FIRST REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED]

HOUSE COMMITTEE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 54

94TH GENERAL ASSEMBLY

2007

0467L.03T

AN ACT

To repeal sections 260.200, 260.211, 260.212, 260.240, 260.247, 260.249, 260.250, 260.330, 260.335, 260.360, 260.470, 260.800, 386.887, 414.420, 444.772, and 643.079, RSMo, and to enact in lieu thereof thirty-nine new sections relating to environmental regulation, with an effective date and penalty provisions.

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

Section A. Sections 260.200, 260.211, 260.212, 260.240, 260.247, 260.249, 260.250, 260.330, 260.335, 260.360, 260.470, 260.800, 386.887, 414.420, 444.772, and 643.079, RSMo, are repealed and thirty-nine new sections enacted in lieu thereof, to be known as sections 256.700, 256.705, 256.710, 260.200, 260.211, 260.212, 260.240, 260.247, 260.249, 260.250, 260.330, 260.335, 260.360, 260.470, 260.800, 260.1000, 260.1003, 260.1006, 260.1009, 260.1012, 260.1015, 260.1018, 260.1021, 260.1024, 260.1027, 260.1030, 260.1033, 260.1036, 260.1039, 386.890, 393.1020, 393.1025, 393.1030, 393.1035, 393.1040, 414.420, 444.772, 643.079, and 1, to read as follows:

256.700. 1. Any operator desiring to engage in surface mining who applies for a permit under section 444.772, RSMo, shall in addition to all other fees authorized under such section, annually submit a geologic resources fee. Such fee shall be deposited in the geologic resources fund established and expended under section 256.705. For any operator of a gravel mining operation where the annual tonnage of gravel mined by such operator is less than five thousand tons, there shall be no fee under this section.

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

2. The director of the department of natural resources may require a geologic resources fee for each permit not to exceed one hundred dollars. The director may also require a geologic resources fee for each site listed on a permit not to exceed one hundred dollars for each site. The director may also require a geologic resources fee for each acre permitted by the operator under section 444.772, RSMo, not to exceed ten dollars per acre. If such fee is assessed, the fee per acre on all acres bonded by a single operator that exceeds a total of three hundred acres shall be reduced by fifty percent. In no case shall the geologic resources fee portion for any permit issued under section 444.772, RSMo, be more than three thousand five hundred dollars.

3. Beginning August 28, 2007, the geologic resources fee shall be set at a permit fee of fifty dollars, a site fee of fifty dollars, and an acre fee of six dollars. Fees may be raised as allowed in this subsection by a regulation change promulgated by the director of the department of natural resources. Prior to such a regulation change, the director shall consult the industrial minerals advisory council created under section 256.710 in order to determine the need for such an increase in fees.

4. Fees imposed under this section shall become effective August 28, 2007, and shall expire on December 31, 2020. No other provisions of sections 256.700 to 256.710 shall expire.

5. The department of natural resources may promulgate rules to implement the provisions of sections 256.700 to 256.710. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, 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, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly under chapter 536, RSMo, 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, 2007, shall be invalid and void.

256.705. 1. All sums received through the payment of fees under section 256.700 shall be placed in the state treasury and credited to the "Geologic Resources Fund" which is hereby created.

2. After appropriation by the general assembly, the money in such fund shall be expended to collect, process, manage, and distribute

geologic and hydrologic resource information pertaining to mineral resource potential in order to assist the mineral industry and for no other purpose. Such funds shall be utilized by the division of geology and land survey within the department of natural resources.

3. Any portion of the fund not immediately needed for the purposes authorized shall be invested by the state treasurer as provided by the constitution and laws of this state. All income from such investments shall, unless otherwise prohibited by the constitution of this state, be deposited in the geologic resources fund. The provisions of section 33.080, RSMo, relating to the transfer of unexpended balances in various funds to the general revenue fund at the end of each biennium shall not apply to funds in the geologic resources fund.

4. General revenue of the state or other state funds may be appropriated or expended for the administration of sections 256.700 to 256.710. The state geologist may enter into a memorandum of understanding or other agreement that allows for state or federal funds to supplement the geologic resources fund.

256.710. 1. There is hereby created an advisory council to the state geologist known as the "Industrial Minerals Advisory Council". The council shall be composed of nine members as follows:

(1) The director of the department of transportation or his or her designee;

(2) Eight representatives of the following industries appointed by the director of the department of natural resources:

(a) Three representing the limestone quarry operators;

(b) One representing the clay mining industry;

(c) One representing the sandstone mining industry;

(d) One representing the sand and gravel mining industry;

(e) One representing the barite mining industry; and

(f) One representing the granite mining industry.

The director of the department of natural resources or his or her designee shall act as chairperson of the council and convene the council as needed.

2. The advisory council shall:

(1) Meet at least once each year;

(2) Annually review with the state geologist the income received and expenditures made under sections 256.700 and 256.705;

(3) Consider all information and advise the director of the department of natural resources in determining the method and amount of fees to be assessed;

(4) In performing its duties under this subsection, represent the best interests of the Missouri mining industry;

(5) Serve in an advisory capacity in all matters pertaining to the administration of this section and section 256.700;

(6) Serve in an advisory capacity in all other matters brought before the council by the director of the department of natural resources.

3. All members of the advisory council, with the exception of the director of the department of transportation or his or her designee who shall serve indefinitely, shall serve for terms of three years and until their successors are duly appointed and qualified; except that, of the members first appointed:

(1) One member who represents the limestone quarry operators, the representative of the clay mining industry, and the representative of the sandstone mining industry shall serve terms of three years;

(2) One member who represents the limestone quarry operators, the representative of the sand and gravel mining industry, and the representative of the barite mining industry shall serve terms of two years; and

(3) One member who represents the limestone quarry operators, and the representative of the granite mining industry shall serve a term of one year.

4. All members shall be residents of this state. Any member may be reappointed.

5. All members shall be reimbursed for reasonable expenses incurred in the performance of their official duties in accordance with the reimbursement policy set by the director. All reimbursements paid under this section shall be paid from fees collected under section 256.700.

6. Every vacancy on the advisory council shall be filled by the director of the department of natural resources. The person selected to fill any such vacancy shall possess the same qualifications required by this section as the member he or she replaces and shall serve until the end of the unexpired term of his or her predecessor.

260.200. 1. The following words and phrases when used in sections

260.200 to 260.345 shall mean:

(1) "Alkaline-manganese battery" or "alkaline battery", a battery having a manganese dioxide positive electrode, a zinc negative electrode, an alkaline electrolyte, including alkaline-manganese button cell batteries intended for use in watches, calculators, and other electronic products, and larger-sized alkaline-manganese batteries in general household use;

(2) **"Bioreactor", a municipal solid waste disposal area or portion of a municipal solid waste disposal area where the controlled addition of liquid waste or water accelerates both the decomposition of waste and landfill gas generation;**

(3) "Button cell battery" or "button cell", any small alkaline-manganese or mercuric-oxide battery having the size and shape of a button;

[(3)**] (4)** "City", any incorporated city, town, or village;

[(4)**] (5)** "Clean fill", uncontaminated soil, rock, sand, gravel, concrete, asphaltic concrete, cinderblocks, brick, minimal amounts of wood and metal, and inert solids as approved by rule or policy of the department for fill, reclamation or other beneficial use;

[(5)**] (6)** "Closure", the permanent cessation of active disposal operations, abandonment of the disposal area, revocation of the permit or filling with waste of all areas and volumes specified in the permit and preparing the area for long-term care;

[(6)**] (7)** "Closure plan", plans, designs and relevant data which specify the methods and schedule by which the operator will complete or cease disposal operations, prepare the area for long-term care, and make the area suitable for other uses, to achieve the purposes of sections 260.200 to 260.345 and the regulations promulgated thereunder;

[(7)**] (8)** "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;

(9) "Construction and demolition waste", waste materials from the construction and demolition of residential, industrial, or commercial structures, but shall not include materials defined as clean fill under this section;

[(8)**]** **(10)** "Demolition landfill", a solid waste disposal area used for the controlled disposal of demolition wastes, construction materials, brush, wood wastes, soil, rock, concrete and inert solids insoluble in water;

[(9)**]** **(11)** "Department", the department of natural resources;

[(10)**]** **(12)** "Director", the director of the department of natural resources;

[(11)**]** **(13)** "District", a solid waste management district established under section 260.305;

[(12)**]** **(14)** "Financial assurance instrument", an instrument or instruments, including, but not limited to, cash or surety bond, letters of credit, corporate guarantee or secured trust fund, submitted by the applicant to ensure proper closure and postclosure care and corrective action of a solid waste disposal area in the event that the operator fails to correctly perform closure and postclosure care and corrective action requirements, except that the financial test for the corporate guarantee shall not exceed one and one-half times the estimated cost of closure and postclosure. The form and content of the financial assurance instrument shall meet or exceed the requirements of the department. The instrument shall be reviewed and approved or disapproved by the attorney general;

[(13)**]** **(15)** "Flood area", any area inundated by the one hundred year flood event, or the flood event with a one percent chance of occurring in any given year;

[(14)**]** **(16)** "Household consumer", an individual who generates used motor oil through the maintenance of the individual's personal motor vehicle, vessel, airplane, or other machinery powered by an internal combustion engine;

[(15)**]** **(17)** "Household consumer used motor oil collection center", any site or facility that accepts or aggregates and stores used motor oil collected only from household consumers or farmers who generate an average of twenty-five gallons per month or less of used motor oil in a calendar year. This section shall not preclude a commercial generator from operating a household consumer used motor oil collection center;

[(16)**]** **(18)** "Household consumer used motor oil collection system", any used motor oil collection center at publicly owned facilities or private locations, any curbside collection of household consumer used motor oil, or any other household consumer used motor oil collection program determined by the department to further the purposes of sections 260.200 to 260.345;

[(17)**]** **(19)** "Infectious waste", waste in quantities and characteristics as determined by the department by rule, including isolation wastes, cultures and stocks of etiologic agents, blood and blood products, pathological wastes, other

wastes from surgery and autopsy, contaminated laboratory wastes, sharps, dialysis unit wastes, discarded biologicals known or suspected to be infectious; provided, however, that infectious waste does not mean waste treated to department specifications;

[(18)**]** **(20)** "Lead-acid battery", a battery designed to contain lead and sulfuric acid with a nominal voltage of at least six volts and of the type intended for use in motor vehicles and watercraft;

[(19)**]** **(21)** "Major appliance", clothes washers and dryers, water heaters, trash compactors, dishwashers, conventional ovens, ranges, stoves, woodstoves, air conditioners, refrigerators and freezers;

[(20)**]** **(22)** "Mercuric-oxide battery" or "mercury battery", a battery having a mercuric-oxide positive electrode, a zinc negative electrode, and an alkaline electrolyte, including mercuric-oxide button cell batteries generally intended for use in hearing aids and larger size mercuric-oxide batteries used primarily in medical equipment;

[(21)**]** **(23)** "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;

[(22)**]** **(24)** "Motor oil", any oil intended for use in a motor vehicle, as defined in section 301.010, RSMo, train, vessel, airplane, heavy equipment, or other machinery powered by an internal combustion engine;

[(23)**]** **(25)** "Motor vehicle", as defined in section 301.010, RSMo;

[(24)**]** **(26)** "Operator" and "permittee", anyone so designated, and shall include cities, counties, other political subdivisions, authority, state agency or institution, or federal agency or institution;

[(25)**]** **(27)** "Permit modification", any permit issued by the department which alters or modifies the provisions of an existing permit previously issued by the department;

[(26)**]** **(28)** "Person", any individual, partnership, corporation, association, institution, city, county, other political subdivision, authority, state agency or institution, or federal agency or institution;

(29) "Plasma arc technology", a process that converts electrical energy into thermal energy. This electric arc is created when an ionized gas transfers electric power between two or more electrodes;

[(27)**]** **(30)** "Postclosure plan", plans, designs and relevant data which specify the methods and schedule by which the operator shall perform necessary monitoring and care for the area after closure to achieve the purposes of sections

260.200 to 260.345 and the regulations promulgated thereunder;

[(28)**]** **(31)** "Recovered materials", those materials which have been diverted or removed from the solid waste stream for sale, use, reuse or recycling, whether or not they require subsequent separation and processing;

[(29)**]** **(32)** "Recycled content", the proportion of fiber in a newspaper which is derived from postconsumer waste;

[(30)**]** **(33)** "Recycling", the separation and reuse of materials which might otherwise be disposed of as solid waste;

[(31)**]** **(34)** "Resource recovery", a process by which recyclable and recoverable material is removed from the waste stream to the greatest extent possible, as determined by the department and pursuant to department standards, for reuse or remanufacture;

[(32)**]** **(35)** "Resource recovery facility", a facility in which recyclable and recoverable material is removed from the waste stream to the greatest extent possible, as determined by the department and pursuant to department standards, for reuse or remanufacture;

[(33)**]** **(36)** "Sanitary landfill", a solid waste disposal area which accepts commercial and residential solid waste;

[(34)**]** **(37)** "Scrap tire", a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect;

[(35)**]** **(38)** "Scrap tire collection center", a site where scrap tires are collected prior to being offered for recycling or processing and where fewer than five hundred tires are kept on site on any given day;

[(36)**]** **(39)** "Scrap tire end-user facility", a site where scrap tires are used as a fuel or fuel supplement or converted into a useable product. Baled or compressed tires used in structures, or used at recreational facilities, or used for flood or erosion control shall be considered an end use;

[(37)**]** **(40)** "Scrap tire generator", a person who sells tires at retail or any other person, firm, corporation, or government entity that generates scrap tires;

[(38)**]** **(41)** "Scrap tire processing facility", a site where tires are reduced in volume by shredding, cutting, or chipping or otherwise altered to facilitate recycling, resource recovery, or disposal;

[(39)**]** **(42)** "Scrap tire site", a site at which five hundred or more scrap tires are accumulated, but not including a site owned or operated by a scrap tire end-user that burns scrap tires for the generation of energy or converts scrap tires to a useful product;

[(40)**]** **(43)** "Solid waste", garbage, refuse and other discarded materials including, but not limited to, solid and semisolid waste materials resulting from

industrial, commercial, agricultural, governmental and domestic activities, but does not include hazardous waste as defined in sections 260.360 to 260.432, recovered materials, overburden, rock, tailings, matte, slag or other waste material resulting from mining, milling or smelting;

[(41)**]** **(44)** "Solid waste disposal area", any area used for the disposal of solid waste from more than one residential premises, or one or more commercial, industrial, manufacturing, recreational, or governmental operations;

[(42)**]** **(45)** "Solid waste fee", a fee imposed pursuant to sections 260.200 to 260.345 and may be:

(a) A solid waste collection fee imposed at the point of waste collection; or

(b) A solid waste disposal fee imposed at the disposal site;

[(43)**]** **(46)** "Solid waste management area", a solid waste disposal area which also includes one or more of the functions contained in the definitions of recycling, resource recovery facility, waste tire collection center, waste tire processing facility, waste tire site or solid waste processing facility, excluding incineration;

[(44)**]** **(47)** "Solid waste management system", the entire process of managing solid waste in a manner which minimizes the generation and subsequent disposal of solid waste, including waste reduction, source separation, collection, storage, transportation, recycling, resource recovery, volume minimization, processing, market development, and disposal of solid wastes;

[(45)**]** **(48)** "Solid waste processing facility", any facility where solid wastes are salvaged and processed, including:

(a) A transfer station; or

(b) An incinerator which operates with or without energy recovery but excluding waste tire end-user facilities; or

(c) A material recovery facility which operates with or without composting;

(d) A plasma arc technology facility;

[(46)**]** **(49)** "Solid waste technician", an individual who has successfully completed training in the practical aspects of the design, operation and maintenance of a permitted solid waste processing facility or solid waste disposal area in accordance with sections 260.200 to 260.345;

[(47)**]** **(50)** "Tire", a continuous solid or pneumatic rubber covering encircling the wheel of any self-propelled vehicle not operated exclusively upon tracks, or a trailer as defined in chapter 301, RSMo, except farm tractors and farm implements owned and operated by a family farm or family farm corporation as defined in section 350.010, RSMo;

[(48)**]** **(51)** "Used motor oil", any motor oil which, as a result of use,

becomes unsuitable for its original purpose due to loss of original properties or the presence of impurities, but used motor oil shall not include ethylene glycol, oils used for solvent purposes, oil filters that have been drained of free flowing used oil, oily waste, oil recovered from oil tank cleaning operations, oil spilled to land or water, or industrial nonlube oils such as hydraulic oils, transmission oils, quenching oils, and transformer oils;

[(49)**]** **(52)** "Utility waste landfill", a solid waste disposal area used for 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;

[(50)**]** **(53)** "Yard waste", leaves, grass clippings, yard and garden vegetation and Christmas trees. The term does not include stumps, roots or shrubs with intact root balls.

2. For the purposes of this section and sections 260.270 to **[**260.278**]** **260.279** and any rules in place as of August 28, 2005, or promulgated under said sections, the term "scrap" shall be used synonymously with and in place of "waste", as it applies only to scrap tires.

260.211. 1. A person commits the offense of criminal disposition of demolition waste **[**in the first degree**]** if he purposely or knowingly disposes of or causes the disposal of more than two thousand pounds or four hundred cubic feet of such waste **[**in violation of section 260.210**]** **on property in this state other than in a solid waste processing facility or solid waste disposal area having a permit as required by section 260.205; provided that, this subsection shall not prohibit the use or require a solid waste permit for the use of solid wastes in normal farming operations or in the processing or manufacturing of other products in a manner that will not create a public nuisance or adversely affect public health and shall not prohibit the disposal of or require a solid waste permit for the disposal by an individual of solid wastes resulting from his or her own residential activities on property owned or lawfully occupied by him or her when such wastes do not thereby create a public nuisance or adversely affect the public health**. Demolition waste shall not include clean fill or vegetation. Criminal disposition of demolition waste **[**in the first degree**]** is a class **[**A misdemeanor**]** **D felony**. In addition to other penalties prescribed by law, a person convicted of criminal disposition of demolition waste **[**in the first degree**]** is subject to a fine not to exceed twenty thousand dollars, except as provided below. The magnitude of the fine shall reflect the seriousness or potential seriousness of the threat to human health and the environment posed by the violation, but shall not exceed twenty thousand dollars, except that if a

court of competent jurisdiction determines that the person responsible for illegal disposal of demolition waste under this subsection did so for remuneration as a part of an ongoing commercial activity, the court shall set a fine which reflects the seriousness or potential threat to human health and the environment which at least equals the economic gain obtained by the person, and such fine may exceed the maximum established herein.

2. **Any person who purposely or knowingly disposes of or causes the disposal of more than two thousand pounds or four hundred cubic feet of his or her personal construction or demolition waste on his or her own property shall be guilty of a class C misdemeanor. If such person receives any amount of money, goods, or services in connection with permitting any other person to dispose of construction or demolition waste on his or her property, such person shall be guilty of a class D felony.**

3. The court shall order any person convicted of illegally disposing of demolition waste upon his own property for remuneration to clean up such waste and, if he fails to clean up the waste or if he is unable to clean up the waste, the court may notify the county recorder of the county containing the illegal disposal site. The notice shall be designed to be recorded on the record.

[3. Any person who pleads guilty or is convicted of criminal disposition of demolition waste in the first degree a second or subsequent time shall be guilty of a class D felony, and subject to the penalties provided in subsection 1 of this section in addition to those penalties prescribed by law.

4. A person commits the offense of criminal disposition of demolition waste in the second degree if he purposely or knowingly disposes of or causes the disposal of less than the amount of demolition waste specified in subsection 1 of this section in violation of section 260.210. Criminal disposition of demolition waste in the second degree is a class C misdemeanor.

5. In addition to other penalties prescribed by law, a person convicted of criminal disposition of demolition waste in the second degree is subject to a fine, and the magnitude of the fine shall reflect the seriousness or potential seriousness of the threat to human health and the environment posed by the violation, but shall not exceed two thousand dollars.

6. Any person who pleads guilty or is convicted of criminal disposition of demolition waste in the second degree a second or subsequent time shall be guilty of a class D felony, and subject to the penalties provided in subsection 5 of this section in addition to those penalties prescribed by law.

7.**]** **4.** The court may order restitution by requiring any person convicted

under this section to clean up any demolition waste he illegally dumped and the court may require any such person to perform additional community service by cleaning up and properly disposing of demolition waste illegally dumped by other persons.

[8.**]** **5.** The prosecutor of any county or circuit attorney of any city not within a county may, by information or indictment, institute a prosecution for any violation of the provisions of this section.

6. Any person shall be guilty of conspiracy as defined in section 564.016, RSMo, if he or she knows or should have known that his or her agent or employee has committed the acts described in sections 260.210 to 260.212 while engaged in the course of employment.

260.212. 1. A person commits the offense of criminal disposition of solid waste **[**in the first degree**]** if he purposely or knowingly disposes of or causes the disposal of more than five hundred pounds or one hundred cubic feet of commercial or residential solid waste **[**on any property in this state other than a sanitary landfill in violation of section 260.210**]** **on property in this state other than a solid waste processing facility or solid waste disposal area having a permit as required by section 260.205; provided that, this subsection shall not prohibit the use or require a solid waste permit for the use of solid wastes in normal farming operations or in the processing or manufacturing of other products in a manner that will not create a public nuisance or adversely affect public health and shall not prohibit the disposal of or require a solid waste permit for the disposal by an individual of solid wastes resulting from his or her own residential activities on property owned or lawfully occupied by him or her when such wastes do not thereby create a public nuisance or adversely affect the public health**. Criminal disposition of solid waste **[**in the first degree**]** is a class **[**A misdemeanor**]** **D felony**. In addition to other penalties prescribed by law, a person convicted of criminal disposition of solid waste **[**in the first degree**]** is subject to a fine, and the magnitude of the fine shall reflect the seriousness or potential seriousness of the threat to human health and the environment posed by the violation, but shall not exceed twenty thousand dollars, except that if a court of competent jurisdiction determines that the person responsible for illegal disposal of solid waste under this subsection did so for remuneration as a part of an ongoing commercial activity, the court shall set a fine which reflects the seriousness or potential threat to human health and the environment which at least equals the economic gain obtained by the person, and such fine may exceed the maximum established herein.

2. The court shall order any person convicted of illegally disposing of solid waste upon his own property for remuneration to clean up such waste and, if he fails to clean up the waste or if he is unable to clean up the waste, the court may notify the county recorder of the county containing the illegal disposal site. The notice shall be designed to be recorded on the record.

3. **[**Any person who pleads guilty or is convicted of criminal disposition of solid waste in the first degree a second or subsequent time shall be guilty of a class D felony. If a court of competent jurisdiction determines that the person responsible for illegal disposal of solid waste under this subsection did so for remuneration as a part of an ongoing commercial activity, the court shall set a fine which reflects the seriousness or potential threat to human health and the environment which equals at least three times the economic gain obtained by the person, and such fine may exceed the maximum established in this section.

4. A person commits the offense of criminal disposition of solid waste in the second degree if he purposely or knowingly disposes of or causes the disposal of less than the amount of commercial or residential solid waste specified in subsection 1 of this section on any property in this state other than a permitted sanitary landfill in violation of section 260.210. Criminal disposition of solid waste in the second degree is a class C misdemeanor.

5. In addition to other penalties prescribed by law, a person convicted of criminal disposition of solid waste in the second degree is subject to a fine, and the magnitude of the fine shall reflect the seriousness or potential seriousness of the threat to human health and the environment posed by the violation, but shall not exceed two thousand dollars.

6. Any person who pleads guilty or is convicted of criminal disposition of solid waste in the second degree a second or subsequent time shall be guilty of a class D felony. If a court of competent jurisdiction determines that the person responsible for illegal disposal of solid waste under this subsection did so for remuneration as a part of an ongoing commercial activity, the court shall set a fine which reflects the seriousness or potential threat to human health and the environment which equals at least three times the economic gain obtained by the person, and such fine may exceed the maximum established in this subsection.

7.**]** The court may order restitution by requiring any person convicted under this section to clean up any commercial or residential solid waste he illegally dumped and the court may require any such person to perform additional community service by cleaning up commercial or residential solid waste illegally dumped by other persons.

[8.**]** **4.** The prosecutor of any county or circuit attorney of any city not

within a county may, by information or indictment, institute a prosecution for any violation of the provisions of this section.

[9.**]** **5.** Any person shall be guilty of conspiracy as defined in section 564.016, RSMo, if he knows or should have known that his agent or employee has committed the acts described in sections 260.210 to 260.212 while engaged in the course of employment.

260.240. 1. In the event the director determines that any provision of sections 260.200 to 260.245 **and 260.330** or any standard, rule, regulation, final order or approved plan promulgated pursuant thereto is being, was, or is in imminent danger of being violated, the director may, in addition to those remedies provided in section 260.230, 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 in the case of violations concerning a solid waste disposal area or a solid waste processing facility, for the assessment of a penalty not to exceed one thousand dollars per day for each day, or part thereof, the violation occurred and continues to occur, or both, as the court deems proper **or in the case of violations concerning a solid waste disposal area and in the case of a violation of section 260.330 by a solid waste processing facility, for the assessment of a penalty not to exceed five thousand dollars per 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 260.249. The director 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 can be brought in any county where the defendant's principal place of business is located or where the violation occurred. 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. Any rule, regulation, standard or order of a county commission, adopted pursuant to the provisions of sections 260.200 to 260.245, may be enforced in a civil action for mandatory or prohibitory injunctive relief or for the assessment of a penalty not to exceed **[**one**]** **five** hundred dollars per day for each day, or part thereof, that a violation of such rule, regulation, standard or order of a county commission occurred and continues to occur, or both, as the commission deems

proper. The county commission may request the prosecuting attorney or other attorney to bring any action authorized in this section in the name of the people of the state of Missouri.

3. The liabilities imposed by this section shall not be imposed due to any violation caused by an act of God, war, strike, riot or other catastrophe.

260.247. 1. Any city **or political subdivision** which annexes an area or enters into or expands solid waste collection services into an area where the collection of solid waste is presently being provided by one or more private entities**, for commercial or residential services,** shall notify the private entity or entities of its intent to provide solid waste collection services in the area by certified mail.

2. A city **or political subdivision** shall not commence solid waste collection in such area for at least two years from the effective date of the annexation or at least two years from the effective date of the notice that the city **or political subdivision** intends to enter into the business of solid waste collection or to expand existing solid waste collection services into the area, unless the city **or political subdivision** contracts with the private entity or entities to continue such services for that period. **If for any reason the city or political subdivision does not exercise its option to provide for or contract for the provision of services within an affected area within three years from the effective date of the notice, then the city or political subdivision shall renotify under subsection 1 of this section.**

3. If the services to be provided under a contract with the city **or political subdivision** pursuant to subsection 2 of this section are substantially the same as the services rendered in the area prior to the decision of the city to annex the area or to enter into or expand its solid waste collection services into the area, the amount paid by the city shall be at least equal to the amount the private entity or entities would have received for providing such services during that period.

4. Any private entity or entities which provide collection service in the area which the city **or political subdivision** has decided to annex or enter into or expand its solid waste collection services into shall make available upon written request by the city not later than thirty days following such request, all information in its possession or control which pertains to its activity in the area necessary for the city to determine the nature and scope of the potential contract.

5. The provisions of this section shall apply to private entities that service fifty or more residential accounts or **[**fifteen or more**]** **any** commercial accounts in the area in question.

260.249. 1. In addition to any other remedy provided by law, upon a determination by the director that a provision of sections 260.200 to 260.281, 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 260.200 to 260.281 or minor violation of any standard, limitation, order, rule or regulation promulgated pursuant to sections 260.200 to 260.281 or minor violations of any term or condition of a permit issued pursuant to sections 260.200 to 260.281 or any violations of sections 260.200 to 260.281 by any person resulting from mismanagement of solid waste generated and managed on the property of the place of residence of the person. 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 section 260.235. 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 department 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 **[**260.230**]** **260.240**. 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 department 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 as provided in section 260.235. 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. 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.

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

260.250. 1. After January 1, 1991, major appliances, waste oil and lead-acid batteries shall not be disposed of in a solid waste disposal area. After January 1, 1992, yard waste shall not be disposed of in a solid waste disposal area**, except as otherwise provided in this subsection. After August 28, 2007, yard waste may be disposed of in a municipal solid waste disposal area or portion of a municipal solid waste disposal area provided that:**

(1) The department has approved the municipal solid waste disposal area or portion of a solid waste disposal area to operate as a bioreactor under 40 CFR Part 258.4; and

(2) The landfill gas produced by the bioreactor shall be used for the generation of electricity.

2. After January 1, 1991, waste oil shall not be incinerated without energy recovery.

3. Each district, county and city shall address the recycling, reuse and handling of aluminum containers, glass containers, newspapers, whole tires, plastic beverage containers and steel containers in its solid waste management plan consistent with sections 260.250 to 260.345.

260.330. 1. Except as otherwise provided in subsection 6 of this section, effective October 1, 1990, each operator of a solid waste sanitary landfill shall collect a charge equal to one dollar and fifty cents per ton or its volumetric

equivalent of solid waste accepted and each operator of the solid waste demolition landfill shall collect a charge equal to one dollar per ton or its volumetric equivalent of solid waste accepted. Each operator shall submit the charge, less collection costs, to the department of natural resources for deposit in the "Solid Waste Management Fund" which is hereby created. On October 1, 1992, and thereafter, the charge imposed herein shall be adjusted annually by the same percentage as the increase in the general price level as measured by the Consumer Price Index for All Urban Consumers for the United States, or its successor index, as defined and officially recorded by the United States Department of Labor or its successor agency. No annual adjustment shall be made to the charge imposed under this subsection during October 1, 2005, to October 1, **[**2009**]** **2014**, except an adjustment amount consistent with the need to fund the operating costs of the department and taking into account any annual percentage increase in the total of the volumetric equivalent of solid waste accepted in the prior year at solid waste sanitary landfills and demolition landfills and solid waste to be transported out of this state for disposal that is accepted at transfer stations. No annual increase during October 1, 2005, to October 1, **[**2009**]** **2014**, shall exceed the percentage increase measured by the Consumer Price Index for All Urban Consumers for the United States, or its successor index, as defined and officially recorded by the United States Department of Labor or its successor agency and calculated on the percentage of revenues dedicated under subdivision (1) of subsection 2 of section 260.335. Any such annual adjustment shall only be made at the discretion of the director, subject to appropriations. Collection costs shall be established by the department and shall not exceed two percent of the amount collected pursuant to this section.

2. The department shall, by rule and regulation, provide for the method and manner of collection.

3. The charges established in this section shall be enumerated separately from the disposal fee charged by the landfill and may be passed through to persons who generated the solid waste. Moneys shall be transmitted to the department shall be no less than the amount collected less collection costs and in a form, manner and frequency as the department shall prescribe. The provisions of section 33.080, RSMo, to the contrary notwithstanding, moneys in the account shall not lapse to general revenue at the end of each biennium. Failure to collect the charge does not relieve the operator from responsibility for transmitting an amount equal to the charge to the department.

4. The department may examine or audit financial records and landfill activity records and measure landfill usage to verify the collection and

transmittal of the charges established in this section. The department may promulgate by rule and regulation procedures to ensure and to verify that the charges imposed herein are properly collected and transmitted to the department.

5. Effective October 1, 1990, any person who operates a transfer station in Missouri shall transmit a fee to the department for deposit in the solid waste management fund which is equal to one dollar and fifty cents per ton or its volumetric equivalent of solid waste accepted. Such fee shall be applicable to all solid waste to be transported out of the state for disposal. On October 1, 1992, and thereafter, the charge imposed herein shall be adjusted annually by the same percentage as the increase in the general price level as measured by the Consumer Price Index for All Urban Consumers for the United States, or its successor index, as defined and officially recorded by the United States Department of Labor or its successor agency. No annual adjustment shall be made to the charge imposed under this subsection during October 1, 2005, to October 1, **[**2009**]** **2014**, except an adjustment amount consistent with the need to fund the operating costs of the department and taking into account any annual percentage increase in the total of the volumetric equivalent of solid waste accepted in the prior year at solid waste sanitary landfills and demolition landfills and solid waste to be transported out of this state for disposal that is accepted at transfer stations. No annual increase during October 1, 2005, to October 1, **[**2009**]** **2014**, shall exceed the percentage increase measured by the Consumer Price Index for All Urban Consumers for the United States, or its successor index, as defined and officially recorded by the United States Department of Labor or its successor agency and calculated on the percentage of revenues dedicated under subdivision (1) of subsection 2 of section 260.335. Any such annual adjustment shall only be made at the discretion of the director, subject to appropriations. The department shall prescribe rules and regulations governing the transmittal of fees and verification of waste volumes transported out of state from transfer stations. Collection costs shall also be established by the department and shall not exceed two percent of the amount collected pursuant to this subsection. A transfer station with the sole function of separating materials for recycling or resource recovery activities shall not be subject to the fee imposed in this subsection.

6. Each political subdivision which owns an operational solid waste disposal area may designate, pursuant to this section, up to two free disposal days during each calendar year. On any such free disposal day, the political subdivision shall allow residents of the political subdivision to dispose of any solid waste which may be lawfully disposed of at such solid waste disposal area

free of any charge, and such waste shall not be subject to any state fee pursuant to this section. Notice of any free disposal day shall be posted at the solid waste disposal area site and in at least one newspaper of general circulation in the political subdivision no later than fourteen days prior to the free disposal day.

260.335. 1. Each fiscal year eight hundred thousand dollars from the solid waste management fund shall be made available, upon appropriation, to the department and the environmental improvement and energy resources authority to fund activities that promote the development and maintenance of markets for recovered materials. Each fiscal year up to two hundred thousand dollars from the solid waste management fund be used by the department upon appropriation for grants to solid waste management districts for district grants and district operations. Only those solid waste management districts that are allocated fewer funds under subsection 2 of this section than if revenues had been allocated based on the criteria in effect in this section on August 27, 2004, are eligible for these grants. An eligible district shall receive a proportionate share of these grants based on that district's share of the total reduction in funds for eligible districts calculated by comparing the amount of funds allocated under subsection 2 of this section with the amount of funds that would have been allocated using the criteria in effect in this section on August 27, 2004. The department and the authority shall establish a joint interagency agreement with the department of economic development to identify state priorities for market development and to develop the criteria to be used to judge proposed projects. Additional moneys may be appropriated in subsequent fiscal years if requested. The authority shall establish a procedure to measure the effectiveness of the grant program under this subsection and shall provide a report to the governor and general assembly by January fifteenth of each year regarding the effectiveness of the program.

2. All remaining revenues deposited into the fund each fiscal year after moneys have been made available under subsection 1 of this section shall be allocated as follows:

(1) Thirty-nine percent of the revenues shall be dedicated, upon appropriation, to the elimination of illegal solid waste disposal, to identify and prosecute persons disposing of solid waste illegally, to conduct solid waste permitting activities, to administer grants and perform other duties imposed in sections 260.200 to 260.345 and section 260.432. In addition to the thirty-nine percent of the revenues, the department may receive any annual increase in the charge during October 1, 2005, to October 1, **[**2009**]** **2014**, under section 260.330 and such increases shall be used solely to fund the operating costs of the department;

(2) Sixty-one percent of the revenues, except any annual increases in the charge under section 260.330 during October 1, 2005, to October 1, **[**2009**]** **2014**, which shall be used solely to fund the operating costs of the department, shall be allocated through grants, upon appropriation, to participating cities, counties, and districts. Revenues to be allocated under this subdivision shall be divided as follows: forty percent shall be allocated based on the population of each district in the latest decennial census, and sixty percent shall be allocated based on the amount of revenue generated within each district. For the purposes of this subdivision, revenue generated within each district shall be determined from the previous year's data. No more than fifty percent of the revenue allocable under this subdivision may be allocated to the districts upon approval of the department for implementation of a solid waste management plan and district operations, and at least fifty percent of the revenue allocable to the districts under this subdivision shall be allocated to the cities and counties of the district or to persons or entities providing solid waste management, waste reduction, recycling and related services in these cities and counties. Each district shall receive a minimum of seventy-five thousand dollars under this subdivision. After August 28, 2005, each district shall receive a minimum of ninety-five thousand dollars under this subdivision for district grants and district operations. Each district receiving moneys under this subdivision shall expend such moneys pursuant to a solid waste management plan required under section 260.325, and only in the case that the district is in compliance with planning requirements established by the department. Moneys shall be awarded based upon grant applications. Any moneys remaining in any fiscal year due to insufficient or inadequate applications may be reallocated pursuant to this subdivision;

(3) Except for the amount up to one-fourth of the department's previous fiscal year expense, any remaining unencumbered funds generated under subdivision (1) of this subsection in prior fiscal years shall be reallocated under this section;

(4) Funds may be made available under this subsection for the administration and grants of the used motor oil program described in section 260.253;

(5) The department and the environmental improvement and energy resources authority shall conduct sample audits of grants provided under this subsection.

3. The advisory board created in section 260.345 shall recommend criteria to be used to allocate grant moneys to districts, cities and counties. These criteria shall establish a priority for proposals which provide methods of solid

waste reduction and recycling. The department shall promulgate criteria for evaluating grants by rule and regulation. Projects of cities and counties located within a district which are funded by grants under this section shall conform to the district solid waste management plan.

4. The funds awarded to the districts, counties and cities pursuant to this section shall be used for the purposes set forth in sections 260.300 to 260.345, and shall be used in addition to existing funds appropriated by counties and cities for solid waste management and shall not supplant county or city appropriated funds.

5. The department, in conjunction with the solid waste advisory board, shall review the performance of all grant recipients to ensure that grant moneys were appropriately and effectively expended to further the purposes of the grant, as expressed in the recipient's grant application. The grant application shall contain specific goals and implementation dates, and grant recipients shall be contractually obligated to fulfill same. The department may require the recipient to submit periodic reports and such other data as are necessary, both during the grant period and up to five years thereafter, to ensure compliance with this section. The department may audit the records of any recipient to ensure compliance with this section. Recipients of grants under sections 260.300 to 260.345 shall maintain such records as required by the department. If a grant recipient fails to maintain records or submit reports as required herein, refuses the department access to the records, or fails to meet the department's performance standards, the department may withhold subsequent grant payments, if any, and may compel the repayment of funds provided to the recipient pursuant to a grant.

6. The department shall provide for a security interest in any machinery or equipment purchased through grant moneys distributed pursuant to this section.

7. If the moneys are not transmitted to the department within the time frame established by the rule promulgated, interest shall be imposed on the moneys due the department at the rate of ten percent per annum from the prescribed due date until payment is actually made. These interest amounts shall be deposited to the credit of the solid waste management fund.

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;

[(19)**]** **(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;

[(20)**]** **(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;

[(21)**]** **(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;

[(22)**] (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.

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.

260.800. As used in sections 260.800 to 260.815, the following terms shall mean:

(1) "Governing body", any city, municipality, county or combination thereof, or an authority or agency created by intergovernmental compact;

(2) "Solid waste", garbage, refuse and other discarded materials including,

but not limited to, solid and semisolid waste materials resulting from industrial, commercial, agricultural, governmental and domestic activities, but does not include overburden, rock, tailings, matte, slag or other waste material resulting from mining, milling or smelting;

(3) "Waste to energy facility", any facility**, including plasma arc technology,** with the electric generating capacity of up to eighty megawatts which is fueled by solid waste.

260.1000. Sections 260.1000 to 260.1039 shall be cited as the "Missouri Environmental Covenants Act".

260.1003. As used in sections 260.1000 to 260.1039, the following terms shall mean:

(1) "Activity and use limitations", restrictions or obligations with respect to real property created under sections 260.1000 to 260.1039;

(2) "Department", the Missouri department of natural resources or any other state or federal department that determines or approves the environmental response project under which the environmental covenant is created;

(3) "Common interest community", a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes, insurance premiums, maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community;

(4) "Environmental covenant", a servitude arising under an environmental response project that imposes activity and use limitations;

(5) "Environmental response project", a plan or work performed for environmental remediation of real property and conducted:

(a) Under a federal or state program governing environmental remediation of real property, including but not limited to the Missouri hazardous waste management law as specified in this chapter;

(b) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of the department; or

(c) Under a state voluntary cleanup program authorized in the Missouri hazardous waste management law as specified in this chapter;

(6) "Holder", the grantee of an environmental covenant as specified in section 260.1006;

(7) "Person", an individual, corporation, business trust, estate,

trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, department, or instrumentality, or any other legal or commercial entity;

(8) "Record", information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(9) "State", a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

260.1006. 1. Any person, including a person that owns an interest in the real property, the department, or a municipality or other unit of local government, may be a holder. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property.

2. The rights of a department under sections 260.1000 to 260.1039 or under an environmental covenant, other than a right as a holder, is not an interest in real property.

3. A department is bound by any obligation it assumes in an environmental covenant, but a department does not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under law other than sections 260.1000 to 260.1039 except as provided in the covenant.

4. The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(1) An interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant;

(2) Sections 260.1000 to 260.1039 do not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant;

(3) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the record may be signed by any person authorized by the governing board of the owners association;

(4) An agreement by a person to subordinate a prior interest to

an environmental covenant affects the priority of that person's interest but shall not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

260.1009. 1. An environmental covenant shall:

(1) State that the instrument is an environmental covenant executed under sections 260.1000 to 260.1039;

(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;

(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.

2. In addition to the information required by subsection 1 of this section, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:

(1) Requirements for notice following transfer of a specified interest in, or 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 narrative 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; and

(6) Rights of the holder in addition to its right to enforce the covenant under section 260.1030.

3. In addition to other conditions for its approval of an environmental covenant, the department may require those persons

specified by the department who have interests in the real property to sign the covenant.

260.1012. 1. An environmental covenant that complies with sections 260.1000 to 260.1039 runs with the land.

2. An environmental covenant that is otherwise effective is valid and enforceable even if:

(1) It is not appurtenant to an interest in real property;

(2) It can be or has been assigned to a person other than the original holder;

(3) It is not of a character that has been recognized traditionally at common law;

(4) It imposes a negative burden;

(5) It imposes an affirmative obligation on a person having an interest in the real property or on the holder;

(6) The benefit or burden does not touch or concern real property;

(7) There is no privity of estate or contract;

(8) The holder dies, ceases to exist, resigns, or is replaced; or

(9) The owner of an interest subject to the environmental covenant and the holder are the same person.

3. An instrument that creates restrictions or obligations with respect to real property that would qualify as activity and use limitations except for the fact that the instrument was recorded before the effective date of sections 260.1000 to 260.1039 is not invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection 2 of this section or because it was identified as an easement, servitude, deed restriction, or other interest. Sections 260.1000 to 260.1039 shall not apply in any other respect to such an instrument.

4. Sections 260.1000 to 260.1039 shall not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the laws of this state.

260.1015. Sections 260.1000 to 260.1039 shall not authorize a use of real property that is otherwise prohibited by zoning, by law other than sections 260.1000 to 260.1039 regulating use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of

real property which are authorized by zoning or by laws other than sections 260.1000 to 260.1039.

260.1018. 1. A copy of an environmental covenant shall be provided by the persons and in the manner required by the department to:

(1) Each person that signed the covenant;

(2) Each person holding a recorded interest in the real property subject to the covenant;

(3) Each person in possession of the real property subject to the covenant;

(4) Each municipality or other unit of local government in which real property subject to the covenant is located; and

(5) Any other person the department requires.

2. The validity of a covenant is not affected by failure to provide a copy of the covenant as required under this section.

260.1021. 1. An environmental covenant and any amendment or termination of the covenant shall be recorded in every county or city not within a county in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

2. Except as otherwise provided in section 260.1024, an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property.

260.1024. 1. An environmental covenant is perpetual unless it is:

(1) By its terms, limited to a specific duration or terminated by the occurrence of a specific event;

(2) Terminated by consent under section 260.1027;

(3) Terminated by subsection 2 of this section;

(4) Terminated by foreclosure of an interest that has priority over the environmental covenant; or

(5) Terminated or modified in an eminent domain proceeding, but only if:

(a) The department that signed the covenant is a party to the proceeding;

(b) All persons identified in section 260.1027 are given notice of the pendency of the proceeding; and

(c) The court determines, after hearing, that the termination or modification will not adversely affect human health, public welfare, or

the environment.

2. If the department that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in section 260.1027 have been given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant. The department's determination or its failure to make a determination upon request is subject to review under chapter 536, RSMo.

3. Except as otherwise provided in subsections 1 and 2 of this section, an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or any similar doctrine.

4. An environmental covenant may not be extinguished, limited, or impaired by the application of chapter 442, RSMo, or chapter 444, RSMo.

260.1027. 1. An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

(1) The department;

(2) Unless this requirement is waived by the department, the current owner of the fee simple of the real property subject to the covenant;

(3) Each person that originally signed the covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and

(4) The holder, except as otherwise provided in subsection 4 of this section.

2. If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.

3. Except for an assignment undertaken under a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

4. Except as otherwise provided in an environmental covenant:

(1) A holder may not assign its interest without consent of the other parties;

(2) A holder may be removed and replaced by agreement of the other parties specified in subsection 1 of this section.

5. A court of competent jurisdiction may fill a vacancy in the position of holder.

260.1030. 1. A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

(1) A party to the covenant;

(2) The department;

(3) Any person to whom the covenant expressly grants power to enforce;

(4) A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; or

(5) A municipality or other unit of local government in which the real property subject to the covenant is located.

2. Sections 260.1000 to 260.1039 do not limit the regulatory authority of the department under law other than sections 260.1000 to 260.1039 with respect to an environmental response project.

3. A person is not responsible for or subject to liability for environmental remediation solely because it has the right to enforce an environmental covenant.

260.1033. 1. The department shall establish an activity and use limitation information system and ensure that it is maintained, that provides readily accessible information on sites with known contamination, and records the creation, amendment, and termination of covenants. The activity and use limitation information system shall distinguish clearly between three categories of sites contaminated with hazardous substance contamination:

(1) Sites where no investigation or remedial action has been performed, or where remedial actions are in progress but are not complete;

(2) Sites where remedial action has been taken to address known risks to human health, public welfare, and the environment and the site is suitable for certain land uses and the department has issued a letter indicating that the site is suitable for certain land uses and that further

investigation and remedial action is not required;

(3) Sites where previous concerns about contamination should no longer be an issue because of removal of waste and contamination or investigation results that demonstrate that contamination is now below levels considered suitable for unrestricted use.

2. After an environmental covenant or an amendment or termination of a covenant is filed in the information system established under subsection 1 of this section, a notice of the covenant, amendment, or termination that complies with this section may be recorded in the land records in lieu of recording the entire covenant. Any such notice shall contain:

(1) A legally sufficient description and any available street address of the real property subject to the covenant;

(2) The name and address of the owner of the fee simple interest in the real property, the department, and the holder if other than the department;

(3) A statement that the covenant, amendment, or termination is available in an information system at the department, which discloses the method of any electronic access; and

(4) A statement that the notice is notification of an environmental covenant executed under sections 260.1000 to 260.1039.

3. A statement in substantially the following form, executed with the same formalities as a deed in this state, satisfies the requirements of subsection 2 of this section:

"1. This notice is filed in the land records of the ..... (political subdivision) of ..... (insert name of jurisdiction in which the real property is located) under Sections 260.1000 to 260.1039, RSMo.

2. This notice and the covenant, amendment or termination to which it refers may impose significant obligations with respect to the property described below.

3. A legal description of the property is attached as Exhibit A to this notice. The address of the property that is subject to the environmental covenant is ..... (insert address of property) (not available).

4. The name and address of the owner of the fee simple

interest in the real property on the date of this notice is ..... (insert name of current owner of the property and the owner's current address as shown on the tax records of the jurisdiction in which the property is located).

5. The environmental covenant, amendment or termination was signed by ..... (insert name and address of the department).

6. The environmental covenant, amendment, or termination was filed in the information system on ..... (insert date of filing).

7. The full text of the covenant, amendment or termination and any other information required by the department is on file and available for inspection and copying in the information system maintained for that purpose by the department at ..... (insert address and room of building in which the information system is maintained). The covenant, amendment or termination may be found electronically at ..... (insert Internet address for covenant)."

260.1036. Sections 260.1000 to 260.1039 shall not apply to aboveground or underground storage tanks as defined in section 319.100, RSMo.

260.1039. As authorized in 15 U.S.C. 7002, as amended, sections 260.1000 to 260.1039 modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but do not modify, limit, or supersede 15 U.S.C. Section 7001(a), or authorize electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).

386.890. 1. This section shall be known and may be cited as the "Net Metering and Easy Connection Act".

2. As used in this section, the following terms shall mean:

(1) "Avoided fuel cost", the current average cost of fuel for the entity generating electricity, as defined by the governing body with jurisdiction over any municipal electric utility, rural electric cooperative as provided in chapter 394, RSMo, or electrical corporation as provided in chapter 386, RSMo;

(2) "Commission", the public service commission of the state of Missouri;

(3) "Customer-generator", the owner or operator of a qualified electric energy generation unit which:

(a) Is powered by a renewable energy resource;

(b) Has an electrical generating system with a capacity of not more than one hundred kilowatts;

(c) Is located on a premises owned, operated, leased, or otherwise controlled by the customer-generator;

(d) Is interconnected and operates in parallel phase and synchronization with a retail electric supplier and has been approved by said retail electric supplier;

(e) Is intended primarily to offset part or all of the customer-generator's own electrical energy requirements;

(f) Meets all applicable safety, performance, interconnection, and reliability standards established by the National Electrical Code, the National Electrical Safety Code, the Institute of Electrical and Electronics Engineers, Underwriters Laboratories, the Federal Energy Regulatory Commission, and any local governing authorities; and

(g) Contains a mechanism that automatically disables the unit and interrupts the flow of electricity back onto the supplier's electricity lines in the event that service to the customer-generator is interrupted;

(4) "Department", the department of natural resources;

(5) "Net metering", using metering equipment sufficient to measure the difference between the electrical energy supplied to a customer-generator by a retail electric supplier and the electrical energy supplied by the customer-generator to the retail electric supplier over the applicable billing period;

(6) "Renewable energy resources", electrical energy produced from wind, solar thermal sources, hydroelectric sources, photovoltaic cells and panels, fuel cells using hydrogen produced by one of the above-named electrical energy sources, and other sources of energy that become available after August 28, 2007, and are certified as renewable by the department;

(7) "Retail electric supplier" or "supplier", any municipal utility, electrical corporation regulated under this chapter, or rural electric cooperative under chapter 394, RSMo, that provides retail electric service in this state.

3. A retail electric supplier shall:

(1) Make net metering available to customer-generators on a first-come, first-served basis until the total rated generating capacity of net metering systems equals five percent of the utility's single-hour peak load during the previous year, after which the commission for a public utility or the governing body for other electric utilities may increase the total rated generating capacity of net metering systems to an amount above five percent. However, in a given calendar year, no retail electric supplier shall be required to approve any application for interconnection if the total rated generating capacity of all applications for interconnection already approved to date by said supplier in said calendar year equals or exceeds one percent of said supplier's single-hour peak load for the previous calendar year;

(2) Offer to the customer-generator a tariff or contract that is identical in electrical energy rates, rate structure, and monthly charges to the contract or tariff that the customer would be assigned if the customer were not an eligible customer-generator but shall not charge the customer-generator any additional standby, capacity, interconnection, or other fee or charge that would not otherwise be charged if the customer were not an eligible customer-generator; and

(3) Disclose annually the availability of the net metering program to each of its customers with the method and manner of disclosure being at the discretion of the supplier.

4. A customer-generator's facility shall be equipped with sufficient metering equipment that can measure the net amount of electrical energy produced or consumed by the customer-generator. If the customer-generator's existing meter equipment does not meet these requirements or if it is necessary for the electric supplier to install additional distribution equipment to accommodate the customer-generator's facility, the customer-generator shall reimburse the retail electric supplier for the costs to purchase and install the necessary additional equipment. At the request of the customer-generator, such costs may be initially paid for by the retail electric supplier, and any amount up to the total costs and a reasonable interest charge may be recovered from the customer-generator over the course of up to twelve billing cycles. Any subsequent meter testing, maintenance or meter equipment change necessitated by the customer-generator shall be paid for by the customer-generator.

5. Consistent with the provisions in this section, the net

electrical energy measurement shall be calculated in the following manner:

(1) For a customer-generator, a retail electric supplier shall measure the net electrical energy produced or consumed during the billing period in accordance with normal metering practices for customers in the same rate class, either by employing a single, bidirectional meter that measures the amount of electrical energy produced and consumed, or by employing multiple meters that separately measure the customer-generator's consumption and production of electricity;

(2) If the electricity supplied by the supplier exceeds the electricity generated by the customer-generator during a billing period, the customer-generator shall be billed for the net electricity supplied by the supplier in accordance with normal practices for customers in the same rate class;

(3) If the electricity generated by the customer-generator exceeds the electricity supplied by the supplier during a billing period, the customer-generator shall be billed for the appropriate customer charges for that billing period in accordance with subsection 3 of this section and shall be credited an amount at least equal to the avoided fuel cost of the excess kilowatt-hours generated during the billing period, with this credit applied to the following billing period;

(4) Any credits granted by this subsection shall expire without any compensation at the earlier of either twelve months after their issuance or when the customer-generator disconnects service or terminates the net metering relationship with the supplier;

(5) For any rural electric cooperative under chapter 394, RSMo, or municipal utility, upon agreement of the wholesale generator supplying electric energy to the retail electric supplier, at the option of the retail electric supplier, the credit to the customer-generator may be provided by the wholesale generator.

6. (1) Each qualified electric energy generation unit used by a customer-generator shall meet all applicable safety, performance, interconnection, and reliability standards established by any local code authorities, the National Electrical Code, the National Electrical Safety Code, the Institute of Electrical and Electronics Engineers, and Underwriters Laboratories for distributed generation. No supplier shall impose any fee, charge, or other requirement not specifically

authorized by this section or the rules promulgated under subsection 9 of this section unless the fee, charge, or other requirement would apply to similarly situated customers who are not customer-generators, except that a retail electric supplier may require that a customer-generator's system contain a switch, circuit breaker, fuse, or other easily accessible device or feature located in immediate proximity to the customer-generator's metering equipment that would allow a utility worker the ability to manually and instantly disconnect the unit from the utility's electric distribution system;

(2) For systems of ten kilowatts or less, a customer-generator whose system meets the standards and rules under subdivision (1) of this subsection shall not be required to install additional controls, perform or pay for additional tests or distribution equipment, or purchase additional liability insurance beyond what is required under subdivision (1) of this subsection and subsection 4 of this section;

(3) For customer-generator systems of greater than ten kilowatts, the commission for public utilities and the governing body for other utilities shall, by rule or equivalent formal action by each respective governing body:

(a) Set forth safety, performance, and reliability standards and requirements; and

(b) Establish the qualifications for exemption from a requirement to install additional controls, perform or pay for additional tests or distribution equipment, or purchase additional liability insurance.

7. (1) Applications by a customer-generator for interconnection of a qualified electric energy generation unit meeting the requirements of subdivision (3) of subsection 2 of this section to the distribution system shall be accompanied by the plan for the customer-generator's electrical generating system, including but not limited to, a wiring diagram and specifications for the generating unit, and shall be reviewed and responded to by the retail electric supplier within thirty days of receipt for systems ten kilowatts or less and within ninety days of receipt for all other systems. Prior to the interconnection of the qualified generation unit to the supplier's system, the customer-generator will furnish the retail electric supplier a certification from a qualified professional electrician or engineer that the installation meets the requirements of subdivision (1) of subsection 6 of this

section. If the application for interconnection is approved by the retail electric supplier and the customer-generator does not complete the interconnection within one year after receipt of notice of the approval, the approval shall expire and the customer-generator shall be responsible for filing a new application.

(2) Upon the change in ownership of a qualified electric energy generation unit, the new customer-generator shall be responsible for filing a new application under subdivision (1) of this subsection.

8. Each commission-regulated supplier shall submit an annual net metering report to the commission, and all other non-regulated suppliers shall submit the same report to their respective governing body and make said report available to a consumer of the supplier upon request, including the following information for the previous calendar year:

(1) The total number of customer-generator facilities;

(2) The total estimated generating capacity of its net-metered customer-generators; and

(3) The total estimated net kilowatt-hours received from customer-generators.

9. The commission shall, within nine months of the effective date of this section, promulgate initial rules necessary for the administration of this section for public utilities, which shall include regulations ensuring that simple contracts will be used for interconnection and net metering. For systems of ten kilowatts or less, the application process shall use an all-in-one document that includes a simple interconnection request, simple procedures, and a brief set of terms and conditions. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, 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, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly under chapter 536, RSMo, 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, 2007, shall be invalid and void.

10. The governing body of a rural electric cooperative or municipal utility shall, within nine months of the effective date of this

section, adopt policies establishing a simple contract to be used for interconnection and net metering. For systems of ten kilowatts or less, the application process shall use an all-in-one document that includes a simple interconnection request, simple procedures, and a brief set of terms and conditions.

11. For any cause of action relating to any damages to property or person caused by the generation unit of a customer-generator or the interconnection thereof, the retail electric supplier shall have no liability absent clear and convincing evidence of fault on the part of the supplier.

12. The estimated generating capacity of all net metering systems operating under the provisions of this section shall count towards the respective retail electric supplier's accomplishment of any renewable energy portfolio target or mandate adopted by the Missouri general assembly.

13. The sale of qualified electric generation units to any customer-generator shall be subject to the provisions of sections 407.700 to 407.720, RSMo. The attorney general shall have the authority to promulgate in accordance with the provisions of chapter 536, RSMo, rules regarding mandatory disclosures of information by sellers of qualified electric generation units. Any interested person who believes that the seller of any electric generation unit is misrepresenting the safety or performance standards of any such systems, or who believes that any electric generation unit poses a danger to any property or person, may report the same to the attorney general, who shall be authorized to investigate such claims and take any necessary and appropriate actions.

14. Any costs incurred under this act by a retail electric supplier shall be recoverable in that utility's rate structure.

15. No consumer shall connect or operate an electric generation unit in parallel phase and synchronization with any retail electric supplier without written approval by said supplier that all of the requirements under subdivision (1) of subsection 7 of this section have been met. For a consumer who violates this provision, a supplier may immediately and without notice disconnect the electric facilities of said consumer and terminate said consumer's electric service.

16. The manufacturer of any electric generation unit used by a customer-generator may be held liable for any damages to property or

person caused by a defect in the electric generation unit of a customer-generator.

17. The seller, installer, or manufacturer of any electric generation unit who knowingly misrepresents the safety aspects of an electric generation unit may be held liable for any damages to property or person caused by the electric generation unit of a customer-generator.

393.1020. 1. It is the general assembly's intent to encourage the development and utilization of technically feasible and economical renewable technologies, creating cleaner and more sustainable forms of energy for the residents of the state. It is for this reason that sections 393.1020 to 393.1040 shall be known as the "Green Power Initiative".

2. The definitions provided in section 386.020, RSMo, shall apply to sections 393.1020 to 393.1040. As used in sections 393.1020 to 393.1040, the following terms mean:

(1) "Department", the department of natural resources;

(2) "Eligible renewable energy technology", sources of energy that shall be considered renewable for purposes of this section shall include but not be limited to the following:

(a) Solar, including photovoltaic cells, concentrating solar power technologies, and low temperature solar collectors;

(b) Wind;

(c) Hydroelectric, not including pump-storage;

(d) Hydrogen from renewable sources;

(e) Biomass, any organic matter available on a renewable basis, including dedicated energy crops and trees, agricultural food and feed crops, agricultural crop wastes and residues, wood wastes and residues, animal waste, aquatic plants, biogas from landfills or wastewater treatment plants; and

(f) Other renewable energy sources defined by rule by the commission after consultation with the department;

(3) "Energy efficiency", verifiable reductions in energy consumption, or verifiable reductions in the rate of energy consumption growth, as defined by rule by the commission after consultation with the department, as a result of measures implemented by electrical corporations and electricity consumers which may include, but not be limited to, pricing signals, electronic controls,

education, information, infrastructure improvements, and the use of high efficiency equipment and lighting;

(4) "Total retail electric sales", the kilowatt-hours of electricity delivered in a year by an electrical corporation to its Missouri retail customers.

393.1025. 1. Each electrical corporation shall make a good faith effort to generate or procure sufficient electricity generated by an eligible renewable energy technology, and support energy efficiency measures, so that by 2012, four percent of total retail electric sales in the aggregate by electrical corporations is generated by eligible renewable energy technologies, increasing to eight percent by 2015, and eleven percent generated by eligible renewable energy technologies by 2020. Generation provided by any existing eligible renewable energy technology, owned, controlled, or purchased by electrical corporations, that are operational prior to August 28, 2007, shall be applied towards meeting the objective so long as it continues to generate electricity. Credit towards the objective also may be achieved through energy efficiency that includes electrical corporation and consumer efforts to reduce the consumption of electric energy. After consulting with the department, the commission may establish intermediate goals for the use of renewable energy technologies as part of its rulemaking process.

2. By July 1, 2008, the commission shall, after consultation with the department, adopt rules that integrate into its resource planning rules the renewable energy objective of subsection 1 of this section and the criteria and standards by which it will measure an electrical corporation's efforts to meet that objective to determine whether it is making the required good faith effort. In this rulemaking, the commission shall include criteria and standards that, at a minimum, shall:

(1) Protect against adverse economic impacts, including the costs of any transmission investments necessary to access eligible renewable energy technologies, on the ratepayers and shareholders;

(2) Protect against undesirable impacts on the reliability of each electrical corporation's system;

(3) Consider environmental compliance costs, present and future, of each source being evaluated; and

(4) Consider technical feasibility, providing for flexibility in

meeting the objective in the event electrical corporations are, for good cause shown, unable to meet in aggregate the objective of this section.

3. In its rulemaking under this section, the commission shall provide for a weighted scale of how energy produced by various eligible renewable energy technologies shall count toward an electrical corporation's objective. In establishing this scale, the commission shall consider the attributes of various technologies and fuels and shall establish a system that grants multiple credits toward the objective for those technologies and fuels the commission determines are in the public interest to encourage. The commission may also grant multiple credits toward the objective for generation in the state or procurement of electricity generated in the state that uses an eligible renewable energy technology.

4. The commission shall develop rules as provided in this section in consultation with the department as necessary to implement the requirements of section 393.1025. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section and section 393.1020 shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, 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, 2007, shall be invalid and void.

393.1030. 1. Each electric corporation shall submit to the commission a biennial report by December thirty-first, beginning in 2009, on its plans, activities, and progress with regard to the objective of section 393.1025, demonstrating to the commission that it is making the required good faith effort. The report must be submitted in a format prescribed by the commission, not to exceed fifty pages, and it shall include the following:

(1) Sufficient data to specify and verify the status of its renewable energy mix relative to the good faith objective;

(2) Sufficient data to specify and verify the status of the electric corporation's and its customers' energy efficiency efforts relative to the good faith objective;

(3) Efforts taken to meet the objective;

(4) Any obstacles encountered or anticipated in meeting the objective; and

(5) Potential solutions to the obstacles.

2. The commission shall compile the information provided under subsection 1 of this section and biennially report by July first, beginning in 2010, to the governor, the speaker of the house of representatives, the president pro tempore of the senate, the chairs of the committees in the house of representatives and senate with jurisdiction over energy and environment policy issues, and the department as to the progress of electrical corporations in the state in increasing the amount of renewable energy provided to retail customers and increasing energy efficiency, with any recommendations for regulatory or legislative action. In addition, the Missouri director of the department of economic development shall issue a biennial report by July first, beginning in 2010, on the impact of the renewable portfolio standard on the Missouri economy and the director of the department of natural resources shall issue a biennial report by July first, beginning in 2010, on the environmental impact of sections 393.1020 to 393.1040. The biennial reporting requirements under this subsection shall end after July 1, 2022.

393.1035. 1. Electricity produced by fuel combustion may only count toward an electrical corporation's objectives if the generation facility complies with all federal and state statutes and rules.

2. An electrical corporation may blend or co-fire a fuel listed in subsection 2 of section 393.1020, with other fuels in the generation facility, but only the percentage of electricity that is attributable to a fuel listed in that section can be counted toward an electric corporation's renewable energy objectives.

393.1040. In addition to the renewable energy objectives set forth in sections 393.1025, 393.1030, and 393.1035, it is also the policy of this state to encourage electrical corporations to develop and administer energy efficiency initiatives that reduce the annual growth in energy consumption and the need to build additional electric generation capacity.

414.420. **1. As used in this section, the term "alternative fuel" shall have the same meaning as in section 414.400.**

2. There is hereby created the "Missouri **[**Ethanol and Other Renewable

Fuel Sources**]** **Alternative Fuels** Commission" composed of **[**seven**]** **nine** members, including two members of the senate of different political parties appointed by the president pro tem of the senate, two members of the house of representatives of different political parties appointed by the speaker of the house, and **[**three**]** **five** other persons appointed by the governor, with the advice and consent of the senate. The members appointed by the governor **[**may include, but are not limited to,**]** **shall be** persons engaged in **[**the ethanol production industry**]** **industries that produce alternative fuels, wholesale alternative fuels, or retail alternative fuels,** and no more than two of such members shall **represent an alternative fuel producer, retailer, or wholesaler and no more than three of such members shall** be of the same political party. The members appointed by the governor shall be appointed for a term of four years**[**, except that of the first members appointed, one shall serve for a term of two years, one shall serve for a term of three years, and one shall serve for a term of four years**]**. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments. The commission shall elect a member of its own group as chairman at the first meeting, which shall be called by the governor. The commission shall meet at least four times in a calendar year at the call of the chairman. **[**The commission shall promote the continued production of ethanol and the continued usage of ethanol and fuel ethanol blends, as defined in section 142.027, RSMo, and the production and usage of other renewable fuel sources, in this state. The commission shall report to each regular session of the general assembly its recommendations for legislation in the field of the promotion of the ethanol industry and related subjects in this state.**]** Members of the commission shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.

3. The commission shall:

(1) Make recommendations to the governor and general assembly on changes to state law to facilitate the sale and distribution of alternative fuels and alternative fuel vehicles;

(2) Promote the development, sale, distribution, and consumption of alternative fuels;

(3) Promote the development and use of alternative fuel vehicles and technology that will enhance the use of alternative and renewable transportation fuels;

(4) Educate consumers about alternative fuels, including but not limited to ethanol and biodiesel;

(5) Develop a long-range plan for the state to reduce

consumption of petroleum fuels; and

(6) Submit an annual report to the governor and the general assembly.

444.772. 1. Any operator desiring to engage in surface mining shall make written application to the director for a permit.

2. Application for permit shall be made on a form prescribed by the commission and shall include:

(1) The name of all persons with any interest in the land to be mined;

(2) The source of the applicant's legal right to mine the land affected by the permit;

(3) The permanent and temporary post office address of the applicant;

(4) Whether the applicant or any person associated with the applicant holds or has held any other permits pursuant to sections 444.500 to 444.790, and an identification of such permits;

(5) The written consent of the applicant and any other persons necessary to grant access to the commission or the director to the area of land affected under application from the date of application until the expiration of any permit granted under the application and thereafter for such time as is necessary to assure compliance with all provisions of sections 444.500 to 444.790 or any rule or regulation promulgated pursuant to them. Permit applications submitted by operators who mine an annual tonnage of less than ten thousand tons shall be required to include written consent from the operator to grant access to the commission or the director to the area of land affected;

(6) A description of the tract or tracts of land and the estimated number of acres thereof to be affected by the surface mining of the applicant for the next succeeding twelve months; and

(7) Such other information that the commission may require as such information applies to land reclamation.

3. The application for a permit shall be accompanied by a map in a scale and form specified by the commission by regulation.

4. The application shall be accompanied by a bond, security or certificate meeting the requirements of section 444.778**, a geologic resources fee authorized under section 256.700, RSMo,** and a permit fee approved by the commission not to exceed **[**six hundred**] one thousand** dollars. The commission may also require a fee for each site listed on a permit not to exceed **[**three**] four** hundred dollars for each site. If mining operations are not conducted at a site for six months or more during any year, the fee for such site for that year shall be reduced by fifty percent. The commission may also require a fee for each acre

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

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

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

7. Where mining or reclamation operations on acreage for which a permit has been issued have not been completed, the permit shall be renewed. The operator shall submit a permit renewal form furnished by the director for an additional permit year and pay a fee equal to an application fee calculated pursuant to subsection 4 of this section, but in no case shall the renewal fee for any operator be more than **[**two**]** **three** thousand **[**five hundred**]** dollars. For any

operator involved in any gravel mining operation where the annual tonnage of gravel mined by such operator is less than five thousand tons, the permit as to such acreage shall be renewed by applying on a permit renewal form furnished by the director for an additional permit year and payment of a fee of three hundred dollars. Upon receipt of the completed permit renewal form and fee from the operator, the director shall approve the renewal. With approval of the director and operator, the permit renewal may be extended for a portion of an additional year with a corresponding prorating of the renewal fee.

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

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

10. At the time that a permit application is deemed complete by the director, the operator shall publish a notice of intent to operate a surface mine in any newspaper qualified pursuant to section 493.050, RSMo, to publish legal notices in any county where the land is located. If the director does not respond to a permit application within forty-five calendar days, the application shall be deemed to be complete. Notice in the newspaper shall be posted once a week for four consecutive weeks beginning no more than ten days after the application is deemed complete. The operator shall also send notice of intent to operate a surface mine by certified mail to the governing body of the counties or cities in which the proposed area is located, and to the last known addresses of all record landowners of contiguous real property or real property located adjacent to the proposed mine plan area. The notices shall include the name and address of the operator, a legal description consisting of county, section, township and range, the number of acres involved, a statement that the operator plans to mine a specified

mineral during a specified time, and the address of the commission. The notices shall also contain a statement that any person with a direct, personal interest in one or more of the factors the commission may consider in issuing a permit may request a public meeting, a public hearing or file written comments to the director no later than fifteen days following the final public notice publication date.

11. The commission may approve a permit application or permit amendment whose operation or reclamation plan deviates from the requirements of sections 444.760 to 444.790 if it can be demonstrated by the operator that the conditions present at the surface mining location warrant an exception. The criteria accepted for consideration when evaluating the merits of an exception or variance to the requirements of sections 444.760 to 444.790 shall be established by regulations.

12. Fees imposed pursuant to this section shall become effective August 28, **[**2001**]** **2007**, and shall expire on December 31, **[**2007**]** **2013**. No other provisions of this section shall expire.

643.079. 1. Any air contaminant source required to obtain a permit issued under sections 643.010 to 643.190 shall pay annually beginning April 1, 1993, a fee as provided herein. For the first year the fee shall be twenty-five dollars per ton of each regulated air contaminant emitted. Thereafter, the fee shall be **[**annually**]** set **every three years** by the commission by rule and shall be at least twenty-five dollars per ton of regulated air contaminant emitted but not more than forty dollars per ton of regulated air contaminant emitted in the previous calendar year. **If necessary, the commission may make annual adjustments to the fee by rule.** The fee shall be set at an amount consistent with the need to fund the reasonable cost of administering sections 643.010 to 643.190, taking into account other moneys received pursuant to sections 643.010 to 643.190. For the purpose of determining the amount of air contaminant emissions on which the fees authorized under this section are assessed, a facility shall be considered one source under the definition of subsection 2 of section 643.078, except that a facility with multiple operating permits shall pay the emission fees authorized under this section separately for air contaminants emitted under each individual permit.

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

the following schedule:

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

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

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

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

4. Each air contaminant source with a permit issued under sections 643.010 to 643.190 shall pay the fee for the first four thousand tons of each regulated air contaminant emitted each year but no air contaminant source shall pay fees on total emissions of regulated air contaminants in excess of twelve thousand tons in any calendar year. A permitted air contaminant source which emitted less than one ton of all regulated pollutants shall pay a fee equal to the amount per ton set by the commission. An air contaminant source which pays emission fees to a holder of a certificate of authority issued pursuant to section 643.140 may deduct such fees from any amount due under this section. The fees imposed in this section shall not be applied to carbon oxide emissions. The fees imposed in subsection 1 and this subsection shall not be applied to sulfur dioxide emissions from any Phase I affected unit subject to the requirements of Title IV, Section 404, of the federal Clean Air Act, as amended, 42 U.S.C. 7651, et seq., any sooner than January 1, 2000. The fees imposed on emissions from Phase I affected units shall be consistent with and shall not exceed the provisions of the federal Clean Air Act, as amended, and the regulations promulgated thereunder. Any such fee on emissions from any Phase I affected unit shall be reduced by the amount of the service fee paid by that Phase I affected unit pursuant to subsection 8 of this section in that year. Any fees that may be imposed on Phase I sources shall follow the procedures set forth in subsection 1 and this subsection and shall not be applied retroactively.

5. Moneys collected under this section shall be transmitted to the director of revenue for deposit in appropriate subaccounts of the natural resources protection fund created in section 640.220, RSMo. A subaccount shall be maintained for fees paid by air contaminant sources which are required to be permitted under Title V of the federal Clean Air Act, as amended, 42 U.S.C. Section 7661, et seq., and used, upon appropriation, to fund activities by the department to implement the operating permits program authorized by Title V of the federal Clean Air Act, as amended. Another subaccount shall be

maintained for fees paid by air contaminant sources which are not required to be permitted under Title V of the federal Clean Air Act as amended, and used, upon appropriation, to fund other air pollution control program activities. Another subaccount shall be maintained for service fees paid under subsection 8 of this section by Phase I affected units which are subject to the requirements of Title IV, Section 404, of the federal Clean Air Act Amendments of 1990, as amended, 42 U.S.C. 7651, and used, upon appropriation, to fund air pollution control program activities. The provisions of section 33.080, RSMo, to the contrary notwithstanding, moneys in the fund shall not revert to general revenue at the end of each biennium. Interest earned by moneys in the subaccounts shall be retained in the subaccounts. The per-ton fees established under subsection 1 of this section may be adjusted annually, consistent with the need to fund the reasonable costs of the program, but shall not be less than twenty-five dollars per ton of regulated air contaminant nor more than forty dollars per ton of regulated air contaminant. The first adjustment shall apply to moneys payable on April 1, 1994, and shall be based upon the general price level for the twelve-month period ending on August thirty-first of the previous calendar year.

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

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

8. Any Phase I affected unit which is subject to the requirements of Title IV, Section 404, of the federal Clean Air Act, as amended, 42 U.S.C. 7651, shall pay annually beginning April 1, 1993, and terminating December 31, 1999, a service fee for the previous calendar year as provided herein. For the first year, the service fee shall be twenty-five thousand dollars for each Phase I affected generating unit to help fund the administration of sections 643.010 to 643.190. Thereafter, the service fee shall be annually set by the commission by rule, following public hearing, based on an annual allocation prepared by the department showing the details of all costs and expenses upon which such fees are based consistent with the department's reasonable needs to administer and implement sections 643.010 to 643.190 and to fulfill its responsibilities with respect to Phase I affected units, but such service fee shall not exceed twenty-five

thousand dollars per generating unit. Any such Phase I affected unit which is located on one or more contiguous tracts of land with any Phase II generating unit that pays fees under subsection 1 or subsection 2 of this section shall be exempt from paying service fees under this subsection. A "contiguous tract of land" shall be defined to mean adjacent land, excluding public roads, highways and railroads, which is under the control of or owned by the permit holder and operated as a single enterprise.

9. The department of natural resources shall determine the fees due pursuant to this section by the state of Missouri and its departments, agencies and institutions, including two- and four-year institutions of higher education. The director of the department of natural resources shall forward the various totals due to the joint committee on capital improvements and the directors of the individual departments, agencies and institutions. The departments, as part of the budget process, shall annually request by specific line item appropriation funds to pay said fees and capital funding for projects determined to significantly improve air quality. If the general assembly fails to appropriate funds for emissions fees as specifically requested, the departments, agencies and institutions shall pay said fees from other sources of revenue or funds available. The state of Missouri and its departments, agencies and institutions may receive assistance from the small business technical assistance program established pursuant to section 643.173.

Section 1. The commissioner of administration shall ensure that no less than seventy percent of new purchases for the state vehicle fleet are flexible fuel vehicles that can operate on fuel blended with eighty-five percent ethanol.

[386.887. 1. This section shall be known and may be cited as the "Consumer Clean Energy Act".

2. As used in this section, the following terms mean:

(1) "Commission", the public service commission of the state of Missouri;

(2) "Customer-generator", a consumer of electric energy who purchases electric energy from a retail electric energy supplier and is the owner of a qualified net metering unit;

(3) "Local distribution system", facilities for the distribution of electric energy to the ultimate consumer thereof;

(4) "Net energy metering", a measurement of the difference between the electric energy supplied to a customer-generator by a retail electric supplier and the electric energy generated by a

customer-generator that is delivered to a local distribution system at the same point of interconnection;

(5) "Qualified net metering unit", an electric generation unit which:

(a) Is owned by a customer-generator;

(b) Is a hydrogen fuel cell or is powered by sun, wind or biomass;

(c) Has an electrical generating system with a capacity of not more than one hundred kilowatts;

(d) Is located on the premises that are owned, operated, leased or otherwise controlled by the customer-generator;

(e) Is interconnected and operates in parallel and in synchronization with a retail electric supplier; and

(f) Is intended primarily to offset part or all of the customer-generator's own electrical requirements;

(6) "Retail electric supplier" or "supplier", any person that sells electric energy to the ultimate consumer thereof;

(7) "Value of electric energy", the total resulting from the application of the appropriate rates, which may be time of use rates at the option of the supplier, to the quantity of electric energy produced from qualified net metering units or to the quantity of electric energy sold to customer-generators.

3. By August 28, 2003, each retail electric supplier shall adopt rates, charges, conditions and contract terms for the purchase from and the sale of electric energy to customer-generators. The commission, in consultation with the department and retail electric suppliers, shall develop a simple contract for such transactions and make it available to eligible customer-generators and retail electric suppliers. Upon agreement of the wholesale generator supplying electric energy to the retail electric supplier, at the option of the retail electric supplier, the purchase from the customer-generator may be by the wholesale generator. Any time of use or other rates charged for electric energy sold to customer-generators shall be the same as those made available to any other customers with the same net electric energy usage pattern including minimum bills and service availability charges. Rates for electric energy generated by the customer- generator from a qualified net generating unit and sold

to the retail electric supplier or its wholesale generator shall be the avoided cost (time of use or nontime of use) of the generation used by the retail electric supplier to serve its other customers. Whenever a customer- generator with a qualified net generating unit uses any energy generation method entitled to eligibility under a minimum renewable energy generation requirement, the total amount of energy generated by that method shall be treated as generated by the generator providing electric energy to the retail electric supplier for purposes of such requirement. The wholesale generator, at the option of the retail electric supplier, shall receive credit for emissions avoided by the wholesale generator because of electric energy purchased by the wholesale generator or the retail electric supplier from a qualified net metering unit. If the supplier is required to file tariffs with the commission, the commission shall review the reasonableness of the charges provided in such tariffs.

4. Each retail electric supplier shall calculate the net energy measurement for a customer-generator in the following manner:

(1) The retail electric supplier shall individually measure both the electric energy produced and the electric energy consumed by the customer-generator during each billing period using an electric metering capable of such function, either by a single meter capable of registering the flow of electricity in two directions or by using multiple meters;

(2) If the value of the electric energy supplied by the retail electric supplier exceeds the value of the electric energy delivered by the customer-generator to the retail electric supplier during a billing period, then the customer-generator shall be billed for the net value of the electric energy supplied by the retail electric supplier in accordance with the rates, terms and conditions established by the retail electric supplier for customer-generators; and

(3) If the value of the electric energy generated by the customer-generator exceeds the value of the electric energy supplied by the retail electric supplier, then the customer-generator:

(a) Shall be billed for the appropriate customer charges for

that billing period; and

(b) Shall be credited for the excess value of the electric energy generated and supplied to the retail electric supplier during the billing period, with this credit appearing on the bill for the following billing period.

5. A retail electric supplier shall not be required to provide net metering service with respect to additional customer-generators after the date during any calendar year on which the total generating capacity of all customer-generators with qualified net metering units served by that retail electric supplier is equal to or in excess of the lesser of ten thousand kilowatts or one-tenth of one percent of the capacity necessary to meet the company's aggregate customer peak demand for the preceding calendar year.

6. Each retail electric supplier shall maintain and make available to the public records of the total generating capacity of customer-generators of the supplier that are using net metering, the type of generating systems and energy source used by the electric generating systems which customer-generators use. Each such retail electric supplier shall notify the commission when the total generating capacity of such customer-generators is equal to or in excess of the lesser of ten thousand kilowatts or one-tenth of one percent of the capacity necessary to meet the company's aggregate customer peak demand for the preceding calendar year.

7. Each qualified net metering unit used by a customer-generator shall meet all applicable safety, performance, synchronization, interconnection and reliability standards established by the commission, the National Electrical Safety Code, National Electrical Code, the Institute of Electrical, Electronics Engineers, and Underwriters Laboratories. Each qualified net metering unit used by a customer- generator shall also meet all reasonable standards and requirements established by the retail electric supplier to enhance employee, consumer and public safety and the reliability of electric service to the customer-generator and other consumers receiving electric service from the retail electric supplier. Each qualified net metering unit used by a customer-generator shall also comply with all applicable local building, electrical and safety codes. The customer-generator shall obtain liability insurance coverage in amounts and coverage as set

by the commission by rule applicable to all qualified net metering units.

8. The cost of meeting the standards of subsection 7 of this section and any cost to install additional controls, to install additional metering, to perform or pay for additional tests or analysis of the effect of the operation of the qualified net metering unit on the local distribution system shall be paid by the customer-generator.

9. Applications by a customer-generator for interconnection to the distribution system shall include a copy of the plans and specifications for the qualified net metering unit for review and acceptance by the retail electric supplier. Prior to connection of the qualified net metering unit to the distribution system, the customer-generator will furnish the retail electric supplier a certification from a qualified professional electrician or engineer that the installation meets the requirements of subsection 7 of this section. Such applications shall be reviewed and responded to by the retail electric supplier within ninety days. If the application for interconnection is approved by the retail electric supplier, the retail electric supplier shall complete the interconnection within fifteen days if electric service already exists to the premises, unless a later date is mutually agreeable to both the customer-generator and the retail electric supplier.

10. The sale of qualified net metering units shall be subject to the provisions of sections 407.700 to 407.720, RSMo. The attorney general shall have the authority to promulgate in accordance with the provisions of chapter 536, RSMo, rules regarding mandatory disclosures of information by sellers of qualified net metering units. Such rules shall as a minimum require disclosure or the standards of subsection 7 of this section and potential liability of the owner or operator of a qualified net metering unit to third persons for personal injury or property damage as a result of negligent operation of a qualified net metering unit. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, 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, RSMo, and, if applicable, section 536.028, RSMo. This section and

chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, 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, 2002, shall be invalid and void.**]**

Section B. Section A of this act shall become effective January 1, 2008.

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