

FIRST REGULAR SESSION

SENATE BILL NO. 195

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROHRBACH.

Pre-filed December 29, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S0861.011

AN ACT

To repeal sections 444.784 and 643.055, RSMo 1994, sections 260.225, 260.370, 444.380 and 644.026, RSMo Supp. 1998, and section 319.137 as enacted by senate bill no. 3 and by house bill no. 251, first regular session of the eighty-eighth general assembly, relating to environmental protection, and to enact in lieu thereof seven new sections relating to the same subject.

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

Section A. Sections 444.784 and 643.055, RSMo 1994, sections 260.225, 260.370, 444.380 and 644.026, RSMo Supp. 1998, and section 319.137 as enacted by senate bill no. 3 and by house bill no. 251, first regular session of the eighty-eighth general assembly, are repealed and seven new sections enacted in lieu thereof, to be known as sections 260.225, 260.370, 319.137, 444.380, 444.784, 643.055 and 644.026, to read as follows:

260.225. 1. The department shall administer sections 260.200 to 260.345 to maximize the amount of recovered materials and to minimize disposal of solid waste in sanitary landfills. The department shall, through its rules and regulations, policies and programs, encourage to the maximum extent practical, the use of alternatives to disposal. To accomplish these objectives, the department shall:

(1) Administer the state solid waste management program pursuant to the provisions of sections 260.200 to 260.345;

(2) Cooperate with appropriate federal, state, and local units of government of this or any other state, and with appropriate private organizations in carrying out its authority under sections 260.200 to 260.345;

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

(3) Promulgate and adopt, after public hearing, such rules [and regulations] relating to solid waste management systems as shall be necessary to carry out the purposes and provisions of sections 260.200 to 260.345. **The rules so established shall not be any stricter than any required by federal law relating to the disposal of solid waste. The department may adopt federal rules by reference following the procedures and requirements of this section. Where federal rules are adopted by reference, failure to include certain rules shall not, in itself, mean that those rules are not applicable in this state, and shall not be interpreted to mean that the state intends to be more restrictive than federal requirements. In cases where there are no federal standards or guidelines for such regulation, where no other provision of laws exists, or where such federal laws, standards, or guidelines are not sufficient to protect public health, welfare, or the environment, the department shall have the authority to regulate, based upon substantial evidence on the record after public hearing and finding by the department that the subject of the regulation constitutes a significant adverse impact to public health, welfare, or the environment. The department shall establish procedures for the exercise of its authority under this section for determining whether a significant adverse impact to public health, welfare, or the environment exists through formal rulemaking. Such criteria and rulemaking shall be based upon reasonably available scientific data and shall, at a minimum, include consideration of health, welfare, economics, pollution prevention, and the effectiveness and cost of available control methods;**

(4) Develop a statewide solid waste management plan in cooperation with local governments, regional planning commissions, districts, and appropriate state agencies;

(5) Provide technical assistance to cities, counties, districts, and authorities;

(6) Develop and conduct a mandatory solid waste technician training course of study;

(7) Conduct and contract for research and investigations in the overall area of solid waste storage, collection, recycling, recovery, processing, transportation and disposal, including, but not limited to, new and novel procedures;

(8) Subject to appropriation by the general assembly, establish criteria for awarding state-funded solid waste management planning grants to cities, counties, and districts, allocate funds, and monitor the proper expenditure of funds;

(9) Issue such permits and orders and conduct such inspections as may be necessary to implement the provisions of sections 260.200 to 260.345 and the rules and regulations adopted pursuant to sections 260.200 to 260.345;

(10) Initiate, conduct and support research, demonstration projects, and investigations with applicable federal programs pertaining to solid waste management systems;

(11) Contract with cities, counties, districts and other persons to act as its agent in carrying out the provisions of sections 260.200 to 260.345 under procedures and conditions as the

department shall prescribe.

2. The department shall prepare model solid waste management plans suitable for rural and urban areas which may be used by districts, counties and cities. In preparing the model plans, the department shall consider the findings and recommendations of the study of resource recovery conducted pursuant to section 260.038, and other relevant information. The plans shall conform with the requirements of section 260.220 and section 260.325 and shall:

- (1) Emphasize waste reduction and recycling;
- (2) Provide for economical waste management through regional cooperation;
- (3) Be designed to achieve a reduction of forty percent in solid waste disposed, by weight, by January 1, 1998;
- (4) Establish a means to measure the amount of reduction in solid waste disposal;
- (5) Provide for the elimination of small quantities of hazardous waste, including household hazardous waste, from the solid waste stream; and
- (6) Be designed to guide planning in districts, cities and counties including cities and counties not within a district.

3. The model plan shall be distributed to the executive board of each solid waste district and to counties and cities not within a district by December 1, 1991.

4. No rule or portion of a rule promulgated under the authority of sections 260.200 to 260.345 shall become effective unless it has been promulgated pursuant to the provisions of [section 536.024] **chapter 536**, RSMo.

5. In coordination with other appropriate state agencies, including, but not limited to, the division of commerce and industrial development, the office of administration, the environmental improvement and energy resource authority, and the public service commission, the department shall perform the following duties in order to promote resource recovery in the state in ways which are economically feasible:

- (1) Identify markets for recovered materials and for energy which could be produced from solid waste and household hazardous waste;
- (2) Provide technical assistance pertaining to all aspects of resource recovery to cities, counties, districts, industries and other persons;
- (3) Identify opportunities for resource recovery programs in state government and initiate actions to implement such programs;
- (4) Expand state contracts for procurement of items made from recovered materials;
- (5) Initiate recycling programs within state government;
- (6) Provide a clearinghouse of consumer information regarding the need to support resource recovery, utilize and develop new resource recovery programs around existing enterprises, request and purchase recycled products, participate in resource conservation activities and other relevant issues;

(7) Identify barriers to resource recovery and resource conservation, and propose remedies to these barriers; and

(8) Initiate activities with appropriate state and local entities to develop markets for recovered materials.

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

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

waste facility a complete, full and detailed accounting of the cost of the department's inspections of the facility for the twelve-month period immediately preceding the request within forty-five days after receipt of the request. Failure to provide the accounting within forty-five days shall require the department to refund the inspection fee paid during the twelve-month-time period.

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

(1) From time to time adopt, amend or repeal, after due notice and public hearing, [standards,] rules [and regulations] to implement, enforce and carry out the provisions of sections 260.350 to 260.430 and any required of this state by any federal hazardous waste management act and as the commission may deem necessary to provide for the safe management of hazardous wastes to protect the health of humans and the environment. In implementing this subsection, the commission shall consider the variations within this state in climate, geology, population density, quantities and types of hazardous wastes generated, availability of hazardous waste facilities and such other factors as may be relevant to the safe management of hazardous wastes. **The rules so established shall not be any stricter than any required by federal law relating to the management of hazardous waste. The commission may adopt federal rules by reference following the procedures and requirements of this section. Where federal rules are adopted by reference, failure to include certain rules shall not, in itself, mean that those rules are not applicable in this state, and shall not be interpreted to mean that the state intends to be more restrictive than federal requirements. In cases where there are no federal standards or guidelines for the regulation of the management of hazardous waste, where no other provision of law exists, or where such federal laws, standards, or guidelines are not sufficient to protect public health, welfare, or the environment, the commission shall have the authority to regulate such hazardous waste based upon substantial evidence on the record after public hearing and finding by the commission that the hazardous waste to be regulated constitutes a significant adverse impact to public health, welfare, or the environment. The commission shall establish procedures for the exercise of its authority under this section for determining whether a significant adverse impact to public health, welfare, or the environment exists through formal rulemaking. Such criteria and rulemaking shall be based upon reasonably available scientific data and shall, at a minimum, include consideration of health, welfare, economics, pollution prevention, and the effectiveness and cost of available control methods.** Within two years after September 28, 1977, the commission shall adopt rules [and regulations] including the following:

(a) Rules [and regulations] establishing criteria and a listing for the determination of whether any waste or combination of wastes is hazardous for the purposes of sections 260.350 to 260.430, taking into account toxicity, persistence and degradability in nature, potential for

accumulation in tissue, and other related factors such as flammability, corrosiveness and other hazardous characteristics;

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

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

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

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

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

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

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

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

(4) Grant individual variances in accordance with the provisions of sections 260.350 to 260.430;

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

4. No rule or portion of a rule promulgated under the authority of sections 260.350 to 260.480 and sections 260.565 to 260.575 shall become effective unless it has been promulgated pursuant to the provisions of [section 536.024] **chapter 536**, RSMo.

319.137. [Rules and regulations promulgated by the United States Environmental Protection Agency under subtitle I of the federal Resource Conservation Recovery Act of 1976 (P.L.

94-580), as amended, may be adopted by the department by reference. The department may adopt rules and regulations that are more stringent than those issued by the United States Environmental Protection Agency if such rules or regulations are necessary to protect human health or the environment. Any such rule shall be adopted only after due notice and public hearing in accordance with the provisions of this section, chapter 536, RSMo, and chapter 644, RSMo. No rule or portion of a rule promulgated under the authority of sections 319.100 to 319.139 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.]

1. Rules promulgated by the United States Environmental Protection Agency pursuant to section 42 U.S.C. 6991, et seq., as amended, may be adopted by the department by reference. The department may not adopt rules that are more stringent than those issued by the United States Environmental Protection Agency, unless such rules are necessary to protect human health or the environment. Where federal rules are adopted by reference, failure to include certain rules shall not, in itself, mean that those rules are not applicable in this state, and shall not be interpreted to mean that the state intends to be more restrictive than federal requirements. Any such rule shall be adopted only after due notice and public hearing in accordance with the provisions of this section, chapter 536, RSMo, and chapter 644, RSMo. In cases where there are no federal standards or guidelines for such regulation, where no other provision of law exists, or where such federal laws, standards, or guidelines are not sufficient to protect public health, welfare, or the environment, the department shall have the authority to regulate such pollution based upon substantial evidence on the record after public hearing and finding by the department that the subject of such regulation constitutes a significant adverse impact to public health, welfare, or the environment. The department shall establish procedures for the exercise of its authority under this section for determining whether a significant adverse impact to public health, welfare, or the environment exists through formal rulemaking. Such criteria and rulemaking shall be based upon reasonably available scientific data and shall, at a minimum, include consideration of health, welfare, economics, pollution prevention and the effectiveness and cost of available control methods.

2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority delegated in sections 319.100 to 319.139 shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to the effective date of this section if it fully complied with the provisions of chapter 536, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority

and any rule proposed or adopted after the effective date of this section shall be invalid and void.

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

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

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

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

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

- (1) An absence of statutory authority for the proposed rule;
- (2) An emergency relating to public health, safety or welfare;
- (3) The proposed rule is in conflict with state law;
- (4) A substantial change in circumstance since enactment of the law upon which the proposed rule is based;

- (5) That the rule is arbitrary and capricious.

6. If the committee disapproves any rule or portion thereof, the filing agency shall

not file such disapproved portion of any rule with the secretary of state and the secretary of state shall not publish in the Missouri Register any final order of rulemaking containing the disapproved portion.

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

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

444.380. 1. The director may adopt and promulgate reasonable rules [and regulations] to implement sections 444.352 to 444.380. [No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.] **The rules so established shall not be any stricter than any required by federal law regulating disposal of metallic mineral waste. The director may adopt federal rules by reference following the procedures and requirements of this section. Where federal rules are adopted by reference, failure to include certain rules shall not, in itself, mean that those rules are not applicable in this state, and shall not be interpreted to mean that the state intends to be more restrictive than federal requirements. In cases where there are no federal standards or guidelines for such regulation, where no other provision of law exists, or where such federal laws, standards, or guidelines are not sufficient to protect public health, welfare, or the environment, the director shall have the authority to regulate such disposal of metallic mineral waste based upon substantial evidence on the record after public hearing and finding by the director that the subject of such regulation constitutes a significant adverse impact to public health, welfare, or the environment. The director shall establish procedures for the exercise of its authority under this section for determining whether a significant adverse impact to public health, welfare, or the environment exists through formal rulemaking. Such criteria and rulemaking shall be based upon reasonably available scientific data and shall, at a minimum, include consideration of health, welfare, economics, pollution prevention and the effectiveness and cost of available control methods.**

2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority delegated in sections 444.352 to 444.380 shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to the effective date of this section if it fully complied with the provisions of chapter 536, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after the effective date of this section shall be invalid and void.

444.784. **1. The commission may adopt and promulgate reasonable rules [and regulations respecting] with respect to the administration of sections 444.760 to 444.789. The rules so established shall not be any stricter than any required by federal law regulating surface mining and reclamation of land. The director may adopt federal rules by reference following the procedures and requirements of this section. Where federal rules are adopted by reference, failure to include certain rules shall not, in itself, mean that those rules are not applicable in this state, and shall not be interpreted to mean that the state intends to be more restrictive than federal requirements. In cases where there are no federal standards or guidelines for such regulation, where no other provision of law exists, or where such federal laws, standards, or guidelines are not sufficient to protect public health, welfare, or the environment, the director shall have the authority to regulate surface mining and reclamation of land based upon substantial evidence on the record after public hearing and finding by the director that the subject of such regulation constitutes a significant adverse impact to public health, welfare, or the environment. The director shall establish procedures for the exercise of its authority under this section for determining whether a significant adverse impact to public health, welfare, or the environment exists through formal rulemaking. Such criteria and rulemaking shall be based upon reasonably available scientific data and shall, at a minimum, include consideration of health, welfare, economics, pollution prevention and the effectiveness and cost of available control methods.**

2. Any act authorized to be done by the director may be performed by any employee of the commission when designated by the director. All forfeitures collected after January 1, 1972, as provided in sections 444.760 to 444.789, shall be expended to reclaim and rehabilitate land affected in accordance with the provisions of sections 444.760 to 444.789. Insofar as is reasonably practicable, the funds shall be expended upon the lands for which the permit was issued and for which the bond was given.

643.055. **1. Other provisions of law notwithstanding, the Missouri air conservation**

commission shall have the authority to promulgate rules [and regulations], pursuant to chapter 536, RSMo, [to establish standards and guidelines] to ensure that the state of Missouri is in compliance with the provisions of the federal Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.). The [standards and guidelines] **rules** so established shall not be any stricter than [those] required under the provisions of the federal Clean Air Act, as amended; nor shall those [standards and guidelines] **rules** be enforced in any area of the state prior to the time required by the federal Clean Air Act, as amended. The restrictions of this section shall not apply to the parts of a state implementation plan developed by the commission to bring a nonattainment area into compliance and to maintain compliance when needed to have a United States Environmental Protection Agency approved state implementation plan. The determination of which parts of a state implementation plan are not subject to the restrictions of this section shall be based upon specific findings of fact by the air conservation commission as to the rules, regulations and criteria that are needed to have a United States Environmental Protection Agency approved plan.

2. The Missouri air conservation commission shall also have the authority to grant exceptions and variances from the rules set under subsection 1 of this section when the person applying for the exception or variance can show that compliance with such rules:

- (1) Would cause economic hardship; or
- (2) Is physically impossible; or
- (3) Is more detrimental to the environment than the variance would be; or
- (4) Is impractical or of insignificant value under the existing conditions.

3. The commission may adopt federal rules by reference following the procedures and requirements of section 643.070. Where federal rules are adopted by reference, failure to include certain rules shall not, in itself, mean that those rules are not applicable in this state, and shall not be interpreted to mean that the state intends to be more restrictive than federal requirements. In cases where there are no federal standards or guidelines for such regulation, where no other provision of law exists, or where such federal laws, standards, or guidelines are not sufficient to protect public health, welfare, or the environment, the commission shall have the authority to regulate such activities based upon substantial evidence on the record after public hearing and finding by the commission that the subject of such regulation constitutes a significant adverse impact to public health, welfare, or the environment. The commission shall establish procedures for the exercise of its authority under this section for determining whether a significant adverse impact to public health, welfare, or the environment exists through formal rulemaking. Such criteria and rulemaking shall be based upon reasonably available scientific data and shall, at a minimum, include consideration of health, welfare, economics, pollution prevention and the

effectiveness and cost of available control methods.

644.026. 1. The commission shall:

(1) Exercise general supervision of the administration and enforcement of sections 644.006 to 644.141 and all rules and regulations and orders promulgated thereunder;

(2) Develop comprehensive plans and programs for the prevention, control and abatement of new or existing pollution of the waters of the state;

(3) Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions and industries in furtherance of the purposes of sections 644.006 to 644.141;

(4) Accept gifts, contributions, donations, loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions, which funds shall not be expended for other than the purposes for which provided;

(5) Encourage, participate in, or conduct studies, investigations, and research and demonstrations relating to water pollution and causes, prevention, control and abatement thereof as it may deem advisable and necessary for the discharge of its duties under sections 644.006 to 644.141;

(6) Collect and disseminate information relating to water pollution and the prevention, control and abatement thereof;

(7) After holding public hearings, identify waters of the state and prescribe water quality standards for them, giving due recognition to variations, if any, and the characteristics of different waters of the state which may be deemed by the commission to be relevant insofar as possible under any federal water pollution control act. These shall be reevaluated and modified as required by any federal water pollution control act;

(8) Adopt, amend, promulgate, or repeal after due notice and hearing, rules [and regulations] to enforce, implement, and effectuate the powers and duties of sections 644.006 to 644.141 and any required of this state by any federal water pollution control act, and as the commission may deem necessary to prevent, control and abate existing or potential pollution. **The rules so established shall not be any stricter than any required by federal law regulating pollution of waters. The director may adopt federal rules by reference following the procedures and requirements of this section. Where federal rules are adopted by reference, failure to include certain rules shall not, in itself, mean that those rules are not applicable in this state, and shall not be interpreted to mean that the state intends to be more restrictive than federal requirements. In cases where there are no federal standards or guidelines for such regulation, where no other provision of law exists, or where such federal laws, standards, or guidelines are not sufficient to protect public health, welfare, or the environment, the director shall have the authority to regulate pollution of waters based upon substantial evidence on the record after public**

hearing and finding by the director that the subject of such regulation constitutes a significant adverse impact to public health, welfare, or the environment. The director shall establish procedures for the exercise of its authority under this section for determining whether a significant adverse impact to public health, welfare, or the environment exists through formal rulemaking. Such criteria and rulemaking shall be based upon reasonably available scientific data and shall, at a minimum, include consideration of health, welfare, economics, pollution prevention and the effectiveness and cost of available control methods;

(9) Issue, modify or revoke orders prohibiting or abating discharges of water contaminants into the waters of the state or adopting other remedial measures to prevent, control or abate pollution;

(10) Administer state and federal grants and loans to municipalities and political subdivisions for the planning and construction of sewage treatment works;

(11) Hold such hearings, issue such notices of hearings and subpoenas requiring the attendance of such witnesses and the production of such evidence, administer such oaths, and take such testimony as the commission deems necessary or as required by any federal water pollution control act. Any of these powers may be exercised on behalf of the commission by any members thereof or a hearing officer designated by it;

(12) Require the prior submission of plans and specifications, or other data including the quantity and types of water contaminants, and inspect the construction of treatment facilities and sewer systems or any part thereof in connection with the issuance of such permits or approval as are required by sections 644.006 to 644.141;

(13) Issue, continue in effect, revoke, modify or deny, under such conditions as it may prescribe, to prevent, control or abate pollution or any violations of sections 644.006 to 644.141 or any federal water pollution control act, permits for the discharge of water contaminants into the waters of this state, and for the installation, modification or operation of treatment facilities, sewer systems or any parts thereof. Such permit conditions, in addition to all other requirements of this subdivision, shall ensure compliance with all effluent regulations or limitations, water quality related effluent limitations, national standards of performance and toxic and pretreatment effluent standards, and all requirements and time schedules thereunder as established by sections 644.006 to 644.141 and any federal water pollution control act; however, no permit shall be required of any person for any emission into publicly owned treatment facilities or into publicly owned sewer systems tributary to publicly owned treatment works;

(14) Require proper maintenance and operation of treatment facilities and sewer systems and proper disposal of residual waste from all such facilities and systems;

(15) Exercise all incidental powers necessary to carry out the purposes of sections 644.006 to 644.141, assure that the state of Missouri complies with any federal water pollution control act,

retains maximum control thereunder and receives all desired federal grants, aid and benefits;

(16) Establish effluent and pretreatment and toxic material control regulations to further the purposes of sections 644.006 to 644.141 and as required to ensure compliance with all effluent limitations, water quality related effluent limitations, national standards of performance and toxic and pretreatment effluent standards, and all requirements and any time schedules thereunder, as established by any federal water pollution control act for point sources in this state, and where necessary to prevent violation of water quality standards of this state;

(17) Prohibit all discharges of radiological, chemical, or biological warfare agent or high-level radioactive waste into waters of this state;

(18) Require that all publicly owned treatment works or facilities which receive or have received grants or loans from the state or the federal government for construction or improvement make all charges required by sections 644.006 to 644.141 or any federal water pollution control act for use and recovery of capital costs, and the operating authority for such works or facility is hereby authorized to make any such charges;

(19) Represent the state of Missouri in all matters pertaining to interstate water pollution including the negotiation of interstate compacts or agreements;

(20) Develop such facts and make such investigations as are consistent with the purposes of sections 644.006 to 644.141, and, in connection therewith, to enter or authorize any representative of the commission to enter at all reasonable times and upon reasonable notice in or upon any private or public property for any purpose required by any federal water pollution control act or sections 644.006 to 644.141 for the purpose of developing rules, regulations, limitations, standards, or permit conditions, or inspecting or investigating any records required to be kept by sections 644.006 to 644.141 or any permit issued hereunder, any condition which the commission or executive secretary has probable cause to believe to be a water contaminant source or the site of any suspected violation of sections 644.006 to 644.141, regulations, standards, or limitations, or permits issued hereunder. The results of any such investigation shall be reduced to writing, and shall be furnished to the owner or operator of the property. No person shall refuse entry or access, requested for the purposes of inspection under this provision, to an authorized representative in carrying out the inspection. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath, shall be issued by any judge or associate circuit judge having jurisdiction to any representative for the purpose of enabling him to make such inspection. Information obtained under this section shall be available to the public unless it constitutes trade secrets or confidential information, other than effluent data, of the person from whom it is obtained, except when disclosure is required under any federal water pollution control act;

(21) Retain, employ, provide for, and compensate, within appropriations available therefor, such consultants, assistants, deputies, clerks and other employees on a full- or part-time basis as

may be necessary to carry out the provisions of sections 644.006 to 644.141 and prescribe the times at which they shall be appointed and their powers and duties;

(22) Secure necessary scientific, technical, administrative and operation services, including laboratory facilities, by contract or otherwise, with any educational institution, experiment station, or any board, department, or other agency of any political subdivision of the state or the federal government;

(23) Require persons owning or engaged in operations which do or could discharge water contaminants, or introduce water contaminants or pollutants of a quality and quantity to be established by the commission, into any publicly owned treatment works or facility, to provide and maintain any facilities and conduct any tests and monitoring necessary to establish and maintain records and to file reports containing information relating to measures to prevent, lessen or render any discharge less harmful or relating to rate, period, composition, temperature, and quality and quantity of the effluent, and any other information required by any federal water pollution control act or the executive secretary hereunder, and to make them public, except as provided in subdivision (20) of this section. The commission shall develop and adopt such procedures for inspection, investigation, testing, sampling, monitoring and entry respecting water contaminant and point sources as may be required for approval of such a program under any federal water pollution control act;

(24) Take any action necessary to implement continuing planning processes and areawide waste treatment management as established under any federal water pollution control act or sections 644.006 to 644.141.

2. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section [536.024] **chapter 536**, RSMo.

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