FIRST REGULAR SESSION

HOUSE COMMITTEE SUBSTITUTE FOR

SENATE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 36

92ND GENERAL ASSEMBLY

Reported from the Committee on Agriculture April 17, 2003, with recommendation that the House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 36 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

0424L.18C

AN ACT

To repeal sections 260.273, 260.475, 260.479, 260.830, 260.831, 444.770, 444.772, 444.778, 640.010, and 643.078, RSMo, and to enact in lieu thereof seventeen new sections relating to environmental regulation.

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

Section A. Sections 260.273, 260.475, 260.479, 260.830, 260.831, 444.770, 444.772, 444.778, 640.010, and 643.078, RSMo, are repealed and seventeen new sections enacted in lieu thereof, to be known as sections 260.217, 260.219, 260.273, 260.475, 260.479, 260.830, 260.831, 444.770, 444.772, 444.778, 640.010, 640.014, 640.016, 640.018, 640.020, 640.037 and 643.078, to read as follows:

260.217. No solid waste processing facility shall store solid waste for longer than forty-eight hours on-site over any weekend, or for more than seventy-two hours in the event of a state-observed holiday weekend.

260.219. No local government or political subdivision shall provide waste or garbage collection services outside of its boundaries.

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

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

2. A fee for each new tire sold at retail shall be imposed on any person engaging in the business of making retail sales of new tires within this state. The fee shall be charged by the retailer to the person who purchases a tire for use and not for resale. Such fee shall be imposed at the rate of fifty cents for each new tire sold. Such fee shall be added to the total cost to the purchaser at retail after all applicable sales taxes on the tires have been computed. The fee imposed, less six percent of fees collected, which shall be retained by the tire retailer as collection costs, shall be paid to the department of revenue in the form and manner required by the department of revenue and shall include the total number of new tires sold during the preceding month. The department of revenue shall promulgate rules and regulations necessary to administer the fee collection and enforcement. The terms "sold at retail" and "retail sales" do not include the sale of new tires to a person solely for the purpose of resale, if the subsequent retail sale in this state is to the ultimate consumer and is subject to the fee.

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

4. Up to five percent of the revenue available may be allocated, upon appropriation, to the department of natural resources to be used cooperatively with the department of elementary and secondary education for the purposes of developing educational programs and curriculum pursuant to section 260.342.

5. Up to twenty-five percent of the moneys received pursuant to this section may, upon appropriation, be used to administer the programs imposed by this section. Up to five percent of the moneys received under this section may, upon appropriation, be used for the grants authorized in subdivision (2) of subsection 6 of this section and authorized in section 260.274. All remaining moneys shall be allocated, upon appropriation, for the projects authorized in section 260.276.

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

(1) Removal of waste tires from illegal tire dumps;

(2) Providing grants to persons that will use products derived from waste tires, or used waste tires as a fuel or fuel supplement; and

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

7. The fee imposed in subsection 2 of this section shall terminate January 1, **[**2004**]** **2009**.

260.475. 1. Every hazardous waste generator shall pay, in addition to the fees imposed in section 260.380, a fee of twenty-five dollars per ton annually on all hazardous waste which is discharged, deposited, dumped or placed into or on the soil as a final action, and two dollars per ton on all other

hazardous waste transported off site. No fee shall be imposed upon any hazardous waste generator who registers less than ten tons of hazardous waste annually pursuant to section 260.380, or upon:

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

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

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

(4) Cement kiln dust waste;

(5) Waste oil; or

(6) Hazardous waste that is:

(a) Reclaimed or reused for energy and materials;

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

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

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

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

3. Sixty percent of all moneys collected or received by the department pursuant to this section shall be transmitted to the department of revenue for deposit in the state treasury to the credit of the hazardous waste remedial fund created in section 260.480. Forty percent of all moneys collected or received by the department pursuant to this section shall be transmitted to the department of revenue for deposit in the state treasury to the credit of the hazardous waste fund created pursuant to section 260.391. Following each annual reporting date, the state treasurer shall certify the amount deposited in the fund to the commission.

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

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

6. The state treasurer is authorized to deposit all of the moneys in the hazardous waste remedial

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

7. No fee shall be collected pursuant to this section after January 1, **[**2005**]** **2010**.

260.479. 1. The hazardous waste management commission shall establish, by rule, two subdivisions of hazardous waste based upon the management method. Subdivision A shall include waste which is placed in a hazardous waste disposal facility or which is stored for a period of more than one hundred eighty days; provided, however, for the purposes of this section, the commission may identify hazardous waste which shall be taxed pursuant to subdivision A when stored for longer than ninety days as well as waste which may be stored for up to one year and taxed as provided in subdivision B below. Subdivision B shall include all other hazardous waste produced. The director shall annually request that a minimum of one million dollars be appropriated from general revenue funds for deposit in the hazardous waste remedial fund created pursuant to section 260.480.

2. Except as provided in this subsection and subsection 5 of this section, each hazardous waste generator registered with the department of natural resources, except the state and any political subdivision thereof, shall pay a fee based on the volume of waste produced in each of the subdivisions A and B as follows:

(1) For subdivision A waste, the fee shall be equal to 0.90785 times the amount of waste in short tons times the following sum: twenty-one dollars and eighty cents plus the product of 7.9890 cents times the amount of waste in short tons, except that the fee for subdivision A waste shall not exceed eighty thousand dollars; and

(2) For subdivision B waste, the fee shall be equal to 0.90785 times the amount of waste in short tons times the following sum: ten dollars and ninety cents plus the product of 3.9945 cents times the amount of waste in short tons, except that the fee for subdivision B waste shall not exceed forty thousand dollars.

No company shall pay more than eighty thousand dollars annually pursuant to this subsection; provided that all fee amounts established pursuant to this subsection may be adjusted annually by the commission by an amount not to exceed two and fifty-five hundredths percent. No individual generator subject to a fee pursuant to this section shall pay less than fifty dollars annually.

3. No tax shall be imposed pursuant to this section upon hazardous waste generators whose waste consists solely of waste oil or facilities licensed pursuant to chapter 197, RSMo. The commission may exempt intermittent generators or generators of very small volumes of hazardous waste from payment of fees required pursuant to this section, provided those generators comply with all other applicable provisions of sections 260.360 to 260.430.

4. Any hazardous waste generator registered with the department which discharges waste to a

publicly owned treatment works having an approved pretreatment program as required by chapter 204, RSMo, shall not pay any fee required in sections 260.350 to 260.550 on such waste discharged which is in compliance with pretreatment requirements. The hazardous waste management commission may exempt such generators from the provisions of sections 260.350 to 260.430 if such exemption will not be in violation of the federal Resource Conservation and Recovery Act.

5. No fee shall be imposed pursuant to this section upon any hazardous waste which must be disposed of as provided by a remedial plan for an abandoned or uncontrolled hazardous waste site, or upon smelter slag waste from the processing of materials into reclaimed metals. Fees on hazardous waste fuel produced from hazardous waste by processing, blending or other off-site treatment shall be assessed and collected only at the facility where such hazardous waste fuel is utilized as a substitute for other fuel. No facility using hazardous waste fuel shall pay more than eighty thousand dollars annually pursuant to this subsection for the first fiscal year fees are assessed pursuant to this section, and such maximum amount may be adjusted annually thereafter by the commission by an amount not to exceed two and fifty-five hundredths percent. This subsection shall not be construed to apply to hazardous waste used directly as a fuel that has not been processed, blended, or otherwise treated off site. Such waste shall be subject to the fees established in subsection 2 of this section.

6. The department may establish by rule and regulation categories of waste based upon waste characteristics pursuant to subsection 2 of section 260.370. When the commission adopts hazardous waste categories, it shall establish and annually revise a fee schedule based upon waste characteristics. Each generator shall annually pay a fee, in lieu of the fee required in subsection 2 of this section, based upon the volume of waste produced annually within each hazard category.

7. All fees within this section shall be based on hazardous waste produced within the preceding state fiscal year beginning with July first of the year this section goes into effect and payable at the end of the calendar year on December thirty-first and annually thereafter in the same manner; provided that no liability for fees shall be accrued pursuant to subsection 5 of this section for any waste used as a fuel prior to August 28, 2000.

8. The department shall promptly transmit sixty percent of all funds collected pursuant to this section to the director of revenue for deposit in the hazardous waste remedial fund created pursuant to section 260.480. The department shall promptly transmit forty percent of all funds collected pursuant to this section to the director of revenue for deposit in the hazardous waste fund created pursuant to section 260.391.

9. Notwithstanding any other provision of law to the contrary, no tax based on the number of employees employed by a hazardous waste generator shall be collected. No tax or fee shall be levied pursuant to this section after January 1, **[**2005**] 2010**.

260.830. 1. Any county of the third classification **or any county of the second classification with more than forty-eight thousand two hundred but less than forty-eight thousand three hundred**

inhabitants may, by a majority vote of its governing body, impose a landfill fee pursuant to sections 260.830 and 260.831, for the benefit of the county. No order or ordinance enacted pursuant to the authority granted by this section shall be effective unless the governing body of the county submits to the qualified voters of the county, at a public election, a proposal to authorize the governing body of the county to impose a fee under the provisions of this section. The ballot of submission shall be in substantially the following form:

Shall the county of ..... (insert name of county) impose a landfill fee of ..... (insert amount of fee per ton or volumetric equivalent of solid waste)?

☐ YES ☐ NO

If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the order or ordinance and any amendments thereto shall become effective on the first day of the calendar quarter immediately after such election results are certified. If a majority of the votes cast by the qualified voters voting are opposed to the proposal, then the governing body of the county shall have no power to impose the fee authorized by this section unless and until the governing body of the county shall again have submitted another proposal to authorize the governing body of the county to impose such fee, and the proposal is approved by a majority of the qualified voters voting thereon. If an economic development authority does not exist in a county at the time that a landfill fee is adopted by such county under this section, then the governing body of such county shall establish an economic development authority in the county.

2. The landfill fee authorized by such an election may not exceed one dollar and fifty cents per ton or its volumetric equivalent of solid waste accepted, which charge may be in addition to any such fee currently imposed pursuant to the provisions of section 260.330.

260.831. 1. Each operator of a solid waste sanitary or demolition landfill in any county wherein a landfill fee has been approved by the voters pursuant to section 260.830 shall collect a charge equal to the charge authorized by the voters in such election, not to exceed one dollar and fifty cents per ton or its volumetric equivalent of solid waste accepted. Such fee shall be collected in addition to any fee authorized or imposed pursuant to the provisions of section 260.330, and shall be paid to such operator by all political subdivisions, municipalities, corporations, entities or persons disposing of solid waste or demolition waste, whether pursuant to contract or otherwise, and notwithstanding that any such contract may provide for collection, transportation and disposal of such waste at a fixed fee. Any such contract providing for collections, transportation and disposal of such waste at a fixed fee which is in force on August 28, **[**1993**]** **2003**, shall be renegotiated by the parties to the contract to include the additional fee imposed by this section. Each such operator shall submit the charge, less collection costs, to the governing body of the county, which shall dedicate such funds for use by the industrial development authority within the county and such funds shall be used by the authority for economic development within the county. Collection costs

shall be the same as established by the department of natural resources pursuant to section 260.330, and shall not exceed two percent of the amount collected pursuant to this section.

2. The charges established in this section shall be enumerated separately from any disposal fee charged by the landfill. After January 1, 1994, the fee authorized under section 260.830 and this section shall be stated as a separate surcharge on each individual solid waste collection customer's invoice and shall also name the economic development authority which receives the funds. Moneys transmitted to the governing body of the county shall be no less than the amount collected less collection costs and in a form, manner and frequency as the governing body may prescribe. Failure to collect such charge shall not relieve the operator from responsibility for transmitting an amount equal to the charge to the governing body.

444.770. 1. It shall be unlawful for any operator to engage in surface mining without first obtaining from the commission a permit to do so, in such form as is hereinafter provided, including any operator involved in any **sand and** gravel mining operation**, except that no permit from the commission shall be required** where the annual tonnage of **sand and** gravel mined by such operator **in total from all such operator's in-stream sand and gravel mines** is less than five thousand tons **and such operator does not engage in any form of surface mining other than in-stream sand and gravel mining. The department may establish excavation standards for operators of in-stream sand and gravel mines that are exempt from permitting requirements pursuant to this subsection. Such excavation standards shall not be more stringent than standards required of operators required to obtain permits. If an operator that is not required to obtain a permit violates such excavation standards, the commission may require the operator to apply for a permit to continue operating at the site of such violation**.

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

3. All surface mining operations where land is affected after September 28, 1971, which are under the control of any government agency whose regulations are equal to or greater than those imposed by section 444.774, are not subject to the further provisions of sections 444.760 to 444.790, except that such operations shall be registered with the land reclamation commission. 4. Any portion of a surface mining operation which is subject to the provisions of sections 260.200 to 260.245, RSMo, and the regulations promulgated thereunder, shall not be subject to the provisions of sections 444.760 to 444.790, and any bonds or portions thereof applicable to such operations shall be promptly released by the commission, and the associated permits canceled by the commission upon presentation to it of satisfactory evidence that the operator has received a permit pursuant to section 260.205, RSMo, and the regulations promulgated thereunder. Any land reclamation bond associated with such released permits shall be retained by the commission until presentation to the commission of satisfactory evidence that:

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

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

5. Notwithstanding the provisions of subsection 1 of this section, any political subdivision which uses its own personnel and equipment **or contracts for excavation to obtain sand and gravel material solely for the use of such political subdivision** or any private individual for personal use may conduct in-stream **sand and** gravel operations without obtaining from the commission a permit to conduct such an activity.

444.772. 1. **Except as provided in section 444.770,** 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 and a permit fee approved by the commission not to exceed six hundred dollars. The commission may also require a fee for each site listed on a permit not to exceed three 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 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 hundred acres shall be reduced by fifty percent. In no case shall the total fee for any permit be more than two thousand five hundred dollars. Permit and renewal fees shall be established by rule 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 **sand and** gravel mining operation where the annual tonnage of **sand and** gravel mined by such operator is less than five thousand tons **and such operator is not exempt from permitting requirements pursuant to section 444.770**, 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.

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 thousand five hundred dollars. For any operator involved in any **sand and** gravel mining operation where the annual tonnage of **sand and** gravel mined by such operator is less than five thousand tons **and such operator is not exempt from permitting requirements pursuant to section 444.770**, 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, and shall expire on December 31, 2007. No other provisions of this section shall expire.

444.778. 1. Any bond herein provided to be filed with the commission by the operator shall be in such form as the director prescribes, payable to the state of Missouri, conditioned that the operator shall faithfully perform all requirements of sections 444.760 to 444.790 and comply with all rules of the commission made in accordance with the provisions of sections 444.760 to 444.790. The bond shall be signed by the operator as principal, and by a good and sufficient corporate surety, licensed to do business

in this state, as surety. The operator shall file with the commission a bond payable to the state of Missouri with surety in the penal sum of eight thousand dollars for each permit up to eight acres and five hundred dollars for each acre thereafter that is to be mined. In addition, for each acre or portion thereof where topsoil has been removed from the site, an additional bond of four thousand five hundred dollars per acre shall be posted with the commission for each acre or portion thereof which will be revegetated, conditioned upon the faithful performance of the requirements set forth in sections 444.760 to 444.790 and of the rules and regulations of the commission. In lieu of a surety bond, the operator may furnish a bond secured by a personal certificate of deposit or irrevocable letter of credit in an amount equal to that of the required surety bond on conditions as prescribed by the commission. For any operator involved in any **sand and** gravel mining operation where the annual tonnage of **sand and** gravel mined by such operator is less than five thousand tons **and such operator is not exempt from permitting requirements pursuant to section 444.770**, such operator shall deposit a bond with the commission in the penal sum of five hundred dollars for each acre or portion thereof of land proposed thereafter by the operator to be subjected to surface mining for the mining permit year.

2. The bond shall remain in effect until the mined acreages have been reclaimed, approved and released by the commission. Forfeiture of such bond may be cause for denial of future permit applications.

3. A bond filed as above prescribed shall not be canceled by the surety except after not less than ninety days' notice to the commission and, in any case, not as to the acreage affected prior to the expiration of the notice period.

4. If the license to do business in this state of any surety upon a bond filed with the commission pursuant to sections 444.760 to 444.790 shall be suspended, revoked, or canceled, or if the surety should act to cancel the bond, the operator, within sixty days after receiving notice thereof from the commission, shall substitute for such surety a good and sufficient corporate surety licensed to do business in this state or a bond secured by a certificate of deposit. Upon failure of the operator to make substitution of surety as herein provided, the commission shall have the right to suspend the permit of the operator until such substitution has been made. 5. The commission shall give written notice to the operator of any violation of sections 444.760 to 444.790 or noncompliance with any of the rules and regulations promulgated by the commission hereunder and if corrective measures, approved by the commission, are not commenced within ninety days, the commission may proceed as provided in section 444.782 to request forfeiture of the bond.

6. The commission shall have the power to reclaim, in keeping with the provisions of sections 444.760 to 444.790, any affected land with respect to which a bond has been forfeited. The commission and any other agency and any contractor under a contract with the commission shall have reasonable right of access to the land affected to carry out such reclamation. The operator shall also have the right of access to the land affected to carry out such reclamation and shall notify the landowner on lease holdings that such

right exists.

7. Whenever an operator shall have completed all requirements pursuant to the provisions of sections 444.760 to 444.790 as to any affected land, he or she shall notify the commission thereof. If the commission determines that the operator has completed the requirements, the commission shall release the operator from further obligations regarding the affected land and the penalty of the bond shall be reduced proportionately.

640.010. 1. There is hereby created a department of natural resources in charge of a director appointed by the governor, by and with the advice and consent of the senate. The director shall administer the programs assigned to the department relating to environmental control and the conservation and management of natural resources. The director shall coordinate and supervise all staff and other personnel assigned to the department. He **or she** shall faithfully cause to be executed all policies established by the boards and commissions assigned to the department, be subject to their decisions as to all substantive and procedural rules and his **or her** decisions shall be subject to appeal to the board or commission on request of the board or commission or by **[**affected parties**] any person who demonstrates a specific and legal property interest in the decision and who demonstrates that the decision will have a direct and substantial impact on such property interest**. The director shall recommend policies to the various boards and commissions assigned to the department to achieve effective and coordinated environmental control and natural resource conservation policies.

2. The director shall appoint directors of staff to service each of the policy making boards or commissions assigned to the department. Each director of staff shall be qualified by education, training and experience in the technical matters of the board to which he **or she** is assigned and his **or her** appointment shall be approved by the board to which he **or she** is assigned and he **or she** shall be removed or reassigned on their request in writing to the director of the department. All other employees of the department and of each board and commission assigned to the department shall be appointed by the director of the department in accord with chapter 36, RSMo, and shall be assigned and may be reassigned as required by the director of the department in such a manner as to provide optimum service, efficiency and economy.

3. The air conservation commission, chapter 203, RSMo, and others, the clean water commission, chapter 204, RSMo, and others, are transferred by type II transfer to the department of natural resources. The governor shall appoint the members of these bodies in accord with the laws establishing them, with the advice and consent of the senate. The bodies hereby transferred shall retain all rulemaking and hearing powers allotted by law, as well as those of any bodies transferred to their jurisdiction. All the powers, duties and functions of the state environmental improvement authority, chapter 260, RSMo, and others, are transferred by type III transfer to the air conservation commission. All the powers, duties and functions of the water resources board, chapter 256, RSMo, and others, are transferred by type I transfer to the clean water commission and the board is abolished. No member of the clean water commission shall

receive or shall have received, during the previous two years from the date of his **or her** appointment, a significant portion of his **or her** income directly or indirectly from permit holders or applicants for a permit under the jurisdiction of the clean water commission. The state park board, chapter 253, RSMo, is transferred to the department of natural resources by type I transfer.

4. All the powers, duties and functions of the state soil and water districts commission, chapter 278, RSMo, and others, are transferred by a type II transfer to the department.

5. All the powers, duties and functions of the state geologist, chapter 256, RSMo, and others, are transferred by type I transfer to the department of natural resources. All the powers, duties and functions of the state land survey authority, chapter 60, RSMo, are transferred to the department of natural resources by type I transfer and the authority is abolished. All the powers, duties and functions of the state oil and gas council, chapter 259, RSMo, and others are transferred to the department of natural resources by type II transfer. The director of the department shall appoint a state geologist who shall have the duties to supervise and coordinate the work formerly done by the departments or authorities abolished by this subsection, and shall provide staff services for the state oil and gas council.

6. All the powers, duties and functions of the land reclamation commission, chapter 444, RSMo, and others, are transferred to the department of natural resources by type II transfer. All necessary personnel required by the commission shall be selected, employed and discharged by the commission. The director of the department shall not have the authority to abolish positions.

7. The functions performed by the division of health in relation to the maintenance of a safe quality of water dispensed to the public, sections 640.100 to 640.115, and others, and for licensing and regulating solid waste management systems and plans are transferred by type I transfer to the department of natural resources.

8. (1) The state interagency council for outdoor recreation, chapter 258, RSMo, is transferred to the department of natural resources by type II transfer. The council shall consist of representatives of the following state agencies: department of agriculture; department of conservation; office of administration; department of natural resources; department of economic development; department of social services; department of transportation; and the University of Missouri.

(2) The council shall function as provided in chapter 258, RSMo, except that the department of natural resources shall provide all staff services as required by the council notwithstanding the provisions of sections 258.030 and 258.040, RSMo, and all personnel and property of the council are hereby transferred by type I transfer to the department of natural resources and the office of executive secretary to the council is abolished.

640.014. 1. All provisions of the law to the contrary notwithstanding, all rules that prescribe environmental conditions or standards promulgated by the department of natural resources, a board or a commission, pursuant to authorities granted in this chapter and chapters 260, 278, 444, 643, and 644, RSMo, the hazardous waste management commission in chapter 260,

RSMo, the state soil and water districts commission in chapter 278, RSMo, the land reclamation commission in chapter 444, RSMo, the safe drinking water commission in this chapter, the air conservation commission in chapter 643, RSMo, and the clean water commission in chapter 644, RSMo, shall cite the specific section of law or legal authority. The rule shall also be based on the regulatory impact report provided in this section.

2. The regulatory impact report required by this section shall include:

(1) A report on the peer-reviewed scientific data used to commence the rulemaking process;

(2) A description of persons who will most likely be affected by the proposed rule, including persons that will bear the costs of the proposed rule and persons that will benefit from the proposed rule;

(3) A description of the probable qualitative and quantitative impact of the proposed rule, including environmental and economic costs and benefits;

(4) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue;

(5) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction, which includes both economic and environmental costs and benefits;

(6) A determination of whether there are less costly or less intrusive methods for achieving the proposed rule;

(7) A description of any alternative method for achieving the purpose of the proposed rule that were seriously considered by the department and the reasons why they were rejected in favor of the proposed rule;

(8) An analysis of both short-term and long-term consequences of the proposed rule;

(9) An explanation of the risks to human health, public welfare, or the environment, addressed by the proposed rule, including an estimate of the impact of risk;

(10) The identification of the sources of scientific information used in evaluating the risk and a summary of such information;

(11) A description and impact statement of any uncertainties and assumptions made in conducting the analysis on the resulting risk estimate;

(12) A description of any significant countervailing risks that may be caused by the proposed rule; and

(13) The identification of alternative regulatory approaches that will produce comparable human health, public welfare, or the environmental outcomes and an estimate of their relative benefits and costs.

3. The department, board, or commission shall develop the regulatory impact report

required by this section using peer reviewed and published data.

4. The department, board, or commission shall publish in at least one newspaper of general circulation, qualified pursuant to chapter 493, RSMo, with an average circulation of twenty thousand or more and on the department, board, or commission website a notice of availability of any regulatory impact report conducted pursuant to this section and shall make such assessments and analyses available to the public by posting them on the department, board, or commission website. The department, board, or commission shall allow at least sixty days for the public to submit comments and shall post all comments and respond to all significant comments prior to promulgating the rule.

5. The department, board, or commission shall file a copy of the regulatory impact report with the joint committee on administrative rules concurrently with the filing of the proposed rule pursuant to section 536.024, RSMo.

6. If the department, board, or commission fails to conduct the regulatory impact report as required for each proposed rule pursuant to this section, such rule shall be void.

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

8. The provisions of this section shall not apply if the department adopts environmental protection agency rules without variance.

640.016. In all matters where a rule that prescribes environmental conditions or standards has been promulgated after August 28, 2003, by the department of natural resources, a board or a commission pursuant to authorities granted in this chapter and chapters 260, 278, 444, and 644, RSMo, the hazardous waste management commission in chapter 260, RSMo, the state soil and water districts commission in chapter 278, RSMo, the land reclamation commission in chapter 444, RSMo, the safe drinking water commission in this chapter, and the clean water commission in chapter 644, RSMo, is challenged pursuant to section 536.050, RSMo, the burden of proof shall be on the department, board, or commission promulgating the rule to prove that the rule is necessary to prevent the specific circumstances or conditions that would cause harm to human health, public welfare, or the environment.

640.018. 1. The department of natural resources shall not place in any permit any requirement, provision, stipulation, or any other restriction which is not prescribed by regulation.

2. Prior to submitting a permit to public comment the department of natural resources

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

3. In any matter where a permit is denied by the department of natural resources pursuant to authorities granted in this chapter and chapters 260, 278, 444, 643, and 644, RSMo, the hazardous waste management commission in chapter 260, RSMo, the state soil and water districts commission in chapter 278, RSMo, the land reclamation commission in chapter 444, RSMo, the safe drinking water commission in this chapter, the air conservation commission in chapter 643, RSMo, and the clean water commission in chapter 644, RSMo, such denial shall clearly state the basis for such denial.

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

640.020. 1. Other provisions of law notwithstanding, the department of natural resources, including any board or commission assigned to the department of natural resources in accordance with section 640.010 that is authorized by statute to adopt rules, shall have the authority to promulgate such rules, pursuant to chapter 536, RSMo, to ensure that the state of Missouri is in compliance with the provisions of any applicable federal statutes and federal regulations.

(1) The clean air commission shall have the authority to promulgate such rules to establish standards, guidelines and requirements to ensure that the state of Missouri is in compliance with the substantive provisions of the federal Clean Air Act, as amended, relating to air pollution control;

(2) The clean water commission shall have the authority to promulgate such rules to establish standards, guidelines and requirements to ensure that the state of Missouri is in compliance with the substantive provisions of the federal Clean Water Act, as amended, relating to water pollution control, and subtitle I of the federal Resource Conservation and Recovery Act, as amended, relating to underground storage tanks;

(3) The hazardous waste management commission shall have the authority to promulgate

such rules to establish standards, guidelines and requirements to ensure that the state of Missouri is in compliance with the substantive provisions of the federal Resource Conservation and Recovery Act, as amended, relating to hazardous waste management;

(4) The land reclamation commission shall have the authority to promulgate such rules to establish standards, guidelines and requirements to ensure that the state of Missouri is in compliance with the substantive provisions of the federal Surface Mining Control and Reclamation Act, as amended, relating to surface mining and land reclamation;

(5) The safe drinking water commission shall have the authority to promulgate such rules to establish standards, guidelines and requirements to ensure that the state of Missouri is in compliance with the substantive provisions of the federal Safe Drinking Water Act, as amended, relating to drinking water systems; and

(6) The department shall have the authority to promulgate such rules to establish standards, guidelines and requirements to ensure that the state of Missouri is in compliance with the substantive provisions of subtitle D of the federal Resource Conservation and Recovery Act, as amended, relating to solid waste management.

2. The rules promulgated after August 28, 2003, by the department or any commission or board assigned to the department and listed in subsection 1 of this section shall not be any stricter than the scope or subject matter of existing state regulations, except as provided in subsections 3 and 4 of this section. The scope and subject matter of existing state regulation for purposes of this section is that set forth in any and all applicable state statutes or in any and all applicable rules or regulations promulgated before August 28, 2003. If there are no existing state statutes or regulations with respect to a particular subject matter, then the scope of existing state regulation is zero and the department or any commission or board assigned to the department and listed in subsection 1 of this section shall not adopt regulations with respect to that subject matter, except as provided in subsections 3 and 4 of this section.

3. The department or any commission or board assigned to the department and listed in subsection 1 of this section may adopt rules after August 28, 2003, that are stricter than the scope or subject matter of existing state regulation if the rulemaking body makes specific findings, based on competent and substantial evidence in the administrative record, that:

(1) Specific circumstances or conditions in the state of Missouri are causing, or have the potential to cause, specific harm to human health or the environment, including water quality; and

(2) Either:

(a) The specific circumstances or conditions are not subject to regulation by any applicable state statute or existing state regulation; or

(b) The scope or subject matter of existing state regulation is not sufficient to adequately protect human health or the environment, including water quality, in the state of Missouri; and

(3) A more restrictive rule is necessary to address the specific circumstance or condition in order to prevent or alleviate the specific harm caused to human health or the environment, including water quality.

4. The department or any commission or board assigned to the department and listed in subsection 1 of this section may adopt rules after August 28, 2003, that are stricter than the scope or subject matter of existing state regulation prior to making the specific findings required by subsection 3 of this section if the director of the department determines that immediate action is necessary to protect human health or the environment, including water quality; provided that in doing so the department shall be required to provide written justification as to why the immediate action was necessary, and shall make the specific findings required by subsection 3 of this section no later than one hundred eighty days after such rule was adopted.

5. For any rule promulgated pursuant to subsection 3 of this section, the department, commission or board shall specifically enumerate in the administrative record and shall publish in the Missouri Register, along with the notice of proposed rulemaking, findings of fact relative to the specific circumstances or conditions causing harm, the nature and scope of the specific harm to human health or the environment, including water quality, and the health-based or science-based reasons justifying why the adoption of a more restrictive rule will prevent or alleviate the specific harm to human health or the environment, including water quality.

6. For any rule promulgated pursuant to subsection 3 of this section, the fiscal notes required by sections 536.200 and 536.205, RSMo, shall contain, in addition to the requirements imposed by those sections, a discussion and explanation of the consideration by the department, commission or board of the effects on human health or the environment, including water quality, economics, pollution prevention, and the effectiveness and cost of reasonably available control methods for the proposed more restrictive rule.

7. Any rule that is more restrictive than the scope or subject matter of existing state regulation that is adopted after August 28, 2003, by the department or a commission or board assigned to the department without complying with the procedures set forth in this section is void.

8. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.

9. No rule or portion of a rule promulgated pursuant to the authority of this section that pertains only to a specific defined area within this state shall become effective unless the department or the appropriate commission or board assigned to the department and listed in subsection 1 of this section conducts a public hearing within such specific defined area. If no suitable facility to conduct a hearing exists within such area, the hearing shall be conducted as near to the area as is possible. The department, the appropriate commission, or board assigned to the department and listed in subsection 1 of this section shall publish a notice of the hearing

once a week for two consecutive weeks in any newspapers qualified pursuant to section 493.050, RSMo, to publish legal notices in each county containing any portion of such specific defined area. The second such notice shall be published at least ten days before such hearing is scheduled. The department, any commission, or board assigned to the department and listed in subsection 1 of this section shall also provide notice of the hearing by registered mail to the governing body of each county containing any portion of such area at least ten days before such hearing is scheduled.

10. This section may be referred to as the "Environmental Regulation Consistency Act".

640.037. 1. Any person who holds a permit issued by the department of natural resources or any of its programs, divisions, or commissions, and fails to file any required report by the date specified by such permit shall not be issued a notice of violation or be subject to any fine or penalty for failure to file such report until:

(1) The department has made a reasonable attempt to notify the holder of the permit by registered mail that the required report has not been received; and

(2) The holder of the permit fails to file the required report within thirty days after such notification.

2. The provisions of subsection 1 of this section shall not apply to any such permit holder who has previously failed to file:

(1) Two or more reports by the required date during the twelve months immediately preceding the date the current report is due; or

(2) Four or more reports by the required date during the sixty months immediately preceding the date the current report is due.

3. Notwithstanding any other provision of law to the contrary, any person who holds a permit issued by the department of natural resources or any of its programs, divisions, or commissions, and is issued a notice of violation for failure to file any required report by the date specified by such permit shall not be subject to a fine or penalty for failure to file such report of more than five hundred dollars for the first violation.

643.078. 1. It shall be unlawful for any person to operate any regulated air contaminant **class A** source after August 28, 1992, without an operating permit except as otherwise provided in sections 643.010 to 643.190.

2. At the option of the permit applicant, a single operating permit shall be issued for a facility having multiple air contaminant sources located on one or more contiguous tracts of land, excluding public roads, highways and railroads, under the control of or owned by the permit holder and operated as a single enterprise.

3. Any person who wishes to construct or modify and operate any regulated air contaminant source shall submit an application to the department for the unified review of a construction permit

application **[**under**]** **pursuant to** section 643.075 and an operating permit application **[**under**]** **pursuant to** this section, unless the applicant requests in writing that the construction and operating permit applications be reviewed separately. **[**The director shall complete any unified review within one hundred and eighty days of receipt of the request for a class B source.**]** For a class A source, the unified review shall be completed within the time period established in section 502 of the federal Clean Air Act, as amended, 42 U.S.C. 7661.

4. As soon as the review process is completed for the construction and operating permits and, if the applicant complies with all applicable requirements of sections 643.010 to 643.190 and all rules adopted thereunder, the construction permit shall be issued to the applicant. The operating permit shall be retained by the department until validated.

5. Within one hundred and eighty days of commencing operations, the holder of a construction permit shall submit to the director such information as is necessary to demonstrate compliance with the provisions of sections 643.010 to 643.190 and the terms and conditions of the construction permit. The operating permit retained by the department shall be validated and forwarded to the applicant if the applicant is in compliance with the terms and conditions of the construction permit and the terms and conditions of the operating permit. The holder of a construction permit may request a waiver of the one hundred and eighty day time period and the director may grant such request by mutual agreement.

6. If the director determines that an air contaminant source does not meet the terms and conditions of the construction permit and that the operation of the source will result in emissions which exceed the limits established in the construction permit, he shall not validate the operating permit. If the source corrects the deficiency, the director shall then validate the operating permit. If the source is unable to correct the deficiency, then the director and the applicant may, by mutual agreement, add such terms and conditions to the operating permit which are deemed appropriate, so long as the emissions from the air contaminant source do not exceed the limits established in the construction permit, and the director shall validate the operating permit. The director may add terms and conditions to the operating permit which allow the source to exceed the emission limits established in the construction permit. In such a case, the director shall notify the affected public and the commission shall, upon request by any affected person, hold a public hearing upon the revised operating permit application.

7. Except as provided in subsection 8 of this section, an operating permit shall be valid for five years from the date of issuance or validation, whichever is later, unless otherwise revoked or terminated pursuant to sections 643.010 to 643.190.

8. An applicant for a construction permit for an air contaminant source with valid operating permit may request that the air contaminant source be issued a new five-year operating permit. The operating permit would be issued in the manner and **[**under**]** **pursuant to** the conditions provided in sections 643.010 to 643.190 and would supersede any existing operating permit for the source.

9. **[**The director shall take action within thirty days after a request for validation of the operating

permit and shall render a decision within one hundred twenty days of receipt of a request for issuance of an operating permit for a class B source.**]** The director shall render a decision within the time period established in section 502 of the federal Clean Air Act, as amended, 42 U.S.C. 7661, for a class A source. Any affected person may appeal any permit decision, including failure to render a decision within the time period established in this section, to the commission.

10. The director may suspend, revoke or modify an operating permit for cause.

11. The director shall not approve an operating permit if he receives an objection to approval of the permit from the United States Environmental Protection Agency within the time period specified**[**under**]** **pursuant to** Title V of the Clean Air Act, as amended, 42 U.S.C. 7661, et seq.

12. The director shall enforce all applicable federal rules, standards and requirements issued **[**under**] pursuant to** the federal Clean Air Act, as amended, 42 U.S.C. 7661, et seq., and shall incorporate such applicable standards and any limitations established pursuant to Title III into operating permits as required **[**under**] pursuant to** Title V of the federal Clean Air Act, as amended, 42 U.S.C. 7661, et seq.

13. Applicable standards promulgated by the commission by rule shall be incorporated by the director into the operating permit of any air contaminant source which has, on the effective date of the rule, at least three years remaining before renewal of its operating permit. If less than three years remain before renewal of the source's operating permit, such applicable standards shall be incorporated into the permit unless the permit contains a shield from such new requirements consistent with Title V of the federal Clean Air Act, as amended, 42 U.S.C. 7661, et seq.

14. The holder of a valid operating permit shall have operational flexibility to make changes to any air contaminant source, if the changes will not result in air contaminant emissions in excess of those established in the operating permit or result in the emissions of any air contaminant not previously emitted without obtaining a modification of the operating permit provided such changes are consistent with Section 502(b)(10) of the federal Clean Air Act, as amended, 42 U.S.C. 7661.

15. An air contaminant source with a valid operating permit which submits a complete application for a permit renewal at least six months prior to the expiration of the permit shall be deemed to have a valid operating permit until the director acts upon its permit application. The director shall promptly notify the applicant in writing of his action on the application and if the operating permit is not issued state the reasons therefor.

16. The applicant may appeal to the commission if an operating permit is not issued or may appeal any condition, suspension, modification or revocation of any permit by filing notice of appeal with the commission within thirty days of the notice of the director's response to the request for issuance of the operating permit.

17. Any person who obtains a valid operating permit from a city or county pursuant to the authority granted in section 643.140 shall be deemed to have met the requirements of this section.