

SECOND REGULAR SESSION

SENATE BILL NO. 1008

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOLL.

Read 1st time January 23, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

4133S.011

AN ACT

To repeal sections 260.370, 260.375, 319.125, 319.127, 319.139, RSMo, section 319.137 as enacted by house committee substitute for senate substitute for senate bill no. 3, eighty-eighth general assembly, first regular session and section 319.137 as enacted by house bill no. 251, eighty-eighth general assembly, first regular session, relating to environmental clean-up, and to enact in lieu thereof seven new sections relating to the same subject.

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

Section A. Sections 260.370, 260.375, 319.125, 319.127, 319.139, RSMo, section 319.137 as enacted by house committee substitute for senate substitute for senate bill no. 3, eighty-eighth general assembly, first regular session and section 319.137 as enacted by house bill no. 251, eighty-eighth general assembly, first regular session, are repealed and seven new sections enacted in lieu thereof, to be known as sections 260.370, 260.375, 319.125, 319.127, 319.130, 319.137 and 319.139, to read as follows:

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

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

disposal of the specific hazardous wastes using land filling as the primary method is prohibited.

2. The hazardous waste management commission shall, by rules and regulations, categorize hazardous waste by taking into account toxicity, persistence and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness and other hazardous characteristics. The commission shall by rules and regulations further establish within each category the wastes which may or may not be disposed of through alternative hazardous waste management technologies including, but not limited to, treatment facilities, incinerators, landfills, landfarms, storage facilities, surface impoundments, recycling, reuse and reduction. The commission shall specify, by rule and regulation, the frequency of inspection for each method of hazardous waste management and for the different waste categories at hazardous waste management sites. The inspection may be daily when the hazardous waste management commission deems it necessary. The hazardous waste management commission shall specify, by rule, fees to be paid to the department by owners or operators of hazardous waste facilities who have obtained, or are required to obtain, a hazardous waste facility permit and who accept, on a commercial basis for remuneration, hazardous waste from off-site sources, but not including wastes generated by the same person at other sites located in Missouri or within a metropolitan statistical area located partially in Missouri and owned or operated by the same person and transferred to the hazardous waste facility, for treatment, storage or disposal, for inspections conducted by the department to determine compliance with sections 260.350 to 260.430 and the regulations promulgated thereunder. Funds derived from these inspection fees shall be used for the purpose of funding the inspection of hazardous waste facilities, as specified in subsection 3 of section 260.391. Such fees shall not exceed twelve thousand dollars per year per facility and the commission shall establish a graduated fee scale based on the volume of hazardous waste accepted with reduced fees for facilities accepting smaller volumes of hazardous waste. The department shall furnish, upon request, to the person, firm or corporation operating the hazardous waste facility a complete, full and detailed accounting of the cost of the department's inspections of the facility for the twelve-month period immediately preceding the request within forty-five days after receipt of the request. Failure to provide the accounting within forty-five days shall require the department to refund the inspection fee paid during the twelve-month-time period.

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

(1) From time to time adopt, amend or repeal, after due notice and public hearing, standards, rules and regulations to implement, enforce and carry out the provisions of sections 260.350 to 260.430 and any required of this state by any federal hazardous waste management act and as the commission may deem necessary to provide for the safe management of hazardous wastes to protect the health of humans and the environment. In implementing this subsection,

the commission shall consider the variations within this state in climate, geology, population density, quantities and types of hazardous wastes generated, availability of hazardous waste facilities and such other factors as may be relevant to the safe management of hazardous wastes. Within two years after September 28, 1977, the commission shall adopt rules and regulations including the following:

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

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

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

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

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

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

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

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

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

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

260.430;

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

(6) From time to time adopt, amend or repeal, after due notice and public hearing, standards, rules and regulations to implement, enforce and carry out the provisions of sections 319.100 to 319.137, RSMo, subtitle 1 of the federal Resource Conservation and Recovery Act of 1976 (P.L. 94-580), and as the commission may deem necessary to protect human health and the environment. Rules and regulations promulgated by the United States Environmental Protection Agency under subtitle 1 and codified in Title 40, part 280 of the Code of Federal Regulation may be incorporated by the commission by reference.

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

260.375. The department shall:

(1) Exercise general supervision of the administration and enforcement of sections 260.350 to 260.430 and all standards, rules and regulations, orders or license and permit terms and conditions adopted or issued pursuant to sections 260.350 to 260.430;

(2) Develop and implement programs to achieve goals and objectives set by the state hazardous waste management plan;

(3) Retain, employ, provide for and compensate, within appropriations available therefor, such consultants, assistants, deputies, clerks and other employees on a full- or part-time basis as may be necessary to carry out the provisions of sections 260.350 to 260.430 and prescribe the times at which they shall be appointed and their powers and duties;

(4) Budget and receive duly appropriated moneys for expenditures to carry out the provisions of sections 260.350 to 260.430;

(5) Accept, receive and administer grants or other funds or gifts from public and private agencies including the federal government for the purpose of carrying out any of the functions of sections 260.350 to 260.430. Funds received by the department pursuant to this section shall

be deposited with the state treasurer and held and disbursed by him or her in accordance with the appropriations of the general assembly;

(6) Provide the commission all necessary support the commission may require to carry out its powers and duties including, but not limited to: keeping of records of all meetings; notification, at the direction of the chairman of the commission, of the members of the commission of the time, place and purpose of each meeting by written notice; drafting, for consideration of the commission, a state hazardous waste management plan and standards, rules and regulations necessary to carry out the purposes of sections 260.350 to 260.430; and investigation of petitions for variances and complaints made to the commission and submission of recommendations thereto;

(7) Collect and maintain, and require any person to collect and maintain, such records and information of hazardous waste generation, storage, transportation, resource recovery, treatment and disposal in this state, including quantities and types imported and exported across the borders of this state and install, calibrate and maintain and require any person to install, calibrate and maintain such monitoring equipment or methods, and make reports consistent with the purposes of sections 260.350 to 260.430;

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

(9) Develop facts and make inspections and investigations, including gathering of samples and performing of tests and analyses, consistent with the purposes of sections 260.350 to [260.430] **260.960**, and in connection therewith, to enter or authorize any representative of the department to enter, at all reasonable times, in or upon any private or public property for any purpose required by sections 260.350 to [260.430] **260.960** or any federal hazardous waste management act. Such entry may be for the purpose, without limitation, of developing or implementing standards, rules and regulations, orders or license or permit terms and conditions, of inspecting or investigating any records required to be kept by sections 260.350 to [260.430] **260.960** or any license or permit issued pursuant to sections 260.350 to [260.430] **260.960** or any hazardous waste management practice which the department or commission believes violates sections 260.350 to [260.430] **260.960**, or any standard, rule or regulation, order or license or permit term or condition adopted or issued pursuant to sections 260.350 to [260.430] **260.960**, or otherwise endangers the health of humans or the environment, or the site of any suspected violation of sections 260.350 to [260.430] **260.960**, or any standard, rule or regulation, order, [or] license or permit term or condition, **control or engineering control** adopted or issued pursuant to sections 260.350 to [260.430] **260.960**. The results of any such investigation shall be reduced to writing and shall be furnished to the owner or operator of the property. No person shall refuse entry or access requested for the purpose of inspection pursuant to this subdivision to an authorized representative of the department or commission who presents appropriate credentials, nor obstruct or hamper the representative in carrying out the inspection. A suitably restricted

search warrant, upon a showing of probable cause in writing and upon oath, shall be issued by any judge or associate circuit judge having jurisdiction to any such representative for the purpose of enabling the representative to make such inspection;

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

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

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

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

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

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

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

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

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

comply with the requirements of sections 260.350 to 260.430 and rules and regulations adopted pursuant to sections 260.350 to 260.430;

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

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

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

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

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

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

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

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

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

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

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

(30) Oversee any corrective action work undertaken pursuant to sections 260.350 to 260.430 and rules promulgated pursuant to sections 260.350 to 260.430 to investigate, monitor, or clean up releases of hazardous waste or hazardous constituents to the environment at hazardous waste facilities. The department shall review the technical and regulatory aspects of

corrective action plans, reports, documents, and associated field activities, and attest to their accuracy and adequacy. Owners or operators of hazardous waste facilities performing corrective actions shall pay to the department all reasonable costs, as determined by the commission, incurred by the department pursuant to this subdivision. All such funds remitted by owners or operators of hazardous waste facilities performing corrective actions shall be deposited in the hazardous waste fund created in section 260.391.

319.125. 1. The department may deny or invalidate a certificate of registration issued under sections 319.120 and 319.123 if the department finds, after notice and a hearing pursuant to chapter [644] **260**, RSMo, that the owner has:

- (1) Fraudulently or deceptively registered or attempted to register a tank; or
- (2) Failed at any time to comply with any provision or requirement of sections 319.100 to 319.137 or any rules and regulations adopted by the department in accordance with the provisions of sections 319.100 to 319.137.

2. Upon the action of the department to invalidate or refuse to issue a certificate, the department shall advise the applicant of his right to have a hearing before the [clean water] **Missouri hazardous waste management** commission. The hearing shall be conducted in accordance with the procedures established in chapter [644] **260**, RSMo.

3. When the department finds that a release from an underground storage tank presents, or is likely to present, an immediate threat to public health or safety or to the environment, it shall order correction of the problem, order cleanup or institute clean-up operations pursuant to the provisions of sections 260.500 to 260.550, RSMo.

4. If the owner or operator fails to perform or improperly performs any action required by the department to abate or eliminate an immediate threat to public health or safety or to the environment, the department or an authorized agent of the department may take any and all necessary action to abate or eliminate such threat. In addition to any other remedy or penalty provided by sections 319.100 to 319.137 or any other law, the owner or operator shall be held strictly liable for the reasonable costs incurred by the department in taking any such action.

5. The denial of reregistration or the revocation of registration of any person participating in the underground storage tank insurance fund shall, upon completion of any appeal, terminate participation in the fund.

319.127. 1. It is unlawful for any owner or operator to cause or permit any violations of sections 319.100 to 319.137, or any standard, rule or regulation, order or permit term or condition adopted or issued hereunder. Except as provided in this section, whenever on the basis of any information, the department determines that any person is in such violation, the department may issue an order requiring compliance within a reasonable specified time period, pursuant to chapter [644] **260**, RSMo, or the department may commence a civil action in a court of competent jurisdiction in which the violation occurred for appropriate relief, including a

temporary or permanent injunction.

2. If an owner or operator fails to comply with an order under this section within the time specified, the department may commence a civil action in a court of competent jurisdiction for injunctive relief to prevent any such violation or further violation or for the assessment of a civil penalty not to exceed ten thousand dollars for each day, or part thereof, the violation occurred or 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 319.139. The department may request either the attorney general or a prosecuting attorney to bring any action authorized in this section in the name of the people of the state of Missouri. 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.

3. Any penalty recovered pursuant to the provisions of this section shall be handled in accordance with section 7 of article IX of the state constitution.

4. If the department alleges a violation of law or regulation of sections 319.100 to 319.139, and mandates compliance with such law or regulation by a person or entity, the department shall provide the person or entity responsible for compliance with such law or regulation with written criteria detailing exactly what action is necessary for such person or entity to comply with the law or regulation. The criteria shall include any time restrictions imposed by the department and shall be prima facie evidence of the action necessary for compliance with the law or regulation. Any person or entity meeting the criteria shall be deemed to be in full compliance with the requests of the department and evidence of compliance shall constitute an affirmative defense in any action brought by or on behalf of the department under the law or regulation. The criteria may not be amended by the department once issued to the person or entity responsible for compliance with such law or department regulation for three years from the date of issuance unless mandated by a change in state or federal law.

319.130. Properties eligible for petroleum storage tank insurance fund benefits are not eligible for state Brownfield Redevelopment Program incentives established pursuant to sections 477.700 to 447.718, RSMo, unless the property owner waives fund benefits. Petroleum contamination from regulated underground storage tanks shall be addressed according to the applicable rules, standards and associated guidance established pursuant to sections 319.100 to 319.137.

[319.137. Rules and regulations promulgated by the United States Environmental Protection Agency under subtitle I of the federal Resource Conservation Recovery Act of 1976 (P.L. 94-580), as amended, may be adopted by the department by reference. The

department may adopt rules and regulations that are more stringent than those issued by the United States Environmental Protection Agency if such rules or regulations are necessary to protect human health or the environment. Any such rule shall be adopted only after due notice and public hearing in accordance with the provisions of this section, chapter 536, RSMo, and chapter 644, RSMo. No rule or portion of a rule promulgated under the authority of sections 319.100 to 319.139 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.]

319.137. 1. Rules and regulations promulgated by the United States Environmental Protection Agency under subtitle I of the federal Resource Conservation Recovery Act of 1976 (P.L. 94-580), as amended, may be adopted by the department by reference. The department may adopt rules and regulations that are more stringent than those issued by the United States Environmental Protection Agency if such rules or regulations are necessary to protect human health or the environment. Rules and regulations promulgated under sections 319.100 to 319.139 shall be submitted to and reviewed by the advisory committee established by subsection 2 of section 319.131 prior to publication. Any such rule shall be adopted only after due notice and public hearing in accordance with the provisions of this section, **chapter 260, RSMo and** chapter 536, RSMo[, and chapter 644, RSMo].

2. No rule or portion of a rule promulgated under the authority of sections 319.100 to 319.139 shall become effective until it has been approved by the joint committee on administrative rules in accordance with the procedures provided herein, and the delegation of the legislative authority to enact law by the adoption of such rules is dependent upon the power of the joint committee on administrative rules to review and suspend rules pending ratification by the senate and the house of representatives as provided herein.

3. Upon filing any proposed rule with the secretary of state, the filing agency shall concurrently submit such proposed rule to the committee, which may hold hearings upon any proposed rule or portion thereof at any time.

4. A final order of rulemaking shall not be filed with the secretary of state until thirty days after such final order of rulemaking has been received by the committee. The committee may hold one or more hearings upon such final order of rulemaking during the thirty-day period. If the committee does not disapprove such order of rulemaking within the thirty-day period, the filing agency may file such order of rulemaking with the secretary of state and the order of rulemaking shall be deemed approved.

5. The committee may, by majority vote of the members, suspend the order of rulemaking or portion thereof by action taken prior to the filing of the final order of rulemaking only for one or more of the following grounds:

- (1) An absence of statutory authority for the proposed rule;
- (2) An emergency relating to public health, safety or welfare;

- (3) The proposed rule is in conflict with state law;
- (4) A substantial change in circumstance since enactment of the law upon which the proposed rule is based;
- (5) That the rule is arbitrary and capricious.

6. If the committee disapproves any rule or portion thereof, the filing agency shall not file such disapproved portion of any rule with the secretary of state and the secretary of state shall not publish in the Missouri Register any final order of rulemaking containing the disapproved portion.

7. If the committee disapproves any rule or portion thereof, the committee shall report its findings to the senate and the house of representatives. No rule or portion thereof disapproved by the committee shall take effect so long as the senate and the house of representatives ratify the act of the joint committee by resolution adopted in each house within thirty legislative days after such rule or portion thereof has been disapproved by the joint committee.

8. Upon adoption of a rule as provided herein, any such rule or portion thereof may be suspended or revoked by the general assembly either by bill or, pursuant to section 8, article IV of the constitution, by concurrent resolution upon recommendation of the joint committee on administrative rules. The committee shall be authorized to hold hearings and make recommendations pursuant to the provisions of section 536.037, RSMo. The secretary of state shall publish in the Missouri Register, as soon as practicable, notice of the suspension or revocation.

319.139. 1. In addition to any other remedy provided by law, upon a determination by the director that a provision of sections 319.100 to 319.137 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 violation through conference, conciliation or persuasion and shall not be imposed for minor violations of sections 319.100 to 319.137 or minor violations of any standard, limitation, order, rule or regulation promulgated pursuant to sections 319.100 to 319.137 or minor violations of any term or condition of a permit issued pursuant to sections 319.100 to 319.137. If the violation is resolved through conference, conciliation and persuasion, no administrative penalty shall be assessed unless the violation has caused, or has the potential to cause, a risk to human health or to the environment, or has caused or has potential to cause pollution, or was knowingly committed, or is defined by the United States Environmental Protection Agency as other than minor. Any order assessing an administrative penalty shall state that an administrative penalty is being assessed under this section and that the person subject to the penalty may appeal as provided by this section. Any such order that fails to state the statute under which the penalty

is being sought, the manner of collection or rights of appeal shall result in the state's waiving any right to collection of the penalty.

2. The [clean water] **Missouri hazardous waste management** commission shall promulgate rules and regulations for the assessment of administrative penalties. The amount of the administrative penalty assessed per day of violation for each violation under this section shall not exceed the amount of the civil penalty specified in section 319.127. 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 [clean water] **Missouri hazardous waste management** commission may reasonably deem relevant. An administrative penalty shall be paid within sixty days from the date of issuance of the order assessing the penalty. Any person subject to an administrative penalty may appeal to the commission as provided in section [644.056] **260.400**, RSMo. An appeal will stay the due date of such administrative penalty until the appeal is resolved. Any person who fails to pay an administrative penalty by the final due date shall be liable to the state for a surcharge of fifteen percent of the penalty plus ten percent per annum on any amounts owed. Any administrative penalty paid pursuant to this section shall be handled in accordance with section 7 of article IX of the state constitution. An action may be brought in the appropriate circuit court to collect any unpaid administrative penalty, and for attorney's fees and costs incurred directly in the collection thereof.

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

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

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