

# SENATE BILL NO. 16

## 101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BERNSKOETTER.

5980S.02I

ADRIANE D. CROUSE, Secretary

### AN ACT

To repeal sections 266.355, 643.050, and 643.079, RSMo, and to enact in lieu thereof three new sections relating to anhydrous ammonia, with an emergency clause.

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

Section A. Sections 266.355, 643.050, and 643.079, RSMo,  
2 are repealed and three new sections enacted in lieu thereof, to  
3 be known as sections 643.050, 643.079, and 643.252, to read as  
4 follows:

643.050. 1. In addition to any other powers vested in  
2 it by law the commission shall have the following powers:

3 (1) Adopt, promulgate, amend and repeal rules and  
4 regulations consistent with the general intent and purposes  
5 of sections 643.010 to 643.355, chapter 536, [and] Titles V  
6 and VI of the federal Clean Air Act, as amended, 42 U.S.C.  
7 7661[, ] et seq., and **42 U.S.C. Section 7412(r), as amended,**  
8 **for covered processes of agricultural stationary sources**  
9 **that use, store, or sell anhydrous ammonia,** including, but  
10 not limited to:

11 (a) Regulation of use of equipment known to be a  
12 source of air contamination;

13 (b) Establishment of maximum quantities of air  
14 contaminants that may be emitted from any air contaminant  
15 source; [and]

16 (c) Regulations necessary to enforce the provisions of  
17 Title VI of the Clean Air Act, as amended, 42 U.S.C. 7671[., ]

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

18 et seq., regarding any Class I or Class II substances as  
19 defined therein; **and**

20 **(d) Regulations necessary to implement and enforce the**  
21 **risk management plans under 42 U.S.C. Section 7412(r), as**  
22 **amended, for agricultural facilities that use, store, or**  
23 **sell anhydrous ammonia;**

24 (2) After holding public hearings in accordance with  
25 section 643.070, establish areas of the state and prescribe  
26 air quality standards for such areas giving due recognition  
27 to variations, if any, in the characteristics of different  
28 areas of the state which may be deemed by the commission to  
29 be relevant;

30 (3) (a) To require persons engaged in operations  
31 which result in air pollution to monitor or test emissions  
32 and to file reports containing information relating to rate,  
33 period of emission and composition of effluent;

34 (b) Require submission to the director for approval of  
35 plans and specifications for any article, machine,  
36 equipment, device, or other contrivance specified by  
37 regulation the use of which may cause or control the  
38 issuance of air contaminants; but any person responsible for  
39 complying with the standards established under sections  
40 643.010 to 643.355 shall determine, unless found by the  
41 director to be inadequate, the means, methods, processes,  
42 equipment and operation to meet the established standards;

43 (4) Hold hearings upon appeals from orders of the  
44 director or from any other actions or determinations of the  
45 director hereunder for which provision is made for appeal,  
46 and in connection therewith, issue subpoenas requiring the  
47 attendance of witnesses and the production of evidence  
48 reasonably relating to the hearing;

49           (5) Enter such order or determination as may be  
50 necessary to effectuate the purposes of sections 643.010 to  
51 643.355. In making its orders and determinations hereunder,  
52 the commission shall exercise a sound discretion in weighing  
53 the equities involved and the advantages and disadvantages  
54 to the person involved and to those affected by air  
55 contaminants emitted by such person as set out in section  
56 643.030. If any small business, as defined by section  
57 643.020, requests information on what would constitute  
58 compliance with the requirements of sections 643.010 to  
59 643.355 or any order or determination of the department or  
60 commission, the department shall respond with written  
61 criteria to inform the small business of the actions  
62 necessary for compliance. No enforcement action shall be  
63 undertaken by the department or commission until the small  
64 business has had a period of time, negotiated with the  
65 department, to achieve compliance;

66           (6) Cause to be instituted in a court of competent  
67 jurisdiction legal proceedings to compel compliance with any  
68 final order or determination entered by the commission or  
69 the director;

70           (7) Settle or compromise in its discretion, as it may  
71 deem advantageous to the state, any suit for recovery of any  
72 penalty or for compelling compliance with the provisions of  
73 any rule;

74           (8) Develop such facts and make such investigations as  
75 are consistent with the purposes of sections 643.010 to  
76 643.355, and, in connection therewith, to enter or authorize  
77 any representative of the department to enter at all  
78 reasonable times and upon reasonable notice in or upon any  
79 private or public property for the purpose of inspecting or  
80 investigating any condition which the commission or director

81 shall have probable cause to believe to be an air  
82 contaminant source or upon any private or public property  
83 having material information relevant to said air contaminant  
84 source. The results of any such investigation shall be  
85 reduced to writing, and a copy thereof shall be furnished to  
86 the owner or operator of the property. No person shall  
87 refuse entry or access, requested for purposes of inspection  
88 under this provision, to an authorized representative of the  
89 department who presents appropriate credentials, nor  
90 obstruct or hamper the representative in carrying out the  
91 inspection. A suitably restricted search warrant, upon a  
92 showing of probable cause in writing and upon oath, shall be  
93 issued by any judge having jurisdiction to any such  
94 representative for the purpose of enabling him to make such  
95 inspection;

96 (9) Secure necessary scientific, technical,  
97 administrative and operational services, including  
98 laboratory facilities, by contract or otherwise, with any  
99 educational institution, experiment station, or any board,  
100 department, or other agency of any political subdivision or  
101 state or the federal government;

102 (10) Classify and identify air contaminants; and

103 (11) Hold public hearings as required by sections  
104 643.010 to 643.355.

105 2. No rule or portion of a rule promulgated under the  
106 authority of this chapter shall become effective unless it  
107 has been promulgated pursuant to the provisions of section  
108 536.024.

109 3. The commission shall have the following duties with  
110 respect to the prevention, abatement and control of air  
111 pollution:

112 (1) Prepare and develop a general comprehensive plan  
113 for the prevention, abatement and control of air pollution;

114 (2) Encourage voluntary cooperation by persons or  
115 affected groups to achieve the purposes of sections 643.010  
116 to 643.355;

117 (3) Encourage political subdivisions to handle air  
118 pollution problems within their respective jurisdictions to  
119 the extent possible and practicable and provide assistance  
120 to political subdivisions;

121 (4) Encourage and conduct studies, investigations and  
122 research;

123 (5) Collect and disseminate information and conduct  
124 education and training programs;

125 (6) Advise, consult and cooperate with other agencies  
126 of the state, political subdivisions, industries, other  
127 states and the federal government, and with interested  
128 persons or groups;

129 (7) Represent the state of Missouri in all matters  
130 pertaining to interstate air pollution including the  
131 negotiations of interstate compacts or agreements.

132 4. Nothing contained in sections 643.010 to 643.355  
133 shall be deemed to grant to the commission or department any  
134 jurisdiction or authority with respect to air pollution  
135 existing solely within commercial and industrial plants,  
136 works, or shops or to affect any aspect of employer-employee  
137 relationships as to health and safety hazards.

138 5. Any information relating to secret processes or  
139 methods of manufacture or production discovered through any  
140 communication required under this section shall be kept  
141 confidential.

643.079. 1. Any air contaminant source required to  
2 obtain a permit issued under sections 643.010 to 643.355

3 shall pay annually beginning April 1, 1993, a fee as  
4 provided herein. For the first year the fee shall be twenty-  
5 five dollars per ton of each regulated air contaminant  
6 emitted. Thereafter, the fee shall be set every three years  
7 by the commission by rule and shall be at least twenty-five  
8 dollars per ton of regulated air contaminant emitted but not  
9 more than forty dollars per ton of regulated air contaminant  
10 emitted in the previous calendar year. If necessary, the  
11 commission may make annual adjustments to the fee by rule.  
12 The fee shall be set at an amount consistent with the need  
13 to fund the reasonable cost of administering sections  
14 643.010 to 643.355, taking into account other moneys  
15 received pursuant to sections 643.010 to 643.355. For the  
16 purpose of determining the amount of air contaminant  
17 emissions on which the fees authorized under this section  
18 are assessed, a facility shall be considered one source  
19 [under the definition of] **as described in** subsection 2 of  
20 section 643.078, except that a facility with multiple  
21 operating permits shall pay the emission fees authorized  
22 under this section separately for air contaminants emitted  
23 under each individual permit.

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

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

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

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

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

45           4. Each air contaminant source with a permit issued  
46 under sections 643.010 to 643.355 shall pay the fee for the  
47 first four thousand tons of each regulated air contaminant  
48 emitted each year but no air contaminant source shall pay  
49 fees on total emissions of regulated air contaminants in  
50 excess of twelve thousand tons in any calendar year. A  
51 permitted air contaminant source which emitted less than one  
52 ton of all regulated pollutants shall pay a fee equal to the  
53 amount per ton set by the commission. An air contaminant  
54 source which pays emission fees to a holder of a certificate  
55 of authority issued pursuant to section 643.140 may deduct  
56 such fees from any amount due under this section. The fees  
57 imposed in this section shall not be applied to carbon oxide  
58 emissions. The fees imposed in subsection 1 **of this section**  
59 and this subsection shall not be applied to sulfur dioxide  
60 emissions from any Phase I affected unit subject to the  
61 requirements of Title IV, Section 404, of the federal Clean  
62 Air Act, as amended, 42 U.S.C. Section 7651[, ] et seq., any  
63 sooner than January 1, 2000. The fees imposed on emissions  
64 from Phase I affected units shall be consistent with and

65 shall not exceed the provisions of the federal Clean Air  
66 Act, as amended, and the regulations promulgated  
67 thereunder. Any such fee on emissions from any Phase I  
68 affected unit shall be reduced by the amount of the service  
69 fee paid by that Phase I affected unit pursuant to  
70 subsection 8 of this section in that year. Any fees that  
71 may be imposed on Phase I sources shall follow the  
72 procedures set forth in subsection 1 **of this section** and  
73 this subsection and shall not be applied retroactively.

74 5. Moneys collected under this section shall be  
75 transmitted to the director of revenue for deposit in  
76 appropriate subaccounts of the natural resources protection  
77 fund created in section 640.220. A subaccount shall be  
78 maintained for fees paid by air contaminant sources which  
79 are required to be permitted under Title V of the federal  
80 Clean Air Act, as amended, 42 U.S.C. Section 7661[, ] et  
81 seq., and used, upon appropriation, to fund activities by  
82 the department to implement the operating permits program  
83 authorized by Title V of the federal Clean Air Act, as  
84 amended. Another subaccount shall be maintained for fees  
85 paid by air contaminant sources which are not required to be  
86 permitted under Title V of the federal Clean Air Act as  
87 amended, and used, upon appropriation, to fund other air  
88 pollution control program activities. Another subaccount  
89 shall be maintained for service fees paid under subsection 8  
90 of this section by Phase I affected units which are subject  
91 to the requirements of Title IV, Section 404, of the federal  
92 Clean Air Act Amendments of 1990 **(42 U.S.C. Section 7651c)**,  
93 as amended, [42 U.S.C. Section 7651,] and used, upon  
94 appropriation, to fund air pollution control program  
95 activities. The provisions of section 33.080 to the  
96 contrary notwithstanding, moneys in the fund shall not



97 revert to general revenue at the end of each biennium.  
98 Interest earned by moneys in the subaccounts shall be  
99 retained in the subaccounts. The per-ton fees established  
100 under subsection 1 of this section may be adjusted annually,  
101 consistent with the need to fund the reasonable costs of the  
102 program, but shall not be less than twenty-five dollars per  
103 ton of regulated air contaminant nor more than forty dollars  
104 per ton of regulated air contaminant. The first adjustment  
105 shall apply to moneys payable on April 1, 1994, and shall be  
106 based upon the general price level for the twelve-month  
107 period ending on August thirty-first of the previous  
108 calendar year.

109 6. The department may initiate a civil action in  
110 circuit court against any air contaminant source which has  
111 not remitted the appropriate fees within thirty days. In  
112 any judgment against the source, the department shall be  
113 awarded interest at a rate determined pursuant to section  
114 408.030 and reasonable attorney's fees. In any judgment  
115 against the department, the source shall be awarded  
116 reasonable attorney's fees.

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

120 8. Any Phase I affected unit which is subject to the  
121 requirements of Title IV, Section 404, of the federal Clean  
122 Air Act **Amendments of 1990 (42 U.S.C. Section 7651c)**, as  
123 amended, [42 U.S.C. Section 7651,] shall pay annually  
124 beginning April 1, 1993, and terminating December 31, 1999,  
125 a service fee for the previous calendar year as provided  
126 herein. For the first year, the service fee shall be twenty-  
127 five thousand dollars for each Phase I affected generating  
128 unit to help fund the administration of sections 643.010 to

129 643.355. Thereafter, the service fee shall be annually set  
130 by the commission by rule, following public hearing, based  
131 on an annual allocation prepared by the department showing  
132 the details of all costs and expenses upon which such fees  
133 are based consistent with the department's reasonable needs  
134 to administer and implement sections 643.010 to 643.355 and  
135 to fulfill its responsibilities with respect to Phase I  
136 affected units, but such service fee shall not exceed twenty-  
137 five thousand dollars per generating unit. Any such Phase I  
138 affected unit which is located on one or more contiguous  
139 tracts of land with any Phase II generating unit that pays  
140 fees under subsection 1 or subsection 2 of this section  
141 shall be exempt from paying service fees under this  
142 subsection. A "contiguous tract of land" shall be defined  
143 to mean adjacent land, excluding public roads, highways and  
144 railroads, which is under the control of or owned by the  
145 permit holder and operated as a single enterprise.

146 9. The department of natural resources shall determine  
147 the fees due pursuant to this section by the state of  
148 Missouri and its departments, agencies and institutions,  
149 including two- and four-year institutions of higher  
150 education. The director of the department of natural  
151 resources shall forward the various totals due to the joint  
152 committee on capital improvements and the directors of the  
153 individual departments, agencies and institutions. The  
154 departments, as part of the budget process, shall annually  
155 request by specific line item appropriation funds to pay  
156 said fees and capital funding for projects determined to  
157 significantly improve air quality. If the general assembly  
158 fails to appropriate funds for emissions fees as  
159 specifically requested, the departments, agencies and  
160 institutions shall pay said fees from other sources of

161 revenue or funds available. The state of Missouri and its  
162 departments, agencies and institutions may receive  
163 assistance from the small business technical assistance  
164 program established pursuant to section 643.173.

165 10. Each retail agricultural facility that uses,  
166 stores, or sells anhydrous ammonia that is an air  
167 contaminant source subject to the risk management plan under  
168 42 U.S.C. Section 7412(r), as amended, shall pay an annual  
169 registration fee of two hundred dollars. In addition, each  
170 retail agricultural facility that uses, stores, or sells  
171 anhydrous ammonia shall pay an annual tonnage fee calculated  
172 on the number of tons of anhydrous ammonia sold. The  
173 initial retail tonnage fee shall be set at one dollar and  
174 twenty-five cents per ton of anhydrous ammonia used or  
175 sold. Each distributor or terminal agricultural facility  
176 that uses, stores, or sells anhydrous ammonia that is an air  
177 contaminant source subject to the risk management plan  
178 program 3 under 40 CFR Part 68 shall pay an annual  
179 registration fee of five thousand dollars and shall not pay  
180 a tonnage fee. The annual registration fees and tonnage fee  
181 may be periodically revised under subsection 11 of this  
182 section. However, the fees collected shall be used  
183 exclusively for the purposes of administering the provisions  
184 of 42 U.S.C. Section 7412(r), as amended, for such  
185 agricultural facilities. Fees paid by agricultural air  
186 contaminant sources that use, store, or sell anhydrous  
187 ammonia for the purposes of implementing the requirements of  
188 42 U.S.C. Section 7412(r), as amended, shall be deposited  
189 into the anhydrous ammonia risk management plan subaccount  
190 within the natural resources protection fund created in  
191 section 643.245. If the funding exceeds the reasonable  
192 costs to administer the programs as set forth in this

193 **section, the department of natural resources shall reduce**  
194 **fees for all registrants if the fees derived exceed the**  
195 **reasonable cost of administering the risk management plan**  
196 **under 42 U.S.C. Section 7412(r), as amended.**

197 **11.** Notwithstanding any statutory fee amounts or  
198 maximums to the contrary, the department of natural  
199 resources may conduct a comprehensive review and propose  
200 changes to the fee structure authorized by sections 643.073,  
201 643.075, 643.079, 643.225, 643.228, 643.232, 643.237, and  
202 643.242 after holding stakeholder meetings in order to  
203 solicit stakeholder input from each of the following  
204 groups: the asbestos industry, electric utilities, mineral  
205 and metallic mining and processing facilities, cement kiln  
206 representatives, and any other interested industrial or  
207 business entities or interested parties. The department  
208 shall submit a proposed fee structure with stakeholder  
209 agreement to the air conservation commission. The  
210 commission shall review such recommendations at the  
211 forthcoming regular or special meeting, but shall not vote  
212 on the fee structure until a subsequent meeting. If the  
213 commission approves, by vote of two-thirds majority or five  
214 of seven commissioners, the fee structure recommendations,  
215 the commission shall authorize the department to file a  
216 notice of proposed rulemaking containing the recommended fee  
217 structure, and after considering public comments, may  
218 authorize the department to file the order of rulemaking for  
219 such rule with the joint committee on administrative rules  
220 pursuant to sections 536.021 and 536.024 no later than  
221 December first of the same year. If such rules are not  
222 disapproved by the general assembly in the manner set out  
223 below, they shall take effect on January first of the  
224 following calendar year and the previous fee structure shall

225 expire upon the effective date of the commission-adopted fee  
226 structure. Any regulation promulgated under this subsection  
227 shall be deemed to be beyond the scope and authority  
228 provided in this subsection, or detrimental to permit  
229 applicants, if the general assembly, within the first sixty  
230 calendar days of the regular session immediately following  
231 the filing of such regulation, by concurrent resolution  
232 disapproves the regulation by concurrent resolution. If the  
233 general assembly so disapproves any regulation filed under  
234 this subsection, the commission shall continue to use the  
235 previous fee structure. The authority of the commission to  
236 further revise the fee structure as provided by this  
237 subsection shall expire on August 28, 2024.

**643.252. 1. All moneys received pursuant to**  
2 **subsection 10 of section 643.079 and any other moneys so**  
3 **designated shall be placed in the "Natural Resources**  
4 **Protection Fund - Anhydrous Ammonia Risk Management Plan**  
5 **Subaccount", which is hereby created. Such moneys received**  
6 **pursuant to subsection 10 of section 643.079 shall, subject**  
7 **to appropriation, be used solely for the purpose of**  
8 **administering the provisions of subsection 10 of section**  
9 **643.079. Any unexpended balance in such fund at the end of**  
10 **any appropriation period shall not be transferred to the**  
11 **general revenue fund of the state treasury and shall be**  
12 **exempt from the provisions of section 33.080.**

13 **2. The state treasurer, with the approval of the board**  
14 **of fund commissioners, is authorized to deposit all of the**  
15 **moneys in any of the qualified state depositories. All such**  
16 **deposits shall be secured in such manner and shall be made**  
17 **upon such terms and conditions as are now and may hereafter**  
18 **be approved by law relative to state deposits. Any interest**  
19 **received on such deposits shall be credited to the natural**

20 **resources protection fund – anhydrous ammonia risk**  
21 **management plan subaccount.**

2 [266.355. Unless provided for by federal  
3 law, rule or regulation, the director of the  
4 department of agriculture shall promulgate,  
5 pursuant to chapter 536, and enforce regulations  
6 setting forth minimum general standards covering  
7 the design, construction, location,  
8 installation, and operation of equipment for  
9 storing, handling, transporting by tank truck,  
10 tank trailer, tank car and utilizing anhydrous  
11 ammonia. The provisions of this section shall  
12 not apply to equipment which is in use for  
13 storing anhydrous ammonia as of August 28, 2010,  
14 and which is found by the department to be in  
15 substantial compliance with generally accepted  
16 standards of safety regarding life and  
17 property. The department shall adopt the  
18 minimum general safety standards for the storage  
19 and handling of anhydrous ammonia set forth in  
20 ANSI Standard K61.1-1999, Safety Requirements  
21 for the Storage and Handling of Anhydrous  
22 Ammonia; except that, ANSI Standard K61.1-1999  
23 shall not be adopted by the department prior to  
24 December 1, 2012. For purposes of this section,  
25 "ANSI" means the American National Standards  
Institute.]

Section B. Because of the need to ensure the safe  
2 usage of anhydrous ammonia, section A of this act is deemed  
3 necessary for the immediate preservation of the public  
4 health, welfare, peace, and safety, and is hereby declared  
5 to be an emergency act within the meaning of the  
6 constitution, and section A of this act shall be in full  
7 force and effect upon its passage and approval.

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