

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 571
99TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, May 4, 2017, with recommendation that the Senate Committee Substitute do pass.

1310S.03C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 260.242 and 319.318, RSMo, and to enact in lieu thereof four new sections relating to natural resources.

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

Section A. Sections 260.242 and 319.318, RSMo, are repealed and four
2 new sections enacted in lieu thereof, to be known as sections 260.244, 319.318,
3 319.337, and 537.535, to read as follows:

260.244. 1. The department shall have the authority to
2 **promulgate rules for the management and risk-based closure of coal**
3 **combustion residual (CCR) surface impoundments and CCR landfills in**
4 **accordance with this section. Except as otherwise provided by this**
5 **section, such rules shall be as protective as but not more restrictive**
6 **than 40 CFR 257, or successor regulations promulgated under Sections**
7 **1008(a)(3) and 4004(a) of the Resource Conservation and Recovery**
8 **Act. Such rules shall allow the use of risk-based measures, including**
9 **all or part of Missouri risk-based corrective action (MRBCA), for**
10 **closure and corrective action at CCR units, including a process for the**
11 **use of alternate groundwater effluent limitations based on a**
12 **demonstration that impacts on groundwater quality will not result in**
13 **an unreasonable risk to human health or the environment and that**
14 **existing and potential uses are not impaired.**

15 **2. No later than June 1, 2018, the department shall promulgate**
16 **rules applicable to CCR surface impoundments that shall include a**
17 **provision for the assessment and collection of a one-time fee not to**

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

18 exceed one thousand six hundred dollars per surficial acre. Nothing in
19 this section shall authorize the department to promulgate rules
20 requiring:

21 (1) A construction or operating permit under sections 260.200 to
22 260.345 for impoundment closure or corrective action; or

23 (2) Post-closure and groundwater monitoring for impoundments
24 that complete closure by removal of coal combustion residuals.

25 3. No later than June 1, 2019, the department shall amend and
26 promulgate rules applicable to CCR landfills as necessary under 40 CFR
27 257, or successor rules promulgated under Sections 1008(a)(3) and
28 4004(a) of the Resource Conservation and Recovery Act. Such rules,
29 including location restrictions and design standards, shall not be more
30 restrictive than those in 40 CFR 257, with the following exceptions:

31 (1) Each operator or permittee of a CCR landfill to provide a
32 financial assurance instrument in such amount and form as prescribed
33 by the department under the authority of sections 260.226 and 260.227;

34 (2) Construction quality assurance measures for the construction
35 and closure of CCR landfills; and

36 (3) A process for assessing and collecting an annual fee not to
37 exceed five hundred dollars per acre for those acres not officially
38 closed. A requirement to pay such fee shall terminate at such time the
39 owner of the CCR landfill certifies and the department approves
40 closure of all active landfill cells.

41 4. All funds received under this section shall be deposited into
42 the coal combustion residuals subaccount of the solid waste
43 management fund created under section 260.330, and shall be solely
44 dedicated to the department for conducting activities required by this
45 section and rules adopted under this section. Fees established by this
46 section shall not yield revenue greater than the cost of administering
47 this section and the rules adopted pursuant to this section. The
48 department shall prepare an annual report detailing costs incurred in
49 connection with the management and closure of CCR surface
50 impoundments and CCR landfills. Every five years the department
51 shall convene a task force including industry representatives to
52 evaluate the sufficiency and level of fees assessed by the
53 department. The provisions of section 33.080 to the contrary
54 notwithstanding, moneys and interest earned on moneys in the

55 subaccount shall not lapse to general revenue at the end of each
56 biennium.

57 5. Until such time as the department promulgates rules under
58 subsections 2 and 3 of this section, nothing in this section shall restrict
59 the authority of the department to issue guidance, including all or part
60 of Missouri risk-based corrective action (MRBCA), for closure and
61 corrective action at CCR units prior to the effective date of such rules.

62 6. The department may promulgate rules to implement the
63 provisions of this section. Any rule or portion of a rule, as that term is
64 defined in section 536.010 that is created under the authority delegated
65 in this section shall become effective only if it complies with and is
66 subject to all of the provisions of chapter 536, and, if applicable, section
67 536.028. This section and chapter 536 are nonseverable and if any of
68 the powers vested with the general assembly pursuant to chapter 536,
69 to review, to delay the effective date, or to disapprove and annul a rule
70 are subsequently held unconstitutional, then the grant of rulemaking
71 authority and any rule proposed or adopted after August 28, 2017, shall
72 be invalid and void.

319.318. 1. Any person using explosives shall comply with the provisions
2 of this section.

3 2. Provisions of federal law and regulation regarding the manufacturing,
4 transportation, distribution, and storage of explosives shall be enforced by the
5 appropriate federal agency and shall not be subject to enforcement under sections
6 319.300 to 319.345.

7 3. Within sixty days after August 28, 2007, each person using explosives
8 or intending to use explosives in Missouri shall register with the division of fire
9 safety. Any person using explosives who is not required to register on the
10 effective date, who subsequently uses explosives in Missouri shall register with
11 the division of fire safety prior to first using explosives in Missouri. The initial
12 registration shall state the name of the person, address, telephone number,
13 facsimile number, email address, and name of the principal individual having
14 responsibility for supervision of the use of explosives. A fee of two hundred
15 dollars shall be submitted with the initial registration.

16 4. Each person using explosives that is required to register under
17 subsection 3 of this section shall by January thirty-first of each year after
18 registering file an annual report with the division of fire safety for the preceding

19 calendar year:

20 (1) The initial annual report shall only include that portion of the
21 preceding calendar year after the date the person became subject to the
22 requirement to register under subsection 3 of this section;

23 (2) The report shall include:

24 (a) Any change or addition to the information required in subsection 3 of
25 this section;

26 (b) The name and address of the distributors from which explosives were
27 purchased;

28 (c) The total number of pounds of explosives purchased for use in Missouri
29 and the total number of pounds actually used in Missouri during the period
30 covered by the report. Persons required to report annually shall maintain records
31 sufficient to prove the accuracy of the information reported;

32 (3) The person using explosives shall submit with the annual report a fee
33 per ton, as established under this section, based on the amount of explosives used
34 in Missouri. If the report of total pounds used results in a portion of a ton, the
35 cumulative total of the fee shall be rounded to the nearest ton. The fee shall be
36 five hundred dollars plus one dollar and fifteen cents per ton of explosives
37 used. The fee per ton authorized under this subdivision may be adjusted by rule
38 provided the fee shall not exceed [two] **seven dollars and fifty cents** per
39 ton. The state blasting safety board shall review the fee schedule on a biennial
40 basis and approve or disapprove adjustments in fees by rule. **The fee**
41 **established by rule shall be no greater than the cost of administering**
42 **this section. The fee authorized in this section and adjusted by rule**
43 **shall not apply to any person, company, or entity regulated by the**
44 **department of natural resources under sections 444.800 through 444.980**
45 **and 10 CSR 40-3.160.**

46 5. (1) The division of fire safety may audit the records of any person
47 using explosives required to report annually under subsection 4 of this section to
48 determine the accuracy of the number of pounds of explosives reported. In
49 connection with such audit, the division of fire safety may also require any
50 distributor of explosives to provide a statement of sales during the year to
51 persons required to report under subsection 4 of this section.

52 (2) It shall be a violation of sections 319.300 to 319.345 to fail to register
53 or report as required by subsection 3 of this section or knowingly report false
54 information in the reports required under subsections 3 and 4 of this section. The

55 state fire marshal may issue a notice of violation under section 319.333 for failure
56 to register or report or for knowingly reporting false information in the reports
57 required by subsections 3 and 4 of this section. The notice of violation shall be
58 subject to the same procedures and rights of appeal as established in sections
59 319.324, 319.327, and 319.333.

60 (3) Any person who fails to register or report or who knowingly reports
61 false information in the reports required under subsections 3 and 4 of this section
62 shall be subject to a civil penalty not exceeding two thousand dollars for the first
63 offense or a penalty not exceeding five thousand dollars for a second or
64 subsequent offense. Fees for use of explosives not reported shall also be paid.

65 6. It shall be a violation of sections 319.300 to 319.345 for any person
66 using explosives to:

67 (1) Engage in blasting other than by a licensed blaster or an individual
68 working under the direct supervision of a licensed blaster;

69 (2) Fail to calculate the scaled distance, conduct monitoring of vibration
70 and noise levels, and conduct record keeping as required by sections 319.300 to
71 319.345;

72 (3) Fail to carry a minimum of one million dollars in commercial general
73 liability insurance.

74 7. The state fire marshal may issue a notice of violation for any violation
75 of subsection 6 of this section which shall be subject to the same procedures and
76 rights of appeal as established in sections 319.324, 319.327, and 319.333.

77 8. A violation of subsection 6 of this section shall be subject to a civil
78 penalty not exceeding two thousand dollars for the first offense or a penalty not
79 exceeding five thousand dollars for a second or subsequent offense.

**319.337. Any person regulated under sections 319.300 to 319.345
2 shall not be liable for damages for public or private nuisance relating
3 to noise within the limits of this chapter during ordinary business
4 hours.**

**537.535. No action for a private nuisance shall be brought against
2 a permittee in compliance with a related permit issued by the
3 department of natural resources, the United States Environmental
4 Protection Agency, or the United States Army Corps of Engineers,
5 except that the provisions of this section shall not apply to any
6 permittee in compliance with a hazardous waste permit issued
7 pursuant to chapter 260 for hazardous waste that is either nuclear**

8 **waste or radioactive waste, or a sanitary landfill permit issued**
9 **pursuant to chapter 260.**

2 [260.242. All fly ash produced by coal combustion
3 generating facilities shall be exempt from all solid waste permitting
4 requirements of this chapter, if such ash is constructively reused
5 or disposed of by a grout technique in any active or inactive
6 noncoal, non-open-pit mining operation located in a city having a
7 population of at least three hundred fifty thousand located in more
8 than one county and is also located in a county of the first class
9 without a charter form of government with a population of greater
10 than one hundred fifty thousand and less than one hundred sixty
11 thousand, provided said ash is not considered hazardous waste
under the Missouri hazardous waste law.]

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Bill

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