~
- ~~F. Layout of the monitoring system;~~
- ~~G. Access roads;~~
- ~~H. Location of soil borings and trenches;~~
- ~~I. Major rock outcrops and sinkholes within the map area;~~
- ~~J. Occupied permanent residential dwelling houses within one fourth (1/4) mile of the disposal facility boundaries;~~
- ~~K. All available information on private and public wells, public water supply lines, and any aquifers, seeps, sinkholes, caves, or mining areas within one fourth (1/4) mile of the facility; and~~
- ~~L. For landfills only, a coordinate system referenced to a benchmark and baseline that have been permanently established on the site and referenced to Government Land Office corners and the legal boundaries of the facility as described by a registered land surveyor licensed by Missouri.~~

~~6. All submitted engineering plans and reports shall be approved by a registered professional engineer licensed by Missouri. The engineering plans and reports shall specify the materials, equipment, construction methods, design standards, and specifications for hazardous waste management facilities, and processes that will be utilized in the construction and operation of the facility. The engineering plans and reports shall also include a diagram of any piping, instrumentation or process flows, and descriptions of any feed systems, safety cutoffs, bypass systems, and pressure controls (for example, vents).~~

~~7. The applicant for a hazardous waste facility permit to construct or operate a facility shall submit the application to the department in triplicate (quadruplicate, if application is made for a land-based management facility). If a permit is issued, the permittee shall submit two (2) copies of the entire approved application to the department.~~

~~8. The permit application fee set forth in 10 CSR 25-12.010 shall be submitted with the application.~~

9. The department will supervise any field work undertaken to collect geologic and engineering data which is to be submitted with the application. The applicant shall contact the department at least five (5) working days prior to conducting any field work that is undertaken to collect geologic and engineering data which is to be submitted with the application. A fee shall also be assessed pursuant to 10 CSR 25-12.010 for all costs incurred by the department in the observation of field work, engineering and geological review of the application, and all other review necessary by the department to verify that the application complies with section 260.395.7., RSMo.

10. The permit application shall include the following information for the purpose of notification:

A. Names and address of all persons listed on the facility mailing list as defined in 10 CSR 25-8.124(1)(A)10.C.(I)(c) shall be submitted in the form of an alphabetical list with five (5) sets of addressed, self-adhesive mailing labels also included; and

B. The name, address, and telephone number of the location where the permit application and supporting documents are to be placed, as described in 10 CSR 25-8.124(1)(B)3.B.(II)(c) and the name of the person at that location who may be contacted to schedule a review of the documents.

11. The applicant shall submit the information required by subsection (2)(H) of this rule in the form of a disclosure statement as part of the permit application.

12. An applicant may be required to submit other information as may be necessary to enable the department to carry out its duties.

~~13. In addition to the requirements in 40 CFR 270.15 incorporated in this rule, an owner/operator of a facility that treats hazardous waste in containers shall meet the requirements in 40 CFR 270.23 incorporated in this rule.~~

~~14. In addition to the requirements in 40 CFR 270.16 incorporated in this rule, an owner/operator of a facility that treats hazardous waste in a tank system shall meet the requirements in 40 CFR 270.23 incorporated in this rule.~~

~~15. 40 CFR 270.16(h)(2) is not incorporated in this rule.~~

~~16. An owner/operator who stores, treats, or disposes of hazardous waste in surface impoundments shall provide the following information in addition to the requirements of 40 CFR 270.17 incorporated in this rule: detailed plans and an engineering report explaining the location of the saturated zone in relation to the surface impoundment and the design of a double liner system that incorporates a leak detection system between liners.~~

~~17. An owner/operator who disposes of hazardous waste in landfills shall provide the following information in addition to the requirements of 40 CFR 270.21 incorporated in this rule:~~

~~A. Engineering reports which describe the geology and hydrology of the site and demonstrate the site suitability as required in 10 CSR 25 7.264(2)(N)1.;~~

~~B. Detailed plans and an engineering report addressing the following items:~~

~~(I) Management of run off from the disposal facility or unit;~~

~~(II) Minimization of erosion, landslides, and sloughing;~~

~~(III) Control of horizontal migration of leachate where applicable;~~

~~(IV) Delineation of a three hundred foot (300') buffer between the property line of the~~

~~disposal facility and area to be permitted;~~

~~(V) Control of wind dispersal of waste particulate matter where applicable;~~

~~(VI) Control of odor dispersal where applicable; and~~

~~(VII) Control of escape of gases where applicable.~~

~~C. Detailed plans and engineering report explaining the location of the saturated zone in relation to the landfill and the design of a double liner system that incorporates a leachate collection and removal system above and between the liners; and~~

~~D. An explanation of how the volatile waste standards in 10 CSR 25-7.264(2)(N)4. are met.~~

~~18. An owner/operator of a hazardous waste treatment facility or operating disposal facility shall submit a health profile as set forth in 10 CSR 25-7.264(2)(P).~~

~~19. The person applying for a permit under sections 260.350-260.434, RSMo, shall notify the department in the permit application of any convictions for any acts occurring after July 9, 1990, which would have the effect of limiting competition. The applicant, after submission of the permit application and prior to permit issuance, shall notify the department in writing within thirty (30) days of any conviction for any act which would have the effect of limiting competition.~~

~~20. 40 CFR 270.26 is not incorporated in this rule.~~

~~21. The owner/operator of a TSD facility that accepts and/or ships hazardous waste via railroad tank car (railcar) shall submit a railcar management plan in accordance with the requirements set forth in 10 CSR 25-7.264(3).~~

~~22. The person applying for a permit under sections 260.350-260.434, RSMo, shall comply with the requirements of 10 CSR 25-8.124(1).~~

(C) Permit Conditions. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 270 subpart C.

1. This paragraph sets forth the procedures for issuance of a hazardous waste facility permit, construction certification, and authorization to begin operation.

A. If, after public notice in accordance with 10 CSR 25-8.124 and review of the application, the department determines that the application conforms with the provisions of sections 260.350-260.434, RSMo, and all standards and rules corresponding, the department shall issue the hazardous waste facility permit to the applicant upon payment of a fee of one thousand dollars (\$1000) for each facility for each year the permit is to be in effect beyond the first year. The department will issue an EPA identification number to the facility at the time.

~~B. The applicant may begin construction or alterations at the facility in accordance with the approved plans, reports, design specifications, and procedures after receiving the facility permit. When construction is completed as approved in the permit and the financial requirements of this chapter have been fulfilled, the owner/operator shall submit a written request as required in 40 CFR 270.30(1)(2) incorporated in this rule to the department for authorization to begin operation.~~

~~C. If the permit is for a facility operating under interim status, the department may deny authority to operate under the permit if the construction required under the permit is not completed in accordance with the approved plans within the time period specified in the permit or within the time period as extended by the department for cause due to circumstances beyond the permittee's control.~~

D. The appeal period for a permit or any condition of a permit shall begin on the date of issuance of the permit as required in subparagraph (2)(C)1.A. of this rule. However, for the purposes of termination of interim status pursuant to 40 CFR 270.73(a) incorporated in this rule, final administrative disposition of the permit application shall occur either—

(I) Thirty (30) days after issuance of a letter of authorization pursuant to subparagraph (2)(C)1.B. of this rule, unless a notice of appeal is filed with the commission within that time;

(II) Thirty (30) days after denial of authorization to operate pursuant to subparagraph (2)(C)1.C. of this rule, unless a notice of appeal is filed with the commission within that time; or

(III) Upon the issuance of a decision by the commission, after timely appeal of an action under subparagraph (2)(C)1.B. or C. of this rule.

2. The department may deny the permit application if—

A. The applicant fails to submit a complete application in accordance with, and within the time specified in, a notice of deficiency issued pursuant to 10 CSR 25-8.124(1)(A)3.;

B. The applicant has failed to fully disclose all relevant information in the application or during the permit issuance process or has misrepresented facts at any time;

C. The department determines that the application does not conform with the provisions of sections 260.350–260.434, RSMo, and all corresponding standards and rules, or that the facility cannot be effectively operated and maintained in full compliance with sections 260.350–260.434, RSMo, and all corresponding standards and rules, or that the facility is being operated or maintained in violation of a present permit, or that continued operation of the facility presents an unreasonable threat to human health or the environment or will create or allow for the continuance of a public nuisance;

~~D. The department determines that the applicant owner/operator is a habitual violator as defined in subsection (2)(H) of this rule;~~

E. The department determines that one (1) of the conditions specified in section 260.395.17., RSMo, is present; or

F. The applicant owner/operator fails to submit the permit fees required by subparagraph (2)(C)1.A. of this rule within thirty (30) days of receipt of notice from the department that the fees are due.

~~3. In 40 CFR 270.30(1)(2) introductory text incorporated in this rule, delete “except as provided in 270.42.”~~

~~4. The owner/operator of a facility permitted under sections 260.350–260.434, RSMo, shall notify the department in writing of any conviction for any act occurring after July 9, 1990, which would have the effect of limiting competition. This written notification shall be provided within thirty (30) days of the conviction or plea and shall comply with the requirements at subsection (2)(I) of this rule.~~

(D) Changes to Permit. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 270 subpart D.

~~1. In addition to the requirements of 40 CFR 270.40(b), the department shall determine, in accordance with subsection (2)(H) of this rule, whether the proposed owner or operator, including an officer or management employee of the proposed owner or operator, is a person described in section 260.395.16, RSMo, and whether any of the conditions specified in section 260.395.17, RSMo, would exist if the proposed transfer were to take place.~~

2. “Revocation and reissuance” of a permit, as that term is used in 40 CFR part 270 incorporated in this rule, shall mean the same as “total modification” as that term is used in 10 CSR 25-8.124.

3. The “termination” of a permit, as used in 40 CFR part 270 incorporated in this rule, shall mean the same as “revocation” of a permit as used in 10 CSR 25-8.124.

~~4. The director shall suspend, revoke, or not renew the permit of any person to treat, store, and dispose of hazardous waste if that person has had two (2) or more convictions in any court of the United States or of any state other than Missouri, or two (2) or more convictions within a Missouri court for crimes or criminal acts occurring after July 9, 1990, an element of which involves restraint of trade, price fixing, intimidation of the customers of any person, or for engaging in any other acts which may have the effect of restraining or limiting competition concerning activities regulated under Chapter 260, RSMo, the Resource Conservation and Recovery Act, or similar laws of other states within any five (5) year period. Convictions by entities which occurred prior to the purchase or acquisition by a permittee shall not be included. The permittee shall submit a written report to the department within thirty (30) days of the conviction or plea. The report shall include information explaining the charge(s) on which the permittee was convicted, the date(s) of the conviction(s), and the date(s) and charge(s) of previous convictions.~~

~~5. The owner/operator of a facility that has had his/her permit (issued under the provisions of sections 260.350-260.434, RSMo) revoked under section 260.379, RSMo, may apply to the department for reinstatement of his/her permit after five (5) years have elapsed from the date of the last conviction of crimes or criminal acts as described in section 260.379, RSMo. The application must be in writing and accompanied by a reapplication fee, updated permit application, and any other information the department deems necessary in order to reinstate the permit.~~

~~6. 40 CFR 270.42(j)(1) and 40 CFR 270.42(j)(2) are not incorporated in this rule.~~

~~7. 40 CFR 270.42(l) is not incorporated into this rule.~~

(E) Expiration and Continuation of Permits. The director will review all permits for operating disposal facilities every five (5) years after issuance for conformance with applicable current hazardous waste rules and laws. The permit will be modified as necessary to conform with the applicable rules and laws.

(F) Special Forms of Permits. *(Reserved)*

(G) Interim Status. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 270 subpart G.

1. An ~~owner/operator~~ who becomes regulated under 10 CSR 25-7 shall operate in compliance with interim status in accordance with paragraphs (2)(A)4. and (2)(B)1. of this rule.

2. In addition to the items in 40 CFR 270.73 incorporated in this rule, interim status terminates when the department issues an order or commences an action pursuant to paragraph (2)(G)4. of this rule requiring the ~~owner/operator~~ to cease operations and undertake closure actions at the facility or at a unit.

3. The ~~owner/operator~~, at any time, voluntarily may submit a permit application pursuant to this rule.

4. Upon a determination by the department that the facility is not being operated or cannot be operated in full compliance with the requirements of 10 CSR 25-7.265, the department, in lieu of or in addition to requiring the submittal of a permit application pursuant to paragraph (2)(G)1. of this rule, may take an enforcement action pursuant to sections 260.410, 260.420, and 260.425, RSMo, as it deems appropriate under the circumstances in order to fully and effectively protect public health and the environment.

~~(H) Habitual Violators. This subsection describes how the department shall determine whether a hazardous waste management facility permit applicant is a habitual violator for purposes of implementing section 260.395.16, RSMo. This subsection applies to the issuance, reissuance, or total modification of hazardous waste management facility permits, excluding post-closure and corrective action only permits, and to hazardous waste resource recovery facilities for the activities subject to permit requirements in 10 CSR 25 7.264.~~

~~1. The department shall consider the applicant's prior operating history pursuant to section 260.395.16, RSMo, during the review of an application for a permit to operate a hazardous waste management or commercial polychlorinated biphenyl (PCB) facility. All documentation required by this subsection shall be submitted along with the information specified in 40 CFR part 270 subparts B and D incorporated by reference in section (1) of this rule and modified in subsection (2)(B) of this rule, paragraph (2)(D)1. of this rule, and 10 CSR 25 13.010(9)(B).~~

~~2. Definitions. The definitions in this paragraph apply to subsection (2)(H) of this rule.~~

~~A. Facility, for purposes of calculating violations as required in paragraph (2)(H)5. of this rule, means each permitted, licensed interim status, unpermitted or unlicensed hazardous waste management or commercial PCB facility, solid waste disposal area, solid waste processing facility, certified hazardous waste resource recovery facility, or solid or hazardous waste transporter or transfer station.~~

~~B. Person, in addition to the definition in section 260.360(17) RSMo, shall mean an officer or management employee of the applicant, any officer or management employee of any corporation or business which owns an interest in the applicant, any officer or management employee of any business in which an interest is owned by any person, corporation, or business which owns an interest in the applicant, or any officer or management employee of any corporation or business in which an interest is owned by the applicant.~~

~~C. Management employee means any individual, including a supervisor, who has the authority to serve as an agent for the employer in that the employee has the authority to perform or effectively recommend any one (1) or more of the following actions: hiring, firing, assigning, or directing other employees with respect to waste management operations.~~

~~D. Violation means any one (1) or more of the following actions or an equivalent action by this or another regulatory agency or competent authority in response to any violation of the Missouri solid or hazardous waste management law, the solid or hazardous waste management law of another state, or any federal law governing the management of solid waste, hazardous waste, PCB material, or PCB units:~~

- ~~(I) Final administrative order;~~
- ~~(II) Final permit revocation;~~
- ~~(III) Final permit suspension;~~
- ~~(IV) Civil judgment against the applicant;~~
- ~~(V) Criminal conviction; or~~

~~(VI) Settlement agreement in connection with a civil action which has been filed in court.~~

~~E. Interest, as used in “owning an interest in,” means having control of at least seven and one half percent (7.5%) of an applicant or person as defined in subparagraph (2)(H)2.B. of this rule. This is determined by multiplying the percentages of ownership at each successive level and comparing this result to a seven and one half percent (7.5%) cutoff level. For city, county, state, federal, and military owned facilities, interest, or owning an interest in, is defined as one (1) level above or below the facility applying for the permit. (For example, a military owned facility shall consider one (1) command level above the base on which the facility will be operated as having an interest in the facility. Likewise, the “command” shall consider itself as having an interest in all facilities within the command).~~

~~F. Habitual violator means a person who has failed the habitual violator test set out in paragraph (2)(H)5. of this rule.~~

~~3. For the purpose of this subsection, any administrative action or order, judgment, or criminal conviction that has been ruled on appeal in favor of the applicant by a final decision of a competent authority will not be considered to be a violation. If the applicant has an appeal pending, the outcome of which will affect the issuance of a permit, the department shall delay issuance of the permit until a final decision is rendered.~~

~~4. The permit applicant shall submit the following information on the Habitual Violator Disclosure Statement form provided by the department, incorporated by reference in this rule, and published in the appendix to this rule as part of the permit application:~~

~~A. Names and addresses of all persons meeting any of the following criteria:~~

~~(I) Any person who owns an interest in the applicant;~~

~~(II) Any person in whom an interest is owned by any person who owns an interest in the applicant; and~~

~~(III) Any person in whom the applicant owns an interest;~~

~~B. A list of all solid waste management, infectious waste management, commercial PCB management and hazardous waste management permits (Part A and Part B), licenses, certifications, or equivalent documents held within the last ten (10) years by the applicant or any person(s) reported under subparagraph (2)(H)4.A. of this rule, for the operation or post-closure of a solid waste management, infectious waste management, commercial PCB or hazardous waste management facility, or a combination of these, as defined in subparagraph (2)(H)2.A. of this rule, in Missouri or in the United States and for each provide the following information:~~

~~(I) Permit or identification number;~~

~~(II) Type of permit, license, certification, or equivalent document and dates held;~~

~~(III) Name(s) of the person(s) to whom each permit, license, certification, or equivalent document was issued;~~

~~(IV) Address or location of each facility; and~~

~~(V) Issuing agency;~~

~~C. The structure of the applicant in relation to any person(s) reported in accordance with subparagraph (2)(H)4.A.;~~

~~D. Names and addresses of the officers and management employees of any person(s) reported in accordance with subparagraph (2)(H)4.A.;~~

~~E. A list of all violations, including the identification of any action for which an appeal or final judgment is pending, as defined in subparagraph (2)(H)2.D. of this rule cited within ten (10) years preceding the date of the permit application incurred by any persons required to be reported under subparagraph (2)(H)4.A. or (2)(H)4.D. of this rule. Each listing shall include the following information:~~

- (I) Dates of violations;
- (II) A brief description of each violation, including the type of regulatory action taken;
- (III) Statutory or regulatory references, or both, to each specific statute or administrative rule that was violated;
- (IV) Name and location of the facility cited; and
- (V) Name and address of the issuing agency, and name and address of any competent authority with final jurisdiction regarding each violation;

F. A brief description of all incidents in which any person(s) reported under subparagraph (2)(H)4.A or (2)(H)4.D. of this rule have been adjudged in contempt of any court order enforcing the provisions of any state's solid or hazardous waste laws, or federal laws pertaining to hazardous waste;

G. A listing of all facilities as defined at (2)(H)2.A. owned or operated by any person required to be reported at (2)(H)4.A. or (2)(H)4.D. A brief justification as to why the facility has been included on the listing; and

H. All other information requested by the department necessary for the department to conduct an evaluation of the overall operating history of the applicant.

5. The habitual violator test.

A. A total of calculated violations shall be determined by the following formula:
 Number of violations (as defined in subparagraph (2)(H)2.D. of this rule), occurring within the ten (10) years preceding the date of the permit application, incurred by any person required to be reported under (2)(H)4.A. or (2)(H)4.D., divided by the total number of facilities (as defined in subparagraph (2)(H)2.A. of this rule) equals the number of calculated violations.

$$\frac{\text{Number of violations}}{\text{Total Number of Facilities}} = \text{Calculated Violations}$$

B. If the total of calculated violations is two (2.0) or less, the applicant has passed the habitual violator test. If the total of calculated violations is greater than two (2.0), the department will notify the applicant of his/her score. Upon receipt of notification, the applicant shall have thirty (30) days to produce clear and convincing evidence to the department which demonstrates that the applicant is not a habitual violator. The department shall determine whether the evidence is clear and convincing for the purpose of the habitual violator determination. If the evidence produced by the applicant is not found to be clear and convincing, or if no evidence is produced, the department will determine the applicant to be a habitual violator, and the department will notify the applicant of permit denial. If the evidence produced by the applicant is found to be clear and convincing, the department may determine that the applicant has not failed the habitual violator test (if the department determines the applicant has failed, a notice of denial will be sent to the applicant by the department) only after the department has considered the following factors:

- (I) The nature and severity of violations;
- (II) Any substantial realignment of corporate structure or corporate philosophy, or both;
- (III) Any significant pattern of improved environmental compliance;
- (IV) The complexity of the facilities and the volume of waste handled; and

~~(V) Any other relevant factors presented as evidence.~~

~~6. The department shall deny a permit for failure of the applicant to provide the required information or for submission of false information.~~

~~7. The department may deny a permit for failure of the applicant to provide complete information when submission of the information is required by this rule.~~

~~8. The department shall deny a permit if the applicant has failed the habitual violator test specified in paragraph (2)(H)5. of this rule.~~

~~9. The department shall not issue a permit to an applicant or a person who has offered in person or through an agent any inducement, including any discussion of possible employment opportunities, to any department employee when that person has an application for a permit pending or a permit under review. Distribution of job announcements from an applicant to the department, which are made in the regular course of business and are intended for general dissemination, shall not be considered improper inducements.~~

~~10. The department shall deny a permit if any person(s) reported in accordance with subparagraph (2)(H)4.A. or (2)(H)4.D. of this rule has been adjudged in contempt of any court order enforcing the provisions of any state's solid or hazardous waste management laws, or federal laws pertaining to hazardous waste.~~

~~11. Any person aggrieved by a permit denial under this subsection may appeal the decision by filing a petition with the Missouri Hazardous Waste Management Commission within thirty (30) days of notice of denial. The appeal hearing shall be conducted in accordance with section 260.400, RSMo, and 10-CSR 25-8.124(2).~~

~~(I) Restraint of Trade.~~

~~1. Any person, as defined in section 260.379.1, RSMo, applying for a permit to operate a hazardous waste treatment, storage, or disposal facility shall notify the director of any conviction occurring after July 9, 1990, for any crimes or criminal acts specified in section 260.379, RSMo. The person shall include any crimes or criminal acts for which an appeal or about which a final judgment is pending. The applicant shall submit this information with the permit application. Any person with a permit application pending, or to whom a permit has been granted, shall notify the department within thirty (30) days of the conviction or plea. The information shall be submitted in the form of a disclosure statement worded as specified in paragraph (2)(I)4. and shall include the following information:~~

~~A. Date of conviction or plea;~~

~~B. The specific charge and statutory citation;~~

~~C. Statutory or regulatory references, or both, and citations to each specific statute or administrative rule that was violated;~~

~~D. Name and location of each facility or person cited;~~

~~E. Name and address of the court; and~~

~~F. Any other information requested by the department.~~

~~2. The department shall deny, suspend, revoke, or not renew a permit if the applicant or permittee fails to submit the required information, the information submitted is false, or the applicant or permittee exceeds the number of convictions allowed under section 260.379, RSMo.~~

~~3. Rehabilitation and reinstatement.~~

~~A. A person may apply to the department for reinstatement of a permit that has been revoked under the provisions of subsection (2)(I) of this rule and section 260.379, RSMo, no sooner than five (5) years after revocation. The person shall demonstrate to the department that s/he had no convictions or pleas for any crimes or criminal acts as specified in section 260.379, RSMo, in any court in any state, or any federal court, within five (5) years preceding the request for reinstatement. The person shall also prove that no litigation or appeal is pending against the person for any crimes or criminal acts specified in section 260.379, RSMo.~~

~~B. If the permit is reinstated, the permittee, for a period of five (5) years from the date of reinstatement, shall file semi-annual disclosure statements prepared in accordance with the requirements of this subsection (2)(I).~~

~~C. If any conviction or plea for the acts specified in section 260.379, RSMo, is entered in any court in any state during the five (5) year period immediately following reinstatement, the reinstated permit shall be revoked for a period of at least five (5) years. Following this five (5)-year period, the person may reapply for reinstatement of the permit.~~

~~4. The disclosure statement specified in paragraph (2)(I)1. of this rule shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information, and the parentheses deleted:~~

~~(Name of permit applicant) (insert, "EPA Identification Number _____," if applicable) hereby certifies that the following list contains all instances in which any person, as defined by section 260.379.1, RSMo, has been convicted or pled to any crimes or criminal acts an element of which involves restraint of trade, price-fixing, intimidation of the customers of any person, or for engaging in any other acts which may have the effect of restraining or limiting competition concerning activities regulated under Chapter 260, RSMo, or similar laws of other states or the federal government; except that convictions for violations by entities purchased or acquired by an applicant or permittee which occurred prior to the purchase or acquisition, shall not be included. (For each conviction or plea required to be reported, provide a listing of the information required in 10 CSR 25-7.270(2)(I)1.A. F. If no conviction or plea is required to be reported, so state.)~~

~~I hereby certify the following:~~

- ~~a) The above information is complete and truthful as of the date this statement was signed;~~
- ~~b) The wording of this disclosure statement is identical to the wording specified in 10 CSR 25-7.270(2)(I)4. on the date this statement was signed; and~~
- ~~c) In such matters, I, the undersigned, do have the authority to act as agent for the permit applicant.~~

~~(Signature)~~

~~(Name)~~

~~(Title)~~

~~(Date)~~

~~(Seal)~~

~~(Notary seal and signature)~~

AUTHORITY: section 260.370, RSMo Supp. 2010 and sections 260.390 and 260.395, RSMo 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. Amended: Filed Feb. 3, 1987, effective Aug. 1, 1987. Amended: Filed Dec. 1, 1987, effective Aug. 12, 1988. Amended: Filed Feb. 16, 1990, effective Dec. 31, 1990. Amended: Filed Jan. 15, 1991, effective Aug. 1, 1991. Amended: Filed Feb. 14, 1992, effective Dec. 3, 1992. Amended: Filed Jan. 5, 1993, effective Aug. 9, 1993. Amended: Filed June 3, 1993, effective Jan. 31, 1994. Amended: Filed Jan. 5, 1994, effective Aug. 28, 1994. Amended: Filed April 4, 1994, effective Oct. 30, 1994. Amended: Filed Aug. 16, 1995, effective April 30, 1996. Amended: Filed June 1, 1998, effective Jan. 30, 1999. Amended: Filed Feb. 1, 2001, effective Oct. 30, 2001. Amended: Filed March 31, 2006, effective Dec. 30, 2006. Amended: Filed Oct. 15, 2008, effective June 30, 2009. Amended: Filed April 15, 2011, effective Dec. 30, 2011.*

**Original authority: 260.370, RSMo 1977, amended 1980, 1988, 1993, 1995, 2004, 2010; 260.390, RSMo 1977, amended 1980, 1983, 1985, 1993; and 260.395, RSMo 1977, amended 1980, 1983, 1985, 1988, 2000.*